

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 404 OF 2011

Friday, this the 23rd day of November, 2012

CORAM:

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

P.K. Sasindran,
Senior Tax Assistant,
Office of the Commissioner of Excise & Customs,
Central Revenue Buildings, Mananchira,
Kozhikode – 673 001. ... **Applicant**

(By Advocate Mr.C.S.G. Nair)

versus

1. Union of India represented by its Secretary,
Department of Revenue,
North Block, New Delhi – 110 001.
2. Chairman, Central Board of Excise and Customs,
North Block, New Delhi – 110 001.
3. Chief Commissioner of Central Excise and Customs,
Central Revenue Buildings, I.S. Press Road,
Cochin – 682 018.
4. Commissioner of Central Excise and Customs,
Central Revenue Buildings, I.S. Press Road,
Cochin – 682 018.
5. Commissioner of Central Excise and Customs,
Central Revenue Buildings,
Mananchira, Calicut – 673 001.
6. M.A. Williams, Inspector of Central Excise,
Office of the Commissioner of
Central Excise and Customs, Central Revenue Buildings,
I.S. Press Road, Cochin – 682 018.
7. A.K. Hariprasad, Inspector of Central Excise,
Office of the Commissioner of Central Excise and
Customs, Central Revenue Buildings,
I.S. Press Road, Cochin – 682 018.
8. K. Jinesh, Inspector of Central Excise,
Office of the Commissioner of Central Excise and
Customs, Central Revenue Buildings,
I.S. Press Road, Cochin – 682 018.

9. Rakhi Nair, Inspector of Central Excise,
Central Excise Divisional Office,
Varinjam Towers, Residency Road,
Kollam – 691 001.
10. K.S. Ajithakumari, Inspector of Central Excise,
Central Excise Divisional Office,
Varinjam Towers, Residency Road,
Kollam – 691 001.
11. K.K. Miraj, Inspector of Central Excise,
Central Excise Division,
Sakthan Thampuran Nagar,
Trichur – 680 001.
12. V.L. Shibu, Inspector of Central Excise,
Office of the Commissioner of Central Excise,
ICE Bhavan, Press Club Road,
Thiruvananthapuram – 695 001.
13. Lijin K. Kamal, Inspector of Central Excise,
Office of the Commissioner of Central Excise
and Customs, Central Revenue Buildings,
I.S. Press Road, Cochin - 682 018.
14. T.S. Santhosh, Inspector of Central Excise,
Office of the Commissioner of Central Excise
and Customs, Central Revenue Buildings,
I.S. Press Road, Cochin – 682 018.
15. K.K. Priya, Inspector of Central Excise,
Office of the Commissioner of Central Excise
and Customs, Central Revenue Buildings,
Mananchira, Calicut – 673 001.

Respondents

(By Advocate Mr. S. Jamal, ACGSC)

The application having been heard on 23.11.2012, the Tribunal on the same day delivered the following:

ORDER

HON'BLE Mr. JUSTICE P.R.RAMAN, JUDICIAL MEMBER

The applicant at the time of filing the OA was a Senior Tax Assistant under the 5th respondent. He is an Ex-serviceman. The next promotion is to the post of Inspector of Central Excise. He claims promotion to the post of Inspector. Even though he would contend that ex-serviceman has got relaxation in the matter of age for promotion, this is denied by the

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respondents. We have carefully gone through the relevant provisions contained in the Ex-servicemen rule for re-employment. We are satisfied that there is no relaxation of age in the matter of promotion. It is only on initial engagement / appointment that such a relaxation is available. Further, the Inspectors post is included in the Group 'B' category and Recruitment Rules are yet to be amended. Therefore, on that score, the applicant cannot claim any relief. However, the applicant had an alternate contention that as per Recruitment Rules what is provided for by way of relaxation is to pass the examination and not for promotion. A copy of the relevant Recruitment Rules, Annexure A-10 is produced in this regard. The method of Recruitment Rules, age, qualifications vide Sl.No.3 are those specified in Columns 5 to 14 of the said schedule. For the post of Inspector (Central Excise) one of the qualifications prescribed for promotion is Senior Tax Assistant with two years regular service in the grade. Applicant has the necessary qualification as prescribed. However, in the matter of qualification in Note 2, Column 12 it is specified as follows:-

"Note: 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 relaxable to 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 to 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."

2. On a plain reading of the above note it could be seen that a test is a must for promotion for Inspector. There is an age limit within which one should pass the examination, i.e relaxation in age limit upto 50 years in order

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to enable a fair opportunity of a minimum of two chances. Thus, it is silent regarding the age within which promotion should be made but only prescribes age limit for the relaxation in the matter of appearing for the examination. But, the Department took the stand that as per Note 2, if a person is not promoted for any reason before completing the age of 50 years of age by virtue of Note 2, he will not be entitled for promotion by that note. This stand taken by the Department has since been challenged and questioned before the Chandigarh Bench in OA 202/09. As per order dated 17.03.2010, the Tribunal held that :

"It is evident from these rules that there is no age bar limit for the purpose of consideration of the candidates for promotion to the post of Inspector and in our considered opinion, this age limit is provided for the purpose of appearing in the written test as may be determined by the Central Board of Excise and Land Customs from time to time. The intention of the legislature is very clear for the simple reason that if some age limit was to be provided for considering the case of the officials for the said promotion, it would have been provided in the rules itself, but a simple 'note' for the purpose of clarification has been added to give maximum age limit of eligibility for the departmental candidates to appear in the examination and he is allowed only two chances for the purpose.

Further, in para 7 of the order it is stated as follows:

"It has also been specially provided under the same column note 5 (supra) that if juniors who have completed their qualifying or eligibility service are being considered for promotion, their seniors are also to be considered provided they are not short of the requisite qualifying or eligibility service by more than half of such qualifying or eligibility service or two years, whichever is less and have successfully completed their probation period for promotion to the next higher grade along with his juniors who have already completed such qualifying or eligibility service. The claim of the applicant is further finds support from the fact that one Shri Angad Kumar, whose date of birth is 18.09.1957, has been promoted for the recruitment year of 2007-08 and had there been a maximum age limit of 50 years for the purpose, he would not have been promoted as on 01.01.2007. The applicant has already qualified the test in 1998 for the post of Inspector and at that time he was 49 years of age, it is Further held that respondents have misconstrued the provisions of the Rules and rejected

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the claim of the applicant on flimsy grounds. Therefore, impugned order of ejection of his claim is quashed and set aside."

3. We are in agreement with the above view of the Chandigarh Bench of the Tribunal. However, it is not necessary to make a declaration sought for. During the pendency of the OA, the applicant has been promoted based on the decision of the Chandigarh Bench as referred to supra. It is contended that the applicant is entitled for retrospective promotion from the date on which his junior was promoted, we are leaving open the question for enabling the applicant to make a representation in this behalf to the proper authority whereupon the authority will consider and dispose of the same in accordance with law. Such representation shall be made within three weeks and the same shall be disposed of within two months therefrom.

4. OA is disposed of as above. No costs.

(Dated, the 23rd November, 2012.)


K GEORGE JOSEPH
ADMINISTRATIVE MEMBER


JUSTICE P.R.RAMAN
JUDICIAL MEMBER

vs