

# CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 320 OF 2009

*Thursday*, this the 14<sup>th</sup> day of January, 2010

CORAM:

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

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

1. N Ashok Kumar,  
Tax Assistant,  
Central Excise Division,  
Kannur.

2. T.V. Sasidharan,  
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, Cochin-18.

2. The Commissioner of Central Excise,  
Central Revenue Buildings,  
Mananchira, Kozhikode.

3. The Chief Commissioner of Central Excise and Customs,  
Central Revenue Buildings,  
IS Press Road, Cochin-18.

4. Union of India, represented by its Secretary,  
Department of Revenue,  
Ministry of Finance, North Block,  
New Delhi-110 001.

5. Smt. Bindu Rejit, W /o. K.B.Rejit,  
Senior Tax Assistant, O/o. the Commissioner of  
Customs (Preventive), CR Building,  
I.S. Press Road, Cochin 18,  
Residing at Karapilly House,  
Kellettumkara P.O., Trichur : 680 683.

6. A.K.Hariprasad, S/o Krishnan,  
Senior Tax Assistant, O/o. the Commissioner of  
Customs, (Preventive), CR Building,  
I.S. Press Road, Cochin 18,  
Residing at 'Madathiparambil', Purayar P.O.,  
Aluva, Ernakulam District.
7. Jayanta Biswas, S/o Jagadish Chandra Biswas,  
Tax Assistant, O/o. the Commissioner of  
Central Excise and Service Tax, CR Building,  
I.S.Press Road, Cochin 18,  
Residing at Quarter No.52, Type II, Central Excise  
Staff Quarters, Kakkanad, Cochin : 682 030.
8. Smt.A.Beena, W /o. K.V.Saju,  
Senior Tax Assistant, O/o. the Commissioner of  
Central Excise Customs & Service Tax,  
CR Building, I.S.Press Road, Cochin 18,  
Residing at H.No.49/481 E2, LMC road,  
Puthukalavattom, Ernakulam.
9. Smt.P.Indulekha, W /o. Sunil,  
Senior Tax Assistant, O/o. the Deputy Commissioner of  
Central Excise, Customs & Service Tax,  
Kollam Division, Kollam,  
Residing at Parvathi Bhavan, 41, Mulluvila Nagar,  
Vadakkivila P.O., Kollam.
10. V.Manikantan, S/o Velappan Pillai,  
Senior Tax Assistant, O/o. the Commissioner of  
Customs (Preventive), CR Building,  
I.S.Press Road, Cochin 18,  
Residing at 'Thiruvonam', 8, Aiswarya Nagar,  
TKM College P.O., Karikode, Kollam.
11. Smt.S.Smitha, W /o. K.K.Sreenivasan,  
Senior Tax Assistant, O/o. the Commissioner of  
Central Excise, Head Quarters Office, Trivandrum,  
Residing at TC 28/2787, Santhi Bhavan,  
Chettikulangara, Trivandrum.
12. Smt. H.S.Subha, W /o. H.H.Subramony,  
Senior Tax Assistant, O/o. the Commissioner of  
Central Excise, Head Quarters Office, Trivandrum,  
Residing at H.No.122, Vinayak Nagar,  
Neeramankara, Trivandrum.
13. Smt.L.Kavitha, W/o A.Sreekumar,  
Senior Tax Assistant, O/o. the Commissioner of  
Central Excise, Head Quarters Office, Trivandrum,  
Residing at TC No.22/851 (1) Attukal,  
Manacaud P.O., Trivandrum

... Respondents

[By Advocates: Mr Sunil Jose, SCGSC (R1-4) and  
Mr. Shafik M.A. (R-5-13)]

The Original Application having been heard on 7<sup>th</sup> January, 2010, this Tribunal on 14-01-10 delivered the following:

### **ORDER**

***(Hon'ble Dr. K B S Rajan, Judicial Member)***

This is the second round of litigation. The brief facts of the case leading to the earlier round of litigation could be culled out from the earlier order dated 17<sup>th</sup> October, 2008 in OA No. 175/2008 which read as under:-

