

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH



O.A.NOS. 856/02, 865/02, 866/02, 867/02, 23/03 & 257/03

WEDNESDAY THE 3rd DAY OF MARCH 2004.

C O R A M

HON'BLE MR.A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER

O.A... 856/02

1. P.C. Mathen
Examiner.
Customs House.
Cochin.
2. Mary Ipe
Examiner.
Customs House.
Cochin.
3. Anil Kumar G.
Examiner.
Customs House.
Cochin.
4. G. Vasundhara
Examiner.
Customs House.
Cochin.

Applicants

By Advocate Mr. S. Radhakrishnan

Vs.

1. Union of India represented by the Secretary
Ministry of Finance,
Department of Revenue
New Delhi.
2. Central Board of Excise and Customs
represented by its Chairman
New Delhi.
3. Chief Commissioner of Central Excise & Customs
Bangalore Zone.
Bangalore.
4. The Commissioner of Customs.
Customs House.
Cochin.

Respondents

By Advocate Mr. C. Rajendran. SCGSC

O.A. 865/02

J. Gouri W/o Chandru
Examiner. Customs House
Kochi
residing at 39/4984, Thoundayil Lane,
Kochi-36..

Applicant

By Advocate Mr. M.R. Rajendran Nair

Vs.

1. Union of India represented by the Secretary
Ministry of Finance.
Department of Revenue
New Delhi.
2. Central Board of Excise and Customs
represented by its Secretary.
Department of Revenue.
Ministry of Finance.
New Delhi.
3. The Commissioner of Customs
Customs House.
Cochin-9.

Respondents

By Advocate Mr. S.K. Balachandran. ACGSC

O.A. No. 866/02

1. P.Sathidevi W/o C.N. Raman Nambeesan
Examiner (Adhoc) Customs House.
Kochi-9
residing at 49/28A, Cherussery Pushpakam
Perandoor. Elamakkara P.O.
2. P.R. Meenakshi W/o P.K. Gopi
Examiner (Adhoc). Customs House.
Kochi-9
residing at Pananjikkapokkam.
Panicker Padi
near Petroll Pump. Vypin.
3. Babu E.A. S/o Arjunan E.K.
Examiner (Adhoc) Customs House.
Kochi-9
residing at Ettumman House.
Manjumal P.O.
Ernakulam District.
4. K.P. Kamalam W/o Mohandas K.S.
Examiner (Adhoc)
Customs House. Kochi
residing at 41/136, Indira road.
Palarivattom.

Applicants

By Advocate Mr. M.R. Rajendran Nair

Vs.

1. Union of India represented by the Secretary
Ministry of Finance.
Department of Revenue
New Delhi.
2. Central Board of Excise and Customs
represented by its Secretary.
Ministry of Finance.
Department of Revenue
New Delhi.

3. The Commissioner of Customs.
Customs House.
Cochin-9

Respondents

By Advocate Mr. S.K. Balachandran. ACGSC

O.A.867/02

1. V.G.Bharghavy W/o Sudarsanan
Tax Assistant. Customs House
Cochin-9
residing at Aparna House No. 33/1873
Vennala P.O. Kochi-28
2. M.A. Asokan S/o O.R. Aravindakshan
Tax assistant. Customs House. Cochin-9
residing at Panakkatharathundiyl House
Vennala P.O. Kochi-28
3. K.Kumari Nalina D/o E. Kollappan Nair
Stenographer Grade-II
Customs House. Cochin-9
residing at Quarter NO. 102.
New Customs Quarters,
Willington Island
Cochin-3

Applicants

By Advocate Mr. M.R. Rajendran Nair

Vs.

1. Union of India represented by the Secretary
Ministry of Finance.
Department of Revenue
New Delhi.
2. Central Board of Excise and Customs
represented by its Secretary
Department of Revenue
Ministry of Finance
New Delhi.
3. The Commissioner of Customs.
Customs House.
Cochin.-9
4. S.N. Suresh. Tax Assistant
Customs House. Willington Island. Kochi-9
5. P.K. Rubymol
Customs House. Willington Island. Kochi-9
6. G. Sarvamangala.
Customs House. Willington Island. Kochi-9
7. Lijji Joseph
Customs House. Willington Island. Kochi-9
8. Daisy K. Poullose
Customs House. Willington Island. Kochi-9

Respondents

By Advocate Mr. R. Madanan Pillai ACGSC for R 1-3
Advocate Mr. T. Govinda Swamy for R 4-8

O.A. 23/03

1. S.N. Suresh. Tax Assistant
Customs House. Willington Island. Kochi-9
2. P.K. Rubyamol. Tax Assistant
Customs House. Willington Island. Kochi-9
3. G. Sarvamangala. UDC
Customs House. Willington Island. Kochi-9
4. Lijji Joseph. UDC
Customs House. Willington Island. Kochi-9
5. Daisy K. Poullose. UDC
Customs House. Willington Island. Kochi-9

Applicants

By Advocate Mr. T.C. Govindaswamy

Vs.

1. Union of India represented by the Secretary
Ministry of Finance.
Department of Revenue
New Delhi.
2. Central Board of Excise and Customs
represented by its Secretary
Department of Revenue
Ministry of Finance
3. The Commissioner of Customs.
Customs House.
Cochin.
4. P.C. Mathen. Examiner.
Customs House. Cochin.

Respondents

By Advocate Mr. C. Rajendran. SCGSC for R 1-3
By Advocate Mr. S. Radhakrishnan for R-4

O.A. 257/03

1. C.C. Sheela W/o P.A. Poullose.
Tax Assistant. Customs House. Cochin.
residing at Palliparambil House
Chattari Via. Thripunithura P.O.
2. R.Ambika W/o P.A. Balakrishnan Nair
Tax Assistant. Customs House. Cochin
residing at Ambattu House.
Thengode P.O. Cochin.

Applicants

By Advocate Mr. K.P. Dandapani

Vs.

1. Union of India represented by the Secretary
Ministry of Finance.
Department of Revenue
New Delhi.
2. Chief Commissioner of Central Excise & Customs
Bangalore Zone.
Bangalore.
3. The Commissioner of Customs.
Customs House.
Cochin.
4. S.N. Suresh, Tax Assistant.
Tax Assistant, Customs House,
Wellington Island, Kochi-9
5. P.K. Rubymol, Tax Assistant.
Customs House, W. Island, Kochi-9. Respondents

By Advocate Mr. C. Rajendran. SCGSC for R 1-3
By Advocate Mr. TCG Swamy for R 4-5

The Applications having been heard on 24.11.2003 the Tribunal delivered the following on **3.3.2004.**

O R D E R

HON'BLE MR. H.P. DAS. ADMINISTRATIVE MEMBER

This is a batch of six cases in which the core issues to be decided are (i) whether the vacancies that arose during the regime of a particular Recruitment Rule and which were filled up by promoting eligible employees on adhoc basis can be filled up subsequently on regular basis by applying a different Recruitment Rule introduced later imposing a fresh condition of recruitment, and (ii) whether those promoted on adhoc basis by applying the earlier Recruitment Rule would be required to comply with the fresh conditions of the later rule for regularisation. While in O.As. 856/02, 865/02, 866/02, 867/02, and 257/03 the common prayer for relief is that the orders imposing the fresh condition of promotion/regularisation on the applicants who are the aggrieved adhoc promotees be quashed as these seek to enforce arbitrarily and illegally a Recruitment Rule inapplicable to them at the relevant point of time when they were promoted on adhoc basis, the prayer in O.A. 23/03 is to direct

enforcement of the recruitment process under the revised new recruitment rules. To place the matter in the correct perspective for a comprehensive disposal, the facts are first set out below briefly Application-wise.

④ O.A. 856/02

2. The applicants are aggrieved by the refusal on the part of the respondents to regularise their appointment as Examiners even though they were appointed as Examiners as early as on 10.1.97 in accordance with the Recruitment Rules after being selected by the Departmental Promotion Committee and against the existing vacancies. The main cause of grievance arises from the fact that the applicants have now been directed to be subjected to the conditions stipulated in the new Recruitment Rules for regularising their appointment made on adhoc basis and the new Recruitment Rules stipulate physical endurance test and prescribe some physical standards which were not there in the earlier Recruitment Rules under which the applicants would have been regularly promoted but for the inaction on the part of the Department at the appropriate time.

⑤ O.A. 865/02

3. The applicant is aggrieved by a move on the part of the respondents to deny her legitimate regular promotion/regularisation as Examiner by insisting on the fulfilment of ^{a certain} physical parameter which did not find place in the earlier Recruitment Rules. The applicant is an Upper Division Clerk who has been working since 1988 on adhoc basis as Examiner.

O.A. 866/02

4. The applicants are UDCs who are working on adhoc basis as Examiners. Applicants 1 to 3 were promoted to officiate as Examiner on adhoc basis with effect from 30.6.1995 and the fourth applicant was promoted with effect from 23.3.1988. They are aggrieved by the application of the new Rules for regularisation of their promotion in the post of Examiner even though at the relevant point of time when the vacancies arose and when the applicants were due for consideration the old Recruitment Rules were in operation and the condition of fulfillment of physical endurance test was not prescribed in the relevant Recruitment Rules at that point of time.

X O.A. 867/02

5. The applicants are aggrieved by the steps taken by the respondents to fill up the exiting vacancies of Examiner following their latest Recruitment Rules. The applicants consider themselves fully eligible for promotion as Examiners and that there were vacancies in the cadre of Examiner/Inspector prior to the communication of the new Recruitment Rules. The applicants are resisting any attempt on the part of the respondents to fill up the vacancies in pursuance of the new Recruitment Rules as they are apprehensive that it would be prejudicial to their interest.

