

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 229 of 2006

Friday..., this the 13th day of October, 2006

CORAM :

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

HON'BLE MR. N. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. Jose Lukose,
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Thodupuzha : 685 583
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Poojapura, Trivandrum.
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Trivandrum.



5. Sasikumar T,
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6. Sasidharan Nair M.P.,
S/o. Parameswaran Nair,
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7. T.R. Ragini Devi,
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Trivandrum Customs Division, Trivandrum,
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Thirumala P.O., Trivandrum.
8. Sujatha M.K.,
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9. Jayasree K.P.,
W/o. C.R. Mohanakumar,
Senior Tax Assistant, Office of the Commissioner
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I.S. Press Road, Kochi - 18,
Residing at : Cherukale Puthen Veedu, Karanma,
Vallikunnam P.O., Alleppey District. ... Applicants.

(By Advocate Mr. T.C. Govindaswamy)

versus

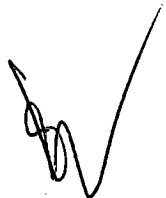
1. Union of India, represented by
The Secretary to Government of India,
Ministry of Finance, Department of Revenue,
New Delhi.
 2. The Chief Commissioner,
Headquarters, Central Excise & Customs,
I.S. Press Road, Kochi.
 3. The Commissioner,
Central Excise & Customs,
Headquarters Office, I.S. Press Road,
Kochi - 18
 4. The Additional Commissioner (P&V),
Office of the Commissioner of Central Excise
and Customs, Cochin Commissionerate,
C.R. Building, Kochi - 18.
 5. The Joint Commissioner (P&V),
Office of the Commissioner of Central Excise
and Customs, Cochin Commissionerate,
C.R. Building, Kochi - 18.
- ... Respondents.

(By Advocate Mr. C.M. Nazar, ACGSC)

This Original Application having been heard on 26.9.2006, this Tribunal on 13.10.06 delivered the following:

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

The short point in this case is as to what aspects are to be taken into account while considering a person for promotion to the post of Inspector in the Central Excise - (a) qualifying marks in the written examination, followed by viva voce performance plus gradings in the Confidential rolls or (b) mere performance in the interview. Again, if (a) above is to be adopted, (i)



whether there is a provision to award marks less than 10 for interview and
(ii) whether bench mark shall take into account the grade in the interview.

2. Brief facts as contained in the O.A.

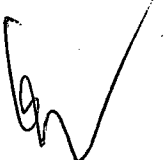
(a) The applicants are presently working as Senior Tax Assistants, Central Excise, on regular basis in scale Rs. 5000-8000. They were considered by the Departmental Promotion Committee (DPC, for short), which met during October, 2003 for promotion to the post of Inspectors of Central Excise, as per an interim direction of this Tribunal in O.A. No. 831/03 filed by the applicants' Association and Another. The applicants and others included therein were to undergo physical standards/endurance tests and those who qualify were to appear for an interview. The applicants having qualified in the physical standards/endurance tests participated in the interview. The respondents did not publish the panel of candidates selected because the consideration was subject to the final outcome of the OA. In its order dated 27th September, 2005, the Tribunal held that the petitioners were eligible to be considered in terms of the Recruitment Rules, 2002, and directed the respondents to consider the applicants accordingly. The respondents published the impugned promotion order No. 29/2006 dated 23.03.06 (Annexure A/4). Though the applicants performed well in the interview, their names were not seen included in the promotion order. On enquiry, the applicants came to know that the total number of vacancies for which the DPC met was about 100 and there are still about 10 vacancies for General Category remaining unfilled. The applicants further understand that the respondents did not consider the applicants in the manner provided for in Government of India, DOP&T O.M. No.



