

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No. 201 of 2005

Friday, this the 13th day of October, 2006

CORAM :

**HON'BLE Mr. K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER**

Prakash Unnikrishnan,
S/o. I. Unnikrishnan,
Tax Assistant, O/o. the Commissioner of Customs,
Customs Preventive Commissionerate,
I.S. Press Road, Cochin -
Residing at G-313, Mayoora Apartments,
Ayyanthole P.O., Trichur.

... **Applicant.**

(By Advocate Mr. Shafik M.A)

Versus

1. Union of India represented by the Chairman,
Central Board of Excise & Customs,
North Block, New Delhi.
2. The Commissioner of Customs & Central Excise,
Cochin Commissionerate, I.S. Press Road, Kochi.
3. The Joint Commissioner of Customs & Central Excise,
Cochin Commissionerate, I.S. Press Road, Kochi.
4. The Addl. Commissioner of Customs & Central Excise,
Cochin Commissionerate, I.S. Press Road, Cochin
5. Jose Lukose,
S/o. A.T. Lucka,
Senior Tax Assistant,
Central Excise, Muvattupuzha Division,
Vazhathala P.O., Thodupuzha, Idukki District

... **Respondents.**

(By Advocate Mrs. Aysha Youseff, ACGSC (R1-4) and
Mr. T.C. Govindaswamy (R-5)



The application having been heard on 22.09.2006, this Tribunal on
13-10-06 delivered the following :

ORDER
HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER

The question involved in this case is whether the applicant, whose seniority is comparatively at the bottom, but, who, by virtue of his service in the previous Commissionerate has some experience as Tax Asst./UDC should be considered for promotion to the post of Inspector of Customs and Central Excise. The contention of the respondents is that the applicant being at the bottom of seniority is not within the zone of consideration and as such, he cannot be considered.

2. For the purpose of having a hang on the subject, minimum facts as contained in the OA are as under:-

(a) The applicant is presently working as Tax Assistant in Cochin Commissionerate . He had joined the Department as a Lower Division Clerk in 1993 at Mumbai and promoted as Upper Division Clerk on 23.08.1999. On cadre restructuring he was re-designated as Tax Assistant and had joined Cochin Commissionerate on Inter Commissionerate transfer on 15.12.2003. He has completed 5 years of service in the cadre taking the service of UDC and TA taken together and is



eligible for promotion to the cadre of Inspectors as per sub clause to Note 1 of the new Recruitment Rules for the post of Inspectors published by the Respondents in 2002. Respondents have not so far brought out a seniority list of Tax Assistant in this Commissionerate. However, as per the unofficial seniority list the applicant is shown as junior to the existing TAs who are all re-designated UDCs and LDCs of this Commissionerate. As per the same, the applicant is placed at Sl.No.90.

(b) DPC for promotions is to be conducted every year by the end of March. The only person who is now eligible to be promoted with the required number of years of service is the applicant, even though the applicant is shown as lower down in the seniority list. As per the instructions regarding the zone of consideration for promotion to be considered in the DPC, if eligible candidates are not available, then the zone is to be elongated till the eligible candidates are available in the list. Since about 80 odd candidates above the applicant were not having the required number of years of service in the cadre, the applicant had pointed out this fact and submitted a representation to the 4th respondent to consider him by conducting a DPC and placing him in the zone of consideration for promotion to the cadre of Inspector of Central Excise. The said representation has been disposed off by Annexure A-1 order, mechanically without understanding the issue and stating that considering his seniority in the Commissionerate, the applicant still does not come within the zone of consideration of the candidates. The said order reads

A handwritten signature in black ink, appearing to be a stylized 'H' or a similar character, followed by a curved line.

as under:-

Order C.No.II/3/49/2003-Estt.I dated 04.01.2005

..... The Hon'ble Supreme Court in the case of Smt.Renu Mullick Vs Union of India & others in Civil Appeal No.7143 of 1993 has observed that the appellant would come up for consideration for promotion as per his turn in the seniority list in the transferee unit..... But when she is so considered, her past service in the previous Collectorate cannot be ignored for the purpose of determining her eligibility.

