

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 143 of 2009

Wednesday, this the 13th day of January, 2010

CORAM:

Hon'ble Dr. K.B.S. Rajan, Judicial Member
Hon'ble Ms. K. Noorjehan, Administrative Member

**M.K. Vincent, Sepoy, Central Excise
Range Office, Perambra, Chalakudy,
Trichur District.**

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Applicant

(By Advocate – Mr. C.S.G. Nair)

V e r s u s

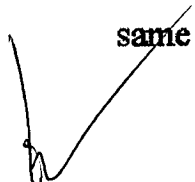
1. Union of India represented by its
Secretary, Department of Revenue,
North Block, New Delhi 110001.
2. The Chairman, Central Board of Excise
and Customs, North Block, New Delhi.
3. The Chief Commissioner of Central
Excise, Central Revenue Buildings,
I.S. Press Road, Kochi. 18.
4. The Commissioner of Central Excise,
Central Revenue Buildings, I.S. Press Road,
Kochi. 18.
5. The Commissioner of Central Excise,
Central Revenue Buildings, Mananchira,
Kozhikode.

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Respondents

(By Advocate – Mr. Subhash Syriac, ACGSC)

This application having been heard on 13.1.2010, the Tribunal on the
same day delivered the following:



ORDER

By Hon'ble Dr. K.B.S. Rajan, Judicial Member -

The applicant, an Ex-servicemen with 15 years of service joined Central Excise Department in January, 1992 as Sepoy. As per recruitment rules of 1979 10% of the vacancies to the post of Lower Division Clerk (in short LDC) are to be filled up by direct recruitment from amongst the qualified Group-D employees on passing of departmental examination and subject to maximum of 45 years/50 years for SC&ST. Vide Annexure A-1 as per the 2002 Recruitment Rules. There has been a modification to the above rules and in that 100% vacancies of LDCs will be filled up by promotion of which 50% is on the basis of seniority-cum-fitness from amongst Havildars/Record Keepers who possesses Matriculation or equivalent qualification and the rest of the 50% by those who possesses Matriculation and passed departmental test. The age limit remained the same. Annexure A-2 refers.

2. Applications were invited for departmental examination to be conducted on 7.11.2003 and the applicant appeared for the said examination and also qualified. He was called for typing test in March, 2004 and he had qualified the typing test as well vide Annexure A-6. By Annexure A-7 the 4th respondent had called for willingness of those Sepoys who had qualified in the departmental examination for promotion as LDC. Vide Annexure A-8 the applicant had given his willingness. By Annexure A-9 once again willingness was called for and by Annexure A-10 the applicant gave his willingness.

3. By order dated 16.2.2009 certain individuals were promoted while the name of the applicant was conspicuously missing. The promotion order included juniors to the applicant as well. Annexure A-11 refers. The applicant therefore, made a request vide Annexure A-13 requesting the respondents to consider his promotion on the basis of his qualification and qualifying in the departmental examination. The said representation has not been so far responded to while in the meantime Annexure A-14 was issued for promotion to the cadre of pre-restructured LDCs to all similarly placed cadres.
4. On oral inquiry as to the omission of the name of the applicant, he was informed that as he had crossed 45 years of age as stipulated in Annexures A-1 and A-2, his case is not considered for promotion.
5. The applicant has through this OA challenged the decision of the department and has requested for a direction to the respondents to consider and promote the applicant as LDC with effect from the date his junior Shri Rajenan G was promoted and for grant of all consequential benefits including monetary benefits.
6. Respondents have contested the OA. According to them by merely permitting the applicant to appear in the departmental exam no legal right gets crystalized in favour of the applicant for promotion. The applicant had qualified in the examination when he was 46 years. OM dated 2nd April, 1992 extends the benefits of age relaxation for Ex-servicemen for 2nd

employment and it does not mention about any age relaxation for promotion. Annexure A-15 submitted by the applicant was issued to give relaxation in age limit to the officers on promotion to the grade of Inspector, whereas in the case of the applicant no such age relaxation is prescribed for promotion from Group-D and Group-C posts.

7. The applicant has filed his rejoinder reiterating his contentions raised in the OA. Counsel for the applicant referred to Annexure A-1 recruitment rules and Annexure A-2 Recruitment Rules. He has also invited the attention that vide Rule 7 "nothing in these rules shall affect reservations, relaxations of age limit and other concessions required to be provided for SC & ST and other special categories of persons in accordance with the orders issued by the Central Government from time to time." According to the counsel for the applicant age relaxation is admissible to Ex-servicemen for securing another civil appointment. Government of India, DOP&T OM dated 2nd April, 1992 refers. The counsel argued that this has to be extended to the applicant.

8. Counsel for the respondents has not denied the fact that Rule 7 of the 2002 rules is still on the statute.

9. Arguments were heard and documents perused. Order dated 2nd April, 1992 reads as under:-

“(6) Age relaxation as admissible to Ex-servicemen will be admissible for securing another higher Civil appointment. - In modification of provision of this Department's O.M. No. 36034/27/84-

Estt. (SCT), dated 2-5-1985 [*Order (5) above*], it has been decided that such of these ex-servicemen candidates who have already secured employment under the Central Government in Groups 'C' and 'D' will be permitted the benefit of age relaxation as prescribed for ex-servicemen for securing another employment in a higher grade or cadre in Group 'C' and 'D' under the Central Government. However, such candidates will not be eligible for the benefit of reservation for ex-servicemen in Central Government jobs.

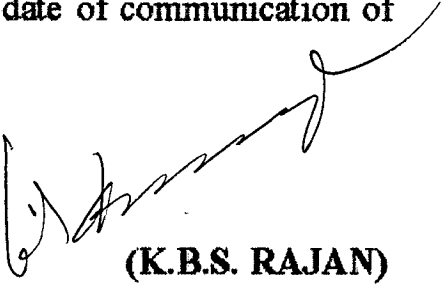
[G.I., Dept. of Per. & Trg., O.M. No. 36034/6/90-Estt. (SCT), dated the 2nd April, 1992.]”

10. The aforesaid order which is a beneficial order in favour of ex-servicemen has to be construed liberally. The said order does not specifically state that it is not applicable in the case of promotions. The said order only talks of securing another employment in Group-C & D posts under the Central Government in which event the age limit can go up to 50. When the respondents allowed age relaxation for ex-servicemen for switching over from one employment to another be at in the same organization or another organization, there is no reason as to why the same should not be followed in respect of promotion within the same department as promotion is also an employment in a higher grade. Reading 1992 order with the provisions of Rule 7 of the 2002 rules would confirm that the applicant is entitled to the claim as he has asked for.

11. In view of the above this OA is allowed. It is declared that the applicant is entitled to be considered for promotion as LDC on the basis of his performance in the examination and on the basis of the relevant rules relating to the age of ex-servicemen. Consequently the respondents should consider promoting the applicant to the said post of LDC at par with his immediate junior and from the date such junior was promoted. This drill

may be performed within three months from the date of communication of this order. No costs.


(K. NOORJEHAN)
ADMINISTRATIVE MEMBER


(K.B.S. RAJAN)
JUDICIAL MEMBER

"SA"