

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION NO. 175 OF 2008

Dated the 17th October, 2008

CORAM:-

**HON'BLE Mr. GEORGE PARACKEN, MEMBER (JUDICIAL)
HON'BLE Dr. K.S.SUGATHAN, MEMBER (ADMINISTRATIVE)**

1. N Ashok Kumar,
Lower Division Clerk,
Central Excise Division,
Kannur.
2. T.V. Sasidharan,
Lower Division Clerk,
Central Excise Division,
Kozhikode.

.. Applicants

[By Advocate: Mr. C.S.G. Nair)


-Versus-

1. The Commissioner of Central Excise & Customs,
Central Revenue Buildings,
IS Press Road, Cochin-18.
2. The Commissioner of Central Excise,
Central Revenue Buildings,
Mananchira, Kozhikode.
3. The Chief Commissioner of Central Excise and Customs,
Central Revenue Buildings,
IS Press Road, Cochin-18.
4. Union of India, represented by its Secretary,
Department of Revenue,
Ministry of Finance, North Block,
New Delhi-110 001.

...Respondents

[By Advocates: Mr Sunil Jose, ACGSC)


**This application having been heard on 2nd September, 2008 the
Tribunal delivered the following -**



ORDER

(Hon'ble Dr. KS Sugathan, AM)

The applicants are working as Lower Division Clerks (LDC) in the Central Excise Department. They joined the Department as Sepoys in the year 1987 and 1986 respectively. They were promoted as LDCs after they qualified in the Departmental Test by order dated 6.2.03 (Annexure-A3) against the quota earmarked for Sepoys. The applicants have also passed the Departmental Examination for promotion of LDCs to Tax Assistants held on 02.12.2003. As a result of the restructuring of the Central Excise Department, the respondents issued a Notification dated 2nd May, 2003. By virtue of this Notification the Central Excise and Land Customs Department (Group C) posts Recruitment Rules, 1979, Customs Department (Group-C) posts Recruitment Rules, 1979, in so far as they related to the posts of Upper Division Clerk, Lower Division Clerk and the Electronic Data Processing Discipline (Group-C Technical Posts) Recruitment Rules, 1979 inasmuch as they relates to the post of Data Entry Operator Grade-A were superseded. In place of the aforesaid Recruitment Rules, there came into existence a new Recruitment Rules for the post of Tax Assistant (Group-C), known as Central Excise and Customs Department Tax Assistant (Group-C post) Recruitment Rules, 2003 (A/9). Rule 4 of the new Recruitment Rules deals with initial constitution of the Cadre of Tax Assistant. As per Rule 4(3) of the new Recruitment Rules those who are holding a post of Lower Division Clerk on regular basis and falls within the seniority list



are deemed to have been promoted to the post of Tax Assistant with effect from the date of passing ^{the} such examination. The said Rule 4(3) is extracted below:


"4(3) Any persons, who holds a post of Lower Division Clerk on regular basis and falls within the seniority list as determined by the appointing authority at the commencement of these rules shall, on passing the Departmental computer Proficiency Examination, conducted by the appointing authority, be deemed to have been promoted with effect from the date of passing such examination on the post of Tax Assistant."

[2] It is contended by the applicants that by virtue of Rule 4(3) of the Recruitment Rules 2003 they should be deemed to have become Tax Assistants with effect from the date they qualified in the Departments Computer Proficiency Examination. They have produced documents to show that they have passed the said Departmental Examination held on 2nd December 2003 (Annexure-A4). The applicants have also sought for notional promotion to the post of LDCs from November 2002 because in the year 2006, 44 vacancies are deemed to have become available wef November, 2002 and December 2002. It is their contention that they are eligible to be adjusted in the relevant promotional quota out of those 44 vacancies, which become available consequent to the notional promotion of 44 LDCs by order dated 26.6.2006. The applicants have sought the following specific relief:

"i. To declare that the applicants are entitled for notional promotion as LDCs since November 2002 and Tax Assistants since December 2003.


ii. To direct the respondents to promote the applicants on notional basis as LDCs since November 2002 and as Tax Assistants since December 2003 and grant all consequential benefits including monitory benefits within a stipulated period.."

