

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**ORIGINAL APPLICATION NO. 272 OF 2011**

Friday, this the 23<sup>rd</sup> day of September, 2011

**CORAM:**

**HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER  
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

1. N Ashok Kumar,  
Senior Tax Assistant,  
Central Excise Division,  
Kannur.
2. T.V. Sasidharan,  
Senior Tax Assistant,  
Central Excise Division,  
Kozhikode.

.... Applicants

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

-Versus-

1. The Commissioner of Central Excise & Customs,  
Central Revenue Buildings,  
IS Press Road, Kochi - 682 018.
2. The Commissioner of Central Excise & Customs,  
Central Revenue Buildings,  
Mananchira, Kozhikode.
3. The Chief Commissioner of Central Excise and Customs,  
Central Revenue Buildings,  
IS Press Road, Cochin -682 018.
4. Union of India, represented by its Secretary,  
Department of Revenue,  
North Block, New Delhi.


... Respondents.

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

The Original Application having been heard on 15.09.2011, the Tribunal on 23.09.2011 delivered the following:

**ORDER****HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

Applicants in this O.A are working as Senior Tax Assistants in the Central Excise Division, Calicut Commissionerate. They were recruited as Sepoys and on passing the departmental qualifying test, they were promoted as LDCs on 14.02.2003. The Recruitment Rules for the post of Tax Assistant came into force on 02.05.2003 in which it was made clear that all LDCs as on 02.05.2003 would become Tax Assistants on passing the computer proficiency test. They passed the computer proficiency test held on 02.12.2003. But they were not promoted as Tax Assistants on the wrong interpretation of the rules stating that they would be eligible for promotion as Tax Assistants only after completion of 7 years of service as LDCs. The applicants filed O.A. No. 175/2008 for granting them promotion as Tax Assistants with effect from the date of passing the computer proficiency test held on 02.12.2003. The O.A was allowed on 17.10.2008. Again, the applicants were directed to appear for computer proficiency test on 15.12.2008. They passed this test also. They were promoted as Tax Assistants with effect from 15.12.2008. Their representations for granting notional promotion with effect from 02.12.2003 on which date they passed the first computer proficiency test, were rejected. The O.A. No. 320/2009 for granting them notional promotion as Tax Assistants with effect from 02.12.2003 was allowed as per order dated 14.01.2010. The applicants were given promotion as Tax Assistants with effect from 02.12.2003. As no consequential benefits were granted, Contempt Petition No. 4/2011 was filed, but it was closed for seeking the redressal of grievances separately. The applicants were promoted as Senior Tax Assistants as per order dated



27.01.2011 and they joined the post on 28.01.2011. The applicants appeared for the departmental qualifying test for the post of Inspector of Central Excise, which is their next promotion. Meanwhile, the first respondent called their juniors for physical test and interview on 29.08.2011 for promotion as Inspectors against 22 vacancies. But they are left out as they were not given retrospective promotion as Senior Tax Assistants. In as much as the applicants were not called for interview on 29.08.2011 for the post of Inspector of Central Excise, they filed M.A. No. 227/2011 in O.A. No. 320/2009 praying for a direction to include them also in the zone of consideration for promotion as Inspectors. When the said M.A. came up for consideration on 28.03.2011, this Tribunal directed the learned counsel for the applicants to file a fresh O.A. after withdrawing the M.A. The M.A. No. 227/2011 was accordingly withdrawn and they filed the present O.A. for the following reliefs:


- (i) To call for the records leading up to the issue of Annexure A-10 and direct the respondents to include the applicants also for consideration for promotion as Inspectors;
- (ii) To direct the respondents to issue orders promoting the applicants as Senior Tax Assistants from the date on which their immediate junior was promoted as Senior Tax Assistants with all consequential benefits;
- (iii) Grant such other relief or reliefs which this Hon'ble Tribunal may deem fit and necessary in the circumstances of the case.

2. As per the interim order of this Tribunal dated 29.03.2011, the applicants have undergone the physical test/endurance test, attended the interview and were considered provisionally by the DPC for promotion as Inspectors on 11.04.2011 on provisional basis. The findings of the DPC are kept in sealed cover, subject to the outcome of this O.A.



3. The applicants contended that they are Tax Assistants with effect from 02.12.2003. But those who became Tax Assistants after 02.12.2003 have been given further promotion as Senior Tax Assistants and applicants are discriminated in this regard. Their juniors were called for physical test and interview for promotion as Inspectors on 29.08.2011 whereas this opportunity is denied to them. This is highly discriminatory.