For applying the ratio of this judgment in the case of Shri Prakash Unnikrishnan, he has first to fall within the zone of consideration for promotion on the basis of his seniority in the Central Excise, Commissionerate, Kerala Zone and thereafter if it is found that he satisfies the eligibility conditions for promotion on the basis of total length of service put in Central Excise Commissionerate, Kerala Zone and Mumbai Commissionerate taken together, he would be entitled for being considered for promotion by the DPC.

Shri Prakash Unnikrishnan, T.A is one of the junior most Tax Assistant in the Central Excise, Kerala Zone. More than 80 officers are senior to him in the cadre of Tax Assistant but they have not completed the required qualifying service. Since Shri Prakash Unnikrishnan does not fall within the zone of consideration on the basis of his seniority position in this Commissionerate his request for promotion to the post of Inspector cannot be considered...

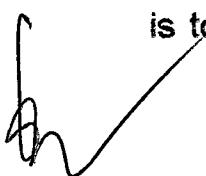
(c) One more representation to the 3rd respondent on 10.01.2005 was also disposed off by Annexure A-2 order which reads as under:-

C.NO.II/3/49/2003-Estt.I dated 15.02.2005



"Shri Prakash Unnikrishnan, T.A is one of the junior most Tax Assistant in Central Excise. More than 80 officers are senior to him in the cadre of Tax Assistant but they have not completed the required qualifying service. Since Shri Prakash Unnikrishnan does not fall within the zone of consideration on the basis of his seniority position in this Commissionerate, his request for promotion to the post of Inspector cannot be considered....."

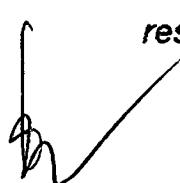
- (d) The stand taken by the respondents is not correct as per the consolidated instructions regarding conduct of DPC issued by the Government of India. As per their OM dated 10.03.1989, where promotions are to be made by selection method as prescribed in the Recruitment Rules, the DPC shall, for the purpose of determining the number of officers who will be considered from out of the eligible officers in the feeder grade(s), restrict the field of choice as under with reference to the number of clear regular vacancies proposed to be filled in the year. The zone of consideration is to be from among the eligible officials in the feeder grade. The candidates above him in the seniority list are not having the required service in the cadre as per the Recruitment Rules and are not eligible for being considered for promotion much less to be included in the zone of consideration.
- (e) The respondents themselves have considered a similarly placed Stenographer Grade III, one Smt. Radha Vijayaraghavan, who had also come on transfer from the same Commissionerate in December, 2003, for promotion. It is to be assumed that the same has been done by invoking

A handwritten signature in black ink, appearing to read 'Smt. Radha Vijayaraghavan', is positioned at the bottom left of the page, below the list of points (d) and (e).

clause 12 (a) of the Annexure A-3 Recruitment Rules. In fact the applicant is also similarly placed and is thus entitled for the same treatment for promotion.

3. The Official respondents have contested the O.A. Their contention, as per reply statement is as under:-

(a) In a number of judgments of the Hon'ble Supreme Court as herein below, it has been implied that from within the zone of consideration, only those that are eligible will be considered. (i) **Badrinath v.Govt.of T.N., (2000) 8 SCC 395, at Page 417** : "Every officer has a right to be considered for promotion under Article 16 to a higher post subject to eligibility, provided he is within the zone of consideration. (ii) **Ajit Singh II v. State of Punjab, (1999) 7 SCC 209, at page 228** : " The word "employment" being wider, there is no dispute that it takes within its fold, the aspect of promotions to posts above the stage of initial level of recruitment. Article 16 (1) provides to every employee otherwise eligible for promotion or who comes within the zone of consideration, a fundamental right to be "considered" for promotion. Equal opportunity here means the right to be "considered" for promotion. If a person satisfies the eligibility and zone criteria but is not considered for promotion, then there will be a clear infraction of his fundamental right o be "considered" for promotion, which is his personal right (iii) **U.P.Jal Nigam v.Narinder Kumar Agarwal, (1996) 8 SCC 43, at Page 46**: " It is seen that since the criteria of zone of consideration was adopted as per the resolution and 54 persons were considered and the respondent did



