

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**M.A. No.1003 OF 2009 & M.A. No.20 OF 2010**

**IN**

**O.A. NO. 224 OF 2009**

Monday, this the 18<sup>th</sup> day of January, 2010.

**CORAM:**

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER  
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

1. D.L. Anilkumar,  
Radio Operator, presently posted  
as Supervisor (Communication),  
Office of the Commissioner of  
Central Excise & Customs,  
ICE Bhavan, Press Club Road,  
Thiruvananthapuram.
2. V. Kumaraswamy,  
Supervisor (Communication),  
Central Excise Head Quarters,  
Thiruvananthapuram.
3. M.R. Ramesh, Radio Operator,  
Central Excise Head Quarters,  
Cochin – 18.

... Applicants

(By Advocate Mr. Babu Cherukara)

versus

1. Union of India, represented by the  
Secretary, Department of Revenue,  
Ministry of Finance, North Block,  
New Delhi – 110 001.
2. The Secretary,  
Department of Expenditure,  
Ministry of Finance, North Block,  
New Delhi – 110 001.
3. The Chairman,  
Board of Central Excise & Customs,  
North Block, New Delhi – 1.
4. The Commissioner,  
Directorate of Logistics,  
4<sup>th</sup> Floor, 'A' Wing,  
Lok Nayak Bhavan, Khan Market,  
New Delhi – 110 003.



5. Addl. Director (Communications),  
Shopping Centre, 7<sup>th</sup> Street,  
Shanthi Nikethan, Moti Bagh,  
New Delhi.
6. The Commissioner,  
Customs Preventive,  
Commissionerate, I.S. Press  
Road, Ernakulam, Cochin-18.
7. The Commissioner,  
Central Excise and Customs,  
Central Revenue Building,  
Press Club Road, Trivandrum.
8. The Commissioner,  
Central Excise & Customs,  
Central Revenue Building,  
I.S. Press Road, Cochin - 18. ... Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

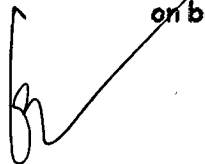
The Miscellaneous Application having been heard on 18.01.2010, the Tribunal on the same day delivered the following:

### ORDER

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER**

The above M.As relate to the request of the applicants for a direction to the respondents to permit the applicants to participate in the ensuing departmental examination for promotion to the post of Inspectors. Such an application in O.A. 634/05 was dealt with and declined vide order of this date, wherein it has been held as under:-

"This M.A. has been filed praying for a direction to the respondents to permit the applicants who are radio operators serving under the respondents to participate in the ensuing departmental examination under the one-third quota for the post of Inspectors. The said post of Radio Operator is not one of the feeder cadres to the above mentioned post of Inspectors. However, the insistence as well as the claim of the applicants for being permitted to participate in the examination is that earlier, vide order dated 20<sup>th</sup> September, 2007, their O.A. praying for amendment to the Recruitment Rules to include Radio Operator had been disposed of on the basis of a statement made on behalf of the respondents that policy decision in



this regard would be taken by holding a meeting by a Committee of Secretaries, but till today no final decision has been taken. Meanwhile the already limited number of Radio Operators majority of whom have crossed the age of 50 would be deprived of their entitlement to participate in the examination due to age restrictions if there be undue delay in final decision in regard to merger of the post of Radio operators with the main stream.

2. Respondents have contested the M.A. stating that there has been no consensus in regard to the merger of the post of Radio Operators with the main stream. Again, in so far as such Radio Operators are concerned, there are adequate avenues for promotion as contained in para 15 of the counter, which reads as follows:

"15. It is a fact that the Radio Operators are not included in the feeder category for the promotion to the cadre of Inspectors of Central Excise, as per the Central Excise and Land Customs Department Inspector (Group C Posts) Recruitment Rules, 2002. This is because, there is another clear Recruitment Rules namely, Customs and Central Excise Department (Group C Technical Posts) Recruitment Rules, 2000 for Radio Operators and, in that Rule, Radio Operators were given other promotion avenues to the grades of Supervisors, Communication Assistants etc. The said posts of Supervisors and Communication Assistants were purely filled by 100% promotion from the post of Radio Operators. Since such a chance is available for the Radio Operators, they were not considered to be included in the feeder category for the promotion to the post of Inspectors. Hence there is no need of any amendment in the Recruitment Rules of Inspectors."

3. Again, Recruitment Rules do not cater for such participation in the promotion examination. As such, the MA be dismissed.

4. Counsel for the applicant strenuously argued that earlier the O.A. was disposed of on the basis of the commitment for merger and till today, the same did not take place. As such, the least the Department could do is to permit the applicants and similarly situated persons to participate in the ensuing examination, which is scheduled on 27<sup>th</sup> January, 2010.