X O.A. 257/03

6. The applicants are aggrieved by the orders of the respondents by which they were deprived of promotion to the

post of Examiner as per the provisions of unamended Recruitment Rules which existed at the time of occurrence of vacancies. The applicants had earlier approached this Tribunal by filing O.A. 832/02 seeking direction to fill up the vacancies of Inspector/Examiner as per the provisions of the unamended rules which existed prior to the occurrence of the vacancies which was disposed of by the Tribunal with a direction to the third respondent to consider the representations of the applicants in the light of the old Rules. The respondents disposed of their representation by an order depriving them of promotion which has been impugned in the present O.A.

O.A. No. 23/03

7. The applicants 1 & 2 are working as Tax Assistants and applicants 3, 4 and 5 are working as UDCs under the same respondents. In this application the applicants are aggrieved by the arbitrary nonfeasance of the respondents in considering them for promotion to the post of Inspector/Examiner under the new Recruitment Rules. They have submitted that there is absolutely no justification or valid reason for inaction on the part of the respondents in considering them and promoting them as Inspector (Examiner) in the light of A5 Recruitment Rules published on 7.12.02.

8. The learned counsel S/Shri S.Radhakrishnan (O.A. 856). M.R. Rajendran Nair (865/02, 866/02 & 867/02). TCG Swamy (OA 23/03) and Mr.K.P. Dandapani (257/03) represented the applicants and S/Shri C. Rajendran. SCGSC. S.K Balachandran. R. Madanan Pillai represented the respondents.

9. The point at issue being common to all, we take O.A. 856 of 2002 for a common disposal.
10. The learned counsel for the applicants in O.A. 856/02 giving the details of the applicants stated that Smt. Mary Ipe was appointed as LDC on 2.3.81, was promoted as UDC on 30.12.86, promoted as Tax Assistant on 27.8.93, was promoted as Examiner on 10.1.97. Shri P.C. Mathen was appointed as LDC on 15.12.81, was promoted to Steno Gr.-III on 17.11.86, was promoted to Steno Gr.II on 5.7.95 and was promoted to the post of Examiner on 10.1.97. The third applicant G. Vasundhara was appointed as LDC on 4.7.77, was promoted to UDC on 5.6.85, was promoted to Tax Assistant on 27.8.93 and was promoted to the post of Examiner on 10.1.97. The fourth applicant was appointed as LDC on 12.3.83, promoted as UDC on 16.3.87, as Tax Assistant on 16.9.93 and promoted to the post of Examiner on 10.1.97. All these promotions were made in accordance with the Customs Department Group-C Recruitment Rules 1979. As per this Recruitment Rules the post of Examiner is a selection post from the grade of UDC/Stenographer. A UDC/Stenographer with 5 years service was eligible to be considered by the DPC for promotion to the post of Examiner. The post of Tax Assistant is a temporary level created with the recommendations of the Fifth Pay Commission and therefore promotion to the post of Tax Assistant was not directly on the way of promotion to the post of Examiner. The applicants were promoted to the post of Tax Assistant without even conducting an examination. The learned counsel for the applicants contended therefore that though the applicants were promoted as Tax Assistants their normal promotional avenue from the grade of UDC/Stenographer

was that of Examiner and all of them were duly promoted to the post by the DPC in accordance with the Recruitment Rules in force on the date of promotion. In the orders promoting the applicants to the post of Examiner it was specifically stipulated that the promotion was on adhoc basis and in the event of abolition of the post they were liable to be reverted to the parent cadre. As on date, the post of Examiner to which they were promoted remains and the applicants continue as such on adhoc basis. Since their adhoc appointment as Examiners, the applicants have been representing to the Commissioner of Central Excise seeking regularisation in the post as they were qualified for appointment to the post and were selected by duly constituted DPCs. Their representations have not been considered. In the meantime the relevant recruitment rules under which they were considered for adhoc appointment were replaced by a new set of rules on 7.12.2002 and the applicants were asked to undergo a physical endurance test prescribed by the new rules for being regularised. The test was scheduled on 24.12.2002, which the applicants refused to attend on the plea that they have already gone through the selection process for adhoc appointment under the old rules and they should not be subjected to the stipulations of a later recruitment rule yet again. The main argument of the learned counsel for the applicants was that their adhoc status in the promotional post of Examiner was entirely due to the failure of the respondents to fill up the vacancies on regular basis. This failure was in no way a result of the non-availability of personnel fit for regular promotion in the feeder grades, but a result of the respondents' internal procedural lapses and unmitigated dilatoriness. The applicants who have, since

their adhoc promotion, continued in the posts discharging the normal duties of the post without interruption, earning increments and for all practical purposes as regular incumbents, could not be asked now to face a physical endurance test prescribed by the new rules to qualify for regularisation.

11. The learned counsel for the applicants citing AIR 2000 SC 2808 (Rudra Kumar Jain Vs. Union of India) sought to drive home the point that when a person possessing the requisite qualification for being appointed to a particular post is appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such appointment can no longer be held as purely adhoc. In the instant case, the learned counsel argued, the applicants were qualified for the post, they were selected by a regularly constituted DPC and they have now worked for a fairly long period of seven years without interruption in the post and hence their regularisation is not dependent on any other selection or evaluation process, they have by virtue of the canon of actuality become regular incumbents of the promotional post. The only thing required for regularising them is a regularisation order, which should issue as a matter of course, without a fresh condition.

12. Citing AIR 2001 SC 1534 S.N. Dhingra Vs. Union of India, the learned counsel sought to add that the crux of the matter is continuous appointment of a qualified person by a competent authority and once these parameters are complied, adhoc status is a mere technicality which would neither obstruct regularity nor seniority. Referring to AIR 1990 SC

1607 Direct Recruit Class II Engineering Officers Association and Others Vs. State of Maharashtra. he argued that the factor of continuous appointment of a qualified person to a post is so decisive a consideration that the Apex Court did not hesitate to bypass the lapses in the procedure of appointment and ruptures in the application of the norm of quota to declare the validity of the officiating service for being counted towards regular service.

13. In regard to the applicability of the relevant recruitment rule, the learned counsel for the applicants cited AIR 1983 SC 852 (Y.V. Rangaiah Vs. T. Sreenivas Rao) in which it was held by the Apex Court that posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rule. He also cited AIR 1988 SC 2068 P.Ganeshwar Rao Vs. State of Andhra Pradesh and AIR 1998 SC 223 B.L. Gupta Vs. MCD following AIR 1990 SCC 157 N.T. Devinkatti Vs. KPSC in which an exactly similar view was carried forward.

14. All these settled positions in regard to the real nature of adhoc appointment and applicability of the recruitment rule at the point of time, the counsel argued, should convince the Tribunal that proper qualification correct recruitment procedure, uninterrupted officiation, time of origin of vacancies and the extant recruitment rule in point of time, are enough to grant regular status to the applicants without inflicting a fresh condition of recruitment.

15. The learned counsel for the respondents argued that the applicants would have to qualify in the physical test also prescribed in the currently operational Recruitment Rules and further that there was no saving clause in these Recruitment Rules to the effect that the vacancies existing at the time of framing the new Recruitment Rules for promotee quota are to be filled based on the earlier Recruitment Rules prevalent at that point of time. The counsel for the respondents also brought to our notice that promotional avenues for the applicants in the ministerial line are already available and therefore the question of reversion in the general did not arise as the applicants could be shown against vacancies in the grade of Examiner even though all those who were working on adhoc basis could not be regularised for want of posts under promotee quota. Referring to the representations submitted by the applicants the counsel contended that the applicants can be considered for promotion to the grade of Examiner on regular basis against the three posts earmarked for promotee quota in accordance with the existing instructions and provisions of the Recruitment Rules. Clarifying the structure of the sanctioned cadre, however, the counsel pointed out that 24 posts of Inspectors(Examiner) were sanctioned and ratio of 2:1 is to be followed between direct recruitees and promotees and therefore 8 posts were meant for promotee officers and there are 10 promotee Examiners now working on adhoc basis. We fail to comprehend the arithmetic as to how the three vacancies for promotees were worked out. He stated that the Group-C Recruitment Rules 2002 was received in the respondents' office in November, 2002 and based on it action was initiated to promote eligible officers to the grade of

Inspector (Examiner) since new Recruitment Rules were made effective from 7.12.2002 and all further promotions/regularisations would be made only on the basis of the new Recruitment Rules. He informed us that regularisation and promotions to the cadre of Inspector/Preventive Officer (Examiner) were initiated and completed but the same could not materialise in the case of Inspector (Examiner) due to the non-cooperation on the part of the adhoc promotees who refused to take physical endurance test fixed.