*not come up in the zone of consideration, we cannot find fault with the non-consideration of the respondent in that zone of consideration of 54 candidates." (iv) **Sarabjit Singh v. Ex-Major B.D>Gupta, (2000) 7 SCC 67**, at Page 70 : " In our view, the respondent writ petitioner is no doubt right in contending that he has a fundamental right to be considered for promotion but this is available only if the 1st respondent falls within the prescribed zone of consideration. That question depends again on the relevant guidelines in Punjab as applicable on the date of DPC met, i.e 10.04.1999" (v) **Delhi Jal Board v. Mahinder Singh (2000) 7 SCC 210**, at Page 212 : " The right to be considered by the Departmental Promotion Committee is a fundamental right guaranteed under Article 16 of the Constitution of India, provided a person is eligible and is in the zone of consideration." (vi) **S.B.Mathur v. Chief Justice of Delhi High Court, 1989 Supp (I) SCC 34**, at page 51 : " In the case before us, zone has been restricted by prescribing that out of the total number of candidates who satisfy the eligibility requirement, the zone of consideration will be limited to as multiple of 3 to 5 times of the number of vacancies and the persons to be considered will be determined on the basis of their seniority in the combined seniority list. It appears to us that there is nothing unreasonable in this restriction. It was open to the Delhi High Court to restrict the zone of consideration in any reasonable manner and limiting the zone of consideration to a multiple of the number of vacancies and basing it on seniority according to the combined seniority list, in our view, cannot be regarded as arbitrary or capricious or mala fide. Nor can it be said that such restriction violates the principle of selection on merit because even experience in service is a relevant*



consideration in assessing merit."

(b) A similar issue was dismissed by the Hon'ble High Court of Kerala in their judgment in O.P.No.12420 of 1998 (S) filed by Shri M.P.Bipinchandran, Inspector of Central Excise. The petitioner in this Writ petition was similarly situated as the applicant in this OA. The petitioner in WP 12420/98 joined Cochin Central Excise Collectorate in 1989 consequent to his Inter Collectorate transfer from Bombay Collectorate. He filed this writ petition consequent to the dismissal of OA 415/96 by this Hon'ble Tribunal. In both the OA and the WP, the Applicant/Petitioner sought restoration of his seniority on the basis of his total length of service and promotion to the cadre of Superintendent on account of his seniority. This Hon'ble tribunal found that his claim could not be sustained. The Hon'ble High Court of Kerala answered the question as to whether the petitioner could jump the queue and claim promotion to the post of Superintendent before persons senior to him had been considered or promoted in the negative. The Hon'ble High Court has observed that merely being eligible, the petitioner did not become entitle to jump the queue and steal a march over persons senior to him. They have also observed that when his turn for promotion comes, his entire service would be considered to determine his eligibility under the rules.

(c) Smt. Radha Vijayaraghavan joined Kerala Central Excise Zone in early 2003. In the DPC conducted in October, 2003, on account of the large number of vacancies that were available, she figured in the zone of consideration and on account of being eligible for promotion, she was promoted. The applicant is not exactly similarly placed as



Smt. Radha Vijayaraghavan as he joined Kerala zone only in December, 2003. Also, the very fact that Smt. Radha Vijayaraghavan was considered for promotion in October 2003 evidences the fact that she was part of the feeder cadre for promotion in Kerala Zone.

4. The applicant in his rejoinder has contended as under:-

(a) The implications drawn from the various judgments of the Hon'ble Supreme Court may differ from case to case as per the situation. As per the decision of the Hon'ble Supreme Court, in Badrinath vs. Govt. of T.N., the respondents themselves admit that every officer has a right to be considered for promotion to a higher post subject to eligibility provided he is within the zone of consideration which means the zone of consideration has to be drawn from eligible officers in the seniority list and not just a list of all the officers. In the case of Ajit Singh II v. State of Punjab, it does not mean that a person who is eligible but does not fall in the zone of consideration since all the officers above him being ineligible, cannot be considered for promotion as also a person who is in the top of the seniority list but is short of the minimum qualifying service of two years cannot be drawn in the zone of consideration, which is the base for promotion, even by applying the junior-senior criteria. In U.P. Jai Nigam v. Narinder Kumar Agarwal, the respondent was not considered in the zone as 54 persons above him were considered on the eligibility criteria. The point is more clear in the case of S.B.Mathur v. Chief Justice of India wherein it is mentioned that the zone has been restricted by prescribing that out of the total number of candidates who satisfy the eligibility requirement, the zone of