22011/5/86-Estt (D) dated 10.04.89. The applicants also understand that they have not been placed in the panel on the alleged ground that they have not secured the "minimum qualifying marks" in the viva voce. A reading of order dated 23.06.03 (Annexure A6) and order dated 9.5.91 (Annexure A7) would show that no minimum "qualifying" marks is fixed for interview and on the contrary, the minimum marks to be awarded is 10. The respondents are bound to prepare a list based on the grading awarded on the total marks obtained for assessment of ACR and interview. It cannot be exclusively based on the interview alone.

3. Respondents have contested the O.A. and their version is as under:-

(a) The applicants were provisionally considered by the DPC held in October, 2003. In terms of the final orders of the CAT in O.A. No. 831/2003 dated 27.09.2005, a DPC was held on 22.3.2006 to open the sealed cover of the DPC held in October 2003. These applicants were not found fit for promotion by the DPC. The contention of the applicants that a review DPC should have been held instead of implementing the findings of the DPC held in October, 2003 is not correct. The DPC held during October, 2003 was conducted according to the Central Excise and Land Customs Department Inspector (Group 'C' post) Recruitment Rules, 2002. The applicants were not eligible to be considered for promotion in the year 2002 as they did not have the required qualifying service as per the Recruitment Rules, 2002. Also the re-structured cadres of Senior Tax Assistant and Tax Assistant came into effect only on 20.1.2003 and 5.5.2003 respectively. Therefore, the Committee was right in implementing the findings of the DPC held in 2003 in respect of the



candidates covered under O.A. No. 831/2003.

(b) Promotion to the post of Inspector is on the basis of selection method. Recruitment Rules, 2002, prescribe interview for promotion. The Ministry of Finance F.No.A-32011/5/2003-Ad.IIIA dated 23.06.2003, had laid down the marks prescribed for interview. Ministry has prescribed maximum of 20 marks and minimum of 10 marks. Candidates will have to be graded with a maximum marks of 20. The contention of the applicants that the select list is to be prepared on the basis of the grading awarded on the total marks obtained for assessment of ACR and interview is baseless.

(c) As per Annexure A5 O.M. dated 10.04.89, the bench-mark for promotion to the Inspector is 'Good'. It appears that the applicants are confusing between the bench-mark for ACR grading and the marks prescribed for the purpose of the interview. The averments contained in the grounds of this OA are not sustainable because the applicants were not found fit for promotion by the DPC held in October, 2003 and a subsequent DPC held in August, 2005.

(d) The instructions relating to interview do not prescribe awarding of any marks for the ACRs and it prescribes marks only for the interview and it does not put any restriction on the DPC to award marks less than 10 for those candidates who perform poorly in this selection interview. As per DOP&T's O.M. No. 22011/5/80-Estt. (D) dated 10.04.1989, the bench-mark promotion to the post of Inspector is 'Good'. That is, the officer should have minimum grading of 'Good' in his ACR for the previous 5 years. It appears that the applicants are confusing between the bench-mark for ACR grading and the marks prescribed for the purpose of interview.



Therefore, the submissions put forth by the applicants are not sustainable.

(e) The DPC was considered strictly as per the guidelines of DOP&T's O.M. No. 22011/5/80 - Estt(D) dated 10.4.1989. Hence, there is no violation of Articles 14 & 16 of the Constitution.

(f) Applicant No. 8 in this O.A. herself is an applicant in O.A. No. 290/05 pending before this Tribunal. The prayers in both the OAs are same and similar.

4. The applicant has filed rejoinder, wherein he has reiterated the contentions in the OA and in addition has annexed a copy of order dated 08-02-2002.

5. In the course of arguments, the counsel for the respondents fairly conceded that for the purpose of promotion, apart from the performance in the viva voce, gradings obtained as per the Performance Appraisal Report are also taken into account. To that extent, the contentions in the reply are to be duly modified.

