

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.620/05

this the 30th day of April 2007

C O R A M :

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

1. Sindhu K.,
W/o.S.Prasanna Kumar,
Senior Tax Assistant,
Air Cargo Complex/UB, Trivandrum.
Residing at Kannankeriyl House, Chittethukara,
Kakkanad CSEZ P.O., Kochi – 37.
2. Asha S.,
W/o.A.R.Santhosh,
Senior Tax Assistant,
Customs Preventive Committee,
CR Building, I.S.Press Road, Cochin – 18.
Residing at Kalathil, Ammankovil Road,
Ernakulam – 35.
3. Jose Lukose,
S/o.A.T.Lukha,
Senior Tax Assistant,
O/o. Assistant Commissioner of Central Excise,
Central Excise Division, KPC Towers, Muvattupuzha.
Residing at Erumelikkara House, Vazhithala P.O.,
Thodupuzha – 685 583.

...Applicants

(By Advocate Mr.T.C.Govindaswamy)

Versus

1. Union of India represented by
the Secretary to the Government of India,
Ministry of Finance, Department of Revenue,
New Delhi.
2. Under Secretary to the Government of India,
Ministry of Finance, Department of Revenue,
Central Board of Excise and Customs,
New Delhi.
3. Chairman,
Central Board of Excise and Customs, New Delhi.

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4. The Commissioner of Central Excise,
Central Revenue Building,
I.S.Press Road, Kochi.

...Respondents

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

This application having been heard on 19th April 2007 the Tribunal on
30th April 2007 delivered the following :-

ORDER

HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN

The applicants in this O.A are erstwhile Data Entry Operators later designated as Tax Assistant and further promoted as Senior Tax Assistant in the restructured cadre of the Department of Central Excise and Customs. In this application they are aggrieved by the impugned order dated 5th August 2005 at Annexure A-1 issued by the 2nd respondent according one time relaxation in the Recruitment Rules relating to the post of Inspectors of Central Excise.

2. The facts are narrated as under :- The next promotion for the applicants is to the cadre of Inspector of Central Excise in terms of existing rules, namely, Central Excise and Land Customs Department Inspector (Group C Posts) Recruitment Rules 2002 (Annexure A-2). In terms of Column 11 of the schedule in Annexure A-2 the vacancies in the cadre of Inspector of Central Excise are to be filled 66 2/3 % by direct recruitment and 33 1/3 % by promotion. In terms of Column 12 of Annexure A-2 dealing with the method of recruitment, the grade from which promotion/deputation/absorption etc. to be made are given as follows :-

Promotion

(a) By selection from those candidates working in the following pre-restructured cadres,

(i) Tax Assistant with 2 years service as Tax Assistant or 5 years service as Tax Assistant and Upper Division Clerk put together

- (ii) Upper Division Clerk or Stenographer Grade III with 5 years service,
- (iii) Upper Division Clerk with 13 years of total service as Upper Division Clerk and Lower Division Clerk taken together subject to the condition that they should have put in a minimum of 2 years service in the grade of Upper Division Clerk,
- (iv) Stenographer Grade II with 2 years service,
- (v) Stenographer Grade II or Stenographer Grade III with 12 years service as Stenographer or Upper Division Clerk and Lower Division Clerk, if any, taken together subject to the condition that they have completed a minimum 2 years service as Stenographer Grade III or Upper Division Clerk.
- (vi) Women Searcher with 7 years service in the grade,
- (vii) Draftsman with 7 years service in the grade
- (b) By selection from those candidates working in the following restructured cadre
 - (i) Senior Tax Assistant with 2 years regular service in the grade
 - (ii) Stenographer Grade II with 2 years regular service in the grade
 - (iii) Women Searcher with 7 years service in the grade
 - (iv) Draftsman with 7 years service in the grade
- (c) Failing the method of recruitment specified under clause (b) above, by selection from those candidates working as Tax Assistant and Stenographer Grade 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.

Note I : Promotion under Clause (a) above shall be only operative for a period of two years from the date on which the restructured cadres mentioned under clause (b) above comes into existence.

The service rendered under the new grade in the restructured cadres shall be counted towards considering the eligibility for promotion under Clause (a) above."

