

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH



O.A.NO.72/2003 and O.A.No.98/2003

Tuesday, this the 1st day of February, 2005.

CORAM:

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN.

HON'BLE MR H.P.DAS, ADMINISTRATIVE MEMBER

1. P Narayani,
Lower Division Clerk,
O/o the Assistt. Commissioner of
Central Excise,
Trichur Division, Trichur.
2. Pretha Suresh Kumar,
Lower Division Clerk,
O/o the Asstt. Commissioner of
Central Excise & Customs,
Palghat Division, Palghat.
3. Biju.P. Raphael,
Lower Division Clerk,
O/o the Asstt. Commissioner of
Central Excise & Customs,
Trichur Division, Trichur.

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 Chief Commissioner of
Customs & Central Excise,
Kerala Zone, Central Venue Building,
I.S.Press Road, Cochin-682 018.
4. The Commissioner of Customs & Central Excise,
Kerala Zone, Central Revenue Building,
I.S.Press Road, Cochin-682 018.
5. Latha G,
Senior Tax Assistant,
Central Excise, Ernakulam II Division,
Central Excise Bhavan, Kathrikadavu,
Ernakulam.

6. Mini.V.K.
Senior Tax Assistant,
Central Excise, Muvattupuzha Division,
K.P.C.Towers,
Muvattupuzha-686 661.

- Respondents

By Advocate Mr Rajeev, ACGSC(for R.1 to 4)

By Advocate Mr TC Govindaswamy (for R. 5 & 6)

D.A.98/2003

1. Jayasree G Nair,
Lower Division Clerk,
O/o Asstt. Commissioner of Central
Excise & Customs,
Air Cargo Complex,
Trivandrum.
2. Indulekha.S.,
Lower Division Clerk,
O/o the Asstt. Commissioner of
Central Excise & Customs,
Trivandrum Division.
3. Renji.N.,
Lower Division Clerk,
O/o the Addl. Commissioner of
Central Excise & Customs,
Trivandrum.
4. Vasudev.S.R.,
Lower Division Clerk,
O/o the Asstt. Commissioner of
Central Excise & Customs,
Trivandrum Division.
5. Shibu.U.R.
Lower Division Clerk,
O/o the Asstt. Commissioner of
Central Excise & Customs,
Trivandrum Division.
6. Rajeev.B.
Lower Division Clerk,
O/o the Asstt. Commissioner of
Central Excise & Customs,
Trivandrum Division.
7. Manojkumar.T.V.
Lower Division Clerk,
O/o the Asstt. Commissioner of
Central Excise & Customs,
Trichur Division.
8. Anupama.P.,
Asstt. Commissioner of
Central Excise & Customs,
Palghat I Division,
Palghat.

9. Biju.M.R.
O/o the Deputy Commissioner of
Central Excise & Customs,
Muvattupuzha Division.

- Applicants

By Advocate Mr Shafik M.A.

VS

1. Union of India,
represented by Secretary,
Department of Revenue,
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,
I.S.Press Road, Cochin-682 018.
4. The Joint Commissioner of
Customs & Central Excise,
Kerala Zone,
Central Revenue Building,
I.S.Press Road, Cochin-682 018. - Respondents

By Advocate Mr C.Rajendran, SCGSC

The applications having been heard on 11.8.2004, the Tribunal
on 1.2.2005 delivered the following:

O R D E R

HON'BLE MR H.P.DAS, ADMINISTRATIVE MEMBER

In both these applications the points at issue and
questions of law being common, we proceed to dispose of the
applications by a common order. To facilitate discussion of
the matters involved with reference to the materials and
arguments submitted, we take up O.A.72/2003.

O.A.72/2003

The applicants, all Lower Division Clerks working in
the field formations of the Commissionerate of Cochin have
sought the following reliefs in the O.A.:

- i) To declare that the applicants are entitled to be promoted to the cadre of UDCs in the vacancies existing prior to restructuring on the basis of A-1 recruitment rules immediately.
- ii) To direct the respondents to convene the DPC for promotion to the post of UDCs existing prior to restructuring i.e. vacancies covered by A-7 and 43 resultant vacancies that arose on the basis of promotion ordered as per order No.228/2002 of 18.12.2002 to the cadre of Inspectors immediately, and to place the applicants in the correct slots in the vacancies of UDCs existing prior to restructuring.

2. The grievances of the applicants arise from the fact that the respondents have so far not held any DPC to promote the applicants to the rank of UDC. The learned counsel for the applicants contends that since the applicants were eligible for promotion to the rank of UDC, having completed the more than required number of years as LDC, prior to the restructuring of cadre that abolished the cadre altogether, they should have been promoted before giving effect to restructuring, so that they would have moved into the restructured Tax Assistant's cadre ahead of DEOs in pursuance of the scheme of restructuring. By letting them remain in the LDC cadre, they would now be moved into the Tax Assistant's cadre as juniors to DEOs instead of moving into the Tax Assistant cadre ahead of them. The main argument of the learned counsel for the respondents against this, is that

consequent on restructuring the cadre of UDC has ceased to exist and the applicants would not be justified in making a claim for promotion to a rank or cadre that has ceased to exist. The learned counsel for the respondents further submits that orders allocating posts in the restructured cadres were issued keeping in view the fair principle that none among the merged cadres would steal a march over the others by being promoted to a cadre that ceased to exist. Hence, the counsel contends, promotion to the pre-restructured cadre of UDC were not effected since 5.6.2002. That Apart, the counsel points out that none of the applicants at the point of time of filing this application, were within the zone of consideration for being considered for promotion to the post of UDC.

