

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

Original Application No. 601 of 2005

Thursday, this the 4<sup>th</sup> day of January, 2007

**CORAM :**

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN  
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

K. V. Rajasekharan Nair,  
Inspector of Central Excise,  
Kundara I Range, Kundara,  
Kollam District.

... Applicant.

(By Advocate Mr. C.S.G. Nair)

1. Union of India represented by  
The Secretary,  
Department of Revenue,  
North Block, New Delhi.
2. The Chairman,  
Central Board of Excise & Customs,  
North Block, New Delhi : 1
3. The Chief Commissioner of  
Central Excise & Customs,  
Central Revenue Buildings,  
I.S. Press Road, Cochin : 682 018
4. The Commissioner of Central Excise & Customs,  
Central Revenue Buildings, I.S. Press Road,  
Cochin - 682 018.
5. The Commissioner of Central Excise & Customs,  
Central Revenue Buildings, Press Club Road,  
Trivandrum. ... Respondents.

(By Advocate Mr. T.P.M. Ibrahim Khan, SCGSC)

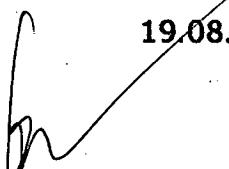
 The Original Application having been heard on 4.1.2007, this  
Tribunal on the same day delivered the following:

**ORDER**  
**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

The capsulated facts of the case, as narrated in the OA by the applicant is as under:-

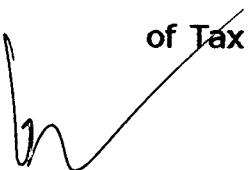
(a) The applicant joined the Respondents' organization as LDC in November, 1980 and was promoted as UDC in July 1988 and later was further promoted as Tax Assistant in July, 1997. The post of Tax Assistant forms the feeder grade for inspector on the one hand and Dy. Office Superintendent Gr. II on the other. While certain age limit (45 years for general candidates and 47 for Reserved category) had been prescribed for promotion to the post of Inspector, such a constraint was not there in respect of Dy. Office Superintendent.

(b) In November, 2002, Recruitment Rules for the post of Inspector were amended, providing for a higher age limit of 50 in respect of the feeder grade. By the time the rules came into force, the applicant who was over 45 years was considered and promoted by Commissioner's Order No. 130/2002 dated 09-08-2002 (Annexure A-6) to the post of Dy. Office Superintendent and the applicant joined the said post on 19.08.2002. By the said order, he was kept under probation for a period



of two years from the date of joining the new post and with the stipulation that he would not be considered for further promotion/retention unless he completed the probation period satisfactorily. However, immediately on coming to know about the extension of age limit under the revised recruitment rules for the post of Inspector, the applicant made Annexure A-3 representation dated 11-11-2002 for his reversion to the post of Tax Assistant, whereby his seniority position in the post of Tax Assistant Could be retained which would be taken into account for consideration for promotion to the post of Inspector. The request of the applicant, on being duly considered, was acceded to vide Annexure A-4 order dated 26.11.2002 stating that the reversion would take effect from the date the applicant joined as Tax Assistant and that his seniority in the cadre of Tax Assistant would be the same as his old seniority in that cadre. The applicant, in the wake of the afore said order thus joined the post of Tax Assistant. By Annexure A-5 order dated 20-12-2002, the applicant was promoted to the post of Inspector of Central Excise and his seniority was also fixed in a specific manner as contained in para 4 of the order. The applicant joined the post of Inspector and has been continuing in that post. The applicant underwent certain training course meant for Inspectors as well.

(c) It appears that on the basis of the applicant's reversion to the post of Tax Assistant with a view to being considered for promotion to the



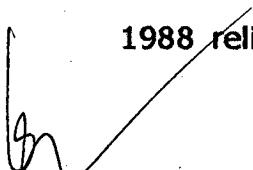
post of Inspector, some physically handicapped persons working as Dy. Office Superintendent made certain representation that they should be so permitted to revert to the post of Tax Assistant, so that they too could be considered for promotion to the post of Inspector. This representation seems to have triggered the Ministry of Finance to hold that the applicant on his having been promoted to the post of Dy. Office Superintendent cannot be reverted as he already stood confirmed at the entry level and as such, he happened to be a confirmed Dy. Office Superintendent as well. The authorities were therefore, directed to revert the applicant to the grade of DOSL II from the grade of Inspector, vide order dated 25<sup>th</sup> July, 2005. Copy of this order was not, however, made available to the applicant. Making a specific averment in the OA in this regard, the applicant had filed this OA challenging the proposed action on the part of the respondents in effecting reversion from the post of Inspector to the post of Dy. Office Superintendent.