6. The counsel for the applicant has submitted that the following are the relevant rules applicable to persons employed in the Central Excise and Customs and the relevant portions of the said rules are as under:-



(a) DOP&T's O.M.No. 22011/5/86-Estt.(D), Dated 10th April, 1989 :

"...6.3.1 Principles to be observed and preparation of panel :- The list of candidates considered by the DPC and the overall grading assigned to each candidate, would form the basis for preparation of the panel for promotion by the DPC. The following principles should be observed in the preparation of the panel:-

(i) Having regard to the levels of the posts to which promotions are to be made, the nature and importance of duties attached to the posts a bench-mark grade would be determined for each category of posts for which promotions are to be made by selection method. For all Group 'C', Group 'B' and Group 'A' posts upto (and excluding) the level of Rs. 3700-5000 excepting promotions for induction to Group 'A' posts or services from lower groups, the bench-mark would be 'Good'. All officers whose overall grading is equal to or better than the bench-mark should be included in the panel for promotion to the extent of the number of vacancies. They will be arranged in the order of their inter se seniority in the lower category without reference to the overall grading obtained by each of them provided that each one of them has an overall grading equal to or better than the bench-mark of 'Good'.

....."

(b) Letter No. B.12014/4/88-Ad.III-A, Dated 18th December, 1989 :

"....4. As regards 'interview, again, awarding of marks is essential and not adjudging a candidate as 'fit' or 'unfit'. To avoid undue subjectivity in weightage, however, similar procedure of broad categorisation, as in the case of C.C.Rs assessment, i.e. Fixed marks - 80 for 'outstanding', 60 for 'very good' and 40 for 'good', categories of performance in interview, should be followed. Further, in order that the C.C.Rs assessment does not influence the assessment of the performance of a candidate in the 'interview', it should be ensured that C.C.Rs are not seen by the members of the DPC interviewing the candidates until all the interviews are over. In other words, assessment of the performance of a candidate in the 'interview' should be independent and uninfluenced by the assessment of his C.C.Rs.

bn

5. After conclusion of the 'interview' proceedings, 'assessment of the C.C.Rs' of all the candidates who qualified in the written test, should be done, and a list prepared of consolidated marks obtained by adding the marks in the written test, the interview and the C.C.Rs assessment by each of such candidates. The merit panel should, thereafter, be prepared by placing the candidates in the order of the consolidated marks obtained by them."

(c) Letter No. F.No.A-32011/2/90-Ad.IIIA, Dated 11th July, 1990 :

<i>Points raised</i>	<i>Clarification</i>
In the Ministry's earlier letter F.No.3/29/70-Ad.IIIA dated 4.8.71, the qualifying marks in the written test for promotion were laid down as 50%. However, in para 2.2 of Board's instructions dated 18.12.89 the qualifying marks has been mentioned as 40%. it may be clarified whether qualifying marks have been reduced from 50% to 40%.	40% was inadvertently shown. There was no intention to lower the qualifying marks from 50% which have been in force for a long time. In para 2.2 of the Board's letter of 18.12.1989, the qualifying marks should be substituted as 50% instead of 40%.

(d) Letter No. F.No.A.32011/21/90-Ad.IIIA, Dated 9th May, 1991 :

"The procedure laid down by the Board in their letters F.No.B-12014/4/88-Ad.III-A dated 18.12.1989 (and F.No. A.32011/2/90-Ad.IIIA dated 11.7.1990) has been discussed in the 72nd and 73rd Meeting of the Departmental Council. After careful consideration of the matter, the Board in consultation with All India Customs Employees Federation have decided, in partial modification of selection procedure contained in the above quoted letter, as under:



(a) The total marks for CCRs will be 80. The marks for each category of ACR will be as under:

- (i) Outstanding - 80
- (ii) Very Good - 70
- (iii) Good - 60

(b) For interview, the marks will be 20 with minimum marks of 10. The marks will be awarded to the candidates according to the performance in the interview as under :-

- Outstanding - 20
- Very Good - 15
- Good - 10

(c) The select panel will be prepared on the basis of the aggregate of the marks obtained by the candidate both in the ACR as well as in interview.