consideration will be limited to a multiple of 3 to 5 times of the number of vacancies (now amended to twice the number of vacancies plus 4) and the persons to be considered will be determined on the basis of their seniority in the combined seniority list, which again means that as per the seniority list starting from the top, a list of eligible officers are to be drawn for the one of consideration.

(b) The situation in Bipin Chandran's case is entirely different. There is no claim for restoration of seniority in OA 201/05 or jumping the queue for claiming promotion. The former is a case where the Inspector has requested for promotion to the cadre of Superintendent but the officers senior to him in the seniority list were also eligible for consideration of promotion. Due to non-existence of vacancies in the higher grade, all the 342 officers above him in spite of being eligible, could not be promoted, after which only the concerned officer's turn comes wherein his past service is to be considered. Here the contention is of drawing the zone of consideration as per the eligible candidates available and not restoration of seniority for claiming promotion before the seniors are being considered.

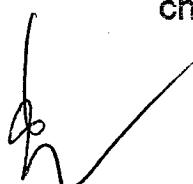
(c) It is agreed that Smt. Radha Vijayaraghavan, Stenographer, on ICT from Mumbai, had fallen in the zone of consideration due to large number of vacancies existing but at the same time it is also to mention that Tax Assistants placed above her had got the benefit of junior-senior criteria in spite of the fact that they had not completed the minimum qualifying service in the erstwhile UDC cadre (re-designated as Tax Assistant). This was because relaxation was

A handwritten signature in black ink, appearing to read 'b' followed by a stylized surname.

granted by Ministry to fill up all the vacancies by 31.10.2003, wherein UDCs/TAs with three years service could not be considered for promotion to the grade of Inspector but there was no relaxation as to the minimum qualifying service to be applied for the junior-senior criteria.

5. Respondent No. 5 filed an application for impleadment as according to him, he would be the worst affected in case the O.A. is allowed. His reply as per the reply statement furnished by him is as under:-

"The averment that as per the Recruitment Rules, to the post of Inspectors, the applicant is the only person who is now eligible to be promoted with the required number of years of service, even though the applicant is shown as lower down in the seniority list is incorrect misleading and hence denied. There are many including this respondent, who has long since been promoted as Senior Tax Assistant, and eligible to be considered for promotion. This respondent, stand snow denied of promotion, because one post was kept vacant by an interim order of this Hon'ble Tribunal. The original applicant is even now ineligible to be considered for promotion, and he does not fall within the zone of consideration. He cannot seek promotion overlooking the seniors. Notification for the DPC held on 18.08.2005 contains names of Senior Assistants eligible for promotion as Inspectors and the original applicant have no claim with them, since, they are all in the still higher grade. Moreover, the said notification is not under challenge either. The applicant has also not impleaded, the

A handwritten signature in black ink, appearing to read 'S. B. H.' followed by a checkmark.

Senior Tax Assistant, and the Tax Assistants, well above the applicant, who would all be affected of the OA were to be allowed."

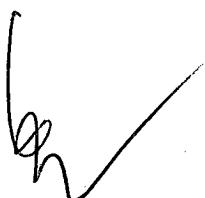
6. The learned counsel for the applicant has submitted that the respondents have erred in drawing the seniority for the purpose of working out the zone of consideration. Para 2.1.1 of the general guidelines dated 10-03-1989 reads as under:-

"2.1.1 Selection Method:

Where promotions are to be made by selection method as prescribed in the recruitment rules, the DPC shall, for the purpose of determining the number of officers who will be considered from out of those eligible officers in the feeder grade(s), restrict the field of choice as under with reference to the number of clear regular vacancies proposed to be filled in the year:

No. of Vacancies	No. of officers to be considered
1	5
2	8
3	10
4	<i>3 times the No. of vacancies</i>

