

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO. 67/2003 & 540/2003

FRIDAY THIS THE 18th DAY OF NOVEMBER, 2005

CORAM

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

O.A.67/2003

By Advocate M/s Manhu and Associates

vs.

- 1 Union of India
represented by Secretary
Ministry of Finance
New Delhi.
- 2 The Chairman
Central Board of Excise & Customs
North Block

New Delhi.

3 The Commissioner of Customs & Central Excise
 Central Revenue Building
 IS Press Road,
 Cocin-682 017.....

Respondents

By Advocate Mr. Thomas Mathew Nellimoottil

O.A. No. 540/2003

1 Rajani Prabhudas W/o Prabhudas,
 Upper Division Clerk/Tax Assistant
 Office of the Assistant Commissioner of
 Central Excise & Customs,
 Trichur Division, Trichur.

2 Shalini Umesh W/o J. Umesh Kumar
 Upper Division Clerk /Tax Assistant
 Office of the Assistant Commissioner of
 Central Excise & Customs
 Central Revenue Building, IS Press Road,
 Kochi.

3 Bindu P W/o C.R. Thambirajan
 Upper Division Clerk /Tax Assistant
 Office of the Assistant Commissioner of
 Central Excise & Customs
 Kottayam Division
 Resilding at No. E2B KSEB Quarters
 Muttambalam PO
 Kottayam. Applicants

By Advocate Mr. Shafik M.A.

Vs.

1 Union of India represented by Secretary
 Ministry of Finance, New Delhi.

2 The Chairman
 Central Board of Excise & Customs
 North Block, New Delhi.

3 The Commissioner of Customs & Central Excise
 Kerala Zone, Central Revenue Building
 IS Press Road, Cochin-682 018

4 The Joint Commissioner of Customs & Central Excise
 Cochin Commissionerate, Central Revenue Building
 IS Press Road, Cochin-682 018

5 Mary Liji PS W/o Biju Jose K.
 Adhoc Senior Tax Assistant
 Service Tax Division, Central Excise Bhavan
 Kathrikadavu, Ernakulam

residing at Kainikattu House
Kothad PO, South Chittoor
Ernakulam.

6 S. Asha W/o A.R. Santhosh
Adhoc Senior Tax Assistant
Ernakulam-II Division
Central Excise Bhavan,
Kathrikadavu, Ernakulam
residing at Kalathil House,
Ammankovil Road, Ernakulam-35

7 Monson Varghese S/o E.K. Varghese
Adhoc Senior Tax Assistant,
Ernakulam-II Division
Central Excise Bhavan, Kathrikadavu, Ernakulam
residing at Quarter No. 41, Central Excise Staff Quarters
Near TV Centre, Kakkadan
Cochin-20.-

-Respondents

By Advocate Mr Thomas Mathew Nellimootttil for R 1-4

Advocate Mr. TCG Swamy for R 5-7

O R D E R

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The issue raised in both these OAs being same they are heard together and are being disposed of in the same order.

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2 The applicants herein are Upper Division Clerks initially joined the respondents' Department as Lower Division Clerks and subsequently came to be promoted as UDCs. The third applicant is however a direct recruit. All these applicants have qualified in the departmental examination for being promoted as Inspectors of Central Excise, are continuing as UDCs without any promotion. As per the Recruitment Rules for promotion to the post of Tax Assistants, UDCs with three years of service and those who have

passed the departmental examination are eligible for promotion. While matters stood thus, a decision was taken to restructure the 16 cadres of the Central Excise and Customs Departments as per letter dated 19.7.2001 issued by the Central Boards of Excise and Customs. Under the scheme the existing cadres of Assistant, Tax Assistant, UDC(Special Pay) DEO Grade-B have been merged in to a new cadre of Senior Tax Assistant and UDC, DEO Grade-A, and LDC were merged into a new cadre of Tax Assistant. Consequently there was a reduction/addition in the number of posts of certain cadres also. By Annexure A4 it was communicated that no direct recruitment would be made to the various grades for the year 2001-02 and also all DPCs for promotion to Group-B and C cadre were frozen by another communication dated 10.9.2001. This embargo came to be lifted as per letter dated 3.1.2002 and directions were issued to conduct DPC on the basis of pre-revised strength. The case of the applicants is that before these actions were taken for restructuring the cadre by the respondents a number of posts of Tax Assistants and Inspectors were available in the Department for filling up by promotion as well as by direct recruitment. There are 43 vacancies in the Tax Assistant cadre earmarked for the promotees from the cadre of UDCs and some more vacancies which have arisen due to promotion granted in the cadre of Tax Assistants to the post of Inspectors. The Recruitment Rules for the post of Tax Assistants have been notified only on 2.5.2003 and as per the new Recruitment Rules there was no cadre of UDC. A number of clarifications have been issued by which the vacancies which have arisen between 1.4.2001 and 31.12.2002 are to be filled up by promotion. All the applicants had submitted representations for