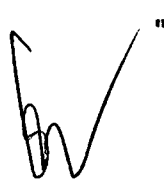
(d) The Selection Committee will be headed by the Collector. Necessary amendment is being made in the rules separately.

Instructions regarding the "retention examination will continue to be followed for the present."

(e) **Letter No. F.No. A-32011/3/99-Ad.IIIA, Dated 16th April, 1999:**

"2. It has, therefore, been decided with the approval of the Chairman, C.B.E.C., that the interviews shall be conducted to weed out only undesirable / undeserving candidates, until further orders or amendment of the Recruitment Rules. The interview shall not carry any grading or marks and the interview shall serve the purpose for weeding out only those of the candidates who have some disciplinary / vigilance cases pending or contemplated against them."

(f) **Letter No. F.No. A. 32011/5/2003-Ad.IIIA, Dated 23rd June, 2003:**



Please refer to the Board's letter F.No. A-32011/3/99-

Ad.IIIA dated 16.4.1999 on the above cited subject wherein it had been provided that an interview shall be conducted to weed out only undesirable / undeserving candidates, until further orders or amendment of the Recruitment Rules and the interview shall not carry any grading or marks and the interview shall serve the purpose for weeding out only those of the candidates who have some disciplinary / vigilance cases pending or contemplated against them.

2. The cadre of Customs and Central Excise Department has since been restructured and new RRs 2002 have also been notified and the mode of selection for promotion to the executive post of P.O./E.O and Inspector is now on "selection basis". In view of this, the above position has now been reviewed and it has now been decided with the approval of Chairman (CBEC), to supersede the instructions contained in Board's letter F.No.A.32011/21/90-Ad.IIIA dated 9.5.91 will be applicable for promotion to the executive posts of P.O./E.O./and Inspectors. These instructions, inter-alia prescribe marks for interview as given below:

For interview, the marks will be 20 with minimum marks of 10. The marks will be awarded to the candidates according to the performance in the interview as under:

Outstanding :	20
Very Good :	15
Good :	10 "

(g) Relevant portion of the Recruitment Rules:

- (i) Promotion : (a) By selection from those candidates working in the following pre-structured cadres.

Note 2 : Candidates shall be required to pass such written test as may be determined by the Central Board of Excise and Customs from time to time. The maximum age of eligibility for the departmental candidates shall be 45 years which shall be relaxable to 47 years in the case of candidates belonging to the Scheduled Castes or Scheduled Tribes category. However, those of the officials who were not considered for such promotion upto the age of 45 or 47 years, as the case may be, shall be granted the benefit of relaxation in age limit upto 50 years in order to enable




a fair opportunity of a minimum of two chances. However, those officials who were considered for promotion upto the age limit of 45 or 47 years, as the case may be, on two or more occasions and were not found fit for promotion shall not be eligible for this relaxation.

Note 3 : Candidates shall be required to pass physical tests and confirm the physical standards as specified in Column 8.

Note 4 : The eligible officers under clause (a), (b) and (c) above shall be required to pass through an interview before promotion."

7. Before going into the merits of the matter, a minor objection by the respondents in respect of Applicant No. 8 has to be answered. It has been informed by the respondents that in so far as applicant No. 8 is concerned, there is one more OA on the same subject. However, the counsel for the applicant submits that the claim of the applicant in the other OA is in respect of promotion for a vacancy that arose in a different year and not the same as in this O.A. The objection raised by the respondents in this regard has thus to be overruled.