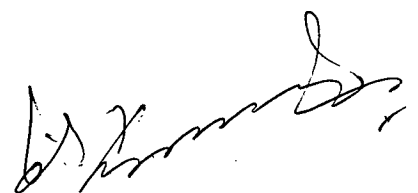
5. Senior Central Government Standing Counsel resisted the M.A. stating that there had been attempt for certain modification in the administrative set up but nothing crystallized. As the applicants have due avenues, they cannot, in deviation from the provisions of the Recruitment Rules, be permitted even on provisional basis to participate in the examination.

6. Arguments were heard and documents perused. Our earlier order only recorded that a policy decision has to be taken up with by the Government and there was no positive commitment that the decision would certainly result in the post of Radio Operators cadre being merged with the main stream. As the Committee of Secretaries were to meet to deliberate on the issue, the decision of which could be anything, it cannot be stated that the applicants' vested rights have been taken away by not coming to a decision on merger. The claim of the applicant is not one of establishing an existing right but one of creation of a new right. It would have been a different matter, had there been a decision in principle to merge the cadre of Radio Operators with the main stream but the methodology might take some time and in the meanwhile the applicants be permitted as for participation in the exam there would be certain age restrictions. This is not the case. As such, none of the vested rights of the applicants having been violated, and there being no positive commitment at the time when the O.A. was disposed of, the M.A. stands rejected."

3. In view of the above, these M.As are also dismissed. List the main O.A. on .....11-02-2010.

(Dated, the 18<sup>th</sup> January, 2010.)

  
K.NOORJEHAN  
ADMINISTRATIVE MEMBER

  
Dr.K.B.S.RAJAN  
JUDICIAL MEMBER

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A. NO.224/2009

Dated this the 14<sup>th</sup> day of June, 2011

C O R A M

HON'BLE Mr. Justice P.R, Raman, Judicial Member  
HON'BLE Mrs. K. Noorjehan, Administrative Member

- 1 D.L.Anilkumar, S/o J.Dharmadas, Radio Operator, presently posted as Supervisor (Communication) O/o Commissioner of Central Excise & Customs, ICE Bhavan, Press Club Road, Thiruvananthapuram.
- 2 V.Kumaraswamy, Supervisor (Communication) Central Excise Head quarters, Thiruvananthapuram.
- 3 M.R.Ramesh, Radio Operator, Central Excise Head quarters Cochin-18.

Applicants

(By Advocate Mr. T.C.Govind Swamy)

Vs

- 1 Union of India represented by the Secretary  
Department of Revenue, Ministry of Finance  
North Block, New Delhi - 110 001
- 2 The Secretary, Department of Expenditure,  
Ministry of Finance, North Block, New Delhi.
- 3 The Chairman Board of Central Excise & Customs  
North Block, New Delh.
- 4 The Commissioner, Directorate of Logistics,  
4<sup>th</sup> Floor, A Wing, Lok Nayak Bhavan, Khan  
Market, New Delhi - 110003

- 5 Additional Director (Communication) Shopping Centre, 7<sup>th</sup> Street, Shanti Nikethan, Moti Bagh New Delhi
- 6 The Commissioner, Customs Preventive, Commissionerate, IS Press Road, Ernakulam Kochi - 18.
- 7 The Commissioner, Central Excise & Customs Central Revenue Building, Press Club Road, Thiruvananthapuram.
- 8 The Commissioner, Central Excise & Customs Central Revenue Building, IS Press Road Cochin - 18.

Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

The Application having been heard on 23.5.2011 the Tribunal delivered the following:

ORDER

HON'BLE Mrs. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicants, Radio Operators in the Telcommunication wing of the respondents department are aggrieved by Annexure A1 order to the effect that they may be withdrawn from the section of the main stream where they stand deputed now.

2 Brief facts of the case as stated by the applicants are that the Telecommunication wing is a dying cadre hence this wing was not included in the restructuring process of the respondent department and likely to be closed down.