16. We have heard the counsels. We find sufficient force in the arguments of the learned counsel for the applicants, particularly in respect of the treatment of adhoc appointment in service jurisprudence and we generally accept the position that the applicants should not be treated as adhoc appointees after seven years in the posts of Examiners, only because they could not be recruited on a regular basis. We have asked ourselves as to what would this regular basis in fact be. We hold that the regularity of a position would be vindicated firstly by the existence of a vacancy not in the nature of a short-term or stop-gap vacancy, secondly by the regularity of a recruitment process backed by a recruitment rule and thirdly by allocation and performance of designated duties. In the instant case the applicants were appointed on adhoc basis by an order dated 10.7.1997 (A2). The test of the true nature of the vacancy would lie in the duration of appointment. If the vacancy is a stop-gap or short-term arrangement, then evidently it would be terminated after a short duration consequent on the removal of the cause of the arrangement of expediency or convenience. If the arrangement continues for seven years, then it has to be concluded that

the vacancy is of regular nature. The second criterion of regularity of recruitment process is also met as the Commissioner of Customs in his letter dated 24.1.2001 addressed to the Ministry of Finance had confirmed it that the applicants had in fact fulfilled the eligibility conditions as per the existing Recruitment Rules and it was also admitted that a duly constituted DPC had found them suitable. So the second criterion is also met. The third criterion is not in dispute as the applicants are continuing to discharge the duties allotted to the posts for the last seven years. Thus, the claims of the applicants to be regularised passes the crucial tests, but the only instrument that can translate this into reality is an appropriate order regularising their promotion which has not been issued. At this juncture, it has been brought to our notice through a Miscellaneous Application by the applicants that excepting in the case of the first applicant (P.C. Mathen) in the case of the other three applicants (Mary Ipe, Anil Kumar and Vasundhara) orders have been issued on 27.3.2003 granting them deemed promotion as Senior Tax Assistants w.e.f. 21.8.1991 with the stipulation that they would have to pass the required or suitable departmental examination in computer application and relevant procedures within two years failing which they would not be eligible for further increments. The order also provides that the service rendered by the officers before 16.1.2003 would be taken into account for deciding their eligibility of promotion to the next higher grade. Interestingly the next higher grade is that of 'Examiner' which the applicants are already occupying since 1997. Now, by this order the applicants would be required to pass a qualifying examination within two years failing which they

would not be entitled to further increments. In fact the applicants, by the time of issue of the orders have completed almost seven years in the next higher grade. If it is the intention of the respondents, as apprehended by the applicants in the MA 313 of 2003 relating to this OA., that by promoting them as Senior Tax Assistants retrospectively they would in a way compel them to conform to the new Recruitment rules for promotion to the rank of Examiners, then that would be patently unfair. We recognise that the post of Senior Tax Assistant was created in pursuance of the Vth Pay Commission recommendation and the applicants could have been promoted to this post by following the regular procedure before they were allowed adhoc promotion to the next higher grade and uninterrupted continuance in that grade for seven years without regularisation. Introduction of the barrier of a deemed promotion, at an intermediary level of Senior Tax Assistant, therefore would not prejudice their regularisation.

17. Now about the circumstances in which the adhoc promotions were made. The order promoting the applicants to the Examiner grade does not specify any reason, nor does it lay down a limit of time. The promotion would remain in force until further orders, that is what it says. But more importantly, at least from the point of view of the respondents it cautions the promotees that the appointment is against temporary vacancy, purely on temporary basis and in the event of abolition of their posts, they are liable to be reverted to their parent cadre. Further, the order includes a clarification that the promotion is purely an officiating arrangement and would not confer any right on them for

claiming any preferential treatment or advantage in the matter of seniority and future regularisation. The learned counsel for the respondents relied almost exclusively on the text of this order to persuade us that the applicants were already warned of the risks involved in the promotion and further that they had willingly accepted the promotion. Having done that with the full knowledge of the implications, the applicants, according to the learned counsel, were no longer in a position to claim regularisation in the post from the date of their initial adhoc appointment. To convey the full import of the appointment order, we would highlight five elements in it. There are: (i) the vacancies were temporary (ii) promotion was not regular, but adhoc (iii) they would revert if posts are abolished (iv) officiating arrangement would not confer any advantage for seniority or regularisation (v) their promotion would not prejudice the claims of others.

18. Were the vacancies temporary? Prolonged continuation is evidence that there were regular vacancies available. Could it be that there was a problem of quota management? No averments to this effect has been made by either party. Did the vacancies arise due to a sudden development? No evidence of that also is available.

19. How is a regular promotion different from adhoc promotion? An adhoc promotion is so called when the process of recruitment is applied for a particular purpose, or the promotees themselves are particularised out of sequence, but nevertheless the promotions have to be made due to certain special circumstances for a specified period. Adhoc is

eventually either superseded or subsumed by what is regular. By definition 'ad hoc' is an exception made to the rule for this particular or special purpose. Regular appointment supersedes ad hoc appointment when regular appointees are regularised. In both the situations time and process are crucial. If ad hoc arrangement is made for a short time, then termination of ad hoc arrangement with or without replacement would pose no problem. If ad hoc arrangement is made for want of compliance with the regularly constituted process of recruitment, then also it can be terminated without any problem by instituting a regular process. In both these situations the essence of 'ad hoc' engagement is its transitoriness. But if an ad hoc appointment continues for as long as seven years and there are no plausible explanations as to the conferment a degree of permanence on an apparently transitory arrangement, then inference would gain ground that the description 'ad hoc' was inappropriate and opportunistic on the part of the Appointing Authority. In such an event regular appointment would by necessity subsume ad hoc appointment by absorbing the event of initial ad hocism into its broader rubric of regularity. It is not as if the respondents were at any point of time unaware of the implications of prolonged ad hoc appointment. It would be pertinent to refer to A8 document dated 29.8.2000 a communication addressed by the Ministry of Finance to the Commissioner, Cochin. In this communication the Ministry had asked the Commissioner to furnish the details of ad hoc promotees and to certify if the officials had fulfilled all the eligibility conditions at the time of their initial ad hoc promotions as per the provisions of the relevant recruitment

rules. The Commissioner of Customs Cochin in reply to the communication had stated on 24.1.2001 that all the adhoc appointees had fulfilled all the eligibility conditions as per the provisions of the relevant Recruitment Rules at the time of their initial promotion on adhoc basis. Further, he had explained in an appended note the reason why adhoc appointment was continued beyond one year. The explanation would clarify the context:

" The sanctioned strength in the grade of Examiners is 24 including 2 leave reserve posts sanctioned in the grade. At present 10 adhoc promotees are working in this grade. Promotions were made on the vacancies arising due to Cost Recovery Basis and Deputation Basis.

On continuation of a number of Export Promotion Schemes and liberalised policy of the Government, sufficient manpower is required. With the operation of the newly opened Cochin International Airport at Nedumbassery the requirement of examiners have become insufficient as post of Examiners have to be manned and lack of personnel in the grade put a lot of strain on the existing staff and would adversely affect the normal work. Hence continuance of adhoc promotions in the grade is absolutely necessary."

20. We do not know if this explanation was accepted. but the very fact that the adhoc engagement continued is sufficient to conclude that the controlling Ministry, atleast, let the matter pass. It is not as if this was a new phenomenon. The Commissioners of Customs, Cochin in a letter dated 26.3.03 (Annexure R-2) to his counterparts in Chennai, Mumbai and Calcutta had enquired about the practice followed in regard to adhoc promotees to the Examiner grade in those Commissionerates. Full text of the letter is reproduced below:

Sanctioned strength of Inspector(Examiner) in Cochin Commissionerate prior to the Cadre Restructuring was 24. After cadre restructuring the sanctioned strength is 24. Ministry vide their letter No. F.No. A.11019/72/99-Ad.IV dated 19.7.01 read with letter F.NO. 11013/04/2002-/Ad IV dated 19.9.02 had directed that vacancies arising out of cadre restructuring has to be filled up only by promotions and intake of direct recruitment was freezed upto 31.12.2002. Before bringing into effect the present recruitment rules i.e. Customs Department Inspector (Examiner)(Group-C posts) Recruitment Rules, 2002, there was no requirement of physical standards, endurance test etc. for the promotion to the grade of Inspector (Examiner). However, with effect from 7.12.2002 any promotions to the grade of Inspector (Examiner) have to be in accordance with the modified Recruitment Rules. Since good number of officers were working on adhoc basis in the grade of Inspector (Examiner) in this Commissionerate and since some of them do not possess the physical requirements as indicated in the modified Recruitment Rules, officers have gone to the Hon'ble CAT praying that they may be regularised against the vacancies based on the old recruitment rule i.e. Customs Department (Group C post) Recruitment Rules, 1979. Similarly, officers who were waiting for promotion to the grade of Inspector (Examiner) based on the earlier Recruitment Rules also filed applications before Hon'ble CAT Ernakulam Bench requesting that vacancies which arose prior to the implementation of modified Recruitment Rules to be filled up based on the earlier Recruitment Rules. At present vacancies have to be filled up in the ratio of 2:1 i.e. 2 post for Direct Recruits and 1 post for Promotee officers.

2. Practice followed in your Commissionerate for filling up of vacancies after cadre restructuring in the grade of Inspector (Examiner) may kindly be intimated to this Commissionerate.

21. Text of the reply furnished by the New Mumbai Commissionerate is reproduced below:

Kindly refer to your letter F.No.S45/47/2001-Estt. Cus. dated 26.3.2003 on the above subject.

Vide Ministry's letter f.No. A.11013/4/2002 Ad.IV dated 5.6.2002. the sanctioned strength of Examiners in Mumbai Customs House was increased from 181 to 205 under the revision resulted by implementation of Cadre Restructuring Plan which was notified vide F.No. A.11019/72/99 Ad.IV dated 19.7.2001.

The DPC was convened to fill up the (45) regular vacancies of Examiners on 28.12.2002, by following the Interview and conduction of physical Standard Test as attracted by the new Recruitment Rules for the post of examiners 2002. Similar to your Custom House (37) Examiners were also working on adhoc basis that also for a period ranging from 2 to 7 years in Mumbai Custom House. These all promotions were made against the Cost Recovery posts, and also the same could not be regularised for the want of regular vacancies available in promotee quota as per Recruitment Rules of Examiners and all the adhoc promotions were recommended as per Recruitment Rules, 1979, by respective regular constituted DPC the execution of new Recruitment Rules in the case of regularisation of (37) Examiners was appeared difficult promotion to the cadre of Examiner-reg.

