

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
O.A.No.578/2005

Dated the 26th day of February 2008.

CORAM:

HON'BLE SMT. SATHI NAIR, VICE CHAIRMAN
HON'BLE SHRI GEORGE PARACKEN, JUDICIAL MEMBER

K.Bhaskaran,
working as Tax Assistant,
O/O.The Deputy Commissioner of
Central Excise and Customs,
Muvattupuzha, residing at
Sathampura House,
Karimkunnam, Thodupuzha. Applicant

By Advocate Mr.M.R.Hariraj

V/s.

- 1 Union of India,
represented by the Secretary
to Government of India,
Ministry of Finance,
Department of Revenue,
Central Board of Excise and Customs,
New Delhi.
- 2 The Chairman,
Central Board of Excise and Customs,
North Block, New Delhi.
- 3 The Chief Commissioner of Customs
& Central Excise, Kerala Zone,
Central Revenue Building,
Kochi-18.
- 4 The Commissioner of Central Excise
& Customs, Cochin Commissionerate,
CR Building,
I.S.Press Road, Kochi-18.
- 5 Krishna Kumar P,
Sr. Tax Assistant,
Customs Division Trivandrum.
Residing at Koyikkal,
Koyikkal Lane,
Kannamoola,
Medical College P.O.,
Trivandrum – 11.



6 S.Krishna Kumar,
Sr. Tax Assistant,
Trivandrum Commissionerate,
ICE Bhavan, Trivandrum
residing at
TC 28/278 Ottukal Street,
Kaithamukku, Trivandrum-24. ... Respondents

By Advocate Mr.Shaji V A for Mr.TPM I Khan SCGSC (R 1-4)
Mr.T.C.G.Swamy (R 5 & 6)

The application having been heard on 11.1.2008, the Tribunal delivered the following on 26.2.2008:

(ORDER)

Hon'ble Shri George Paracken, Judicial Member

This is the second round of litigation by the Applicant challenging promotions given to some of the Tax Assistants to the Cadre of Senior Tax Assistants on the ground that they have not qualified the confirmation examination as required under the Recruitment Rules. The earlier OA 735/2004 filed by the applicant in this regard was disposed of vide order dated 22/11/2004 (Annexure A-13) with a direction to the second respondent to consider his representation dated 30.9.2004 (Annexure A-11).and to pass appropriate orders.

2 According to aforesaid Annexure A-11 representation, the applicant was initially appointed as a Sepoy in the Central Excise and Customs Department on 10.7.1975. Thereafter, he was promoted as an LDC on 24.8.1994 and later as a UDC on 5.11.2002. After the restructuring of the department, the posts of UDC and Data Entry Operator Grade'A' were merged to form the newly designated post of Tax Assistant w.e.f. 5.5.2003. By Annexure A-3 letter dated 8.10.2003 following relaxation was granted in the matter of promotion to the cadre of Senior Tax Assistants:

"The Recruitment Rules for the post of Senior Tax Assistant provide for a minimum qualifying service of 3 years as Tax Assistant for promotion to the higher post of Senior Tax Assistant. Further, in terms of Rule 4 of the Recruitment Rules for the post of Tax Assistant, services rendered before commencement of these Recruitment Rules by the persons appointed on regular basis and holding the post of Upper Division Clerk and Data Entry Operator Grade 'A' before these rules came into force shall be taken into account as regular service on the post of Tax Assistant for the purpose of promotions, etc. Hence there is no need to relax the minimum qualifying service of 3 years for promotion, since service in the pre-restructured posts shall be counted. However, passing in the examination of Computer Application and relevant procedures is a prerequisite for promotion as Senior Tax Assistant under the Recruitment Rules for the grade of Senior Tax Assistants. The Central Government has decided to relax the requirement for passing the departmental examination for promotion of Tax Assistant to the grade of Senior Tax Assistants. Such promotions will be made on a purely ad-hoc basis subject to the condition that the officers pass such examination by 31st December, 2003. In case they do not pass the departmental examination by the aforesaid date, they will stand reverted."

