

CENTRAL ADMINISTRATIVE TRIBUNAL,**ERNAKULAM BENCH****Original Application No. 612 of 2012**

Wednesday, this the 7th day of October, 2015

CORAM:

Hon'ble Mr. Justice N.K. Balakrishnan, Judicial Member
Hon'ble Mrs. P. Gopinath, Administrative Member

K. Muraleedharan, aged 45 years,
S/o. Apputty, Tax Assistant,
Central Excise, Headquarters Office,
Kozhikode.

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Applicant

(By Advocate : Mr. V. Rajendran)

V e r s u s

1. The Chief Commissioner of Central Excise & Customs,
Kerala Zone, Central Revenue Buildings, I.S. Press Road,
Ernakulam – 682 018.
2. The Commissioner of Central Excise & Customs,
Central Revenue Buildings, I.S. Press Road,
Ernakulam – 682 018.
3. Union of India, represented by the Secretary,
Ministry of Finance, Department of Revenue,
New Delhi.

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Respondents

(By Advocate : Mr. M.K. Padmanabhan Nair)

This application having been finally heard on 23.9.2015, the Tribunal
on 07.10.2015, delivered the following:

ORDER

Per: Justice N.K. Balakrishnan, Judicial Member -

The applicant seeks promotion to the post of Inspector with effect from 11.4.2011 with all consequential benefits. He challenges Annexure A7 as per which his request was turned down by the respondents.

2. The brief facts necessary for the case can be stated thus:-

2.1. The applicant entered service as a Sepoy on 7.6.1994. He was promoted as LDC on 6.2.2003. He sought extension of time to join duty as LDC. It was accepted by the respondents. Later the applicant joined duty on 23.5.2003. In the meanwhile Central Excise & Customs Department Tax Assistant (Group-C) Posts Recruitment Rules, 2003 came into effect from 2.5.2003. As per rule 4(3) of the rules LDC is entitled to further promotion as Tax Assistant provided he is a Lower Division Clerk in the seniority list as on the date of commencement of the rules. Since the applicant was promoted on 6.2.2003 as LDC he sought promotion as Tax Assistant. Since that request was declined he approached this Tribunal by filing OA 141/2009. The OA was allowed by this Tribunal vide Annexure A1. It was noted that one Jackson who was promoted as LDC only on 8.7.2004 was later promoted as Tax Assistant and that the applicant should also be given promotion to the post of Tax Assistant reckoning the fact that the applicant was promoted as LDC with effect from 14.2.2003. Annexure A1 order was challenged by the respondents before the Hon'ble High Court by filing OP

(CAT). Upholding Annexure A1 order the OP (CAT) was dismissed by the Hon'ble High Court vide Annexure A2 judgment. The respondents were granted 30 days time from the date of receipt of a copy of the judgment to implement the order. There was inordinate delay in implementing Annexure A1 order which was confirmed by Annexure A2. The applicant contends that he would have become a Senior Tax Assistant on 1.1.2007 and he would have got his eligible promotion as Inspector from 2009 onwards subject to seniority. When the DPC met during April, 2011 for preparing the select list for the year 2011-2012 the applicant was continuing as a Stenographer Grade-II. Hence, the applicant again approached this Tribunal by filing OA 270/2011. Annexure A3 interim order was passed by this Tribunal and as per that order the applicant was directed to appear for the DPC on 11.4.2011. He appeared. The findings of the committee were kept in a sealed cover. As per order dated 11.4.2011, 16 Senior Tax Assistants including 11 juniors of the applicant were promoted as Inspectors subject to the order in OA No. 270/2011. Annexure A4 is that order. According to the applicant in the light of the directions contained in Annexures A1 and A2 the applicant is entitled to be treated as Tax Assistant with effect from 2.12.2003 with all consequential benefits including arrears of pay and allowances and promotion with effect from the due date. It is further stated that one Prakash Unnikrishnan who was his immediate junior was promoted as Senior Tax Assistant on 27.5.2008 and later as Inspector on 11.4.2011.

The OA 270/2011 was disposed of by this Tribunal on 25.10.2011 directing the respondents to open the sealed cover. Annexure A6 is that order. Annexure A7 is the impugned order as per which the applicant was informed that in the finding of the DPC dated 29.3.2011 and 11.4.2011 the applicant was found unfit for promotion to the post of Inspector of Central Excise against the vacancy for the year 2011-2012. The aforesaid order is highly illegal and hence, the applicant has approached this Tribunal for the reliefs as stated earlier.