8. According to the counsel for the applicant, as per order dated 18.12.1989 vide para 5, after conclusion of the interview proceedings, consolidated marks should be prepared by adding marks in the written test, the interview and the ACR Assessment and the merit panel should be prepared accordingly. This has undergone a change vide order dated 9th



May; 1991 whereby merit would be based on the performance as per the ACRs and in the interview. As per order dated 16th April, 1999, interview is to be conducted to weed out only undesirable/undeserving candidates and interview shall not carry any gradings or marks and the interview shall serve the purpose of weeding out only those of the candidates who have some disciplinary/vigilance cases pending or contemplated against them. However, this has been superseded by order dated 23-06-2003 and the marks obtained in the interview would also count for promotion, but in so far as the marks for interview is concerned, there shall be only three grades with specified marks allotted to each grade, as , Outstanding - 20, Very good 15 and Good 10. There cannot, therefore, be any mark less than 10 nor any other marks other than 20, 15 or 10. And, according to the counsel for the applicant, the gradings as per the ACR shall also be considered for deciding the suitability of candidates.

9. Counsel for respondents has submitted that order dated 10-04-1989 has been complied in this case and the said order read with order dated 8.2.2002 (Annexure A-8) clearly stipulates that eligibility for promotion will no doubt be subject to fulfillment of all the conditions laid down in the Relevant Recruitment/Service Rules, including the conditions that one should be the holder of the relevant feeder post on regular basis and that he should have rendered the prescribed eligibility service in the feeder post. Thus, viva voce being one of the prescriptions under the recruitment rules, the same



has also been considered.

10. Though the respondents in the counter have contended that the contention of the applicants that the select list is to be prepared on the basis of the grading awarded on the total marks obtained for assessment of ACR and interview is baseless, they have clearly admitted that the provisions of OM dated 10-04-1989 apply to promotion to the post of Inspectors and that the same have also been followed. And in the reply the respondents have stated, vide para 7 of the counter, "*In fact the Departmental Promotion Committee has not found the applicant fit for promotion by selection and has not recommended their names for promotion*". The respondents have not clearly spelt out whether the non recommendation of the DPC of the applicant for promotion was due to non acquiring by the applicant of marks to the extent of 10 and above in the viva voce or that the applicant in the ACRs has not obtained the Bench Mark or both.

11. From the various orders as extracted above, it is seen that written exam is a qualifying exam and once qualified, the marks obtained are considered only for interviews and not for promotion. And in the interviews, one should be of the level of Good or Very Good or Outstanding. If any body's performance is less than Good, he cannot be recommended for promotion. Similarly, if, as per the ACR, the grading be not good or above, the candidate cannot be recommended for promotion. Thus, twin conditions




i.e. 'Benchmark' as per ACR and the minimum of 'Good' in interview should be available for promotion to the post of Inspector. The contention of the applicant that there cannot be a marking of less than 10 is to be rejected as such a contention would make the very aim of holding the interview as serving no useful purpose. For, any marks 10 or 15 or 20 would have equal value for the purpose of promotion and if the marks in viva voce be minimum 10, then all those who qualify in written test will qualify interview as well and, thus, the filtration process at viva level would be of no use.

12. As the respondents could not specify the same in such precision it is essential for the respondents to verify from the records and see as to under what circumstances, the applicant has not been recommended for promotion by the D.P.C. If the recommendation is on the ground of the applicant having not secured the Bench Mark in respect of his ACRs or having not secured the minimum of 10 marks in the interview, or both ^{they shall} ~~and if so~~ inform the applicant accordingly. Instead, if the recommendation of the DPC is purely on the basis of interview only without considering the ACRs, then a review DPC shall be convened and the case of the applicants has to be considered by the Review DPC, by taking into account the gradings as per the ACRs and performance in the interview. Evaluation of the performance of the applicant in the interview shall be afresh under these circumstances. This drill of verification and conducting of DPC, if need be, shall be completed

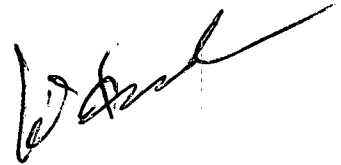
within a period of three months from the date of communication of this order.

13. Under these circumstances, there shall be no orders as to costs.

(Dated, the 13th October, 2006)



N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



K B S RAJAN
JUDICIAL MEMBER

Cvr.