Thereafter, vide Annexure A-4 order dated 17/10/2003, 40 Tax Assistants were promoted to the grade of Senior Tax Assistants on adhoc basis subject to the condition that they shall pass the departmental examination for promotion of Tax Assistants to the grade of Senior Tax Assistants by 31.12.2003 and in case they fail to do so, they will stand reverted. Out of the 40 Tax Assistants, 36 persons were in the pre-restructured cadre of Data Entry Operator, Grade-A who were the beneficiaries of relaxation in recruitment rules in terms of the aforesaid Annexure A-3 letter. According to him, the said relaxation given vide letter dated 8.10.2003 was for the promotion examination specified in the Schedule to Recruitment Rules of Senior Tax Assistant and not to the confirmation examination as laid down in the Rule 4(2) of the Recruitment rules of Tax Assistant. In terms of sub rule 4(2) of the Central Excise and Customs Department Tax Assistant

(Group C post) Recruitment Rules, 2003 promulgated vide Notification dated 2.5.2003, the person holding the post of Data Entry Operator Grade A on appointment as Tax Assistant shall, within two years from the date of such appointment, pass the Departmental Examination conducted by the competent authority, failing which he shall not be entitled to get any further increment. Again as per sub rule 5(v) of the Central Excise and Customs Department Senior Tax Assistant (Group 'C' posts) Recruitment Rules, 2003 promulgated vide notification dated 16.1.2003, "the present employees would be required to pass the required or suitable departmental examination, as specified by the Competent Authority, from time to time, in Computer application and relevant procedures within two years failing which they would not be eligible for further increments." The applicant has, therefore, requested the respondents to declare the results of the examinations of all those Tax Assistants who were not confirmed in the grade of Tax Assistant (not passed the confirmation examination as specified in Rule 4(2) of the Recruitment Rules of Tax Assistant and Rule 5 (v) of Recruitment Rules of Senior Tax Assistants) but promoted to the cadre of Senior Tax Assistant on ad-hoc basis and later confirmed as null and void. He has also requested the respondents to consider him for promotion to the cadre of Senior Tax Assistant and include him in Annexure A-4 order of the respondents dated 17.10.2003.

3. While disposing of the aforesaid Annexure A-11 representation of the applicant dated 30.9.2004 as directed by this Tribunal in OA 735/2004 dated 22.11.2004, the respondents have issued the impugned Annexure A 14 order dated 6.6.2005. They have submitted that the Central Board of Excise and Customs vide Annexure A-3 letter dated 8.10.2003 had already decided to relax the requirement of passing the departmental examination

for promotion of Tax Assistant to the grade of Senior Tax Assistants and such promotion was made purely on an adhoc basis subject to the condition that the officers concerned would pass such examination by 31.12.2003 and based on the aforesaid relaxation 40 Tax Assistants have been promoted to the grade of Senior Tax Assistants without their passing the departmental examination vide Annexure A-4 order dated 17.10.2003. Among them, 36 officers were from the pre-structured cadre of Data Entry Operator Grade-A and remaining 4 were from the cadre of Upper Division Clerks. As per the Recruitment Rules of Senior Tax Assistant, Tax Assistants with regular service of three years in the grade of Tax Assistant who passed the departmental examination as specified by competent authority from time to time only were eligible to be considered for promotion to the grade of Senior Tax Assistants. As the applicant did not have the requisite three years qualifying service as Tax Assistant he was not considered for promotion to the grade of Senior Tax Assistant along with those 40 persons promoted on 8.1.2004. As regards the clarification given by the Department of Revenue vide Annexure A-8 vide letter dated 22.6.2004 that the Ministerial Officers are required to pass two examinations, one for completion of probation in the entry grade and the other for promotion to the higher grades the respondents have submitted that the Tax Assistants (pre-structured) cadre of Data Entry Operators had represented that once they have already been confirmed in the cadre of Date Entry Operator, and they are not required to pass the confirmation examination once again and the respondents had allowed their request in consultation with DOP&T and further clarified that since confirmation in Government service has been made a one time affair and a Government servant is required to be confirmed in the entry grade, he cannot be de-