In this regard Board has issued the instructions vide letter NO. 32022/34/90-Ad.III dated 10.7.1992 (copy enclosed) wherein it was instructed that -

(i) these persons may be regularised on the basis of their selection held in 1982-83 without subjecting them to yet another selection process

(ii) there regularisation should be as per their turn in the seniority list prepared at the time of adhoc promotion. It may please be ensured that the period between their initial appointment on adhoc basis and their subsequent regularisation depending upon their turn in seniority should not be counted for the purpose of fixing their seniority in the examiners grade.

Further Boards had instructed that the aforesaid instructions may be implemented under the intimation to the Boards.

Accordingly, this Custom House, kept reserved (37) vacancies for regularisation of adhoc Examiners out of a total (45) available vacancies. Consequent to the DPC meeting a promotion order containing the names of (07) Examiners, was issued on 31.12.2002. And a reference has been sent to the Ministry vide letter of even number dated 30.1.2003, seeking the concurrence for regularisation of (37) adhoc Examiners following the lines as mentioned in the aforesaid letter. The reply is still awaited.

While holding the DPC for new (08) posts, the Recruitment Rules was followed in toto such as conduction of physical test and interview. No candidate objected the new provision of physical standard test as mentioned in new Recruitment Rules till 31.12.2002.

Later on, a case has been filed before the CAT, Mumbai by a candidate belonging to the eligible feeder cadre and he challenged the introduction of physical standard test in the new Recruitment Rules for the post of Examiner. Till date no interim order/stay has come in force.

22. The correspondence would show that the problem of adhoc appointees has been there and adhoc solutions have been devised for batches of appointees. The New Mumbai Commissionerate's letter quotes the instructions of the Customs & Central Excise Board in letter No. 32022/34/90Add-III dated 10.7.1992. The instructions related to the regularisation of adhoc Examiners selected in 1982-83, and who remained unregularised until July, 1992. The point that emerges from this correspondence is that the reason for not issuing regularisation orders despite the regular nature of appointment and prolonged continuance of adhoc status was that regular vacancies were not available in promotee quota. At least this has been the clear declaration by the New Mumbai Commissionerate although the Cochin Commissionerate has not come out with such a declaration. They have of course clarified in their reply statement that against total promotee vacancy of 8 (applying the ratio of 2:1, to Direct recruits and promotees in a sanctioned strength of 24) they have got 10 adhoc promotees in position. That is neither here nor there as, there is no clear explanation, at least arithmetically of the use of quota and backlog. In any case that is not an impediment on the way to conclude that regularisation in line suggested in Board's instruction was a distinct possibility. This possibility has been used in the past. So why could this not be used now? Mumbai used it by issuing regularisation orders to 37 adhoc appointees in one go. Whether the instructions of the Board in regard to

seniority is complied with this way is another matter and we are not judging the action by merit. But the fact remains that a ban on direct recruitment was imposed by the Department of Revenue, Ministry of Finance on 19.7.2001 to allow the vacancies to be filled up by promotion in all cadres as a one time relaxation. This ban on direct recruitment was extended further upto 31.12.2002 by a communication dated 5.6.2002. The ban on direct recruitment came along with orders of cadre restructuring and it continued until after the new recruitment rules were notified (31.12.2002). The simple idea behind this, as we could gather from the documents and arguments presented before us, was that cadre restructuring as well as the new recruitments rules would both unsettle promotional vacancies, would leave no scope for subsequent regularisation in different cadres, and hence a one-time dispensation would be the best possible way to absorb the promotees leaving the way open for the implementation of a restructured cadre with new recruitment rule. The learned counsel for the respondents explained that the last sentence in the Department's letter dated 5.6.2003 was restrictive as it provided that 'no vacancy in respect of the posts included in the cadre restructuring should be filled up till such time as further orders are issued.' Further, the learned counsel argued, in the very same letter a clear statement had been made that 'sanctioned strength now indicated supersedes all previous sanctions issued so far' and this was interpreted by the Cochin Commissionerate to mean that no action was to be taken in respect of the earlier vacancies. We saw the restructuring orders, and interestingly we found that for Cochin Commissionerate, particularly in respect of the cadre of Examiner there was no

change, it was 24 earlier and it was the same 24 now. we also found that no action was taken by the Cochin Commissiionerate to propose additional requirement of staff in pursuance of the Ministry's letter dated 5.6.2002, which could have corrected the imbalances arising out of adhoc promotions awaiting regularisation.

23. In conspectus, we are of the view that the applicants have a reasonable grievance and that the grounds of cadre restructuring, new recruitment rules, lack of promotee vacancies, and conditions of adhoc appointment are after thoughts which fail to explain the failure of the Commissionerate in taking appropriate action in good time. We are also of the view that the 2002 recruitment rules would not be applicable to the applicants and hence they would not be required to pass any test, including the test of physical standards, to be freshly considered for regular appointment. There would in fact no further selection process required if they have undergone one already for adhoc promotion. All vacancies arising from the first date of adhoc appointment in the cadre of Inspector (Examiner) until until 31.12.2002, excluding those that have already been filled up by direct recruits upto that date if any, would be reckoned as available for regularising the applicants and those similarly circumstanced and would be filled up as such by the applicants and others similarly circumstanced ones, without any further selection process. We declare that the new recruitment rules would be applicable to those who would be eligible for promotion against vacancies arising after 31.12.2002. All direct recruit vacancies that have remained unfilled would be added to the vacancies for promotees and

would be used for regularising the adhoc promotees first. The balance if any would be added to the Direct recruit quota maximum upto the extent of number of slots lost due to regularisation of adhoc examiners. The period between their initial appointment on adhoc basis and their subsequent regularisation would be counted for the purpose of fixing their seniority in the cadre of Examiners subject to the condition that the promotees would be placed enbloc below the direct recruits of the year in the order of their seniority fixed at the time of adhoc promotion. Those eligible employees in the feeder grades awaiting promotion would be considered against vacancies arising after 31.12.2002 under the new recruitment rule. They would be promoted only in their turn. Mere satisfaction of the eligibility condition would not entitle them to promotion, when their seniors, after as long as seven years in adhoc position are awaiting regularisation.

24. In the background of our discussions of the issues and in the context of the foregoing observations we allow the Applications and direct the respondents to regularise the applicants from the respective dates of their initial adhoc appointments. We set aside the A6 series of orders as inapplicable to the applicants. We also direct that direct recruitment quota remaining unfilled until 31.12.2002 be converted into promotee quota to the extent required for regularising the adhoc promotees. With the regularisation of the adhoc promotees against vacancies arising upto 31.12.2002, the balances should open with a fresh count and

quota fixture recalculated for all appointments from that point. Compliance of these orders be completed in all respects within two months from the date of issue of these orders. No orders as to costs.

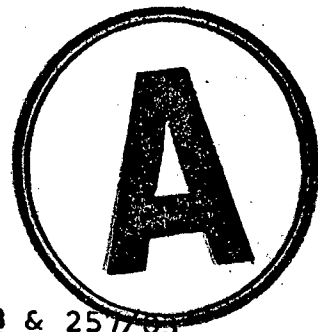
Dated the 3rd March, 2004.

Sd/-
H. P. DAS
ADMINISTRATIVE MEMBER

Sd/-
A. V. HARIDASAN
VICE CHAIRMAN

kmm

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH



O.A.Nos.856/02, 865/02, 866/02, 867/02, 23/03 & 25/03

Monday, this the 28th day of February, 2005.

C O R A M

HON'BLE MR.A.V. HARIDASAN. VICE CHAIRMAN
HON'BLE MR. H.P. DAS. ADMINISTRATIVE MEMBER

O.A.. 856/02

1. P.C. Mathen
Examiner.
Customs House.
Cochin.
2. Mary Ipe
Examiner.
Customs House.
Cochin.
3. Anil Kumar G.
Examiner.
Customs House.
Cochin.
4. G. Vasundhara
Examiner.
Customs House.
Cochin.

Applicants

By Advocate Mr. S. Radhakrishnan

Vs.

1. Union of India represented by the Secretary
Ministry of Finance.
Department of Revenue
New Delhi.
2. Central Board of Excise and Customs
represented by its Chairman
New Delhi.
3. Chief Commissioner of Central Excise & Customs
Bangalore Zone.
Bangalore.
4. The Commissioner of Customs.
Customs House.
Cochin.

Respondents

By Advocate Mr. C. Rajendran. SCGSC

O.A. 865/02

J. Gouri W/o Chandru
Examiner. Customs House
Kochi
residing at 39/4984, Thoundayil Lane.
Kochi-36..

Applicant

By Advocate Mr. M.R. Rajendran Nair

Vs.

1. Union of India represented by the Secretary
Ministry of Finance.
Department of Revenue
New Delhi.
2. Central Board of Excise and Customs
represented by its Secretary.
Department of Revenue.
Ministry of Finance.
New Delhi.
3. The Commissioner of Customs
Customs House.
Cochin-9.

Respondents

By Advocate Mr. S.K. Balachandran. ACGSC

O.A.No. 866/02

1. P.Sathidevi W/o C.N. Raman Nambeesan
Examiner (Adhoc) Customs House.
Kochi-9
residing at 49/28A, Cherussery Pushpakam
Perandoor. Elamakkara P.O.
2. P.R. Meenakshi W/o P.K. Gopi
Examiner (Adhoc). Customs House.
Kochi-9
residing at Pananjikkapokkam.
Panicker Padi
near Petroll Pump, Vypin.
3. Babu E.A. S/o Arjunan E.K.
Examiner (Adhoc) Customs House.
Kochi-9
residing at Ettumman House.
Manjummal P.O.
Ernakulam District.
4. K.P. Kamalam W/o Mohandas K.S.
Examiner (Adhoc)
Customs House. Kochi
residing at 41/136, Indira road.
Palarivattom.

Applicants

By Advocate Mr. M.R. Rajendran Nair

Vs.