3. The respondents resisted the application contending as follows:-

3.1. For a person to be promoted as Senior Tax Assistant he should satisfy the condition that he should be a Tax Assistant with 3 years of regular service in the grade and should have passed the departmental examination as specified by the competent authority from time to time in computer application and relevant procedure. The applicant was promoted as Tax Assistant with effect from 2.12.2003 and as such he had the requisite qualifying service. The applicant did not pass the required departmental examination for promotion to the post of Senior Tax Assistant as per the Recruitment Rules and thus he became ineligible for promotion. The applicant had expressed his willingness for promotion as Stenographer Grade-III. Accordingly, he was promoted as Stenographer Grade-III as per order dated 8.7.2004. The post of Stenographer Grade-III was not upgraded as Stenographer Grade-II with effect from 1.7.2004 as claimed by the

applicant. The Board has only re-designated the post of Stenographer Grade-III as Stenographer Grade-II. The contention of the applicant that he is eligible for promotion as Inspector with effect from 1.1.2006 is factually incorrect. The Recruitment Rules for the post of Inspector was notified vide GSR 494 dated 29.11.2002. The Department has issued notification of new Recruitment Rules for Stenographer Grade-II in supersession of the Recruitment Rules for Stenographers Grade-II and Grade-III notified in 2004. Prakash Unnikrishnan was promoted to the post of Senior Tax Assistant on 27.5.2008 i.e. he became eligible as on 1.1.2008 for the recruitment year 2008-2009. As on 1.1.2008 the applicant has not passed the departmental qualifying examination and hence he cannot be considered to be eligible for promotion. The promotion to the post of Inspector of Central Excise is to be made by selection from those candidates working as Tax Assistant and Stenographer Grad-III having not less than 10 years service including the service to be included for this purpose under the provisions of the Rules regulating the method of recruitment to the post of Tax Assistant. There is no age limit cap for promotion to the cadre of Inspector. The applicant was not eligible to be considered for promotion to the post of Inspector of Central Excise against the vacancy for the year 2011-2012 as he had not passed the departmental examination for promotion to the post of Inspector and he had not completed the qualifying service. However, he was considered provisionally for promotion to the grade of Inspector against the

vacancy for the year 2011-2012 by the DPC held on 29.3.2011 and 11.4.2011 in terms of the interim orders of this Tribunal passed in OA 270.2011. As per the order passed in OA 270/2011 the sealed cover was opened and noted the findings of the DPC dated 29.3.2011 and 11.4.2011 as unfit. As per the DOP&T OM dated 8.2.2002 the bench mark for promotion to the grade of Inspector will continue to be 'good' but the DPC shall grade the officers in the consideration list as fit or unfit with reference to the bench mark of 'good'. The interview board shall also assess the suitability or otherwise of the candidate for holding the post of Inspector without awarding comparative marks as prescribed in Board's letter dated 27.8.2008 vide Annexure R3. Hence, according to the respondents the applicant is not entitled to get the relief as claimed in this Original Application.

4. A rejoinder was filed by the applicant contending that he was entitled to a deemed promotion as Tax Assistant with effect from 2.12.2003 and as such he was entitled to be promoted as Senior Tax Assistant at least on 27.5.2008 when the applicant's juniors were promoted as Senior Tax Assistant. If that be so the applicant would have become eligible for selection to the post of Inspector on 1.1.2011 and his juniors were actually promoted in April, 2011. The DPC was misled by the note submitted in the matter where it was stated that the applicant was not eligible for further promotion for want of pass in departmental examination. Annexure A10 is that relevant note obtained under the RTI Act. The applicant had passed the

departmental examination in the year 2005 itself and it was recorded in his service book. A photo copy of the relevant page of the service book is Annexure A11. The DPC appears to have proceeded as if the applicant was not eligible for promotion and that appears to be the reason why the applicant was not selected by the DPC. The applicant had already passed the computer proficiency examination and that was also recorded in his service book. Relevant page of the same is Annexure A12. The case of the applicant was not taken up at all apparently for the reason that the respondents presumed that the applicant who was only a Stenographer was not eligible for consideration. Had Annexure A1 order, confirmed by Annexure A2 judgment was implemented within the time prescribed the applicant would have become eligible for promotion at least in April, 2011. The DPC met four times after April, 2011 and 20 juniors of the applicant have been promoted as Inspectors. The case of the applicant was not considered at all. In fact the stand taken by the respondents is contrary to the Annexures A1 order of this Tribunal confirmed by the High Court by Annexure A2.