4. The respondents contested the O.A. In the reply statement, they submitted that the Recruitment Rules for the post of Senior Tax Assistants specify that to become eligible for promotion to Senior Tax Assistant, a person has to complete 3 years of service in the cadre of Tax Assistant and has to pass the departmental examination for the post of Senior Tax Assistant. The applicants had passed the departmental examination for the post of Senior Tax Assistant held in the month of February, 2009, and as such they became eligible for promotion as Senior Tax Assistants for the vacancies arising in the recruitment year 2010-11 for which the qualifying date of eligibility was 01.01.2010. The applicants have been given promotion as Senior Tax Assistants in the recruitment year when they became eligible for consideration. Shri Prakash Unnikrishnan, their immediate junior, was promoted as Senior Tax Assistant on 27.05.2008 when he became eligible as on 01.01.2008 for the recruitment year 2008-09. As on 01.01.2008 neither of the applicants had passed the departmental qualifying examination and they cannot be considered as eligible for promotion. To qualify for being considered for promotion as Inspector, a Senior Tax Assistant has to put in 2 years of service in the cadre as on 1<sup>st</sup> January of the recruitment year. As the



applicants did not have the required qualifying service, they were not called for physical/endurance test and interview held on 29.03.2011. But as per the interim order of this Tribunal dated 29.03.2011, the applicants have undergone physical/ endurance test and attended the interview on the same day and they were considered for promotion as Inspectors by the DPC held on 11.04.2011. The findings of the DPC are kept in sealed cover.

5. We have heard Mr. CSG Nair, learned counsel for the applicants and Mr. Sunil Jacob Jose, learned SCGSC, appearing for the respondents and perused the records.

6. The operative part of the order in O.A. No. 320/2009 is extracted as under :

"17. In view of the above, the O.A. fully succeeds. Annexure A-13 order is hereby quashed and set aside. It is declared that the applicants are entitled to be promoted as Tax Assistants on the basis of their qualifying in the computer proficiency test held in December, 2003 and accordingly they are entitled to be fixed their pay and allowances admissible to the Tax Assistants, notionally from the date of their passing and actually from the day they have started enshouldering higher responsibilities. Monetary benefits arising out of the above order shall be paid to the applicants within a period of six months from the date of communication of this order. Their seniority shall also be advanced accordingly, of course, after due notice to the affected parties. Time calendared for the same is also six months from the date of communication of this order.

18. As the applicants have been unnecessarily dragged to this avoidable litigation they do deserve cost to be paid by the respondents, but the sober way of submission made by the Senior Central Government Standing Counsel dissuades us from saddling the Government with cost. Hence, no costs."

7. The order of this Tribunal pertains to the entitlement of the applicants



for promotion as Tax Assistants from 02.12.2003. It does not deal with the promotion of the applicants as Senior Tax Assistants. The respondents have submitted that the applicants passed the departmental examination for the post of Senior Tax Assistants held in the month of February, 2009. As they were qualified for consideration for promotion as Senior Tax Assistants on 01.01.2010, they were duly considered against the vacancies for the year 2010-11 and were promoted as Senior Tax Assistants by order dated 27.01.2011. They were not eligible as on 01.01.2008 for consideration for promotion as Senior Tax Assistants against the vacancies for the year 2008-09 alongwith their junior, Shri Prakash Unnikrishnan who was promoted as Senior Tax Assistant on 27.05.2008. The applicants have not controverted the submission of the respondents.

8. As per the Recruitment Rules, a Senior Tax Assistant has to put in 2 years service in the cadre as on 1<sup>st</sup> January of the recruitment year for being considered for promotion as Inspector. The applicants have not challenged this rule. Having joined as Senior Tax Assistants on 28.01.2011, the applicants will have the required qualifying service only on 27.01.2013 for consideration for promotion as Inspectors. Hence, they were not called for the physical/endurance test and the interview held on 29.03.2011 by the respondents. We do not find anything illegal, arbitrary or discriminatory in the matter. Therefore, it is not necessary for this Tribunal to interfere with the promotion of Senior Tax Assistants as Inspectors for the year 2011-12.

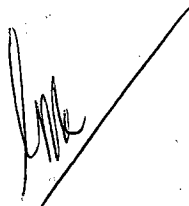
9. The applicants will acquire the necessary qualifying service only on 27.01.2013. Till then, they have no cause for action. As the applicants are



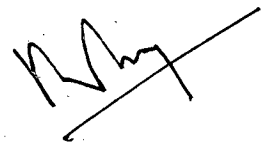
not eligible to appear in the physical/endurance test and the interview held on 29.03.2011 for the post of Inspectors, the interim direction given by this Tribunal on 29.03.2011 is revoked.

10. In the result, the O.A fails and is dismissed accordingly. No order as to costs.

(Dated, the 23<sup>rd</sup> September, 2011)



**(K. GEORGE JOSEPH)**  
**ADMINISTRATIVE MEMBER**



**(JUSTICE P.R. RAMAN)**  
**JUDICIAL MEMBER**

**GVR.**