

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO.353/2009

Dated this the 13th day of April, 2010

C O R A M

**HON'BLE MR.JUSTICE K. THANKAPPAN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

T. P. Ayyappan
Lower Division Clerk
Central Excise Division-I
Palakkad.

..Applicant

By Advocate Mr. CSG Nair & Chandini G. Nair

Vs

- 1 Union of India represented by its
Secretary, Department of Revenue
Ministry of Finance, North Block
New Delhi-110 001
- 2 The Chief Commissioner of Central Excise
& Customs, Central Revenue Buildings
IS Press Road, Cochin-18
- 3 The Commissioner of Central Excise
& Customs, Central Revenue Buildings
IS Press Road, Cochin-18
- 4 The Commissioner of Central Excise
Central Revenue Buildings
Mananchira, Kozhikode.

Respondents.

By Advocate Mr. Sunil Jacob Jose, SCGSC

The Application having been heard on 1.4.2010 the Tribunal delivered the following:

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant, who is presently working as Lower Division Clerk in the Central Excise Division-I, Palakkad, seeks promotion as Tax Assistant w.e.f the date of passing the computer proficiency examination.

2 The applicant joined service as Sepoy on 1.7.1982 (A-1). According to him, 10% of the vacancies to the cadre of LDC is to be filled from Group-D employees through departmental examination consisting of three papers(A-2). The applicant appeared in the examination in 1987 but failed in Paper-III. He passed Paper-III in September, 1997 (A-4). The Recruitment Rules were amended in November, 2002(A-5), according to which, 100% vacancies are to be filled up by promotion - 50% by seniority and 50% by promotion of Sepoys/Havildars who possess Matriculation or equivalent qualification and rendered 5 years of service and qualifies in typing test. In the meanwhile, the applicant was promoted as Havildar in November, 2002. He was promoted as LDC along with others (A-6). He passed the computer proficiency test in December, 2003(A-7). When he was not promoted to the cadre of Tax Assistant, he submitted a representation (A-10) upon which he was reverted to the cadre of Havildar (A-11). He was again promoted as LDC on 19.2.2009 (A-12). As per the Tax Assistant Recruitment Rule 4 of the Rules 2003, he should have been promoted as Tax Assistant w.e.f the date of passing the computer proficiency examination. Hence, he filed this O.A for a direction to the respondents to promote him as Tax Assistant w.e.f. 2.12.2003 i.e. the



date of passing the computer proficiency examination, to consider him for further promotion on the basis of his notional seniority in the cadre of Tax Assistant. The main grounds urged are that he is eligible for promotion to the post of Tax Assistant as per the Recruitment Rules according to which all LDCs shall, on passing the departmental computer proficiency examination should be deemed to have been promoted w.e.f the date of passing such examination for the post of Tax Assistant, the order of the Tribunal in O.A. 175/2008, denial of promotion to him is violation of fundamental rights under Article 14 & 16, his reversion without notice after he had completed more than two years as LDC is illegal and that no further confirmation as LDC is required as he was a confirmed Sepoy.

3 The respondents filed a brief reply statement resisting the claim of the applicant. They admitted that the applicant was promoted as LDC in the seniority quota meant for Havildars but when it was noticed that he had passed the promotion examination in compartment only which was not permitted as per Rules he was reverted to the cadre of Havildar (R1). They submitted that the requirement of passing the examination in full has since been dispensed with prospectively.

4 The applicant filed rejoinder reiterating the stand that there is no stipulation in the rules that the employee should pass all the papers in full at a time. He drew attention to the Recruitment Rules relating to Inspector of Central Excise against 33 1/3% departmental quota wherein compartmental passing of the departmental examination is permitted. Moreover, he stated that the order dispensing with the requirement of passing examination in full at one go has not been

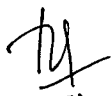
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produced.

5 We have heard the parties on either side.

6 The short question that come up for consideration are whether the reversion of the applicant from LDC to Havildar in 2005 is illegal and that he is entitled to be promoted to Tax Assistant from the date of passing the computer proficiency examination in December, 2003.

