

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 304/08

Friday this the 21st day of November, 2008

C O R A M

**HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

- 1 N.I. Ziyad Hashim
Lower Division Clerk
O/o the Commissioner of Customs (Preventive)
Central Revenue Buildings,
IS Press Road,
Cochin-682 018
- 2 K.O.Joshua
Lower Division Clerk
O/o the Commissioner of Customs (Preventive)
Central Revenue Buildings,
IS Press Road,
Cochin-682 018
- 3 C.P. Jexon
Lower Division Clerk
O/o the Commissioner of Customs (Preventive)
Central Revenue Buildings,
IS Press Road,
Cochin-682 018

By Advocate Mr. CSG Nair

Vs.

- 1 Union of India represented by its Secretary
Department of Revenue
North Block
New Delhi-110 001
- 2 The Chairman
Central Board of Excise & Customs
North Block
New Delhi-110 001
- 3 The Chief Commissioner of Central Excise
Central Revenue Buildings,
I.S. Press Road, Cochin-18

- 4 The Commissioner of Central Excise
Central Revenue Buildings
IS Press Road, Cochin -18
- 5 The Commissioner of Customs (Preventive)
Central Revenue Buildings
IS Press Road, Cochin-18

Respondents

By Advocate Shri T.P.M. Ibrahim Khan, SCGSC

The Application having been heard on 7.11.2008 the Tribunal delivered the following:

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

This Original Application is filed against Annexure A-19 order dated 6.9.2007 rejecting the representation of the first applicant for appearing in the departmental examination for promotion as Tax Assistant on the ground that he does not have the minimum regular service of **six years** for appearing in the departmental examination and the qualifying service of **seven years** for promotion as Tax Assistant.

2 The brief facts as submitted by the applicants in the O.A. are as follows. The first applicant joined service as Sepoy on 30.8.1989 and was promoted as Havildar later. The 3rd applicant entered service as Sepoy on 6.11.1995. All the three applicants passed the departmental examination held in January, 2003 and became qualified for promotion as Lower Division Clerk. The first and second applicants were appointed as Lower Division Clerks on 14.2.03 and the 3rd applicant was appointed on 8.7.2004 which too was later changed to 14.2.2003. As per the amended Central Excise and Customs Department Tax Assistant (Group-C posts) Recruitment Rules 2003 (Annexure A-3) a Lower Division Clerk appointed on regular basis and falls within the

seniority list, on passing the departmental computer proficiency examination is deemed to have been promoted to the post of Tax Assistant w.e.f. the date of passing such examination. It is submitted that the applicants were LDCs on regular basis w.e.f. 14.2.2003 (Annexure A-4) and hence they were eligible for promotion as Tax Assistant as and when they pass the Departmental Examination on Computer Proficiency. It is submitted that the 4th respondent conducted a Computer Proficiency Test on 28.5.03. The applicants were denied the opportunity. In another test conducted in December, 2003 the first and second applicants were permitted to appear in the examination and they have passed the practical test but failed in theory. As per Annexure A-11 notification applications were called for the test on 22.9.04 for promotion of LDCs to Tax Assistants. In the meanwhile the 2nd respondent issued a letter to the effect that an LDC who has completed 6 years of regular service in the grade on the date of examination only should be allowed to appear in the departmental examination (Annexure A-13). On the basis of Annexure A-13 the applicants were not allowed to appear in the examination. The 2nd and 3rd applicants submitted representations for relaxing the recruitment rules which were rejected. Aggrieved by the rejection of their requests and denial of opportunities to appear for the departmental examination they have approached this Tribunal through this O.A.

3 The main grounds raised in this O.A. are that:

(i) As per the Recruitment Rules all those LDCs appointed regularly at the commencement of the rules shall on passing the departmental Computer proficiency examination be deemed to have been promoted w.e.f. the date of passing the examination. But the

respondents have denied the opportunity to the applicants to appear for the examination.

