

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

FRIDAY THIS THE 1ST DAY OF FEBRUARY, 2002.

CORAM : HON'BLE SHRI JUSTICE BIRENDRA DIKSHIT, VICE CHAIRMAN.  
HON'BLE SMT. SHANTA SHASTRY, MEMBER (A).

ORIGINAL APPLICATION NO.501 OF 2000.

Shri M.S. Kadam

working as Tax Assistant in the Office of  
Commissioner of Central Excise, Mumbai.  
Residing at Building No.56, Room No.2350,  
B-Wing, 4th floor, C.G.S. Colony,  
Antop Hill, Mumbai - 400 037.

...Applicant

( By Advocate Shri G.K. Masand )

V/s.

1. Union of India through  
the Secretary in the  
Ministry of Finance,  
Department of Revenue,  
New Delhi.

2. Commissioner of Central Excise  
Mumbai-1, Maharshi Karve Road,  
Churchgate, Mumbai - 400 020.

3. Commissioner of Central Excise  
Mumbai-V (Tribunal Section),  
Utpad Shulk Bhavan, Plot No.C-24,  
Sector No.E, Bandra (East),  
Mumbai - 400 051.

...Respondents.

( By Advocate Shri M.I. Sethna )

O R D E R (ORAL)

( PER : JUSTICE SHRI BIRENDRA DIKSHIT, V.C.)

During the course of arguments, that the State action is in violation of Articles 14 & 16 of Constitution of India, It was pointed out to Mr. G.K. Masand, appearing for applicant, that applicant has neither challenged validity of relevant rule in pleading nor any ground has been taken to that effect. On marking the above deficiency Mr. Masand without proceeding further with his arguments requested for amending O.A. for challenging the Note appended at the end of Item 2 of Schedule to the Central Excise and Land Customs Department Group 'C' Posts Recruitment Rules, 1979 by which Power is conferred on Central Board of Excise and Customs.

*B. Masand*

...2...

The note under challenge reads as follows :

"Candidates will be required to possess such physical standard and pass such written test and confirm to such age limits as may be specified by the Central Board of Excise and Customs from time to time."

During the course of arguments, Mr. Masand contended that whether these Rules have been amended or not it also to be checked as Mr. V.D. Vadhavkar, Counsel for the respondents expressed his inability to give any information on the point of amendment of rules. Even Departmental representative assisting him could not tell.

Mr. G.K. Masand, on instructions from his client, at this stage requested that the applicant may be permitted to withdraw this O.A. with permission to file fresh O.A. We are allowing the request to file fresh O.A. as prayed for but that respondent is to be compensated by Rs.2,000/- as cost. The cost is to be paid to Union of India through Respondent No.2 viz. the Commissioner of Central Excise, Mumbai-1.

O.A. is dismissed as withdrawn with liberty to approach this Tribunal with fresh O.A. subject to payment of aforesaid cost of Rs.2,000/- before filing O.A.

*Shanta Shastri*

( SMT. SHANTA SHASTRY )  
MEMBER (A)

*Birendra Dikshit*

( BIRENDRA DIKSHIT )  
VICE CHAIRMAN

ssg.