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Presently the applicants are working in the main stream of the respondent department. Even though they are working in the main stream but restrained to participate in the examination for promotion to the post of Inspectors. The 1<sup>st</sup> applicant has filed OA 634/2005 before this Tribunal seeking modification of the recruitment rules to enable consideration of Radio Operators to the post of Senior Tax Assistants in the ministerial wing and for further promotion as Inspector of Central Excise on the ground that the category of Radio Operators is a dying cadre and therefore do not have any prospects for further promotion. It is also stated that even though the department started the process of merger of the telecommunication personnel with the main stream but waited for the report of the SIU. The aforesaid OA was disposed of directing the respondents to expedite the policy decision on the issue of merger within a period of three months. The SIU report of the Department of Expenditure reveals that there is no justification for continuance of the office/staff of the telecommunication wing of CBEC which needs to be wound up. Now the department is reviving the Telecommunication wing which according to the applicant would be a loss in exchequer to the respondents. It is submitted that if Annexure A1 is implemented and the applicants are withdrawn from deputation, it would be disadvantageous to the applicants interest. Therefore the applicants prays for a direction to the respondents to allow the merger of Radio Operators and Supervisors to the post of Inspectors on ad hoc basis

3        The respondents have filed reply statement controverting the plea of the applicants. They submitted that for operation of upgraded communication systems and usage of X-ray scanner and electronic surveillance system qualified technical staff is essentially required. The telecommunication wing was established in 1974 and the wireless communication covers the Customs formations along the Indo-Pak border, Indo-Nepal border and Indo-Bangladesh border and the coastal lines to watch the antismuggling activities and ensure national security. Due to the liberalisation of economy there has been a decline in the smuggling activities which resulted under utilisation of professional communication officers and such staff were assigned additional work not related to wireless communication as a temporary measure to optimise manpower utilisation. The department has not agreed with the recommendations of SIU for winding up the Telecommunication wing. It is further submitted that the Committee of Secretaries has considered the SIU

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recommendation on closure of Telecommunication wing under Central Board of Excise & Customs (CBEC for short) in its meeting dated 29.3.2010, chaired by the Secretary (Expenditure) and attended by Secretary (DoPT), CCA (Finance) and Joint Secretary (Personnel) It was agreed in principle to allow the retention of the Telecommunication wing in CBEC on the grounds of functional requirements of the coastal formation including new boats procured by the Customs, Lands Customs formation and CBN Stations. CBEC was asked to replace outdated communication equipments and to recruit trained manpower and to retrain the existing staff to achieve the target of a thorough, modern, forward looking Communication Cadre, capable of handling the sophisticated equipment.

4 The respondents state that CBEC has a Marine Wing manned by professional marine officers/staff recruited from Indian Navy/Indian Coast Guard. The Marine Wing has 109 boats deployed by the Customs (Preventive) in all the coastal areas. To see to the safety of onboard marine staff and operational requirements of wireless communication from boats to customs formation on shore, the boats are never taken to sea without wireless sets and communication staff to operate the same as prescribed codes/procedures have to be followed while communicating on wireless. In replacement of the old boats the Govt has decided to induct a fleet of 109 marine vessels of the latest state of art of Technology at a cost of Rs.358 crores. 57 Vessels have already been brought into use at sensitive customs formations along coastlines. The marine staff has been restructured and 997 posts have been sanctioned under restructuring. 28 Marine staff has been recruited and recruitment of 349 marine staff is in process. Besides this the Govt approved the purchase of 59 VHF sets for the newly acquired boats and procurement of more sets is under consideration. Sanction for procurement of 57 wireless sets for providing wireless communication facility on board for newly delivered 57 marine vessels has been accorded by the Ministry and further procurement will be commensurate with the delivery of the remaining 52 vessels/boats.

5 Further it is submitted that as on date the Telecommunication set up in the department holds 233 H.F sets, 929 VHF 25 Watt sets, 945 Hand-Held (Walkie-talkie) sets. The Telecommunication Wing has been 938 sanctioned posts in different grades. However 472 posts lying vacant in different grades have been abolished, in view of the reduced requirement of communication requirement for operational

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purposes in urban areas. The respondent department has expressed the urgent need to retain 454 posts of communication staff in different grades to meet essential wireless communication requirement for anti-smuggling activities/operations of customs formations in remote border areas and along coastlines of the country, including requirements of wireless communication between boats and shore stations. As per the current proposal of the department the Telecommunication Wing should be retained with the reduced staff strength of 454, as projected by the Directorate of Logistics and the remaining 484 posts (out of existing sanctioned strength of 938) shall be abolished.