"The applicants are working as Lower Division Clerks (LDC) in the Central Excise Department. They joined the Department as Sepoys in the year 1987 and 1986 respectively. They were promoted as LDCs after they qualified in the Departmental Test by order dated 6.2.03 (Annexure-A3) against the quota earmarked for Sepoys. The applicants have also passed the Departmental Examination for promotion of LDCs to Tax Assistants held on 02.12.2003. As a result of the restructuring of the Central Excise Department, the respondents issued a Notification dated 2<sup>nd</sup> May, 2003. By virtue of this Notification the Central Excise and Land Customs Department (Group C) posts Recruitment Rules, 1979, Customs Department (Group-C) posts Recruitment Rules, 1979, in so far as they related to the posts of Upper Division Clerk, Lower Division Clerk and the Electronic Data Processing Discipline (Group-C Technical Posts) Recruitment Rules, 1979 inasmuch as they relates to the post of Data Entry Operator Grade-A were superseded. In place of the aforesaid Recruitment Rules, there came into existence a new Recruitment Rules for the post of Tax Assistant (Group-C), known as Central Excise and Customs Department Tax Assistant (Group-C post) Recruitment Rules, 2003 (A/9). Rule 4 of the new Recruitment Rules deals with initial constitution of the Cadre of Tax Assistant. As per Rule 4(3) of the new Recruitment Rules those who are holding a post of Lower Division Clerk on regular basis and falls within the seniority list are deemed to have been promoted to the post of Tax Assistant with effect from the date of passing the examination. The said Rule 4(3) is extracted below:

"4(3) Any persons, who holds a post of Lower Division Clerk on regular basis and falls 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 with effect from the date of passing such examination on the post of Tax Assistant."

[2] It is contended by the applicants that by virtue of Rule 4(3) of the Recruitment Rules 2003 they should be deemed to have become

Tax Assistants with effect from the date they qualified in the Departments Computer Proficiency Examination. They have produced documents to show that they have passed the said Departmental Examination held on 2<sup>nd</sup> December 2003 (Annexure-A4). The applicants have also sought for notional promotion to the post of LDCs from November 2002 because in the year 2006, 44 vacancies are deemed to have become available wef November, 2002 and December 2002. It is their contention that they are eligible to be adjusted in the relevant promotional quota out of those 44 vacancies, which become available consequent to the notional promotion of 44 LDCs by order dated 26.6.2006. The applicants have sought the following specific relief:

- i. To declare that the applicants are entitled for notional promotion as LDCs since November 2002 and Tax Assistants since December 2003.
- ii. To direct the respondents to promote the applicants on notional basis as LDCs since November 2002 and as Tax Assistants since December 2003 and grant all consequential benefits including monitory benefits within a stipulated period.' "


2. When the applicants in the above OA sought for a direction to the respondents to effect their promotion as Tax Assistants, the Tribunal after considering the case, passed the following order:-

"[8] The second prayer is for promotion as Tax Assistant by virtue of Rule 4(3) of the Recruitment Rule 2003. The text of the said Recruitment Rules 4(3) is extracted supra. As per the said Rule any persons, who holds a post of Lower Division Clerk on regular basis and falls 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 with effect from the date of passing such examination on the post of Tax Assistant. It is abundantly clear from Rule 4(3) that any person who is holding the post of LDC on regular basis shall be deemed to have been promoted w.e.f. the date of passing of the departmental computer proficiency examination. This Rule does not distinguish between LDCs who are directly recruited and those who are promoted from Group-D staff. The contention of the respondents that the benefit of Rule 4(3) is not available to those LDCs who came from promotion from Group-D staff cannot be sustained in the eye of law. The suggestion made by the respondents that Rule 4(3) has to be read in conjunction with Note 5 of the letter dated 19.7.2001 cannot also be sustained, as the Recruitment Rules are issued under Article 309 of the Constitution. The provisions of the said Recruitment Rules cannot be diluted by way of a letter. It is also to be noted that the Respondents themselves allowed the applicants to appear in the departmental computer proficiency

examination and they have passed the examination in December 2003 as per the result declared by Annexure-A4. Further the exclusion of those LDCs who came on promotion from Group-D staff would be discriminatory and a violation of Article 14 of the Constitution. The contention of the respondents that accepting the prayer of the applicants will lead to a spate of litigation cannot be accepted as a valid reason for denying a benefit provided by the provisions of a duly notified Rule. 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 with effect from the date they passed the departmental computer proficiency examination, if they come within the seniority list as determined by the Appointing Authority.

[9] For the reasons stated above, the OA is partly allowed. It is declared that the applicants are entitled to be promoted as Tax Assistants with effect from 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."

3. In the wake of the above said order, the respondents had conducted a computer proficiency test in respect of the promotee LDCs vide Annexure A-9 communication dated 12-12-2008, in which the names of the applicants herein too figure. The applicants accordingly took up the test and qualified in the same and consequently, they were deemed to have been promoted to the post of Tax Assistant w.e.f. 15-12-2008, vide Annexure 10 order dated 16-12-2008. The applicants, however, had penned a representation dated 29-12-2008 stating that as per the earlier order, the applicants were already declared qualified in the computer proficiency test and as such, the respondents were to only notify their promotion as Tax Assistants from the date of passing of the test in December, 2003 itself. Their appearance in the test conducted in December, 2008 did not cancel the earlier test conducted in December, 2003, wherein they had qualified. Hence, their request was to antedate the date of deemed promotion w.e.f. December, 2003 with consequential benefits.