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3. It is clear from a reading of Note I above that clause (a) referred to in column 12 will be operative only for a period of 2 years from the date on which the restructured cadres under clause (b) above come into force. The restructured cadre of Senior Tax Assistants came into force on and with effect from 20.1.2003, the date on which the same was published in the official gazette. Annexure A-2 was also published in the official gazette on 7.12.2002. In other words, clause (a) ceased to be operative as on 19.1.2005 and therefore no longer in force thereafter. It is while so that the applicants have come across Annexure A-1 letter dated 5.8.2005 stating that "in exercise of the powers conferred by Rule 6 of these Rules, the Central Government has decided, as a one time relaxation, to extend the period of operation of the provisions of clause (a) of Column 12 of the Recruitment Rules, 2002 for the post of Inspector (Central Excise), Inspector (Preventive Officer) and Inspector (Examiner) for a further period of one year i.e. up to 19.1.2006." The applicants submit that Annexure A-1 cannot by any stretch of imagination, be a relaxation of the provisions of the Rules but in fact it is an amendment to the Annexure A-2 rules itself. That apart, a rule which ceased to be in force by operation of a time prescribed under the rules cannot be relaxed at any case. The applicants are persons who come under clause (b) of Annexure A-2 column 12 and therefore are persons eligible to be considered for promotion. Annexure A-1, therefore, being ultra-vires of the Statutory Rules, and hence, without jurisdiction, illegal and unconstitutional. The applicants, otherwise eligible to be considered for promotion as Inspectors of Central Excise, are subjected to a hostile discrimination, substantial prejudice, irreparable damages and recurring losses.

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4. The reliefs sought are the following :-

1. Declare that Annexure A-1 is arbitrary, discriminatory, ultra-vires recruitment rules, without jurisdiction and hence illegal and unconstitutional.
2. Call for the records leading to the issue of Annexure A-1 and quash the same to the extent it relates to the post of Inspectors (Central Excise).

5. Respondents have filed a reply statement. They have submitted that in exercise of power conferred by Rule 6 of the Central Excise and Land Customs Department Inspectors (Group C Posts) Recruitment Rules 2002, the Central Government with the approval of the competent authority has decided, as a one time relaxation, to extend the period of operation of the provision of Clause (a) of Column 12 of the Recruitment Rules for a further period of one year i.e. up to 19.1.2006. There is nothing arbitrary or discriminatory or violation of any of the constitutional guarantees and such contentions of the applicants are wrong and denied. It is further submitted that the respondents had all along taken the stand that clause (a) alone is operative for a period of 2 years and clause (b) and (c) cannot be operative for the first 2 years. But the Hon'ble Mumbai High Court in its judgment dated 7.10.2003 in Writ Petition Nos.6957/03 and 6958/03 in the case of Shri.M.R.Patil & Others and Smt.S.S.Dongre & Others (erstwhile Data Entry Operators) held that "Clause (a) has been made to make a provision for considering certain persons for promotion during the initial period of two years. That channel of promotion would end after expiry of two years but that does not mean that for the initial period of two years, clause (a) would be the only channel for promotion and clauses (b) and (c) would not be channels on promotion during the initial period of two years."

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6. A Special Leave Petition (SLP) filed by the Ministerial Employees in the Hon'ble Supreme Court against the Mumbai High Court's judgment was dismissed. After the dismissal of the SLP, the Board has decided that the ratio of the Mumbai High Court decision should be applied to all cases and issued instructions dated 4th October 2004 to implement the judgments of various Benches of CAT which are in accordance with the Mumbai High court decision. Hence, clauses (b) and (c) are simultaneously applicable along with clause (a) of the Recruitment Rules, 2002 and the applicants cannot have any grievance that they have been excluded.

7. No rejoinder has been filed.

8. We have heard Shri.T.C.Govindaswamy, learned counsel for the applicants and Shri.T.P.M.Ibrahim Khan,SCGSC learned counsel for the respondents. During the arguments, learned counsel for the applicants adverting to the position in the Recruitment Rules raised two questions of law, namely,

1. Can there be relaxation of the provision which ceased to be operative by efflux of time
2. Whether relaxation can be given without amending the rules.