[3] Respondents have vehemently contested the OA. It is stated in their reply that the Recruitment Rules for the post of LDCs were amended on 09.9.2002. According to the amended Rules 2002, 717 posts of LDCs were earmarked for 100% promotions from amongst Sepoys / Havildars. The applicants were promoted as per the amended Recruitment Rules 2002 and they are eligible for promotion to the post of Tax Assistants only after rendering 7 years of regular service in the grade of LDCs. The scheme of merger of UDCs and LDCs on re-designation as Tax Assistant is not applicable to those Lower Division Clerks, who were promoted from Group-D cadre in terms of Recruitment Rules, 2002. The respondents have produced a copy of the letter dated 19.7.2001 (Annexure-R1) and drawn the attention of this Tribunal to Note 5 of the said letter. As per Note 5, the existing posts in the cadres of UDC, DEO(A) and LDC (except 717 posts of LDC for the purpose of promotion of Group D) have been merged and re-designated as Tax Assistant (New). According to the Respondents, a combined reading of the provisions of the new Recruitment Rule 2003 along with the note 5 of letter dated 19.7.2001 would make it clear that the re-designation of LDCs as Tax Assistants envisaged in the Recruitment Rule of 2003 is not applicable to those LDCs who were promoted from Group-D in accordance




with the Recruitment Rules of 09.09.2002. On the prayer for pre-dating the promotion of the applicants as LDCs, the respondents have argued that at the notional promotion of 44 LDC s with effect from November/December 2002 was in pursuance of the directions of the Tribunal in OA No.67 of 2003. As the applicants were promoted as LDCs as per the Recruitment Rules of 2002, they are not entitled for notional promotion in respect of the 5% quota of 44 vacancies. The provision of 5% quota is provided in the Recruitment Rules 1979 and not in the Recruitment Rules of 2002.

[4] In the rejoinder filed by the applicant it is stated that as per the Recruitment Rules 2003 issued on 2nd May 2003, any person, who holds a post of Lower Division Clerk on regular basis and falls within the seniority list as determined by the appointing authority at the commencement of these rules shall, on passing the Departmental Computer Proficiency Examination conducted by the appointing authority, be deemed to have been promoted with effect from the date of passing such examination on the post of Tax Assistant. It is therefore the contention of the applicants that this Rule does not discriminate between LDCs recruited as per the Recruitment Rules 1979 vis-à-vis, those recruited as per Recruitment Rules 2002. All LDCs who are working on regular basis are covered by Rule 4(3) of the Rules 2002. The applicants are working as LDCs since 14.2.2003. Only those LDCs, who joined service after 2.5.2003 have to



complete 7 years service for becoming eligible for promotion as Tax Assistant.


[5] The respondents filed additional reply statement disputing the contentions of the applicants. It is stated in the additional reply that clause 4(3) of the new Recruitment Rules of Tax Assistant 2003 is applicable only to those LDCs who were recruited / promoted as per the Recruitment Rules of 1979. If the interpretation of the applicants is accepted, all the LDCs promoted from Group-D cadre as per Recruitment Rules 2002 in different Commissionerates throughout India from 09.9.2002 (the date of Notification of Annexure-A6) to 02.5.2003 (the date of Notification of Annexure-A9) will have a claim for re-designating them as Tax Assistant on passing the Departmental Computer Proficiency Examination in terms of Rule 4(3) of Rules 2003, which will give rise to a spate of litigation by similarly placed LDCs in different Commissionerates and consequent unsettling of settled seniority position of several Group-C and Group-B staff in the Department. Annexures-A6 and A9 clearly indicate the number of post available for different Recruitment Rules. For Recruitment Rules 2002 the number of post is 717 and for Recruitment Rule 2003 the number of posts is 5525. A bare reading of these two notifications would establish that the existing posts in the cadre of UDC, DEO (A) and LDC (except 717 posts for the purpose of promotion of Group-D) have been merged into and re-designated as Tax Assistant (New).



