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CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO. 141/2009

Wednesday, this the 7th day of July, 2010.

CORAM:

**HON'BLE Mr JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
HON'BLE Ms K.NOORJEHAN, ADMINISTRATIVE MEMBER**

K.Muraleedharan,
Stenographer Gr.III
Central Excise & Customs,
Calicut Commissionerate,
C.R.Buildings, Mananchira,
Calicut-673 001.

.. Applicant

By Advocate Mr V Rajendran

v.

1. Union of India represented by the
Revenue Secretary,
Department of Revenue,
Ministry of Finance, North Block,
New Delhi-110 001.
2. The Commissioner of Central Excise & Customs,
C.R.Buildings, I.S.Press Road, Ernakulam.
3. The Chief Commissioner of Central Excise,
Kerala Zone. C.R.Buildings,
I.S.Press Road, Emakulam.. - Respondents

By Advocate Mr Sunil Jacob Jose, SCGSC

The application having been heard on 2.7.2010, the Tribunal on 7.7.2010
delivered the following:-

ORDER

HON'BLE Mr JUSTICE K.THANKAPPAN, JUDICIAL MEMBER

The applicant, a Stenographer Gr.III in the office of the Commissioner of Central
Excise & Customs, Ernakulam has filed this O.A challenging the orders dated

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21.4.2004 and 5.2.2009 of the respondents by which the representations for promotion of the applicant to the post of Tax Assistant has been rejected.

2. The factual matrix of the case are as follows: The applicant is a Post Graduate and acquired LL.B. Degree. While he was working as a Sepoy, a Group D employee, promoted as Lower Division Clerk (LDC for short) on 6.2.2003 against the 50% Departmental Examination quota. On passing the Departmental Computer Proficiency Examination, he claimed for promotion to the post of Tax Assistant as per the Recruitment Rules. However, he was not promoted as Tax Assistant and hence he made representations, but by the impugned orders the claim of the applicant has been rejected. Hence the applicant has filed the present O.A.

3. The O.A has been admitted by this Tribunal and notice has been ordered. In pursuance to the notice ordered a reply statement has been filed for and on behalf of the respondents. The stand taken in the reply statement is that though the applicant was promoted as LDC on 6.2.2003 on the request made by the applicant he was allowed to join in the post only in June 2003. Hence the applicant cannot claim deemed promotion as he was promoted to the post of LDC with effect from 23.5.2003. Further, it is stated in the reply statement that as per Rule 4(3) of the Central Excise & Customs Department Tax Assistant (Group C post) Recruitment Rules, 2003, a person who holds the post of LDC on regular basis and falls within the seniority list as determined by the appointing authority, at the time of the commencement of the rules, shall, on passing the Departmental Computer Proficiency Examination can only deemed to have been promoted with effect from the date of passing of such examination to the post of Tax Assistant. It is also stated in the reply statement that the Recruitment Rules has notified on 2.5.2003 and as the applicant has joined as LDC only during June 2003, he was not holding the post of L.D.C. when the



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Recruitment Rules came into force in the 10% promotion quota earmarked for LDC. In the above circumstance, as the applicant was not promoted as LDC as on 2.5.2003 he cannot be deemed to have been promoted as Tax Assistant on completion of the examination conducted by the Department.

4. Following the reply statement, the applicant filed two rejoinders and submitted that as the Recruitment Rules for Tax Assistants were notified on 2.5.2003 and as the applicant has been promoted as LDC on regular basis on 6.2.2003, he had only requested extension of time for joining in the promoted post that by itself cannot be construed that he was not promoted on the date of commencement of the Recruitment Rules. The applicant further submitted that even as per Annexure R-4, one C.P.Jexon has actually promoted as LDC only on 8.7.2004 but he was given the benefit of deemed promotion based on his notional promotion as LDC from Group D post. If so, he is entitled for the same benefit as given to Mr Jexon. Hence, Annexure A-4 and A-7 are discriminatory and the department should consider the applicant as deemed to have been promoted to the post of LDC on the commencement of the Recruitment Rules, viz, 2.5.2003.