9. Counsel relied on the judgment of the Apex Court reported in 1998 SCC (L&S) 1055 in the case of **Ashok Kumar Uppal Vs. State of J & K** and argued that discretionary power vested with the Government under Rule 6 is a quasi judicial decision and the exercise of this power merely on the request of a service association is not correct. In this judgment the Court has held that the power to relax the rule cannot be exercised capriciously or arbitrarily to give undue advantage or favour to an individual

employee. It was further argued that a rule which is no longer in force cannot be brought back to life under the garb of relaxation of a non existing rule. Clause (a) of column 12 of Annexure A-2 had ceased to be operative as on 19.1.2005. It is also well settled in law that the power to relax rules cannot be exercised to amend the rules. Counsel also relied on the Apex Court judgment in 1995 SCC (L&S) 85 in the case of **Uday Pratap Singh & Ors Vs. State of Bihar & Ors.** in which the ratio has been laid down that an executive order cannot operate retrospectively to destroy any right which has been crystallised.

10. The learned counsel for the respondents stated that the relaxation had been granted for reasons as explained in the 1st paragraph of the impugned order at Annexure A-1 itself i.e. on the basis of large scale representations received from Customs and Central Excise Employees Federation etc and it was granted only as a one time relaxation in order to avoid hardship to the employees in the context of the large scale restructuring exercise taken in the Department.

11. We have gone through the records and the judgments referred to by the learned counsel carefully. Apart from the legal questions raised by the learned counsel for the applicants, the short question arising for our consideration is whether the relaxation granted in Annexure A-1 impugned order extending the period of operation of provision of clause (a) of column 12 of Recruitment Rules, 2002 for the post of Inspector of Central Excise etc. for a further period of one year has been done in excess of jurisdiction or has resulted in denying the lawful benefits otherwise due to the persons like the applicant.

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12. Prior to the restructuring undertaken in the Department promotion to the post of Inspector was confined to selection from the cadre mentioned in clause (a), namely, Tax Assistants, UDCs, Stenographers etc. While restructuring Data Entry Operators who were not earlier in the channel of promotion for the post of Inspectors were designated as Tax Assistant and those like the applicants who were further promoted as Senior Tax Assistants by virtue of such inclusion in the cadre of Tax Assistant/Senior Tax Assistant they became eligible for consideration under clauses (b) & (c) for promotion to the post of Inspectors. However, under the provisions made in Note I of the said rule extracted above restriction for a period of two years was imposed that the selection from the pre-structured cadre provided in clause (a) would be operative only for a period of two years from the date on which the restructured cadre under clause (b) come into existence. It has to be noted that the rules mentioned above were made in the year 2002 and the restructured cadre of Senior Tax Assistant came into force with effect from 20.1.2003 and therefore, clause (a) ceased to be operative as on 19.1.2005 which position has been admitted on both sides. Due to restructuring, promotions to various cadres were put on hold and time was required for convening of DPC etc. After the cadre came into force on 20.1.2003 promotions could not be made effectively during the short period and therefore the Employees Federation has taken up this matter which according to the respondents had been favourably considered and with the approval of the competent authority it was decided to extend the period of operation for further period of one year up to 19.1.2006.

13. As regards the competency of the respondents for effecting such a one time relaxation, Rule 6 of the Central Excise and Customs Department Inspectors Recruitment Rules 2002 has been referred to where the power to relax has been provided which is as under :-

“ Where the Central Government is of the opinion that it is necessary or expedient so to do it may, by order, and for reason to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons.”

14. The power to amend the rules and to relax the rules are two separate and distinct powers and here the respondents have exercised the power of relaxation as provided in the above rule.

15. The second question of law raised by the learned counsel for the applicants with regard to such relaxation has been answered by the judgment of the Apex Court in the case of Ashok Kumar Uppal Vs. State of J & K [1998 SCC (L&S) 1055] relied upon by the applicants themselves in another context. It has been categorically held therein that the Government can exercise the power to relax the rules in all those cases in which hardship is caused in implementation of the rules to meet a particular situation or where injustice has been caused to either individual employee or class of employees and the power cannot be exercised capriciously or arbitrarily to give undue advantage or favour to an individual employee.

25. We are, therefore, clearly of the opinion that it was a case in which the Government had not acted arbitrarily or capriciously but had proceeded to relax the Rules to obviate genuine hardship caused to a class of employees, namely, the appellants and directed their promotion in relaxation of the Rules.