confirmed on restructuring of a cadre. A Government servant is required to be confirmed again only if he is appointed to another post on direct recruitment basis either in the same department or in a different department. Since redesignated/promoted Tax Assistants/Sr.Tax Assistants have already been confirmed in the pre-structured cadre of Data Entry Operators, they are not required to pass the confirmation examination. Hence, the early instructions dated 7.1.2005 stand modified accordingly. As regards the Annexure A-10 letter dated 23.8.2004, making the Tax Assistants with 10 years service including their service as Lower Division Clerk eligible for promotion in case suitable officers in the pre-structured cadre of Senior Tax Assistant Grade II etc are not available for consideration, the respondents have submitted that the said order has already been withdrawn by letter dated 12.10.2004 and therefore Lower Division Clerks are not eligible for consideration for promotion to the post of Inspector in terms of para 12(c) of recruitment rules for inspector.

4. The applicant has challenged the aforesaid Annexure A-14 order dated 6.1.2005 on the ground that when the department has decided that since the re-designated/promoted Tax Assistants are not required to pass the confirmation examination the Annexure A-15 letter dated 17.3.2005 was not available to the respondents as the DPC was held in October, 2003. He has also contended Annexure A-15 being an "Administrative Instruction" cannot have retrospective operation and it cannot over-ride the mandate of the recruitment rules according to which only officials who have passed the confirmation test in the cadre of Tax Assistant can be promoted to the cadre of Senior Tax Assistants. He has, therefore, again reiterated that the action of the respondents in granting promotion to the erstwhile Data Entry Operators before they have been confirmed in the cadre of Tax Assistant

was tainted with malafides and by the aforesaid relaxation, officers like him who have completed three years' regular service in the grade of Tax Assistant after (taking into consideration of the service rendered in the pre-restructured cadre) have been denied their opportunity for promotion to the cadre of Senior Tax Assistants as per the recruitment rules and Annexure A-4 order dated 17.10.2003 was in violation of the aforementioned recruitment rules. He has further contended that vide Annexure A-6 order dated 8.1.2004 by which all those 40 persons have been promoted on regular basis in the cadre of Senior Tax Assistants with effect from 29.11.2003 (i.e the date of passing the qualifying examination) is also illegal as the Tax Assistants listed in the aforesaid order from serial no.1 to 34 and 37 were erstwhile Data Entry Operators who were not confirmed in the grade of Tax Assistants. In this regard, he relied upon the Annexure A8 letter dated 22.6.2004, in which the Department of Revenue had clarified as under:-

"prior to the cadre restructuring, the Central Excise Ministerial Officers were required to take two examinations, 'one for confirmation within their probation period of two years from the date of appointment in the Ministerial grade and another for promotion to the higher grades of Tax Assistant and Inspector, whereas similarly placed officers in the Customs wing were required to pass only the confirmation examination within two years of their appointment. They were not required to clear departmental examination for promotion to the higher grades on Tax Assistant and Preventive officer/Examiner. This situation has been amended in the post-cadre restructuring set up. Now, the ministerial officers in both Central Excise and Customs wing are required to pass two examinations one for completion of probation in the entry grade which is to be conducted by DOICCE and the other for promotion to the higher grades which is to be conducted by NACEN."

Again vide Annexure A-9 letter dated 18.6.2004, the Department of Revenue has again clarified in para 2(a) as under:-

"As per the Board's instructions F.No.A.3011/6/2004

Ad.III.A dated 22.06.2004, ministerial officers of Customs and Central Excise have to pass two examinations viz one on completion of probation in the entry grade for confirmation and the other for promotion to the higher grades. Hence all the erstwhile DEOs/UDCs appointed as STA/TA consequent upon cadre restructuring should first pass the confirmation examination before being allowed to appear in the departmental examination for promotion to the higher grade. Regularization in the lower grade is an essential requirement for promotion to the higher grade."