consideration of their case for promotion. But their claims have now been rejected by Annexure A1 order. The action of the respondents in refusing to conduct the DPC for promotion to the cadre of Tax Assistants for the vacancies which existed prior to the Restructuring resulted in the applicants losing the seniority in the cadre of Tax Assistants and also denied them chance of placing in the higher cadre of Senior Tax Assistants when the new seniority list of Tax Assistant is drawn up. The Hon'ble Supreme Court in the various decisions reported in A IR 1983 SC 843, AIR 1988 SC 2068, AIR 1990 SC 405 etc. have specifically held held that vacancies which arose prior to the amendment of the Recruitment Rules have to be filled up on the basis of the existing rules. The reasoning of the respondents that the posts of UDCs are not in existence is not correct since as per the Recruitment rules itself promotion to the cadre of Inspector for the next two years was also to be made from the cadre of UDCs.

2 The respondents in the reply statement reiterated that the applicants are seeking promotion to a cadre of "Tax Assistants" which ceased to exist on 5.2.2002. The applicants are praying for this advantage so that by virtue of their promotion to the restructured cadre of Tax Assistant they will be re-designated as Senior Tax Assistants consequent on the restructuring thereby stealing a march over the DEO Grade-A. According to the respondents the vacancies that existed in the re-structured cadre of Tax Assistants prior to 5.2.2002 had been filled up by promotion and none of the applicants were having the required seniority of being promoted to the post of Tax Assistant. Hence the instructions regarding the conduct of the

DPCs or the judgment of the High Court of Kerala have no relevance in this aspect. In terms of Annexure R-1 order issued by the CBEC the sanctioned strength of posts in the restructured cadres of Tax Assistants and Senior Tax Assistants came into existence as on 5.2.2002 and from that date onwards the pre-restructured cadres of LDC, UDC, DEO Grade-A, Tax Assistant etc. ceased to exist. Hence none of the reliefs prayed for by the applicants can be allowed.

3 A rejoinder has been filed by the applicant stating that after issue of Annexure R-1 the Ministry by letter dated 21.4.2003 (Annexure A-7) has clarified that the restructured cadre of Senior Tax Assistant came into existence only on 20.1.2003 from the date of publication of the Gazette notification and not on 5.6.2002. The respondents themselves have promoted certain LDCs to the post of UDCs by order dated 23.10.2002 (Annexure A-12) and also issued inter-commissionerate transfer orders like the one in Annexure A-13. Hence the contentions of the respondents in this regard have no basis.

4 Reply statements have also been filed by the private respondents 5 to 7 who have taken the stand that the applicants are entitled to become Inspectors only under the new Recruitment Rules as the cadre of Tax Assistants was constituted in terms of Annexure R-5(a) and R 5(b) w.e.f. 19.7.2001. Since there were no Recruitment Rules in existence there was a categorical direction not to fill up the vacancies in the pre-restructured cadre and the contentions that the same have to be filled by A3 Recruitment Rules are not sustainable.



5 We have given due consideration to the rival contentions. As the OAs were filed in 3.6.2003, by the time the matters came up for final hearing we find that the factual situation has changed drastically. Similar applications were filed in different benches of the CAT and have been adjudicated by various High Courts in the country. The High Court of Andhra Pradesh in WP NO. 2378/05 held that promotions of UDCs to the cadre of Tax Assistants in the pre-restructured cadre shall be made in accordance with the old Recruitment rules in respect of vacancies which arose prior to 5.5.2003. Similar orders were passed by the Hon'ble High Court of Andhra Pradesh in Writ Petition NO. 7963/2004 also. In O.A. 72/2003 a similar order was passed by this Bench which was taken in appeal in WP(C) 10450/2005 before the High Court of Kerala. An interim order passed by this Tribunal in O.A. 67/2003 was also challenged before the High Court of Kerala in OP 9079/2003 and the Hon'ble High Court disposed of these OPs by a common judgment dated 2.8.2005. The Court after considering the various decisions of the Hon'ble Supreme Court in Y.V. Rangaiah and Others, V. J. Sreenivasa Rao and Others (AIR 1983 SC 853) etc. and the decisions of the Andhra Pradesh High Court in the cases in which identical issue arising from the same orders of restructuring were dealt with came to the following conclusions:

28. On the other hand, Annexure A7 dated 10.1.2003 produced in the original application would go to show that the office of the commissioner of central Excise and Customs, Cochin had sought clarification from the Central Board of Excise and Customs as to whether 36 vacancies in the cadre of Upper Division Clerk, which had arisen prior to cadre restructuring can be filled up by promotion under the old recruitment rules

as per the terms of the Supreme Court decision in P. Ganeshwar Rao's case, immediately, prior to the notification of the new rules, since subsequent to the cadre restructuring, these cadres will be merged into the new cadre of Senior Tax Assistants. This letter would prove that there were at least 36 vacancies of UDCs, that recruitment rules were not framed as on 10.1.2003 and that the department was aware of the decision in P. Ganeshwar rao's case which goes a long way in proving the factual situations for applying the ratio of the said case. Therefore, we respectfully agree with the legal position expounded in ext. R6(b) and R6(c) decisions of this Court and that of the Andhra Pradesh High Court respectively.