7. According to the counsel for the applicant, the words "from out of those eligible officers" would be crucial. It contemplates preparation of a separate list from out of the seniority list for the feeder grade, removing from the general seniority list names of those who do not fulfill the requisite



qualification/experience. And, it is from out of such eligible candidates that the zone of consideration as mentioned above would be worked out. And, in the instant case, since the applicant is the first person with requisite qualifications, he ought to have been considered, whereas, by an erroneous interpretation, the respondents have denied the applicant of his legitimate right of consideration for promotion to the post of inspector. To a pointed question whether the post of inspector is a selection post or non selection post, since entry against the relevant column in the Recruitment rules provide as "Not applicable", the counsel submitted that the post of Inspector in the Central Excise is a selection post, as could be evident from entry against column No. 12 of the Rules. The respondents have also endorsed the same. (In fact, in their letter No. A 32011/5/2005-Ad.III dated 23rd June, 2003 addressed to all Chief Commissioners of Central Excise and Customs, the Ministry of Finance, Department of Revenues has clearly stated that the post of Inspectors of Central Excise and Customs is a 'selection post'.

8. The counsel for the applicant submitted that minimum service in the feeder grade for the post of Inspector (i.e. Tax Assistants/UDCs) should have five years of service. If any seniors do not have such experience, then also they would be considered, provided, they are not short of the requisite qualifying or eligibility service by more than half of such qualifying

A handwritten signature consisting of a stylized 'G' and a diagonal line.

or eligibility service of two years, whichever is less. Thus, it is imperative upon the respondents to first filter the seniority list for the purpose of preparing the zone of consideration by excluding those who do not have requisite qualifying service in the feeder grade and from out of such a filtered list, the zone of consideration shall be worked out.

9. Official respondents have, however, contended that the zone of consideration is worked out from the seniority list of Tax Assistants/UDCs and there is no need to prepare a list of eligible candidates' from which the zone of consideration would be worked out. Further, the counsel for the respondents has contended that at the time when the Recruitment Rules were framed, certain other specifications were also provided for in respect of promotion to the post of Inspectors. As there was re-structuring of the cadre, which had introduced the post of 'senior Tax Assistant' in the place of erstwhile 'Tax Assistant' and renaming the post of UDC as Tax Assistant, selection would be in accordance with the provisions contained in para 12(a) for the first two years and subsequently as per 12(b) and failing the above two, by 12(c) of the Recruitment Rules. In this regard, the recruitment rules provide as under:-

"Recruitment Rules:

12. *In case of recruitment by promotion/deputation/absorption, grade from which promotion/deputation/absorption*



to be made.

Promotion :

(a) By selection from those candidates working in the following pre restructured cadres:

- (i) Tax Assistant with two years service as Tax Assistant or five years as Tax Assistant and Upper Division Clerk put together;
- (ii) Upper Division Clerk or Stenographer Grade III with 5 years service.
- (iii) Upper Division Clerk with 13 years of total service as Upper Division Clerk and Lower Division Clerk taken together subject to the condition that they should have put in a minimum of 2 years in the grade of Upper Division Clerk
- (iv) Stenographer Grade II with two years service
- (v) Stenographer Grade II or Stenographer Grade III with 12 years service as stenographer or Upper Division Clerk and Lower Division Clerk, if any, taken together subject to the condition that they have completed a minimum of 2 years service as Stenographer Grade III or Upper Division Clerk.
- (vi) Women searcher with 7 years service in the grade
- (vii) Draftsman with 7 years service in the grade.

(b) By selection from those candidates working in the following restructured cadre:

- (i) Senior Tax Assistant with 2 years regular service in the grade
- (ii) Stenographer Grade II with 2 years regular service in the grade.



(iii) *Women searcher with 7 years service in the grade*

(iv) *Draftsman with 7 years service in the grade*

(c) Failing the method of recruitment specified under Clause (b) above, by selection from those candidates working as Tax Assistant and Stenographer Grade III having not less than 10 years service including the service to be included for this purpose under the provisions of the rules regulating the method of recruitment to the post of Tax Assistant.

Note 1: Promotion under Clause (a) above shall be only operative for a period of two years from the date on which the restructured cadres mentioned under Clause (b) above comes into existence.