4. In response to the above representation, the respondents have issued Annexure A-13 order dated 11-02-2009, which reads as under:-

"Sub: Estt.- Promotion to the post of Tax Assistant – Reg.

Please refer to letter C.No.II/3/6/2008 dated 26.12.08 and C.No.II/3/6/2007-Estt. Dated 31.12.2008 of Calicut and Kannur Division, respectively, on the above subject.

The Joint Commissioner (P&V), Cochin has informed that "CAT's direction in O.A. No. 175/08 is that the applicants may be promoted as Tax Assistants with effect from the date of passing the Computer Proficiency Test conducted by the Appointing Authority as per clause 4 (3) of the Recruitment Rules of Tax Assistants notified on 05.05.2003. The computer proficiency test as per clause 4(3) of the Recruitment Rules of Tax Assistants notified on 05.05.2003. The Computer Proficiency test as per clause 4(3) of the Recruitment Rules was conducted by this office on 15.12.2008 and S/Shri T.V. Saisdharan and Ashok Kumar N were promoted as Tax Assistants vide this office order No. 145/2008 dated 16.12.2008 with effect from 15.12.2008.

In view of the above, the representations of S/Shri T.V. Sasidharan and Ashok Kumar N, Tax Assistant does not merit consideration.

The officers may be intimated accordingly."

5. The applicants have challenged the above order at Annexure A-1 on the grounds raised in para 5 of the O.A.


6. Certain party respondents whose seniority would be adversely affected in the event of this OA being allowed came up for impleading themselves in the OA and their request was allowed vide order dated 23<sup>rd</sup> July, 2009. Accordingly they have also been arrayed as respondents.

7. Both the official respondents as well as the party respondents contest the O.A. According to them, with the introduction of the revised recruitment rules, 2003, no LDC could be allowed to be promoted unless one has the regular services as LDC for a period of seven years and has the prescribed qualifications. According to the official respondents, the test conducted in December, 2003 is the departmental examination in the schedule of recruitment

Rules of Tax Assistant notified on 05-05-2003 for 10% promotion quota vacancies available in the cadre of tax Assistants from amongst the Lower Division Clerks and Head Havildars, who have rendered seven years of service in the grade on regular basis and who possess the qualifications of Matriculation or equivalent qualification from a recognized institution and Data entry speed of 5000 key depressions per hour and passed the departmental examination with knowledge of typing in Hindi or English at a speed of 25 w.p.m, and 30 w.p.m, respectively. This examination is entirely different from the computer proficiency examination as per Rule 4(3) of RR of Tax Assistant. The computer proficiency examination was conducted in December, 2008 and the applicants having qualified in the same, have been encadred as Tax Assistants. Party respondents furnished the details of cadre strength both at All India level and at Commissionerate level. They have further contended vide para 9 of the counter that the promotion given to Group D staff in February 2003 to the cadre of LDC was incorrect and is to be reviewed as there was no vacancy in the cadre of LDC at that time against which promotions could be given.

8. In their rejoinder the applicants have added copy of order dated 18<sup>th</sup> November, 2003 regarding the schedule for the departmental examination for LDCs to be promoted as Tax Assistant and the syllabus therefor.

9. Counsel for the applicant argued that the order dated 17<sup>th</sup> October, 2008 not having been challenged has attained finality and was also implemented by the respondents, though erroneously. That the applicants had participated in the proficiency test conducted in December, 2008 does not mean that the applicants had not qualified earlier. They had just obeyed the orders of the higher authority, who had directed the applicants to participate in the examination without even giving them time. In fact, it is doubtful whether the conducting of the exam had the approval of the competent authority.



10. Senior Central Government Standing Counsel submitted that the earlier examination was not one that could be considered as that meant under Rule 4(3) of the Recruitment Rules.

11. Counsel for the private respondents submitted that there is no question of the applicants being eligible to take part in the computer proficiency test earlier and as per the recruitment rules, a minimum of seven years is required before becoming Tax Assistant and the applicants having got their promotion as LDC only in 2002, the requisite experience is not available as of 2003 when from the applicants claim their seniority.

12. Arguments were heard and documents perused. The Revised Recruitment Rules provide for initial constitution, which is as under:-

**"4. Initial Constitution:-** (1) The person appointed on regular basis and holding the post of Upper Division Clerk and Data Entry Operator Grade A on the commencement of these rules shall deem to have been appointed as Tax Assistant under these rules and the service rendered by such persons in the respective posts before commencement of these rules shall be taken into account as regular service rendered on the post of Tax Assistant for the purpose of promotion etc.