5. The point for consideration is whether the applicant is entitled to get promotion as Inspector as claimed in this Original Application or at least with effect from 11.4.2011 when the immediate junior of the applicant was promoted as Inspector?

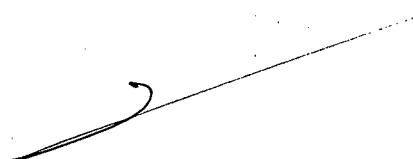
6. We have heard the learned counsel appearing for the parties and have also gone through the pleadings and documents.

7. There is no dispute regarding the fact that the applicant was entitled for promotion as Tax Assistant with effect from 2.12.2003. Annexure A5 order to that effect was passed by the respondents pursuant to Annexure A1 order which was confirmed by the High Court in Annexure

A2.

8. It is also not disputed that the applicant was entitled to be promoted as Sr. Tax Assistant on completion of 3 years in that grade. It is also borne out from the pleadings and records that the persons juniors to the applicant were promoted as Senior Tax Assistant on 27.5.2008. Therefore at least w.e.f. 27.5.2008 the applicant would have become a Senior Tax Assistant. That promotion was denied to the applicant. According to the applicant if he was promoted as Sr. Tax Assistant on 27.5.2008 he would have become eligible for selection to the post of Inspector of Central Excise on 1.1.2011. However, now the applicant confines his claim to have his promotion as Inspector w.e.f. 11.4.2011 when his immediate junior Prakash Unnikrishnan was promoted as Inspector.

9. It was specifically mentioned in Annexure A1 that it is an admitted case that the applicant has completed or passed the departmental computer proficiency exam and he was also holding the post of LDC. It was taking note of fact it was held by this Tribunal that the applicant should be deemed to have been promoted as LDC on 6.2.2003. Not only that, as per Annexure A5 the respondents themselves have passed an order to the



effect that applicant is deemed to have been promoted as Tax Assistant w.e.f. 2.12.2003 ie., the date of passing the departmental computer proficiency examination.

10. Again the applicant had approached this Tribunal by filing OA 270/2011. It was noted that though earlier Review petition was filed challenging Annexure.11 order it was dismissed by this Tribunal. As stated earlier the OP (CAT) No.2730/2011 was also dismissed by the Hon'ble High Court as per judgment dated 24.8.2011. Annexure. A.3 is the interim order passed by this Tribunal in OA 270/2011 as per which this Tribunal directed the respondents to allow the applicants therein (including the present applicant) to undergo the physical test/ interview on 29.3.2011 itself on provisional basis. It was further made clear that if at all it was not possible for the applicants therein to attend the same on account of any constraints, the applicants therein shall be interviewed on the next date. It is stated that pursuant to Annexure.A3 order the applicant was permitted to take part in the interview. The result was kept in the sealed cover. 11.

Annexure. A6 is the final order passed in OA 270/2011 as per which the respondents were directed to open the sealed cover containing the examination results and to announce the same subject to the orders passed in pursuance to Annexure.A2. It is admitted by the respondents themselves, as can be seen from para 7 of the reply statement that the Board vide letter F.No.A.11013/20/2010-Ad.IV dated 22.12.2010 has re-designated

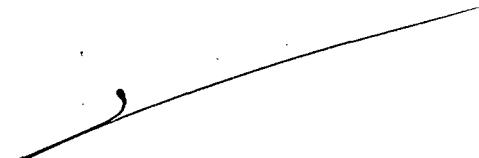
Stenographer III cadre as Stenographer Grade II. For promotion to the post of Inspector the candidate must have been Senior Tax Assistant with 2 years regular service in the grade or Stenographer Grade II with 2 years regular service in the grade. It is also not disputed by the respondents that Prakash Unnikrishnan who was immediately junior to the applicant was promoted on 27.5.2008 as Senior Tax Assistant. It was further admitted that Shri Prakash Unnikrishnan became eligible as on 1.1.2008 for the recruitment year 2008-09.

11. The contention raised by the respondents is that as on 1.1.2008 the applicant had not passed the departmental qualifying examination and thus he cannot be considered to be eligible for promotion. This has been taken strong exception to by the applicant pointing out that it was a wrong statement made by the respondents deliberately to deny promotion to the applicant for the simple reason that the applicant had approached this Tribunal seeking necessary reliefs. It is not disputed that the applicant was not found fit in the physical endurance test. Annexure A8 series makes it clear that the APAR of the applicant for the relevant period was Very Good and Outstanding. Therefore, the respondents cannot deny promotion on that aspect.