3. Heard. We note from the reply statement of the respondents that the applicants have in the meantime been promoted to the restructured cadre of Tax Assistant. Since the cadre of UDC does not exist and the applicants have already been placed in the restructured cadre of Tax Assistants, the respondents are unable to make any space now for promoting them to the non-existent cadre of UDC (even by applying the earlier recruitment rule) so that they 'steal a march' over DEOs. We find from A-5 (14.11.2002) that promotions were ordered to be made in the cadres of Sepoy, Havildar, Tax Assistant, Senior Tax Assistant and Inspector. When promotions were made to the cadre of Inspector in December 2002, 43 vacancies were created in the feeder formations, and it is the contention of the applicants that

these vacancies along with those already existing should have been filled up immediately under para 2 (iii) of the A-5 order. Since promotions to the Inspector's grade were made in December 2002, evidently, the last date for issue of orders in respect of those in residual category in para 2(iii) had by that date passed. Consequential vacancies, when a cadre is being restructured, have to be seen not only in the light of the composition of the restructured cadres, but also in the light of the risk of imbalances that may result from uneven opportunities to the holders of pre-restructured posts/cadres. Going by the stipulation in para 2(iii) of A-5, were there vacancies in the UDC cadre which could have been filled up by promotion by 25.11.2002?. But then the respondents merely state that none of the applicants were in the zone of consideration for promotion. Since the zone of consideration is based on the number of vacancies, we have no means of verifying the applicants' status unless we know the correct vacancy position. We are also surprised that the applicants, at no stage of the pleadings, have referred to their exact places in the seniority list. They have claimed that they were eligible, so were their seniors who have waited for as long as 14 years for promotion, by their own admission. It is important to recall at this stage that this Tribunal had issued an interim order on 13.2.2003 in the present O.A. directing as follows:

"In the meanwhile, respondents are directed to convene the Departmental Promotion Committee meeting for promotion to the cadre of UDC against the vacancies which existed prior to the restructuring as seen from Annexure A7 considering those who are in the feeder grade for promotion, within four weeks from today."

4. The respondents went on to challenge this interim order in O.P.No.9077/2003 before the High Court of Kerala and the Hon'ble High Court have now stayed the operation of the interim order. We had passed the interim order to set at rest any speculation in regard to the status of the applicants. If, in fact the applicants were not in the zone of consideration, then a regularly constituted DPC would have settled the matter once and for all. If the applicants were truly not in the zone, the benefit would have gone to their seniors, who could be non-parties, but then the end of justice would have been met through even-handed administration of policy. We are of the firm view that in pursuance of A-4 orders DPCs should have been constituted to fill up the available and consequential vacancies, if any, before wiping out a promotional rung for LDCs, particularly in the light of the fact that in the post-restructured cadre of Tax Assistants, UDCs were placed ahead of DEOs and LDCs were placed after DEOs. It is the applicant's case that LDCs who despite their seniority and availability of vacancies could not be promoted as UDCs would now rank juniors to DEOs while they would have ranked seniors to DEOs had they been promoted in the pre-structured cadres in due time. This could mean substantial loss to such juniors in a large cadre. We have kept in mind the fact that the restructuring order was issued on 19.7.2001, while the process of departmental promotions under both new rules and old rules went on till 25.11.2002. Greater care was required to be taken in respect of the LDCs cadre by promoting those entitled to the rank of UDCs in the pre-resturctured cadre and placing them in the right slots for merger into the Tax Assistants cadre in the restructured composition. As we said, the seniormost LDCs had, by

restructuring, lost a rung for direct promotion and that loss could not have been left compounded in a new configuration, in the name of policy prerogative. We see no policy issue here. It is inaction on the part of the respondents not to have taken hold of the opportunity to allow the benefit to those who deserved.

5. In the result, we dispose of these applications with the following orders :

- i) Vacancy position as on 3.1.2002 (date of issue of A-4 communication of the Government of India, Ministry of Finance) in the cadre of UDCs be assessed.
- ii) For filling up of the abovesaid vacancies, a DPC be constituted to consider eligible LDCs as per the zone of consideration. If the applicants would fall within the zone of consideration, they shall also be considered.
- iii) Those found suitable be promoted notionally to the rank of UDCs from 25.11.2002 (date of issue of A-5 communication of the Government of India, Ministry of Finance).
- iv) Those notionally promoted be assigned seniority in the cadre of Tax Assistants as UDCs merged into the cadre with all consequential benefits.

v) No arrears would be payable.

vi) The above direction shall be complied with in full and resultant orders issued within a period four months from the date of receipt of copy of this order.

6. No orders as to costs.

Dated, the 1st February, 2005.

Sd/-
H.P. DAS
ADMINISTRATIVE MEMBER

Sd/-
A.V. HARIDASAN
VICE CHAIRMAN

trs