2. Respondents have contested the O.A. According to them, the basis of proposed reversion was not any claim of some Physically handicapped persons working as DOS who also sought, like the applicant for reversion from the post of DOS to the post of Tax Assistant with a view to entitling them to be considered for promotion to the post of Inspector but on the basis of the fact that the earlier reversion of the applicant was a mistake, as the same was not in conformity with the DOPT order dated 28<sup>th</sup> March, 1988

(Annexure R-2).

3. The applicant had filed the rejoinder and reiterated his stand as contained in the OA and in the additional reply the respondents have annexed copy of the Ministry of Finance letter dated 25<sup>th</sup> July, 2005 which contained a direction to the authorities to effect reversion of the applicant to the post of DOS from Inspector..

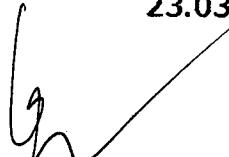
4. Counsel for the applicant argued that the act on the part of the respondents in proposing to revert the applicant to the post of Dy. Office Superintendent from the post of Inspector is thoroughly illegal. He has submitted that the applicant was, no doubt, promoted to the post of Dy. Office Superintendent and was under probation. On coming to know, as per the latest recruitment rules of 2002, that for promotion to the post of Inspector, there has now been enhanced age limit at the feeder post, he had made the Annexure A-3 representation dated 11-11-2002 for reversion, which was duly considered by the competent authority and reversion effected, vide Annexure A-4. The authorities had specifically stated that the applicant would retain his original seniority in the grade of Tax Assistant. Had the applicant declined his promotion initially, then also he would have retained his original seniority. The period he held the post of Dy. Office Superintendent was just two months plus. The order dated 28<sup>th</sup> March, 1988 relied upon by the respondents for the purpose of their attempt to

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revert the applicant, has no bearing on the reversion of the applicant. The said order talks of one time confirmation in the entire service career, and the said order does not provide for any embargo for reversion. And, his continuance or otherwise in the post of Dy. Office Superintendent was to be based on his performance during probation. Thus, just because the applicant was confirmed at the entry grade, it cannot be stated that he cannot be reverted. As his request for reversion for a specific reason was found to be logical and reasonable, the respondents had rightly passed the order dated 09-08-2002 (Annexure A-4) and the applicant has been permitted to retain his original seniority in the grade of Tax Assistant. He was thereafter considered for promotion to the post of Inspector and on being found fit, was so promoted whereafter, the applicant underwent certain training and also by now has completed more than 4 years as on date. As such, attempt to revert him to the post of Dy. Office Superintendent is thoroughly illogical and illegal.

5. Per contra, the counsel for the respondents argued that the earlier reversion from the post of Dy. Office Superintendent was a clear mistake as the same is not permissible in view of one time confirmation at the entry level as per order dated 23-03-1988.

6. Arguments were heard and documents perused. Order dated 23.03.1988 relates to confirmation at one stage (i.e. the entry stage) so

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that person so confirmed at the entry level need not be confirmed at every higher stage. The order relating to confirmation, however, also provides "If the recruitment rules do not prescribe any probation, an officer promoted on regular basis (after following the prescribed DPC etc., procedure) will have all the benefits that a person confirmed in that grade would have. Where probation is prescribed, the appointing authority will on completion of the prescribed period of probation assess the work and conduct of the officer himself and in case the conclusion is that the officer is fit to hold the higher grade, he will pass an order declaring that the person concerned has successfully completed the probation. If the appointing authority considers that the work of the officer has not been satisfactory, or needs to be watched for some more time, he may revert him to the post or grade from which he was promoted, or extend the period of probation, as the case may be. This provision clearly negates the contention of the respondents that because of confirmation at the entry grade which the applicant had been afforded, there cannot be a reversion. Thus, the reversion from the post of Dy. Office Superintendent to the post of Tax Assistant, vide Annexure A-4 order is fully legal and once the applicant was reverted to the post of Tax Assistant, by virtue of the higher age limit, the applicant became eligible for consideration for promotion to the post of Inspector and on such a consideration he has also been promoted vide Annexure A-5. The proposed reversion on the basis of the Ministry of Finance Order dated 25<sup>th</sup> July, 2005 on the basis of OM dated 23-03-1988 cannot, therefore, be legally

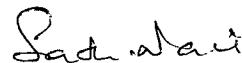
sustained. Hence, it is declared that the applicant cannot be reverted as per the order dated 25<sup>th</sup> July, 2005. The respondents are directed to rescind the order dated 25<sup>th</sup> July, 2005 (Annexure R-3) and not to disturb the applicant from the post of Inspector.

7. The OA is thus, allowed with the above declaration and direction to the respondents. There shall, however, be no orders as to costs.

(Dated, the 4<sup>th</sup> January, 2007)



**Dr. K B S RAJAN**  
**JUDICIAL MEMBER**



**SATHI NAIR**  
**VICE CHAIRMAN**

CVR.