The service rendered under the new Grade in the restructured cadres shall be counted towards considering the eligibility for promotion under Clause (a) above.

Note 5 : Where juniors who have completed their qualifying or eligibility service are being considered for promotion their seniors would also be considered provided they are not short of the requisite qualifying or eligibility service by more than half of such qualifying or eligibility service of two years, whichever is less and have successfully completed their probation period for promotion to the next higher grade alongwith their juniors who have already completed such qualifying or eligibility service."

10. According to the counsel for the respondents, for filling up 34 posts of Inspectors, there is none who is qualified under 12(a) and there were 10 individuals under clause 12(b) who were eligible while under the failing which clause, 38 would be eligible. (Annexure R-4 dated 12-08-2005 refers).

11. Counsel for the private respondents has argued that as per letter No.



11/3/2005-Com.Cs dated 12-08-2005, 45 persons (all being Senior Tax Assistants) were to be considered for promotion to the post of Inspectors and the name of the applicant figures in at serial No. 41. And, according to the counsel, the panel already covered names upto serial No. 40 and one vacancy has been kept unfilled under court orders and if that vacancy is released, it would be this private respondent who would be considered for promotion, as he is the first to be considered under the provisions of para 12(b) and (c) of the Rules. According to the counsel, the applicant is only a tax assistant (restructured) and he fulfils 5 years of service as tax assistant and UDC only as on 01-01-2004 and the provisions of clause 12(a) being only for two years of restructuring, the same became inoperative, the said two years having already expired and thus, it would be only 12(b) and (c) that would be capable of being pressed into service. In so far as the private respondent is concerned, he had entered the department as Data Entry Operator Gr. A in the scale of Rs 4000 – 6000 on 14-07-1994, redesignated under the restructured scheme as Tax Assistant w.e.f. 03-05-2003 and promoted as Sr. Tax Assistant (scale Rs 5000 – 8000) w.e.f. 17-10-2003.

12. Arguments were heard and the documents perused. First, the extent of life of provisions of 12(a) of the Schedule to the Rules is to be considered. Recruitment Rules provide for as under:-

Note 1: Promotion under Clause (a) above shall be only operative for a period of two years from the date on which the restructured cadres mentioned under Clause (b) above comes into existence.

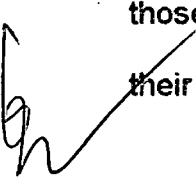


13. There is no mention or contention by the respondents as to the purpose of the above provision. In all probability, as also submitted by the counsel for the private respondent, that is a kind of gestation period, as those who were inducted into the feeder grade especially the Data Entry Operators, have no exposure to that kind of functional responsibilities as of Tax Assistants and as such, certain extent of experience in the field would be required before these persons could be considered for promotion to the post of Inspectors. But, the question is if the respondents had not conducted any DPC for the first two years of the restructuring, then the provisions would become infructuous. Such a delay may be accidental or designed. If it is latter, the same is illegal. In order, therefore, to give effect to the said provisions, it should be construed that in respect of vacancies that had arisen during the first two years of restructuring, the same shall be got filled up by operating the provisions of Clause 12(a) of the Rules, and in the event of there being no eligible individuals, 12(b) could be adopted but only after expiry of two years from the date of restructuring. It is not exactly known from the data available on records, whether the 34 vacancies pertained to a single year or it is of the past years as well. Thus, it is to be first ascertained as to how many vacancies were available during the first two years of cadre restructuring i.e., during 2002-2003 and 2003-04. These vacancies shall be filled up by considering those UDCs/Tax Assistants with a total of five years of service (and in case any junior has this service while seniors did not have, by applying the provisions of Note 5 under clause 12 of the Rules

b

extracted above). If the vacancies that arose in the aforesaid period of 2002-2003 and 2003-2004 could not be filled up under 12(a) then the vacancies have to be carried forward for the subsequent years and again, 12(a) has to be applied. The applicant who had been promoted as UDC in another Commissionerate in August, 1999 completed his five years of service in that capacity (as UDC/TA) by August, 2004. And as under the instructions of the DOP&T No. 22011/1/98 dated 20th April, 1998, the eligibility dates for determining the eligibility of officers for promotion would be the first day of the crucial year i.e January 1, the applicant could be eligible for consideration against the vacancies of 2002-04 only if such vacancies were available on and after 01-01-2005. In respect of vacancies beyond two years of restructuring, the merged posts having become suitable for consideration, 12(b) and failing that 12(c) would apply. In that event, the applicant shall also be considered on the basis of the combined seniority.