1. Union of India represented by the Secretary
Ministry of Finance.
Department of Revenue
New Delhi.
2. Central Board of Excise and Customs
represented by its Secretary.
Ministry of Finance.
Department of Revenue
New Delhi.

3. The Commissioner of Customs.
Customs House.
Cochin-9

Respondents

By Advocate Mr. S.K. Balachandran. ACGSC

O.A.867/02

1. V.G.Bharghavy W/o Sudarsanan
Tax Assistant. Customs House
Cochin-9
residing at Aparna House No. 33/1873
Vennala P.O. Kochi-28
2. M.A. Asokan S/o O.R. Aravindakshan
Tax assistant. Customs House. Cochin-9
residing at Panakkatharathundiyl House
Vennala P.O. Kochi-28
3. K.Kumari Nalina D/o E. Kollappan Nair
Stenographer Grade-II
Customs House. Cochin-9
residing at Quarter NO. 102.
New Customs Quarters.
Willington Island
Cochin-3

Applicants

By Advocate Mr. M.R. Rajendran Nair

Vs.

1. Union of India represented by the Secretary
Ministry of Finance.
Department of Revenue
New Delhi.
2. Central Board of Excise and Customs
represented by its Secretary
Department of Revenue
Ministry of Finance
New Delhi.
- 3.. The Commissioner of Customs.
Customs House.
Cochin.-9
4. S.N. Suresh. Tax Assistant
Customs House. Willington Island. Kochi-9
5. P.K. Rubymol
Customs House. Willington Island. Kochi-9
6. G. Sarvamangala.
Customs House. Willington Island. Kochi-9
7. Lijji Joseph
Customs House. Willington Island. Kochi-9
8. Daisy K. Poullose
Customs House. Willington Island. Kochi-9

Respondents

By Advocate Mr. R. Madanan Pillai ACGSC for R 1-3
Advocate Mr. T. Govinda Swamy for R 4-8

O.A. 23/03

-4-

1. S.N. Suresh. Tax Assistant
Customs House. Willington Island. Kochi-9
 2. P.K. Rubyamol. Tax Assistant
Customs House. Willington Island. Kochi-9
 3. G. Sarvamangala. UDC
Customs House. Willington Island. Kochi-9
 4. Lijji Joseph. UDC
Customs House. Willington Island. Kochi-9
 5. Daisy K. Poullose. UDC
Customs House. Willington Island. Kochi-9
- Applicants
- By Advocate Mr. T.C. Govindaswamy

Vs.

1. Union of India represented by the Secretary
Ministry of Finance,
Department of Revenue
New Delhi.
2. Central Board of Excise and Customs
represented by its Secretary
Department of Revenue
Ministry of Finance
3. The Commissioner of Customs.
Customs House.
Cochin.
4. P.C. Mathen. Examiner.
Customs House. Cochin.

Respondents

By Advocate Mr. C. Rajendran. SCGSC for R 1-3
By Advocate Mr. S. Radhakrishnan for R-4

O.A. 257/03

1. C.C. Sheela W/o P.A. Poullose.
Tax Assistant. Customs House. Cochin.
residing at Palliparambil House
Chattari Via. Thripunithura P.O.
2. R.Ambika W/o P.A. Balakrishnan Nair
Tax Assistant. Customs House. Cochin
residing at Ambattu House.
Thengode P.O. Cochin.

Applicants

By Advocate Mr. K.P. Dandapani

Vs.

1. Union of India represented by the Secretary
Ministry of Finance.
Department of Revenue
New Delhi.
2. Chief Commissioner of Central Excise & Customs
Bangalore Zone.
Bangalore.
3. The Commissioner of Customs.
Customs House.
Cochin.
4. S.N. Suresh, Tax Assistant.
Tax Assistant, Customs House.
Wellington Island, Kochi-9
5. P.K. Rubymol, Tax Assistant.
Customs House, W. Island, Kochi-9.

Respondents

By Advocate Mr. C. Rajendran, SCGSC for R 1-3
By Advocate Mr. TCG Swamy for R 4-5

The Applications having been heard on 10.8.2004 the Tribunal
delivered the following on 28.2.2005:

O R D E R

HON'BLE MR. H.P. DAS. ADMINISTRATIVE MEMBER

This is a batch of six cases in which the core issues to be decided are (i) whether the vacancies that arose during the regime of a particular Recruitment Rule and which were filled up by promoting eligible employees on adhoc basis can be filled up subsequently on regular basis by applying a different Recruitment Rule introduced later imposing a fresh condition of recruitment, and (ii) whether those promoted on adhoc basis by applying the earlier Recruitment Rule would be required to comply with the fresh conditions of the later rule for regularisation. While in O.As. 856/02, 865/02, 866/02, 867/02, and 257/03 the common prayer for relief is that the orders imposing the fresh condition of promotion/regularisation on the applicants who are the aggrieved adhoc promotees be quashed as these seek to enforce arbitrarily and illegally a Recruitment Rule inapplicable to them at the relevant point of time when they were promoted on adhoc basis, the prayer in O.A. 23/03 is to direct

enforcement of the recruitment process under the revised new recruitment rules. To place the matter in the correct perspective for a comprehensive disposal, the facts are first set out below briefly Application-wise.

O.A. 856/02

2. The applicants are aggrieved by the refusal on the part of the respondents to regularise their appointment as Examiners even though they were appointed as Examiners as early as on 10.1.97 in accordance with the Recruitment Rules after being selected by the Departmental Promotion Committee and against the existing vacancies. The main cause of grievance arises from the fact that the applicants have now been directed to be subjected to the conditions stipulated in the new Recruitment Rules for regularising their appointment made on adhoc basis and the new Recruitment Rules stipulate physical endurance test and prescribe some physical standards which were not there in the earlier Recruitment Rules under which the applicants would have been regularly promoted but for the inaction on the part of the Department at the appropriate time.

O.A. 865/02

3. The applicant is aggrieved by a move on the part of the respondents to deny her legitimate regular promotion/regulation as Examiner by insisting on the fulfilment of a certain physical parameter which did not find place in the earlier Recruitment Rules. The applicant is an Upper Division Clerk who has been working since 1988 on adhoc basis as Examiner.

O.A. 866/02

4. The applicants are UDCs who are working on adhoc basis as Examiners. Applicants 1 to 3 were promoted to officiate as Examiner on adhoc basis with effect from 30.6.1995 and the fourth applicant was promoted with effect from 23.3.1988. They are aggrieved by the application of the new Rules for regularisation of their promotion in the post of Examiner even though at the relevant point of time when the vacancies arose and when the applicants were due for consideration the old Recruitment Rules were in operation and the condition of fulfillment of physical endurance test was not prescribed in the relevant Recruitment Rules at that point of time.

O.A. 867/02

5. The applicants are aggrieved by the steps taken by the respondents to fill up the exiting vacancies of Examiner following their latest Recruitment Rules. The applicants consider themselves fully eligible for promotion as Examiners and that there were vacancies in the cadre of Examiner/Inspector prior to the communication of the new Recruitment Rules. The applicants are resisting any attempt on the part of the respondents to fill up the vacancies in pursuance of the new Recruitment Rules as they are apprehensive that it would be prejudicial to their interest.

O.A. 257/03

6. The applicants are aggrieved by the orders of the respondents by which they were deprived of promotion to the

post of Examiner as per the provisions of unamended Recruitment Rules which existed at the time of occurrence of vacancies. The applicants had earlier approached this Tribunal by filing O.A. 832/02 seeking direction to fill up the vacancies of Inspector/Examiner as per the provisions of the unamended rules which existed prior to the occurrence of the vacancies which was disposed of by the Tribunal with a direction to the third respondent to consider the representations of the applicants in the light of the old Rules. The respondents disposed of their representation by an order depriving them of promotion which has been impugned in the present O.A.

O.A. No. 23/03

7. The applicants 1 & 2 are working as Tax Assistants and applicants 3, 4 and 5 are working as UDCs under the same respondents. In this application the applicants are aggrieved by the arbitrary nonfeasance of the respondents in considering them for promotion to the post of Inspector/Examiner under the new Recruitment Rules. They have submitted that there is absolutely no justification or valid reason for inaction on the part of the respondents in considering them and promoting them as Inspector (Examiner) in the light of A5 Recruitment Rules published on 7.12.02.

8. The learned counsel S/Shri S. Radhakrishnan (O.A. 856). M.R. Rajendran Nair (865/02, 866/02 & 867/02). TCG Swamy (OA 23/03) and Mr. K.P. Dandapani (257/03) represented the applicants and S/Shri C. Rajendran, SCGSC. S.K. Balachandran, R. Madanan Pillai represented the respondents.

9. The point at issue being common to O.A.856/02, O.A.865/02, O.A.866/02 and O.A.867/02, we take O.A.856/02 and O.A.23/2003 involving different issues are deal with separately.