[6] We have heard learned counsel Mr CSG Nair, for the applicant and Mr. Sunil Jose, ACGSC for the respondents. We have also carefully perused the documents on record.

[7] There are two prayers in this OA. The first prayer is for ante-dating of the applicants' promotion as LDCs to November 2002. It is contended by the applicants that on account of the notional promotion of 44 LDCs as UDCs with effect from November /December 2002 by order dated 26.6.06 (A/11), 44 vacancies of LDCs become available with effect from November/December 2002 and consequently 5% of the aforesaid 44 vacancies of LDCs should be deemed to have become available for the "examination" quota of promotion for Group-D staff and therefore the promotion of the applicants as LDCs should be pre-dated to November 2002. We are unable to accept this contention of the applicants, because 5% quota is available under the Recruitment Rules of 1979 whereas the applicants were promoted as LDCs under the Recruitment Rules of 09.9.2002.


[8] The second prayer is for promotion as Tax Assistant by virtue of Rule 4(3) of the Recruitment Rule 2003. The text of the said Recruitment Rules 4(3) is extracted supra. As per the said Rule any persons, who holds a post of Lower Division Clerk on regular basis and falls within the seniority list as determined by the appointing authority at the commencement of these rules shall, on passing the Departmental computer Proficiency Examination, conducted by the appointing authority, be deemed

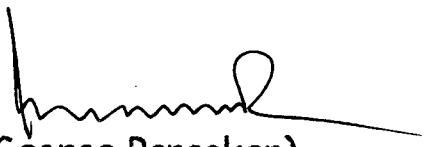


to have been promoted with effect from the date of passing such examination on the post of Tax Assistant. It is abundantly clear from Rule 4(3) that any person who is holding the post of LDC on regular basis shall be deemed to have been promoted w.e.f. the date of passing of the departmental computer proficiency examination. This Rule does not distinguish between LDCs who are directly recruited and those who are promoted from Group-D staff. The contention of the respondents that the benefit of Rule 4(3) is not available to those LDCs who came from promotion from Group-D staff cannot be sustained in the eye of law. The suggestion made by the respondents that Rule 4(3) has to be read in conjunction with Note 5 of the letter dated 19.7.2001 cannot also be sustained, as the Recruitment Rules are issued under Article 309 of the Constitution. The provisions of the said Recruitment Rules cannot be diluted by way of a letter. It is also to be noted that the Respondents themselves allowed the applicants to appear in the departmental computer proficiency examination and they have passed the examination in December 2003 as per the result declared by Annexure-A4. Further the exclusion of those LDCs who came on promotion from Group-D staff ^{would} ~~should also~~ be discriminatory and a violation of Article 14 of the Constitution. The contention of the respondents that accepting the prayer of the applicants will lead to a spate of litigation cannot be accepted as a valid reason for denying a benefit provided by the provisions of a duly notified Rule. We are, therefore, of the considered view that by virtue of Rule 4(3) of Recruitment Rules 2003 the applicants are

entitled to be promoted as Tax Assistants with effect from the date they passed the departmental computer proficiency examination, if they come within the seniority list as determined by the Appointing Authority.

[9] For the reasons stated above, the OA is partly allowed. It is declared that the applicants are entitled to be promoted as Tax Assistants with effect from the date they passed the computer proficiency examination prescribed under Rule 4(3) of the Recruitment Rules 2003, if they fall within the seniority list as determined by the Appointing Authority at the commencement of the said Rules. The respondents are directed to issue necessary orders accordingly within a period of three months from the date of receipt of a copy of this order. No costs.


(Dr. KS Sugathan)
Member (Administrative)


(George Parackal)
Member (Judicial)

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