As regards the service rendered as Lower Division Clerks in the cadre of Tax Assistants, the Department of Revenue vide Annexure A-10 letter dated 23/8/2004 clarified that the

"Tax Assistant with 10 years service including the service as LDC will be eligible for consideration for promotion in case suitable officers in restructured cadre of STA, Steno Gr.II Women Searcher and Draftsman as per terms and conditions laid down in clause 12(b) are not available for consideration that to after 19/1/2005."

5 The applicant has also challenged the contention of the respondents that he did not have the requisite minimum qualifying regular service for promotion to the post of Senior Tax Assistant. In this regard, he has pointed out that he had represented against the seniority position granted to one Smt.P.G.Jayalakshmi above him in the grade of Tax Assistants who has since been promoted as Senior Tax Assistant. When he was promoted to the cadre of Upper Division Clerk by order dated 23.10.2002, he could join at Calicut only on 5.11.2002 and in the meanwhile on 28.10.2002, Smt.P.G.Jayalakshmi came and joined duty on inter-commissionerate transfer and she was shown senior to applicant in the seniority list of Tax Assistant as on 1.10.2003. Subsequently, the date of promotion of applicant was notionally revised to 17.5.2002 vide Annexure A-24 order dated 2.3.2006. According to him as per the Note to column 12 of the Schedule to the Central Excise and Customs Department Senior Tax

Assistant (Group C posts) Recruitment Rules 2003, if a Junior person is considered for promotion on the basis of his completing the prescribed qualifying period of service, all person senior to him in the grade shall also be considered for promotion, notwithstanding that they may not have rendered the prescribed qualifying service in that Grade but have completed successfully the prescribed period of probation. Based on the original seniority list as reflected in Annexure A-23 dated 22.10.2003, the applicant was later on promoted as Senior Tax Assistant vide Annexure A-25 order dated 20.9.2005 and subsequent to Annexure A-24 dated 2.3.2006 notional promotion as Upper Division Clerk w.e.f. 17.5.2002, he has been given the notional promotion in the grade of Senior Tax Assistant with effect from 28.3.2005 (Annexure A-26). Finally, the applicant submitted that refusing him the promotion atleast from the date of promotion of his junior is grossly unjust and illegal and going by the Annexure A-24 order preponing his promotion notionally in the grade of Upper Division Clerk with effect from 17.5.2002 and Annexure A-7 order dated 20.2.2004 promoting Smt.P.G.Jayalakshmi vide order dated 20.2.2004, he was entitled to be considered for promotion atleast from 20.2.2004 i.e. the date on which Smt.P.G.Jayalakshmi was promoted as Senior Tax Assistant.

6. The respondents in their reply have denied all the grounds taken by the applicant challenging the Annexure A-14 order dated 6.6.2005. They have contended that in view of the DOP&T's instruction issued vide OM NO.18011/3/88/Estt(D) dated 24.9.1992 clarifying that confirmation is a one time affair, the Data Entry Operators were not required to pass any confirmation examination again as they were already confirmed in their entry grade. As regards the promotion of Smt.P.G.Jayalakshmi, they have stated that she joined the post of Data Entry Operator on 28.10.2002 as an

Inter Commissionerate transferee. The cadres of Upper Division Clerk and Data Entry Operators Grade 'A' were merged together as Tax Assistants as per Ministry's order dated 2.5.2003 and they were placed en-block senior and their inter se placements have been fixed in accordance with their date of regular appointment. Accordingly, the applicant was placed below Smt.P.G.Jayalakshmi, Data Entry Operator Grade-A. She was promoted to the post of Senior Tax Assistant on 20.2.2004 and the applicant was promoted to the said post on 20.9.2005 as per the seniority list as on 1.10.2003. Later, the date of promotion of the applicant was revised and he was granted notional promotion w.e.f 17.5.2002 vide order 2.2.2006 as Upper Division Clerk and he became senior to Smt.P.G.Jayalakshmi in the cadre of Tax Assistant. However, Smt.P.G.Jayalakshmi was appointed as Inspector notionally w.e.f. November 2003 vide order dated 23.3.2006. As such, the date of promotion of Smt.P.G.Jayalakshmi to the cadre of Senior Tax Assistant with effect from 20.2.2004 has become irrelevant. When the applicant was also later on notionally promoted as Senior Tax Assistant, it was only from 20.3.2005, i.e. the date subsequent to the date from which Smt P.G.Jalalakshmi who was promoted with effect from 20.2.2004. Hence the applicant cannot claim promotion to the cadre of Senior Tax Assistant from the date of promotion of Smt.P.G.Jayalakshmi i.e. 20.2.2004 as she no more exist in the cadre of Senior Tax Assistant on 20.2.2004 and applicant did not possess the required qualifying service for promotion to the post of Senior Tax Assistant as on that date.