6 According to the respondents the essential qualifications prescribed under the recruitment rules for Radio Operators and Inspectors are not the same. Further more the nature of duties of Radio Operators and Inspectors are entirely different. The essential qualification as per recruitment rules for a Radio Operator is (a) 10+2 with Science subject or equivalent (b) Diploma in Radio Technology/Electronics/Communication or equivalent, or I.T.I Certificate in Electronics/Radio Communication with 2 years experience whereas essential qualifications prescribed under recruitment rules for Inspector is Graduation in any discipline. Further there is vast difference in the salary of Radio Operators and Inspectors. The Radio Operators draw salary in Pay Band-1 (5200-20200) with Grade Pay of Rs.2800/- and Inspectors draw salary in the Pay Band-2 (9300-34800) with Grade Pay of Rs.4200. Majority of Radio Operators and other communication staff are recruited from pensioner/discharged ex-servicemen as they only fulfill the eligibility conditions for recruitment as per Recruitment Rules. Majority of them may be above 55 years of age and thus they are left with 3-5 years of service for superannuation hence they are not fit for merger with Inspectors on the basis of educational qualification, mode of recruitment, minimum physical fitness requirement or ability to be trained to perform executive duties of Inspectors. Moreover, the Radio Operators have their own channel of promotion. After putting 3 years of regular service, the Radio Operators become eligible for promotion to the post of Supervisor which is filled 100% by promotion. After putting 3 years of regular service the Supervisors become eligible for promotion to the post of Communication Assistant which is filled 100% by promotion. As regards the Data Entry Operators are concerned, respondents submit that during restructuring of the Department in 2001-02, posts of Data Entry

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Operators in various grades were abolished, by way of merger of Data Entry Operators Grade-A with the grade of Tax Assistant and Data Entry Operators Grade-B&C were merged with the grade of Senior Tax Assistant. The posts in Data Entry Operators Grade-D were re-designated as Assistant Programmers. If any erstwhile Data Entry Operator has become Inspector, he/she has become so consequent upon promotion from the grade of Senior Tax Assistant to the grade of Inspector and not by merger of Data Entry Operators with Inspectors as stated by the applicant. Therefore, the action of the respondents in not agreeing to the request for merger was neither illegal nor in violation of the rules. Hence the applicant has no vested right to be get merged with the main stream.

7 The applicants filed rejoinder to the reply statement reiterating what has been stated in the OA. It is further submitted that on account of diminishing importance of telecom work the telecom staff were asked willingness by the department to work in the main stream of Central Excise and Customs. The applicants gave their willingness.

8 In the additional reply filed by the respondents it is submitted that in the Board's meeting held on 24.4.2006 it was decided to constitute a Committee to conduct a study on deployment of surplus telecommunication staff in individual Commissionerates for optimum utilisation of staff. The Committee submitted its report on 31.5.2006 wherein it was suggested that a few members of the telecommunication staff can be temporarily deployed for ministerial duties in the field formations. According to them it was for gainful utilisation of excess telecommunication staff for ministerial duties without change of cadre or service condition. They continued to be borne on the strength of telecom cadre.

9 We have heard the learned counsel for the parties and perused the record.


10 In the instant case undisputedly the applicants, Radio Operators in the Telecommunication wing of Central Excise & Customs form a class by themselves. They cannot claim that they are discriminated against those who have been regularly recruited in other sections on the basis of the relevant recruitment rules or demand to be treated as on par with the latter in view of the fact that they have rendered long service. A decision to abolish or revive a particular wing in the department is the domain of the authorities concerned. Therefore the claim of the applicants that they are to be merged as Sr.Tax Assistants in the ministerial wing and permitted to

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appear for exam for further promotion as Inspector of Central Excise cannot be accepted. Regarding the contention of the applicants that Data Entry Operators working in the respondent's department had been merged with the post of Tax Assistants, the respondents have clearly explained the position in the foregoing paras. Therefore, we are of the view that the applicants cannot be treated on par with them because the post of Data Entry Operators were abolished consequent on the restructuring exercise undertaken by the respondents and the need for all staff to use the computers. The facts of the case clearly bring out that Inspectors of Central Excise, Sr. Tax Assistants and Radio Operators are governed by different recruitment rules, the posts are placed in different pay scales and the responsibilities vested in them vary to a great extent. The educational qualification required for the applicants is technical in nature, as warranted by their job profile while the nature of work is administrative for the other two categories. Therefore the plea of the applicants to merge them with the main stream and treat them as ad hoc Inspectors of Central Excise is untenable. Moreover after abolition of 472 posts out of 938 sanctioned posts in the Telecommunication wing as instructed by Ministry of Finance, the present strength is 454. Radio Operators and Supervisors constitute the lion share of 365. They are required to work in the 57 new boats acquired already by the respondents besides the remaining 50 to be purchased shortly. To reinforce the telecommunication wing is a policy decision of the government. We do not think that it is the function of the Tribunal to assess the financial implication of reviving the Telecommunication wing. We also see that none of the applicants' vested rights have been violated in issuing the impugned order.

11 We do not see any patent error in the decision of the department in issuing Annexure A1 order. Therefore, we dismiss the OA. No costs.

  
(K. Noorjehan)  
Administrative Member

  
(Justice P.R. Raman)  
Judicial Member

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