26. Power to relax the Recruitment Rules or any other Rule made by the State Government, under Article 309 of the Constitution of which the corresponding provision is contained in Section 124 of the Constitution of Jammu and Kashmir, is conferred upon the Government to meet any emergent situation where injustice might have been caused or is likely to

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be caused to any individual employee or class of employees or where the working of the Rule might have become impossible. Under service jurisprudence as also the Administrative Law, such a power has necessarily to be conceded to the employer particularly the State Government or the Central Government who have to deal with hundreds of employees working under them in different departments including the Central or the State Secretariat.

27. In State of Maharashtra Vs. Jagannath Achyut Karandikar it was held as under : (SCC p.398, para 12)

"The power to relax the conditions of the rules to avoid undue hardship in any case or class of cases cannot now be gainsaid. It would be, therefore, futile for the respondents to make any grievance."

28. In J.C.Yadav Vs. State of Haryana, it was held as under : (SCC pp.194-95, para 6)

"The relaxation of the rules may be to the extent the State Government may consider necessary for dealing with a particular situation in a just and equitable manner. The scope of Rule is wide enough to confer power on the State Government to relax the requirement of Rules in respect of an individual or class of individuals to the extent it may consider necessary for dealing with the case in a just and equitable manner. The power of relaxation is generally contained in the Rules with a view to mitigate undue hardship or to meet a particular situation. Many a time strict application of service rules create a situation where a particular individual or a set of individuals may suffer undue hardship and further there may be a situation where requisite qualified persons may not be available for appointment to the service. In such a situation the Government has power to relax Requirement of Rules. The State Government may in exercise of its powers issue a general order relaxing any particular rule with a view to avail the services of requisite officers. The relaxation even if granted in a general manner would ensure to the benefit of individual officers."

29. This decision was followed in Sandeep Kumar Sharma Vs. State of Punjab in which Hon'ble Punchhi, J. (as His Lordship then was), observed as under : (SCC p.304, para 14)

"The power of relaxation even if generally included in the service rules could either be for the purpose of mitigating hardships or to meet special and deserving situations. Such rule must be construed liberally, according to the learned Judges. Of course arbitrary exercise of such power must be guarded against. But a narrow construction is likely to deny benefit to the really deserving cases. We too are of the view that the rule of relaxation must get a pragmatic construction so as to achieve effective implementation of a good policy of the Government."

30. In view of the above, the Government can exercise the power to relax the Rules in all those cases in which hardship is caused in the implementation of those Rules to meet a particular situation or where injustice has been caused to either individual employee or class of employees. Of course, this power cannot be exercised capriciously or arbitrarily to give undue advantage or favour to an individual employee.

16. In this case the power has been exercised in the context of the representations received from all India Federation of Customs Employees and Ministerial Officers and not in favour of any individual employee, as what has been done was only to extend the protection given to a category/class of employees for a period of two years by a further period of one year. On scrutinising the facts of this case, we are of the view that the power to relax the rules has not been exercised improperly by the respondents requiring any interference from our side. The above case was also one of retrospective relaxation and the Court had found that there was nothing wrong in the Recruitment Rules being relaxed retrospectively in order to remove hardship.

17. The other question is whether the relaxation resulted in any denial of consideration of the applicants for promotion. This position has been explained by the respondents in the reply statement as to how the judgment of the Mumbai High Court dated 7.10.2003 had interpreted the clauses (b) and (c) of the Rules to mean that the channels under clauses (b) and (c) would be applicable simultaneously along with clause (a) of the Recruitment Rules. The respondents had accepted this legal position and the rule was implemented in that form and spirit only. Accordingly, it has been reported that the applicants 1 to 3 were considered by the Departmental Promotion Committee on 12.8.2005 for promotion to the post

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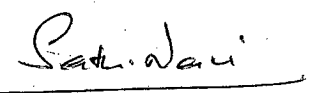
of Inspector but were found unfit by the Departmental Promotion Committee. Hence the applicants cannot be said to have been denied their rights.

18. Further we also noticed that the extended period of one year granted under relaxation also expired in January 2006 and the Rules have come into effect in full shape from that date without the relaxed procedure implied in the impugned order.

19. In the light of these facts and the clear legal position, we do not find that Annexure A-1 impugned order of the respondents requires any interference and the O.A is dismissed.

(Dated the 30th day of April 2007)


K.B.S. RAJAN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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