14. Now the next question is what should be the way for preparation of seniority list. Is it, as contended by the applicant, of the eligible individuals only or as contended by the official respondents, the entire seniority list. Obviously, if ineligible candidates are also considered, then there would be no possibility of filling up the post in the very same year in case none within the zone of consideration is eligible. At the same time, it would pose a question, whether those who get transferred from other Commissionerate would, despite losing their seniority, be eligible for consideration for promotion thereby, diluting the



promotion chances of all those who are in the same Commissionerate. Answer to this question is that in that case, those belonging to the same Commissionerate would also be benefited by way of relaxation of requisite experience by half of the total required service or two years, whichever is less, as per Note 5 appended to clause 12 of the schedule to the Rules. Thus, it is held that para 2.1.1 of the OM dated 10th March, 1989 (Annexure A-7) should be strictly adhered to. In fact, in their OM dated 10th April, 1989 as modified by OM dated 12th October, 1990 and 22nd April 1992 (see Swamy's Compilation on seniority and promotion in Central Government Service 11th Edn. (2006) at page 90) the provisions as of 2.1.1 has been retained.

15. In view of the above the the following directions are issued.

(A) The respondents shall consider filling up of the vacancies that arose during 2002-03 and 2003-04 by considering the candidates in accordance with the provisions of clause 12(a) of the Schedule i.e.,

(a) *By selection from those candidates working in the following pre restructured cadres:*

(i) *Tax Assistant with two years service as Tax Assistant or five years as Tax Assistant and Upper Division Clerk put together;*

(ii) *Upper Division Clerk or Stenographer Grade III with 5 years service.*

(iii) *Upper Division Clerk with 13 years of total service as Upper Division Clerk and Lower Division Clerk taken together subject to the condition that they should have put in a minimum of 2 years in the grade of Upper Division*



Clerk.

(iv) *Stenographer Grade II with two years service*

(v) *Stenographer Grade II or Stenographer Grade III with 12 years service as stenographer or Upper Division Clerk and Lower Division Clerk, if any, taken together subject to the condition that they have completed a minimum of 2 years service as Stenographer Grade III or Upper Division Clerk.*

(vi) *Women searcher with 7 years service in the grade*

(vii) *Draftsman with 7 years service in the grade.*

(B) A list of eligible candidates be drawn and while so drawing, the provisions of Note 5 appended to clause 12 of schedule to the rule (extracted in one of the paragraphs above) be also kept in view. If the applicant is the first individual who had completed the requisite five years, then Note 5 shall be invoked only when the applicant is also to be promoted. Otherwise, it would amount to reduction of the requisite period of service in respect of others, which is not permissible. If the applicant is not to be promoted, none senior to him, with less than the requisite years of service could be promoted and the vacancies be carried forward to the subsequent years.

(C) If the vacancies for the aforesaid years could not be filled in view of non availability of individuals under clause 12(a) within two years of the occurrence of the vacancies, then, such vacancies could, after the expiry of two years, be filled in from among the eligible candidates falling under clause 12(b). It is only when candidates are not available under this clause, that candidates from 12(c) shall be considered for promotion.

b

(D) In respect of the applicant if he is not promoted within two years of the occurrence of the vacancies for the years 2002-03 and 2003-04, he would be considered under 12(b) after two years and in accordance with the ceiling relating to zone of consideration, as per order dated 10th April, 1989.

(E) After considering the case of the applicant on the above terms, the decision be communicated to the applicant by a reasoned and speaking order.

16. The above drill be performed within a period of four months from the date of communication of this order. The application is disposed of on the above terms.

17. No costs.

(Dated, the 13th October, 2006)



N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



K B S RAJAN
JUDICIAL MEMBER

vs/cvr.