7 The applicant who joined as Sepoy in 1982, took the qualifying examination for promotion to LDC in 1987. As per the Recruitment Rules, 1979, 10% of vacancies to be filled up by direct recruitment, will be reserved for Group-D employees of the Department with Matriculation as educational qualification. Out of the 3 papers prescribed for the qualifying test, he failed in paper-III. He appeared for the test once again in 1997, after a long gap. The result, at A-4 shows that he did not get pass marks in Paper I but he passed in Paper III which he did not clear in 1987. While matters stood so, he was promoted as Havildar on 23.9.2002 and as LDC on 6.2.2003 vide A-6. The applicant passed the departmental examination for promotion to Tax Assistant from LDC, held on 2.12.2003. Since he was not promoted as Tax Assistant till 2005, while a few LDCs were being promoted, he represented vide A-10 dated 11.2.2005 and got reverted as Havildar vide A-11 dated 14.2.2005. In the reply statement, the respondents produced letter No. A-12034/172/85-Ad.III-B issued by the Central Board of Excise & Customs to the Principal Collector of Customs & Central Excise, Madras dated 11.2.1986 (Annexure R-1) which is extracted below to substantiate their action in reverting the applicant.



"Subject: Filling up of 10% vacancies in the LDC cadre reserved for educationally qualified Group-D employees-Instructions-regarding

Sir,

I am directed to refer to your letter C.No.II/31/3/84-Estt. Vol. II dated 4.10.85 on the above subject and to say that point(i) raised in para 3 of your letter under reference, has already been clarified vide Board's letter F.No.A-12034/114/85-Ad.III-B dated 24.12.85, addressed to Collector of Central Excise, Madurai and copy endorsed to all other Heads of Department of Excise & Customs. So far as point(ii) raised in para 3 of your letter, under reference, is concerned, the matter was taken up with the Department of Personnel & Training and they have observed as under:

"The qualifying examination for promotion of Group-D employees to the LDC grade cannot be cleared in parts."

The respondents have filed a very sketchy reply statement which is compelling us to make presumptions and assumptions hampering the process of adjudication, in the absence of required information.

8 When the applicant appeared for the LDC departmental promotion examination, under the 10% quota reserved for Group-D in 1987 and 1997, the recruitment rules of 1979 were in force. The A-6 order, when he was promoted as LDC reads as follows:

"The following Havildars/Sepoys are promoted to the cadre of Lower Division Clerk against the 50% examination quota prescribed under the Recruitment Rules in the pay scale of Rs. 3050-75-3950-80-4590 plus such allowances admissible with effect from the date they assume the charge of the higher post:

- 1 T.P.Ayyappan, Havildar
- 2 Joshua K.I. Havildar.....".

9 So, the Group-D officials who qualified in the test were waitlisted and promoted as and when vacancy arose giving due weightage to their seniority. The amended recruitment rules of 2002 A-5 made the entire recruitment to LDC by promotion from Group-D as against only 10% in the 1979 recruitment rules. The relevant portion is extracted below:



Method of recruitment whether by direct recruitment or by promotion or by deputation / absorption and percentage of posts to be filled by various methods.	In case of recruitment by promotion /deputation / absorption, grades from which promotion/ deputation absorption to be made.
<p style="text-align: center;">-11-</p> <p>100 per cent by promotion.</p>	<p style="text-align: center;">-12-</p> <p>(i) 50% per cent of the vacancies shall be filled up by promotion from amongst Havildars on the basis of seniority-cum-fitness who posses Matriculation or an equivalent qualification as per recognised Boards or University and have rendered 5 years regular service in the grade,without any age limit</p> <p>(ii) 50 per cent of vacancies shall be filled up by promotion from amongst Sepoys and Havildars who possess Matriculation or an equivalent qualification as per recognised Board or University and have rendered 5 years' of service in the grade of Sepoy Havildar and feeder cadres thereto on the basis of Departmental Qualifying examination with typing test with minimum speed of 30 words per minute in English type writing or 25 words per minute in Hindi typewriting</p> <p>Note: (a) The maximum age limit for eligibility for examination is 45 years (50 years for the Scheduled Caste/Scheduled Tribe)...</p>