10. The learned counsel for the applicants in O.A. 856/02 giving the details of the applicants stated that Smt. Mary Ipe was appointed as LDC on 2.3.81. was promoted as UDC on 30.12.86. promoted as Tax Assistant on 27.8.93. was promoted as Examiner on 10.1.97. Shri P.C. Mathen was appointed as LDC on 15.12.81. was promoted to Steno Gr.-III on 17.11.86. was promoted to Steno Gr.II on 5.7.95 and was promoted to the post of Examiner on 10.1.97. The third applicant G. Vasundhara was appointed as LDC on 4.7.77. was promoted to UDC on 5.6.85. was promoted to Tax Assistant on 27.8.93 and was promoted to the post of Examiner on 10.1.97. The fourth applicant was appointed as LDC on 12.3.83. promoted as UDC on 16.3.87. as Tax Assistant on 16.9.93 and promoted to the post of Examiner on 10.1.97. All these promotions were made in accordance with the Customs Department Group-C Recruitment Rules 1979. As per this Recruitment Rules the post of Examiner is a selection post from the grade of UDC/Stenographer. A UDC/Stenographer with 5 years service was eligible to be considered by the DPC for promotion to the post of Examiner. The post of Tax Assistant is a temporary level created with the recommendations of the Fifth Pay Commission and therefore promotion to the post of Tax Assistant was not directly on the way of promotion to the post of Examiner. The applicants were promoted to the post of Tax Assistant without even conducting an examination. The learned counsel for the applicants contended therefore that though the applicants were promoted as Tax Assistants their normal promotional avenue from the grade of UDC/Stenographer

was that of Examiner and all of them were duly promoted to the post by the DPC in accordance with the Recruitment Rules in force on the date of promotion. In the orders promoting the applicants to the post of Examiner it was specifically stipulated that the promotion was on adhoc basis and in the event of abolition of the post they were liable to be reverted to the parent cadre. As on date, the post of Examiner to which they were promoted remains and the applicants continue as such on adhoc basis. Since their adhoc appointment as Examiners, the applicants have been representing to the Commissioner of Central Excise seeking regularisation in the post as they were qualified for appointment to the post and were selected by duly constituted DPCs. Their representations have not been considered. In the meantime the relevant recruitment rules under which they were considered for adhoc appointment were replaced by a new set of rules on 7.12.2002 and the applicants were asked to undergo a physical endurance test prescribed by the new rules for being regularised. The test was scheduled on 24.12.2002, which the applicants refused to attend on the plea that they have already gone through the selection process for adhoc appointment under the old rules and they should not be subjected to the stipulations of a later recruitment rule yet again. The main argument of the learned counsel for the applicants was that their adhoc status in the promotional post of Examiner was entirely due to the failure of the respondents to fill up the vacancies on regular basis. This failure was in no way a result of the non-availability of personnel fit for regular promotion in the feeder grades, but a result of the respondents' internal procedural lapses and unmitigated dilatoriness. The applicants who have, since

their adhoc promotion, continued in the posts discharging the normal duties of the post without interruption, earning increments and for all practical purposes as regular incumbents, could not be asked now to face a physical endurance test prescribed by the new rules to qualify for regularisation.

11. The learned counsel for the applicants citing AIR 2000 SC 2808 (Rudra Kumar Jain Vs. Union of India) sought to drive home the point that when a person possessing the requisite qualification for being appointed to a particular post is appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such appointment can no longer be held as purely adhoc. In the instant case, the learned counsel argued, the applicants were qualified for the post, they were selected by a regularly constituted DPC and they have now worked for a fairly long period of seven years without interruption in the post and hence their regularisation is not dependent on any other selection or evaluation process, they have by virtue of the canon of actuality become regular incumbents of the promotional post. The only thing required for regularising them is a regularisation order, which should issue as a matter of course, without a fresh condition.

12. Citing AIR 2001 SC 1534 S.N. Dhingra Vs. Union of India, the learned counsel sought to add that the crux of the matter is continuous appointment of a qualified person by a competent authority and once these parameters are complied, adhoc status is a mere technicality which would neither obstruct regularity nor seniority. Referring to AIR 1990 SC

1607 Direct Recruit Class II Engineering Officers Association and Others Vs. State of Maharashtra. he argued that the factor of continuous appointment of a qualified person to a post is so decisive a consideration that the Apex Court did not hesitate to bypass the lapses in the procedure of appointment and ruptures in the application of the norm of quota to declare the validity of the officiating service for being counted towards regular service.

13. In regard to the applicability of the relevant recruitment rule, the learned counsel for the applicants cited AIR 1983 SC 852 (Y.V. Rangaiah Vs. T. Sreenivas Rao) in which it was held by the Apex Court that posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rule. He also cited AIR 1988 SC 2068 P.Ganeshwar Rao Vs. State of Andhra Pradesh and AIR 1998 SC 223 B.L. Gupta Vs. MCD following AIR 1990 SCC 157 N.T. Devinkatti Vs. KPSC in which an exactly similar view was carried forward.

14. All these settled positions in regard to the real nature of adhoc appointment and applicability of the recruitment rule at the point of time, the counsel argued, should convince the Tribunal that proper qualification, correct recruitment procedure, uninterrupted officiation, time of origin of vacancies and the extant recruitment rule in point of time, are enough to grant regular status to the applicants without inflicting a fresh condition of recruitment.

15. The learned counsel for the respondents argued that the applicants would have to qualify in the physical test also prescribed in the currently operational Recruitment Rules and further that there was no saving clause in these Recruitment Rules to the effect that the vacancies existing at the time of framing the new Recruitment Rules for promotee quota are to be filled based on the earlier Recruitment Rules prevalent at that point of time. The counsel for the respondents also brought to our notice that promotional avenues for the applicants in the ministerial line are already available and therefore the question of reversion in the general did not arise as the applicants could be shown against vacancies in the grade of Examiner even though all those who were working on adhoc basis could not be regularised for want of posts under promotee quota. Referring to the representations submitted by the applicants the counsel contended that the applicants can be considered for promotion to the grade of Examiner on regular basis against the three posts earmarked for promotee quota in accordance with the existing instructions and provisions of the Recruitment Rules. Clarifying the structure of the sanctioned cadre, however, the counsel pointed out that 24 posts of Inspectors(Examiner) were sanctioned and ratio of 2:1 is to be followed between direct recruitees and promotees and therefore 8 posts were meant for promotee officers and there are 10 promotee Examiners now working on adhoc basis. We fail to comprehend the arithmetic as to how the three vacancies for promotees were worked out. He stated that the Group-C Recruitment Rules 2002 was received in the respondents' office in November, 2002 and based on it action was initiated to promote eligible officers to the grade of

Inspector (Examiner) since new Recruitment Rules were made effective from 7.12.2002 and all further promotions/regularisations would be made only on the basis of the new Recruitment Rules. He informed us that regularisation and promotions to the cadre of Inspector/Preventive Officer (Examiner) were initiated and completed but the same could not materialise in the case of Inspector (Examiner) due to the non-cooperation on the part of the adhoc promotees who refused to take physical endurance test fixed.

16. We have heard the counsels. We find sufficient force in the arguments of the learned counsel for the applicants, particularly in respect of the treatment of adhoc appointment in service jurisprudence and we generally accept the position that the applicants should not be treated as adhoc appointees after seven years in the posts of Examiners. only because they could not be recruited on a regular basis. We have asked ourselves as to what would this regular basis in fact be. We hold that the regularity of a position would be vindicated firstly by the existence of a vacancy not in the nature of a short-term or stop-gap vacancy. secondly by the regularity of a recruitment process backed by a recruitment rule and thirdly by allocation and performance of designated duties. In the instant case the applicants were appointed on adhoc basis by an order dated 10.7.1997 (A2). The test of the true nature of the vacancy would lie in the duration of appointment. If the vacancy is a stop-gap or short-term arrangement. then evidently it would be terminated after a short duration consequent on the removal of the cause of the arrangement of expediency or convenience. If the arrangement continues for seven years. then it has to be concluded that

the vacancy is of regular nature. The second criterion of regularity of recruitment process is also met as the Commissioner of Customs in his letter dated 24.1.2001 addressed to the Ministry of Finance had confirmed it that the applicants had in fact fulfilled the eligibility conditions as per the existing Recruitment Rules and it was also admitted that a duly constituted DPC had found them suitable. So the second criterion is also met. The third criterion is not in dispute as the applicants are continuing to discharge the duties allotted to the posts for the last seven years. Thus, the claims of the applicants to be regularised passes the crucial tests, but the only instrument that can translate this into reality is an appropriate order regularising their promotion which has not been issued. At this juncture, it has been brought to our notice through a Miscellaneous Application by the applicants that excepting in the case of the first applicant (P.C. Mathen) in the case of the other three applicants (Mary Ipe, Anil Kumar and Vasundhara) orders have been issued on 27.3.2003 granting them deemed promotion as Senior Tax Assistants w.e.f. 21.8.1991. with the stipulation that they would have to pass the required or suitable departmental examination in computer application and relevant procedures within two years failing which they would not be eligible for further increments. The order also provides that the service rendered by the officers before 16.1.2003 would be taken into account for deciding their eligibility of promotion to the next higher grade. Interestingly the next higher grade is that of 'Examiner' which the applicants are already occupying since 1997. Now, by this order the applicants would be required to pass a qualifying examination within two years failing which they

would not be entitled to further increments. In fact the applicants, by the time of issue of the orders have completed almost seven years in the next higher grade. If it is the intention of the respondents, as apprehended by the applicants in the MA 313 of 2003 relating to this OA.. that by promoting them as Senior Tax Assistants retrospectively they would in a way compel them to confirm to the new Recruitment rules for promotion to the rank of Examiners, then that would be patently unfair. We recognise that the post of Senior Tax Assistant was created in pursuance of the Vth Pay Commission recommendation and the applicants could have been promoted to this post by following the regular procedure before they were allowed adhoc promotion to the next higher grade and uninterrupted continuance in that grade for seven years without regularisation. Introduction of the barrier of a deemed promotion, at an intermediary level of Senior Tax Assistant, therefore would not prejudice their regularisation.