29. The result of the above discussion is that the legal position as decided by the Supreme Court also is in favour of the case of the applicants in the original application as approved by the Tribunal and therefore the impugned order of the Tribunal cannot be faulted on legal grounds also.

In the result WP(C) NO. 10450/2005 is dismissed but without any order as to costs.

Regarding OP NO. 9079, now that OA No. 67/2003, the interim order in which is under challenge in the same, has to be necessarily allowed in terms of the above judgment in WP(C) 10450/2005, the same is closed with a direction to the tribunal to take up the said original application and dispose of the same expeditiously, if not already disposed of.

6 The learned counsel for the respondents brought to our notice the communication from the Ministry of Finance dated 26.9.05 addressed to all the Commissioners that a decision has been taken to implement the Andhra Pradesh High Court's decision in WP No. 2378/95 referred to above. Paras 2 & 3 of the above orders are as follows:

■The orders of the High Court of Andhra Pradesh dated 2.3.2005 and 7.3.2005 passed in above referred Writ Petitions had been considered by the Board in consultation with the Ministry of Law. The Board has decided to implement the Hon'ble High Court of Andhra Pradesh Orders dated 2.3.2005 and 7.3.2005 in Writ Petition No. 7963/2004 and Writ Petition No. 2378/2005 and various similar; CAT orders passed in OAs by the Hon'ble CATs of different State.

You are, therefore, requested to take immediate action for implementation of the judgment of the Andhra Pradesh High Court dated 7.3.2005 and 2.3.2005 as well as similar order passed by CAT Principal Bench Delhi in OA No. 157/1/2003 filed by Shri Kapil Dev & Others, CAT (Ernakulam Bench) in OA No. 72/2003 filed by Smt. P. Narayani, OANO. 98/2003 filed by Smt Jayashree and CAT Allahabad Bench in OANO. 649/2004 filed by Smt. Nagma Khatoon. The action taken in this regard may also be intimated to the Board.■

7 It is obvious from the above that the respondents have taken note of various decisions of the High Courts and the CAT in consultation with the Ministry of Law and have finally decided to implement the decision which amounts to conceding the prayers of the applicants in this OA that the vacancies which existed prior to restructuring are to be filled up in accordance with the old recruitment rules. The learned counsel for the applicants submitted that since this position has now been taken note of by the various Chief Commissioners they have to take follow up action for implementation of this decision. In these circumstances we are of the view that there is no scope for any further grievance for the applicants and the decision of the respondents as conveyed in the letter dated 26.9.05 i.e. In tune with the prayer of the applicants.

8 If the Government is proceeding to implement the decisions of

the Courts to fill up the pre-structured vacancies according to the then existing Recruitment rules perhaps the only point that remains to be settled is regarding the date from which the restructuring came into force.

9 Since there are orders of various Courts all of which are not available before us, we cannot say with certainty that the dates mentioned in these judgments are identical. However from the records available with us we are of the view that Annexure A-7 order dated 21.4.2003 which is a communication from the Ministry of Finance to all the Chief Commissioners clarifying that the restructured cadres of Senior Tax Assistant came into existence on 20.1.2003 i.e. the date of publication of the Recruitment Rules should be taken as the authentic record to determine the date of restructuring.

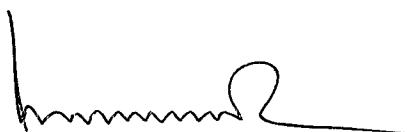
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10 The only difference herein is that the applicants are Lower Division Clerks who have completed the required years of service for promotion to the post of UDC and they are claiming promotion to the cadre of UDCs which existed before restructuring. Their prayers are also the same- for granting promotion in the pre-structured vacancies and the findings and decisions of the Courts referred to above equally apply to them. The interim order granted in this case was challenged before the Hon'ble High Court in OP No. 9079/2003 and the orders by the High Court in this behalf have been extracted supra. The Hon'ble High Court has directed therein that the OA should be taken up expeditiously and the IO has been confirmed by

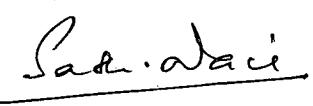
them. Therefore we proceed to dispose off this OA also on the same lines.

11 In the result both the OAs are allowed. The respondents are directed to consider the cases of the applicants on the basis of the old Recruitment rules which existed prior to the re-structuring and to fill up accordingly the vacancies which existed prior to restructuring. This exercise shall be complied within a period of three months from the date of receipt of a copy of this order.

Dated 18.11.2005.



GEORGE PARACKEN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

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