10 So, the first presumption is the same panel of Group-D officials waitlisted for promotion to LDC, was operated upon and more officials promoted under the 50% departmental qualifying examination in 2003. The second presumption is that the applicant too was promoted as LDC by oversight, giving due credence to R-1 produced by the respondents. The latter has made a blank statement that Annexure R-1 has been since been dispensed with, retrospective effect. Since R-1 is issued in February, 1986 and the applicant has taken the qualifying examination prior to the amendment of recruitment rules in 2002, it is to be presumed that Annexure R-1 is applicable to the applicant. Also logically, if passing in compartment was permissible when the applicant took the examination in 1997, he should have been allowed to appear for only Paper-III in which he failed. Instead, he had to write all the three

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papers, once again in 1997 and then he failed in Paper-I. It is surprising that result of departmental promotion examination held in September, 1997 is not properly compiled and only names of those who have passed in the examination published for the information of candidates and entering in the service books by the third respondent. Annexure A-4 is endorsed to all Assistant Commissioners, CAO/PAO/etc and to pay Bill Section with a direction to make necessary entries in the service book. Among 21 candidates including the applicant who were issued hall tickets, majority of them absented and only a single candidate has passed in all the three papers. Not to publish the result of an examination especially when passing in parts is not permitted is a totally unacceptable administrative practice besides being bad in law. Why this exercise in futility was attempted at A-4, showing "passed" and failed for each subject, if the official is expected to clear all the papers in one stretch? The counsel for the respondents was not able to enlighten us, in any of these aspects.

11 Let us examine the issue of reversion of the applicant. The applicant submitted that no reason is mentioned in Annexure A-11 order for his reversion. The applicant was promoted vide Annexure A-6 dated 6.2.2003. It is seen from the above order that the applicant along with five others were promoted to the cadre of Lower Division Clerks against the **50% examination quota** prescribed under the new Recruitment Rules 2002. No reason has been stated in the reversion order. In the reply statement, the respondents submitted that:

".....It is true that the applicant was promoted as LDC vide order dated 16/2/09 in the **seniority quota** meant for Havildars with 5 years of service in the grade. But, on a subsequent examination, it was found that the applicant has passed the promotion examination to the LDC cadre in compartment only, which was not permitted as per Rules prevailing at that time. Hence the applicant was reverted to the cadre of Havildar."



The applicant was promoted as LDC on 16.2.2009 under the 50% seniority quota and not under the 50% examination quota under the Recruitment Rules 2002.

12 We further find that neither notice was given to the applicant before the reversion order was issued nor any reason was given in the order reverting him. It is the basic principle of natural justice that a person is heard before an order adversely affecting him is issued. No such notice is seen to have been issued in this case. Moreover, the respondents submitted that the stipulation of passing the examination at a stretch was dispensed with prospectively but they have not produced any order. They could not have done so, without the approval of Department of Personnel & Training, it is presumed since the matter was referred to DOPT for clarification in 1986.

13 What emerges from the above is that the applicant who qualified the departmental examination in compartment was promoted to the post of LDC under examination quota by an oversight. But his reversion after two years without giving any reason whatsoever, when he represented for further promotion, is against the basic principles of natural justice. However, the applicant has not challenged the reversion order in this O.A. In that view of the matter, we are not quashing the reversion order.

14 The learned counsel for the applicant has relied on the judgments of this Tribunal in O.A. 433/2009 and O.A. 320/2009 and contended that he is identically situated like the applicants in those cases and sought reliefs allowing the O.A. The case of the applicants in

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that O.A were that, they were entitled to promotion from the date of passing the computer proficiency test whereas, the case of the applicant on hand though it looks identically situated is not so. The applicant in the case on hand has been reverted unlike the applicants in O.A. 433/09 and other case. In view of the finding in para 8, we do not find that the applicant is similarly situated like the applicant in O.A. 433/09 and 320/2009.

15 The appointment of the applicant to the post of LDC itself was cancelled which has not been challenged and hence it has become valid. In this view of the matter, none of the reliefs sought by the applicant can be granted. The application is therefore dismissed. No costs..

Dated 13th April, 2010.


K. NOORJEHAN
ADMINISTRATIVE MEMBER


JUSTICE K. THANKAPPAN
JUDICIAL MEMBER

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