(ii) Restructuring of the department was undertaken to mitigate the stagnation prevailing in the department but the respondents have violated the spirit of the restructuring exercise. In the minutes at Annexure A-7 it was clearly stipulated that those who fail in the Computer Proficiency Test may be allowed two more chances within the span of three months. But the respondents illegally denied the chances to the applicants. The respondents violated the fundamental rights of the applicants under Article 14 and 16 of the Constitution.

(iii) The LDCs who were allowed to appear for the test on 275.2003 had to pass only the practical test in computer proficiency. By not permitting the applicants to appear for the test conducted on 27.5.2003 the applicants are forced to pass the theory as well as Practical tests.

4 The applicants have filed the O.A mainly for a declaration that they were entitled to appear for the departmental examination conducted on 28.5.2003 onwards for promotion to the cadre of Tax Assistants with all consequential benefits, to direct respondents to promote the 1st and 3rd applicants as Tax Assistants w.e.f. 27.5.03 as they had passed the practical examination in computer proficiency and to direct the respondents to conduct the practical test in computer proficiency and on passing the test to promote the third applicant as Tax Assistant.

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5 The respondents filed reply and additional reply statements opposing the averments in the O.A. They submitted that the applicants joined service as Sepoy and were promoted as Lower Division Clerks by Annexure A-1 and A-2 orders against 50% departmental examination quota in the new re-structured cadre of LDC under Recruitment Rules 2002 notified on 9.9.2002. It is further submitted that as per the Recruitment Rules of Tax Assistants 2003 notified on 2.5.2003, 90% of the post of Tax Assistants is to be filled up by direct recruitment and 10% by promotion from amongst LDCs and Head Havildars who have rendered 7 years of regular service in the grade. The applicants who were promoted in terms of Recruitment Rules 2002 are in the feeder cadre of Tax Assistants against 10% promotion quota. It is further submitted that the 1st and 2nd applicants were promoted to the cadre of re-structured LDC by Annexure A-1 order against 50% examination quota. The 3rd applicant was notionally promoted to the cadre of LDC w.e.f. 14.2.2003. They submitted that the computer proficiency test conducted on 27.5.2003 was as per Recruitment Rules 2003 for the LDCs recruited as per Recruitment Rules 1979. The applicants were promoted only under Recruitment Rules 2002. The Examination schedule (Annexure A-6) was meant for pre-structured LDC recruited as per Recruitment Rules 1979 and not for those promoted to the restructured cadre of LDCs as per Recruitment Rules 2002, therefore, the applicants were not eligible to be considered for promotion as Tax Assistant. The representations of the applicants were rejected by the 4th respondent as he was not the competent authority to grant any relaxation in the Recruitment Rules. The applicants were in fact benefited by the restructuring as they were given promotion to the cadre of LDC according to Recruitment Rules 2002 against the 14 posts

allotted to Kerala Zone. The Board by Annexure A-13 clarified that an officer who has completed 6 years regular service in the grade of LDC on the date of examination for promotion to the post of Tax Assistant may be allowed to appear for the said Examination. As the applicants did not fulfill the above criteria they were not permitted to take the examination. A close reading of the clarification shows that the clarification has been issued in the context of departmental examination held in September, 2004 for promotion to Tax Assistant as it has come to the notice of the Board that some Commissionerates are giving promotions to newly promoted LDCs as Tax Assistants against existing vacancies. The applicants are therefore, not eligible for promotion as Tax Assistants since they were newly promoted LDCs as per Recruitment Rules 2002. They become eligible to be considered for promotion to the post of Tax Assistant **only after rendering 7 years of regular service in the grade of LDC.** The respondents have submitted that they have acted as per existing laws and therefore there is no discrimination against the applicants. They have submitted that the prayers in the O.A. are devoid of any merit and the O.A is liable to be dismissed.

