

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**O.A. NO. 168/2008**

**Wednesday this the 18<sup>th</sup> day of March, 2009**

**C O R A M**

**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER  
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

Ramachandran M.K. S/o K. Damodaran Nambiar  
Tax Assistant, Central Excise division,  
Kannur.

Applicant

By Advocate Mr. U.Balagangadharan

Vs.

- 1 The Chief Commissioner of Central Excise  
Cochin.
- 2 The Commissioner of Central Excise & Customs  
Kerala Zone, Kochi.
- 3 The Assistant Commissioner of Central Excise  
Kannur.
- 4 Union of India represented by the Secretary  
Government of India, Ministry of Finance  
Department of Revenue,  
New Delhi.

Respondents.

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

The Application having been heard on 26.2.2009 the Tribunal delivered the following:

**O R D E R**

**HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

The applicant, a Tax Assistant in the Central Excise at Kannur is aggrieved by Annexure A-7 order dated 28.1.2008 rejecting his representation for promotion as UDC along with similarly situated persons.

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2 The applicant has joined the Central Excise & Customs at Indore Commissionerate as LDC on 4.3.1993. He got an inter-commissionerate transfer to Customs House, Cochin on 8.6.1996 accepting loss of seniority and thereafter transferred to Kannur Division under the Calicut Commissionerate on 16.7.2001. According to the applicant, consequent on restructuring of the cadres, as a one time measure a conscious decision was taken to fill up all the vacancies by promotion in relaxation of rules. Accordingly, there arose large number of vacancies of UDCs due to promotion of UDCs as Inspectors. S/Shri Murali P, Ms Sindhu MS, Joseph John and Santhosh John who joined service in the year 1998 were promoted as UDCs notionally w.e.f. 18.12.2002 (A1) without considering the applicant who had completed 7 years of service on that date. According to the applicant all the available vacancies of UDC were not filled. Subsequently, on passing the proficiency test, the applicant was granted deemed promotion to the post of Tax Assistant w.e.f. 27.5.2003. In the seniority list of Tax Assistants as on 1.1.005 the applicant was shown much below the S/Shri Murali P etc. (A2). Aggrieved, the applicant relying on the decision of the Mumbai Bench of the Tribunal in Santha Kumar Vs. Union of India submitted a representation on 31.10.2007 (A5). The applicant is challenging Annexure A-7 rejection of his representation on the grounds that all the available vacancies of UDCs were not filled up and that the past service rendered by the applicant should have been counted by virtue of the decision of the Apex Court in Prabha Devi's case.

3 The respondents contested the O.A. by filing reply statement. They submitted that the applicant has been granted inter-commissionerate transfer on acceptance of the terms and conditions stipulated in Annexure R-1 order dated 6.7.2001 according to which his seniority will be fixed

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below the last temporary LDC in the combined commissionerate of Central Excise & Customs, Cochin and Calicut together i.e he will be treated as a fresh entrant in the cadre. The claim made by the applicant for promotion to the grade of UDC overlooking his seniors is violative of the conditions accepted by him in his undertaking. The promotion to the grade of UDC is done based on seniority cum fitness. The zone of consideration is limited to the number of vacancies, as the applicant was at the bottom of the seniority list he was not eligible for consideration. The vacancies reserved for SC/ST were kept unfilled for want of eligible candidates and these posts cannot be filled up by candidates belonging to general category. They also submitted that promotion quota posts lying vacant in the cadre of pre-restructured UDC is due to non-availability of eligible candidates in the zone of consideration.

4 We have heard the learned counsel for the parties and have gone through the judgment relied on by the applicant.

5 We find that promotion to the post of UDC is based on seniority-cum-fitness. As the applicant was at the bottom of the seniority list, his name has not come within the zone of consideration. The number of vacancies and the position of the officer in the seniority list are to be taken into account for promotion. There is no selection to the post of UDC as envisaged in the judgment relied on by the applicant. The promotion is not given based on the length of service but on the seniority. The vacancies of UDCs existing on 5.5.2003 till the issue of Recruitment Rules of Tax Assistant were filled.

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6 Now we would examine the case laws relied on by the applicant.

In Union of India and Others Vs. C.N. Ponnappan (1996) 1 SCC 524 the Hon'ble Supreme Court held that in computing the service of the applicant, service rendered by him in a unit from where he was transferred to another unit on compassionate grounds and consequently placed at the bottom of seniority could be validly counted as experience for the purpose of promotion in the new unit.

In Renu Mullick (Smt) Vs. Union of India and Others,(1994) 1 SCC held that for the purpose of minimum length of service, the service rendered prior to unilateral transfer at own request also counts for determining the eligibility condition though own transfer downgrades seniority.

The case of the applicant on hand is not similarly situated. There is no dispute that the applicant's service in the earlier office is not counted. The grievance of the the applicant is that though there are vacancies and has sufficient length of service, he has not been considered for promotion. The stand of the respondents is that though he possess the required length of service, his name has not come within the zone of consideration as there are seniors having the required length of service waiting for consideration.

7 In R. Santha Kumar Vs. UOI and Ors relied on by the applicant there was a notification inviting application for promotion under the relaxed eligibility conditions and while the applicant was eligible to appear having the minimum period of three years of service, seniors of applicant were not eligible to apply not having the minimum service. While disposing of the

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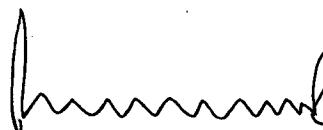
O.A. the Tribunal held that the applicant has to be considered for promotion along with other eligible candidates and it is not necessary that he will be considered only when his seniors become eligible for promotion. The applicant was required to be considered for the promotion though he is shown junior to the seniors who have not completed three years of service. The Tribunal had ordered to consider the applicant along with eligible candidates for promotion to the higher post.

In the case on hand there is no selection and there is no dearth of eligible seniors. The applicant being the juniormost his name had not come within the zone of consideration. The judgment relied on by the applicant is not applicable in his case.

8 In this view of the matter, we do not find any merit in the O.A. it is dismissed. No costs.

Dated 18<sup>th</sup> March, 2009

  
K. NOORJEHAN  
ADMINISTRATIVE MEMBER

  
GEORGE PARACKEN  
JUDICIAL MEMBER

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