(2) The person holding the post of Data Entry Operator Grade-A appointed under these rules as Tax Assistant shall, within two years from the date of such appointment as Tax Assistant, pass the Departmental Examination as conducted by the competent authority, failing which he shall not be entitled to get any further increment.

(3) Any person who holds a post of Lower Division Clerk on regular basis and falls within the seniority list as determined by the appointing authority Computer Proficiency examination conducted by the appointing authority, be deemed to have been promoted with effect from the date of passing such examination on the post of Tax Assistant.

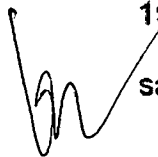
(4) The Upper Division Clerks and Data Entry Operators Grade-A shall be placed en-block senior and, their inter se placement shall be fixed in accordance with the date of regular appointment to the respective grade subject to the condition that their inter se placement in respective grade shall not be disturbed.

(5) Lower Division Clerks shall be placed below Upper Division Clerks and Data Entry Operators Grade-A"



13. Thus, on the date of promulgation of the revised recruitment rules, the sanctioned strength would be as provided in the Rules (in the case of Tax Assistants it is 5525) while the borne strength would be as per the number arrived at under Rule 4 of the Recruitment Rules. In Rule 4, the UDCs and D.E.Os are deemed to be Tax Assistants appointed under the rules, while in the case of LDCs available on the date of promulgation of the rules, subject to falling within the seniority and passing the computer proficiency test, such LDCs would also be deemed to have been promoted as Tax Assistants. When the applicants claimed that they were, as on the date of promulgation of the Recruitment Rules, holding the post of LDC and that they had, in December, 2003 qualified in the computer proficiency test and as such, they should be deemed to have been promoted w.e.f. the date they had qualified in the computer proficiency test, their claim was resisted by the respondents, who had, in their counter filed in OA NO. 175/2008, asserted that since the applicants became LDC under the 2002 Recruitment Rules and not under the earlier 1979 Recruitment Rules, they would be in the feeder cadre for promotion under the 10% promotion quota and were not entitled to be deemed as Tax Assistant. This, according to the respondents, is evident from note 5 of Restructure Order dated 19<sup>th</sup> July 2001, as per which the existing posts in the cadres of UDC, DEO (A) and LDC (except 717) posts of LDC for the purpose of promotion of Group D have been merged and redesignated as Tax Assistant.

14. It was after thoroughly considering the above contentions that the Tribunal held that the applicants had qualified in the computer proficiency test and are entitled to the deemed promotion w.e.f. the date of passing and the respondents were directed to pass suitable orders. However, the respondents chose to conduct the computer proficiency examination and on the applicants' qualifying in the same, held them to have been promoted as Tax Assistant from the date of passing the examination. When the applicants through M.A. No. 153/3009 in OA No. 175/2008 questioned the date of promotion and claimed the same from the date they had originally qualified in the computer proficiency test




in December, 2003, the respondents contended before the Court that if there be any deficiency in the compliance of the order, the same would form a fresh cause of action. Accordingly the M.A. Was disposed of and this OA came to be filed.

15. Though the respondents claim that the exam conducted in December, 2003 was one for promotion under the 10% quota in which the applicants qualified, the same is patently wrong as is evident from the following twin points:-

(a) The schedule for the departmental examination for LDCs to be promoted as Tax Assistant, vide Annexure A-15, clearly talks of the paper as "Computer Proficiency test (Theory and Practical)". And the syllabus annexed to the schedule clearly specifies, "Course content for computer proficiency Test for promotion of LDCs to the Grade of Tax Assistance"

(b) The promotion test under the 10% quota is as to departmental examination with 'knowledge of typing in Hindi or English at a speed of 25 wpm and 30 wpm respectively', whereas the results declared vide Annexure to Order dated 06-01-2004 shows "Result of Practical & Theory" and the result of typing speed is conspicuously missing. The term 'Practical & Theory' does relate to the computer proficiency test, as specified vide (a) above.

16. The contentions of the private respondents also are to be rejected as the earlier decision of this Tribunal in unequivocal term has spelt out that the applicants have already qualified in the relevant test for being considered for promotion as Tax Assistant under the provisions of Rule 4(3) of the Recruitment Rules. That the applicants have taken up the test again cannot in any way adversely affect their right to claim promotion and seniority etc... on the basis of



their qualifying in the test in 2003. Their attempt has to be taken as to prove their mettle now also.

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.

(Dated, the 14<sup>th</sup> January, 2010)



**K. GEORGE JOSEPH**  
**ADMINISTRATIVE MEMBER**



**Dr. K B S RAJAN**  
**JUDICIAL MEMBER**