6 The applicants have filed rejoinder stating that the question involved in this O.A. is regarding recruitment of Tax Assistants and the difference between the 1979 and 2002 Recruitment Rules is that as per 1979 Rules 90% vacancies of LDCs were being filled by direct recruitment whereas as per 2002 Rules the entire vacancies are to be filled up by promotion among qualified Sepoys/Havildars. Other than this mode of recruitment there is no difference in the qualification. It is submitted that nowhere in Annexure A3 the difference in the year of recruitment is shown. It is submitted that if the respondents were to

follow Annexure A3 rules correctly the applicants would have been permitted to appear for the departmental examination earlier itself and they would have been promoted as Tax Assistants.

7 In the additional reply statement the respondents have reiterated that as per Recruitment Rules 1979, 10% of the vacancies were reserved for regular Group-D employees whereas the Recruitment Rules 2002 created a new restructured cadre of LDCs to be filled by promotion of Sepoys/Havildarss. The LDCs so promoted are only in the feeder cadre for promotion against the 10% promotion quota of Tax Assistants as per Central Excise and Customs Department Tax Assistant (Group-C Posts) Recruitment Rules 2003. They stated that it is evident from the clarification issued under Annexure A-13 that the applicants were not eligible to appear in the examination. It is submitted that only those LDCs in the seniority list who were recruited/promoted as per Recruitment Rules of 1979 at the commencement of the new Recruitment Rules are covered under clause 4(3) of the Recruitment Rules of Tax Assistant 2003.

8 We have heard Shri CSG Nair for the applicant, Ms Jisha for Mr. TPM Ibrahim Khan, SCGSC appearing on behalf of the respondents and gone through the pleadings carefully.

9 The learned counsel for the applicants argued that according to Rule 4(3) of the new Recruitment Rules those who are holding the post of Lower Division Clerk on regular basis and fall within the seniority list as determined by the appointing authority at the commencement of these rules shall, on passing the Departmental computer proficiency

examination conducted by the appointing authority be deemed to have been promoted w.e.f. the date of passing such examination on the post of Tax Assistant. The learned counsel contended that by virtue of Rule 4(3) of the Recruitment Rules 2003 the applicants should be deemed to have become Tax Assistants w.e.f. 27.5.2003 - the date they qualified the Departmental Computer Proficiency Test. The learned counsel for the applicants brought to our notice the decision of Tribunal on similar lines in O.A.175/2008 which was partly allowed.

10 The learned counsel appearing for the respondents submitted that 1st and 2nd applicants were promoted to the cadre of restructured LDC against 50% examination quota against the 14 posts allotted to Kerala Zone as per the Recruitment Rules 2002 and the applicants can be considered for promotion to the post of Tax Assistant only after rendering 7 years of regular service in the grade of LDC. This is evident from Notes 5 below Annexure R-1 read with Rule 4(3) of the Central Excise and Customs Department Tax Assistant (Group-C posts) Recruitment Rules, 2003. The clarification issued by the Board by Annexure R-3 and A-13 also endorse the same fact.

11 Having heard the learned counsel for both sides and after going through the pleadings and the judgment brought to our notice, we find that the provisions of Recruitment Rules cannot be diluted by way of a letter as the Recruitment Rules are issued under Article 309 of the Constitution. We are therefore of the considered view that by virtue of Rule 4(3) of Recruitment Rules 2003 the applicants are entitled to be promoted as Tax Assistants w.e.f. The date they passed the departmental computer proficiency examination if they come within the

seniority list as determined by the Appointing Authority. Accordingly we follow the judgment of this Tribunal in O.A.175/2008 and allow the O.A. with similar direction. The O.A. is therefore allowed with a declaration that the applicants are entitled to be promoted as Tax Assistants w.e.f. the date they passed the computer proficiency examination prescribed under Rule 4(3) of the Recruitment Rules, 2003 if they fall within the seniority list as determined by the Appointing Authority at the commencement of the said Rules. The respondents are directed to issue necessary orders accordingly within a period of three months from the date of receipt of a copy of this order. No costs.

Dated 21st November, 2008


K. NOORJEHAN
ADMINISTRATIVE MEMBER


K.B.S. RAJAN
JUDICIAL MEMBER

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