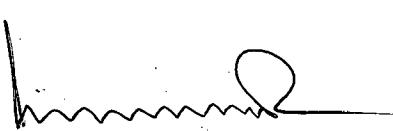
7. We have heard Advocate Mr.M.R.Hariraj for the applicant, Advocate Mr Shaji V A for Mr.TPM I Khan SCGSC for respondents 1 to 4 and Advocate Mr.T.C.G.Swamy for respondents 5&6. Though the applicant has taken a number of grounds challenging the Annexure A-14

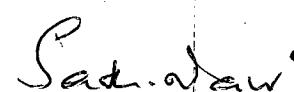
order dated 6.6.2005, finally he has narrowed down his claim only to the extent of promotion from 20.2.2004, i.e. the date on which Smt. P.G.Jayalakshmi was promoted as Senior Tax Assistant on the basis of the next below rule that if a junior has been promoted earlier, irrespective of the fact that whether the senior has completed the minimum eligibility period or not, such senior has also to be promoted along with his junior. As the applicant has already been promoted on 20.9.2005 and later on preponed it notionally to 20.3.2005 as per his position in the seniority list as on 1.10.2003, his request would amount only to further preponement of his date of promotion to 20.2.2004. However, this was also not found possible by the respondents because firstly, as on 20.2.2004 when Smt Jayalakshmi was promoted as Senior Tax Assistant the applicant had not completed the mandatory qualifying service of three years as Tax Assistant and he was junior to her. Secondly the applicant was notionally promoted as UDC with effect from 17.5.2002 only by order dated 2.3.2006 and on 20.2.2004, he had not again completed the eligibility period of 3 years. By the time the applicant had already been promoted as Senior Tax Assistants in his turn on 20.9.2005 and Smt Jayalakshmi has also been notionally promoted as Inspector with effect from November 2003 and her promotion as Senior Tax Assistant with effect from 20.2.2004 has become irrelevant. We find considerable merit in the contentions of the respondents. When Smt Jayalakshmi was promoted as Senior Tax Assistant with effect from 20.2.2004, she was admittedly senior to the applicant and the applicant was not eligible to be considered for promotion to that post. When the applicant was promoted as Senior Tax Assistant with effect from 20.9.2005 Smt Jayalakshmi continued to be senior to him as his promotion to the post of UDC with effect from 17.5.2002 was revised only subsequently by

Annexure A-24 order dated 2.3.2006. By that time the promotion of Smt P.G. Jayalakshmi as Senior Tax Assistant with effect from 20.2.2004 has become irrelevant, as she has already been notionally promoted as Inspector with retrospective effect from November, 2003. Again, when the date of promotion of the applicant as Senior Tax Assistant with effect from 20.5.2005 was revised to 20.3.2005 by the Annexure A-26 order dated 26.2.2007, Smt.Jayalakshmi continued to be senior to him as Senior Tax Assistant with her promotion to that post w.e.f. 20.2.2004. In other words, neither notionally nor actually, the applicant was ever promoted as Senior Tax Assistant w.e.f. 20.2.2004 i.e. the date on which Smt.Jayalakshmi was promoted to that post.

8. In the above facts and circumstances of the case, we do not find any merit in the OA and therefore the same is dismissed. There shall be no orders as to costs.

Dated, the 26th February, 2008.


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

abp