5. We have heard Shri V Rajendran, learned counsel appearing for the applicant and Shri Sunil Jacob Jose, learned SCGSC appearing for the respondents. Learned counsel for the applicant reiterating the averments in the O.A and the rejoinders submits that as per the Recruitment Rules for the post of Tax Assistant, any person who holds the post of LDC on regular basis and falls within the seniority list as determined by the appropriate authority at the time of commencement of these rules, is, on passing the Departmental Computer Proficiency Examination can be deemed to have been promoted with the effect from the date of passing such examination to the post of Tax Assistant. As the rule position is so, the department has to consider the



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case of the applicant that he was promoted as LDC as on 6.2.2003 on regular basis and he entitled to be considered for deemed promotion on passing the Departmental Computer Proficiency Examination to the post of Tax Assistant. Apart from that, the learned counsel submits that the applicant has already given his willingness to appear for the Departmental Computer Proficiency Examination as per his written submission dated 10.11.2003 through proper channel and on passing the said test, he ought to have been promoted to the post of Tax Assistant as per Rule 4(3) of the Recruitment Rules as he was already promoted on regular basis as LDC. Learned counsel further submits that as per Annexure R-4, it is seen that one Jexon has given the benefit of deemed promotion to the post of Tax Assistant though he was actually promoted as LDC only on 8.7.2004. Hence the same benefit may be given to the applicant also. It is the further contention of the learned counsel that the Department has no case that the applicant has not passed the Departmental Computer Proficiency Examination which is mandatory for promotion to the post of Tax Assistant.

6. The arguments of the learned counsel for applicant have been met by the learned counsel for respondents by reiterating the stand in the reply statement and also relying on Annexure R1 to R-4. The learned counsel submits that as per Rule 4(3) of the Recruitment Rules, a person who was holding the post of LDC alone can be considered as deemed promotion to the post of Tax Assistant and when the commencement of the Recruitment Rules. In the case of the applicant he was joined as LDC only in June 2003 i.e. after the commencement of the Recruitment Rules. In the circumstance, according to the learned counsel for respondents, the reasons stated by the respondents are justifiable and the O.A is liable to be dismissed.

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7. On analyzing the factual position and the relevant rules relied on by the parties, the question to be considered is that whether the applicant is entitled for the relief which he claimed in the O.A or not. It is an admitted case that the applicant has now completed or passed the Departmental Computer Proficiency Examination and he was holding the post of LDC. At the same time, the further question to be answered is whether the applicant could be considered to be promoted as LDC as on 2.5.2003, the date of the Recruitment Rules came into force or not. As per Annexure A-1 promotion order dated 6.2.2003, it could be seen that the applicant has been promoted as LDC in the 50% examination quota and the applicant was directed to join duty on or before 15.2.2003. It is also to be noted that on the request made by the applicant as per Annexure A-2, he was allowed to join duty on 23.5.2003. In that case, it is just and proper for us to conclude that the applicant's promotion as ordered on 6.2.2003 has not been cancelled as he was permitted to join duty by the Department. In this context, it is also the case of the applicant that one Jexon has been promoted as Tax Assistant as per the Recruitment Rules though he was promoted as LDC only on 8.7.2004 but at the same time notional promotion was given to him with effect from 14.2.2003 based on a review DPC. If so, the same benefit can be given to the applicant also. In this context it has to be noted that the Department has not denied the promotion given to the said Jexon as LDC with effect from 8.7.2004, but still when he had passed the Departmental Computer Proficiency Examination to the post of Tax Assistant he has given the benefit of notional promotion to the post of LDC with effect from the date of commencement of the Recruitment Rules. Hence we are of the considered view that the same treatment shall be given to the applicant also and the promotion to the post of Tax Assistants also may be considered with effect from the date of passing of the Departmental Computer Proficiency Examination for the said post. In the result, O.A succeeds to the extent indicated above. We direct the respondents to consider the case of the applicant as aforesaid and pass appropriate orders with consequential

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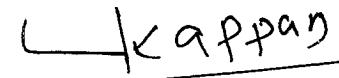
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benefits thereon within 90 days from the date of receipt of this order.

8. With the above direction the OA is allowed with no order as to costs.


K. NOORJEHAN

ADMINISTRATIVE MEMBER


JUSTICE K. THANKAPPAN

JUDICIAL MEMBER

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