12. Since the performance of the applicant has been found to be exemplary or outstanding the finding of the DPC that the applicant is unfit cannot be sustained. The contention is that the Recruitment Rules says that

the suitability of the candidates should also be taken into account, But the very fact that the applicant has otherwise acquired the eligibility and his performance was outstanding or very good according to the APAR, it is inconceivable what is the other ground on which the applicant's promotion can be denied, the applicant contends. No explanation worth convincing has been produced by the respondents to justify the denial of promotion to the applicant with effect from 11.4.2011 when his immediate junior was promoted except the other ground that the applicant had not passed the required departmental test as on 1.1.2008..

13. Annexure.A12 has been pressed into service by the applicant which would show that he has successfully completed the course in diploma in computer application. The learned counsel for the applicant states that the applicant is even now ready to produce the certificate before the respondents to show that he had actually passed the departmental qualifying examination within the time prescribed itself but the DPC was not fully apprised of that fact. Since the only available ground which Respondents have projected is that the applicant had not passed the Departmental Qualifying examination in 2008, we are of the considered view that as the performance of the applicant was outstanding and very good during the relevant period and that he had acquired all other qualifications, there was no justification for denial of promotion provided the applicant had passed the qualifying examination during the relevant time. It is also not disputed



that the immediate junior of the applicant was promoted on 11.4.2011, the applicant is also entitled to be promoted as Inspector at least w.e.f. 11.4.2011 provided the applicant produces the certificate to show that he had passed the departmental qualifying examination during the relevant time.

14. Annexure. A4 is the proceedings dated 11.4.2011 as per which 16 Senior Tax Assistants were promoted to officiating the cadre of Inspector of Central Excise w.e.f. date they take charge in the higher post. Prakash Unnikrishnan referred to above is shown as Sl.No.6. It is not disputed that he is immediately junior to the applicant. Not only that, in Annexure.A4 itself there is a foot note which is to the effect that "the above promotions are subject to the outcome of OA No. 270/2011 and OA No. 272/2011 pending before CAT (EB) and subject to the outcome of the decision of the Medical Board in the cases referred to it". As stated earlier OA 270/2011 filed by the applicant was disposed of as per Annexure.A6. In Annexure.A6 it was specifically noted that the Writ Petition filed by the applicant was dismissed as per Judgment dated 24.8.2011 as per Annexure.A2 produced in this OA. It was also noted that there is a further direction to implement the order passed (Exhibit P5) within 30 days from the date of receipt of that order. It was observed that as per the orders passed by the High Court the applicant would have become eligible for promotion to the post of Inspector. By virtue of the interim order, the

applicant had already appeared for the test. Hence the Tribunal ordered as follows:

"In the circumstances, we direct the respondents to open the sealed cover containing the examination results and announce the same subject to the orders being passed in pursuance to Annexure.A2 and communicate the same to the applicant."

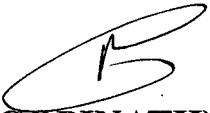
At that point of time no other objection was raised by the respondents. As delineated earlier the only ground raised by the respondents to deny promotion was that the applicant had not passed the Departmental Qualifying Examination. The applicant asserts that he has passed the Departmental Qualifying Examination and an entry to that effect was made in the service record. There is an endorsement in Annexure.A12, signed by the Administrative Office of the Special Customs Preventive Division, Kozhikode that "the applicant successfully completed the course in diploma in computer application conducted by ICON Computers and I.T, Parappandnagadi and secured Ist class having Reg. No 1279". But the date of passing of exam is not mentioned. The endorsement was made by Administrative Officer on 22.2.2012. Hence it is just and proper that the applicant is directed to produce the certificate to convince the respondents that he has passed the diploma in computer application as noted in Annexure.A12.

15. In the result this O.A is disposed of as stated below:

The applicant will produce the aforesaid certificate before the respondents within one month from the date of receipt of a copy of this

order. If it is produced and if the certificate shows that the applicant had passed the examination during the relevant period, then the respondents shall pass orders granting promotion to the applicant w.e.f. 11.4.2011 on which date the applicant's immediate junior was promoted as Inspector. If so, the applicant would also be entitled to get all consequential benefits.

16. No order as to costs.


(P. GOPINATH)
ADMINISTRATIVE MEMBER

"SA/KSPPS"


(N.K.BALAKRISHNAN)
JUDICIAL MEMBER