17. Now about the circumstances in which the adhoc promotions were made. The order promoting the applicants to the Examiner grade does not specify any reason, nor does it lay down a limit of time. The promotion would remain in force until further orders, that is what it says. But more importantly, atleast from the point of view of the respondents it cautions the promotees that the appointment is against temporary vacancy, purely on temporary basis and in the event of abolition of their posts, they are liable to be reverted to their parent cadre. Further, the order includes a clarification that the promotion is purely an officiating arrangement and would not confer any right on them for

claiming any preferential treatment or advantage in the matter of seniority and future regularisation. The learned counsel for the respondents relied almost exclusively on the text of this order to persuade us that the applicants were already warned of the risks involved in the promotion and further that they had willingly accepted the promotion. Having done that with the full knowledge of the implications, the applicants, according to the learned counsel, were no longer in a position to claim regularisation in the post from the date of their initial adhoc appointment. To convey the full import of the appointment order, we would highlight five elements in it. There are: (i) the vacancies were temporary (ii) promotion was not regular, but adhoc (iii) they would revert if posts are abolished (iv) officiating arrangement would not confer any advantage for seniority or regularisation (v) their promotion would not prejudice the claims of others.

18. Were the vacancies temporary? Prolonged continuation is evidence that there were regular vacancies available. Could it be that there was a problem of quota management? No averments to this effect has been made by either party. Did the vacancies arise due to a sudden development? No evidence of that also is available.

19. How is a regular promotion different from adhoc promotion? An adhoc promotion is so called when the process of recruitment is applied for a particular purpose, or the promotees themselves are particularised out of sequence, but nevertheless the promotions have to be made due to certain special circumstances for a specified period. Adhoc is

eventually either superseded or subsumed by what is regular. By definition 'ad hoc' is an exception made to the rule for this particular or special purpose. Regular appointment supersedes ad hoc appointment when regular appointees are regularised. In both the situations time and process are crucial. If ad hoc arrangement is made for a short time, then termination of ad hoc arrangement with or without replacement would pose no problem. If ad hoc arrangement is made for want of compliance with the regularly constituted process of recruitment, then also it can be terminated without any problem by instituting a regular process. In both these situations the essence of 'ad hoc' engagement is its transitoriness. But if an ad hoc appointment continues far as long as seven years and there are no plausible explanations as to the conferment a degree of permanence on an apparently transitory arrangement, then inference would gain ground that the description 'ad hoc' was inappropriate and opportunistic on the part of the Appointing Authority. In such an event regular appointment would by necessity subsume ad hoc appointment by absorbing the event of initial ad hocism into its broader rubric of regularity. It is not as if the respondents were at any point of time unaware of the implications of prolonged ad hoc appointment. It would be pertinent to refer to A8 document dated 29.8.2000 a communication addressed by the Ministry of Finance to the Commissioner, Cochin. In this communication the Ministry had asked the Commissioner to furnish the details of ad hoc promotees and to certify if the officials had fulfilled all the eligibility conditions at the time of their initial ad hoc promotions as per the provisions of the relevant recruitment

rules. The Commissioner of Customs Cochin in reply to the communication had stated on 24.1.2001 that all the adhoc appointees had fulfilled all the eligibility conditions as per the provisions of the relevant Recruitment Rules at the time of their initial promotion on adhoc basis. Further, he had explained in an appended note the reason why adhoc appointment was continued beyond one year. The explanation would clarify the context:

" The sanctioned strength in the grade of Examiners is 24 including 2 leave reserve posts sanctioned in the grade. At present 10 adhoc promotees are working in this grade. Promotions were made on the vacancies arising due to Cost Recovery Basis and Deputation Basis.

On continuation of a number of Export Promotion Schemes and Liberalised policy of the Government, sufficient manpower is required. With the operation of the newly opened Cochin International Airport at Nedumbassery the requirement of examiners have become insufficient as post of Examiners have to be manned and lack of personnel in the grade put a lot of strain on the existing staff and would adversely affect the normal work. Hence continuance of adhoc promotions in the grade is absolutely necessary."

20. We do not know if this explanation was accepted. but the very fact that the adhoc engagement continued is sufficient to conclude that the controlling Ministry. atleast, let the matter pass. It is not as if this was a new phenomenon. The Commissioners of Customs, Cochin in a letter dated 26.3.03 (Annexure R-2) to his counterparts in Chennai, Mumbai and Calcutta had enquired about the practice followed in regard to adhoc promotees to the Examiner grade in those Commissionerates. Full text of the letter is reproduced below:

Sanctioned strength of Inspector(Examiner) in Cochin Commissionerate prior to the Cadre Restructuring was 24. After cadre restructuring the sanctioned strength is 24. Ministry vide their letter No. F.No. A.11019/72/99-Ad.IV dated 19.7.01 read with letter F.NO. 11013/04/2002-/Ad IV dated 19.9.02 had directed that vacancies arising out of cadre restructuring has to be filled up only by promotions and intake of direct recruitment was freezed upto 31.12.2002. Before bringing into effect the present recruitment rules i.e. Customs Department Inspector (Examiner)(Group-C posts) Recruitment Rules. 2002, there was no requirement of physical standards, endurance test etc. for the promotion to the grade of Inspector (Examiner). However, with effect from 7.12.2002 any promotions to the grade of Inspector (Examiner) have to be in accordance with the modified Recruitment Rules. Since good number of officers were working on adhoc basis in the grade of Inspector (Examiner) in this Commissionerate and since some of them do not possess the physical requirements as indicated in the modified Recruitment Rules, officers have gone to the Hon'ble CAT praying that they may be regularised against the vacancies based on the old recruitment rule i.e. Customs Department (Group C post) Recruitment Rules. 1979. Similarly, officers who were waiting for promotion to the grade of Inspector (Examiner) based on the earlier Recruitment Rules also filed applications before Hon'ble CAT Ernakulam Bench requesting that vacancies which arose prior to the implementation of modified Recruitment Rules to be filled up based on the earlier Recruitment Rules. At present vacancies have to be filled up in the ratio of 2:1 i.e. 2 post for Direct Recruits and 1 post for Promotee officers.

2. Practice followed in your Commissionerate for filling up of vacancies after cadre restructuring in the grade of Inspector (Examiner) may kindly be intimated to this Commissionerate.

21. Text of the reply furnished by the New Mumbai Commissionerate is reproduced below:

Kindly refer to your letter F.No.S45/47/2001-Estt. Cus. dated 26.3.2003 on the above subject.

Vide Ministry's letter f.No. A.11013/4/2002 Ad.IV dated 5.6.2002, the sanctioned strength of Examiners in Mumbai Customs House was increased from 181 to 205 under the revision resulted by implementation of Cadre Restructuring Plan which was notified vide F.No. A.11019/72/99 Ad.IV dated 19.7.2001.

The DPC was convened to fill up the (45) regular vacancies of Examiners on 28.12.2002. by following the Interview and conduction of physical Standard Test as attracted by the new Recruitment Rules for the post of examiners 2002. Similar to your Custom House (37) Examiners were also working on adhoc basis that also for a period ranging from 2 to 7 years in Mumbai Custom House. These all promotions were made against the Cost Recovery posts, and also the same could not be regularised for the want of regular vacancies available in promotee quota as per Recruitment Rules of Examiners and all the adhoc promotions were recommended as per Recruitment Rules, 1979. by respective regular constituted DPC the execution of new Recruitment Rules in the case of regularisation of (37) Examiners was appeared difficult promotion to the cadre of Examiner-reg.

In this regard Board has issued the instructions vide letter NO. 32022/34/90-Ad.III dated 10.7.1992 (copy enclosed) wherein it was instructed that -

(i) these persons may be regularised on the basis of their selection held in 1982-83 without subjecting them to yet another selection process

(ii) there regularisation should be as per their turn in the seniority list prepared at the time of adhoc promotion. It may please be ensured that the period between their initial appointment on adhoc basis and their subsequent regularisation depending upon their turn in seniority should not be counted for the purpose of fixing their seniority in the examiners grade.

Further Boards had instructed that the aforesaid instructions may be implemented under the intimation to the Boards.

Accordingly, this Custom House, kept reserved (37) vacancies for regularisation of adhoc Examiners out of a total (45) available vacancies. Consequent to the DPC meeting a promotion order containing the names of (07) Examiners, was issued on 31.12.2002. And a reference has been sent to the Ministry vide letter of even number dated 30.1.2003, seeking the concurrence for regularisation of (37) adhoc Examiners following the lines as mentioned in the aforesaid letter. The reply is still awaited.

While holding the DPC for new (08) posts. the Recruitment Rules was followed in toto such as conduction of physical test and interview. No candidate objected the new provision of physical standard test as mentioned in new Recruitment Rules till 31.12.2002.

Later on, a case has been filed before the CAT. Mumbai by a candidate belonging to the eligible feeder cadre and he challenged the introduction of physical standard test in the new Recruitment Rules for the post of Examiner. Till date no interim order/stay has come in force.

22. The correspondence would show that the problem of adhoc appointees has been there and adhoc solutions have been devised for batches of appointees. The New Mumbai Commissionerate's letter quotes the instructions of the Customs & Central Excise Board in letter No. 32022/34/90Add-III dated 10.7.1992. The instructions related to the regularisation of adhoc Examiners selected in 1982-83, and who remained unregularised until July, 1992. The point that emerges from this correspondence is that the reason for not issuing regularisation orders despite the regular nature of appointment and prolonged continuance of adhoc status was that regular vacancies were not available in promotee quota. At least this has been the clear declaration by the New Mumbai Commissionerate although the Cochin Commissionerate has not come out with such a declaration. They have of course clarified in their reply statement that against total promotee vacancy of 8 (applying the ratio of 2:1 to Direct recruits and promotees in a sanctioned strength of 24) they have got 10 adhoc promotees in position. That is neither here nor there as, there is no clear explanation, at least arithmetically of the use of quota and backlog. In any case that is not an impediment on the way to conclude that regularisation in line suggested in Board's instruction was a distinct possibility. This possibility has been used in the past. So why could this not be used now? Mumbai used it by issuing regularisation orders to 37 adhoc appointees in one go. Whether the instructions of the Board in regard to

seniority is complied with this way is another matter and we are not judging the action by merit. But the fact remains that a ban on direct recruitment was imposed by the Department of Revenue, Ministry of Finance on 19.7.2001 to allow the vacancies to be filled up by promotion in all cadres as a one time relaxation. This ban on direct recruitment was extended further upto 31.12.2002 by a communication dated 5.6.2002. The ban on direct recruitment came along with orders of cadre restructuring and it continued until after the new recruitment rules were notified (31.12.2002). The simple idea behind this, as we could gather from the documents and arguments presented before us, was that cadre restructuring as well as the new recruitments rules would both unsettle promotional vacancies, would leave no scope for subsequent regularisation in different cadres, and hence a one-time dispensation would be the best possible way to absorb the promotees leaving the way open for the implementation of a restructured cadre with new recruitment rule. The learned counsel for the respondents explained that the last sentence in the Department's letter dated 5.6.2003 was restrictive as it provided that 'no vacancy in respect of the posts included in the cadre restructuring should be filled up till such time as further orders are issued.' Further, the learned counsel argued, in the very same letter a clear statement had been made that 'sanctioned strength now indicated supersedes all previous sanctions issued so far' and this was interpreted by the Cochin Commissionerate to mean that no action was to be taken in respect of the earlier vacancies. We saw the restructuring orders, and interestingly we found that for Cochin Commissionerate, particularly in respect of the cadre of Examiner there was no

change. it was 24 earlier and it was the same 24 now. we also found that no action was taken by the Cochin Commissionerate to propose additional requirement of staff in pursuance of the Ministry's letter dated 5.6.2002, which could have corrected the imbalances arising out of adhoc promotions awaiting regularisation.

23. In conspectus, we are of the view that the applicants have a reasonable grievance and that the grounds of cadre restructuring, new recruitment rules, lack of promotee vacancies, and conditions of adhoc appointment are after thoughts which fail to explain the failure of the Commissionerate in taking appropriate action in good time. We are also of the view that the 2002 recruitment rules would not be applicable to the applicants and hence they would not be required to pass any test, including the test of physical standards, to be freshly considered for regular appointment. There would in fact no further selection process required if they have undergone one already for adhoc promotion. All vacancies arising from the first date of adhoc appointment in the cadre of Inspector (Examiner) until until 31.12.2002, excluding those that have already been filled up by direct recruits upto that date if any, would be reckoned as available for regularising the applicants and those similarly circumstanced and would be filled up as such by the applicants and others similarly circumstanced ones, without any further selection process. We declare that the new recruitment rules would be applicable to those who would be eligible for promotion against vacancies arising after 31.12.2002. All direct recruit vacancies that have remained unfilled would be added to the vacancies for promotees and

would be used for regularising the adhoc promotees first. The balance if any would be added to the Direct recruitment quota maximum upto the extent of number of slots lost due to regularisation of ad hoc examiners. The period between their initial appointment on ad hoc basis and their subsequent regularisation would be counted for the purpose of fixing their seniority in the cadre of Examiners subject to the condition that the promotees would be placed enbloc below the direct recruits of the year in the order of their seniority fixed at the time of ad hoc promotion.

24. In the background of our discussions of the issues and in the context of the foregoing observations we allow O.A.856/02, O.A.865/02, O.A.866/02 and O.A.867/02 and direct the respondents to regularise the applicants from the respective dates of their initial ad hoc appointments. We set aside the A-6 series of orders as inapplicable to the applicants. We also direct that direct recruitment quota remaining unfilled until 31.12.2002 be converted into promotee quota to the extent required for regularising the ad hoc promotees. With the regularisation of the ad hoc promotees against vacancies arising upto 31.12.2002, the balances should open with a fresh count and quota fixture recalculated for all appointments from that point. Compliance of these orders be completed in all respects within two months from the date of issue of these orders.

25. In O.A.257/2002, the limited question to be considered is whether A-7 Memorandum issued by the Commissioner of Customs, Cochin disposing of the representations of the applicant, is sustainable, in the light of R4(a), R4(b) and R4

(c) orders of the Central Excise & Customs Board which lay down the ground rule that all the backlog vacancies which have occurred upto 31.12.2002 should be filled up by promotees by grant of one time relaxation. The applicants have admitted that they do not possess the required physical standards required under the new recruitment rule. The applicants claim that they became eligible for promotion to the post of Inspector (Examiner) in 1992. While these claims are disputed by the respondents, they point out that the new recruitment rule brought into force from 7.12.2002 has wholly replaced the old recruitment rule, so all promotions from that date onwards would have to be made on the basis of the new rules. Since all promotions from the ministerial line to the cadre of Inspectors and Preventive Officers are now being made as per the new recruitment rules, which do not distinguish between Examiners and Preventive Officers in terms of physical standards, a separate dispensation for the applicants on the basis of old recruitment rules would not be in order. Further, the old recruitment rules did not recognise the post Inspector (Examiner), the correct nomenclature then was Examiner (Ordinary Grade).

26. On comparing the old and new recruitment rules, we notice that the new recruitment rules under Col. 12(a) declared inter alia UDCs with five years service in the grade as eligible for the post of Inspector (Examiner). This was the sole criterion for eligibility under the old recruitment rules for the post of Examiner (Ordinary grade). Thus we do not see much problem in terms of nomenclature. What was Examiner (Ordinary Grade) under the old recruitment rules, became Inspector (Examiner) under the new recruitment rules with the

addition physical standards as a new condition. So, a UDC, who was eligible to be promoted under the old recruitment rules without conforming to any physical standard, would be required to confirm to that if he is to be promoted under the new recruitment rules. As long as a feeder cadre is identifiably the same in the old and new recruitment rules, the new condition of physical standard absent in the old rules, cannot be imported into the new rules to the disadvantage of those who could have been promoted under the old rules, but for the inaction of the respondents.

27. Could the applicants have been promoted to the rank of Examiner (Ordinary grade) in the first place, on the basis of available vacancies prior to the implementation of the new rules? It has been argued by the private party respondents that the post of Inspector (Examiner) came into being with the restructured cadre and became operational with the introduction of the new recruitment rule i.e. From 7.12.2002, and the applicants opted for promotion to the post. Hence their claim for promotion to the non-existent post of Examiner (Ordinary grade) under the old recruitment rule is without any basis. The contention of the respondents has to be understood in the context of the fact that the applicants, who admittedly do not possess the required physical standard, could have been promoted prior to 7.12.2002 (introduction of the new recruitment rules) or prior to 31.12.2002 (date upto which there was a ban on direct recruitment and all vacancies were to go to promotees). Seen in this context, the applicants can reasonably have a case only if vacancies were available, and yet no promotion to the rank of Examiner (Ordinary grade) were

made. The respondents do not dispute the fact that the applicants were eligible since 1992, they also do not dispute the fact that there were vacancies in the pre-restructured cadre. If in fact there were vacancies in the pre-restructured cadre, then no presumption need be made to the effect that these vacancies would have to be filled under the new rules. If some of those who were qualified under the old and new rules, both, chose to take the opportunity under the new rules, then should that be a basis for shutting out those who conformed only to the old rules? If that is done, as is the case here, then normal career aspiration of those like the applicants in pre-restructured cadre, would be drastically compromised.

28. We would go by a simple dictum – old vacancies, old rules. In other words, recruitment under the new rules must begin on a clean slate. As long as there are eligible persons and vacancies to accommodate them under the old rule, the new rules cannot be brought into force if it seeks to impose a new condition for career progression. It cannot be argued that the post of Inspector (Examiner) carries a job definition, different from Examiner (Ordinary Grade). Logically therefore, it cannot be argued that the redesignated post of Inspector (Examiner) can functionally render the applicants ineligible in terms of physical standard alone.

29. We therefore conclude that the applicants in O.A.257/2002 would be entitled to promotion to the posts of Examiner (Ordinary Grade) and Inspector (Examiner) against vacancies that arose upto 31.12.2002 and direct that the private party respondents who have been promoted under the new rules would, if

they are eligible, be considered along with the applicants against the vacancies that arose upto 31.12.2002 under the old rules and on promotion be placed along with others in the order of their seniority. Only residual vacancies to the extent of direct recruit quota and unfilled vacancies would be carried forward as fresh count for being filled up under the new recruitment rule. With these orders, we set aside A-7 memorandum and allow the application to the extent ordered. We also direct that the orders would be complied with within a period of two months from the date of issue of this order.

30. The issue in O.A.23/2003 is whether the applicants could be considered for promotion under the new recruitment rules for filling the vacancies that arose upto 31.12.2002. We have already arrived at a decision in the linked cases to the effect that vacancies arising upto 31.12.2002 would be filled up by promotees under the old rule. So, the applicants, if they are eligible under the old rules would be considered along with others and be placed in the order of their seniority if promoted. The new recruitment rules notified on 7.12.2002 would be effectively brought into force from 1.1.2003, because of a ban on direct recruitment under the new recruitment rules upto 31.12.2002, and the new rules cannot be applied by partial operation for the applicants. We therefore dismiss the application.

31. In summary, we allow O.A.s 856/02, 865/02, 866/02, 867/02 and O.A.257/03 to the extent and in the manner directed and dismiss O.A.23/03. Dismissal of O.A.23/03 would, however, not prejudice the consideration of the applicants for promotion under the old rules.

32. The applicants in all these O.A.s would bear their own costs.

Dated, the 28th February, 2005.

Sd/-

H.P. DAS
ADMINISTRATIVE MEMBER

Sd/-

A.V. HARIDASAN
VICE CHAIRMAN

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