

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: MUMBAI

ORIGINAL APPLICATION NO.619 & 685/2001

Date of Decision: 31.05.2002

Shri d.B. Shimpi & anr.

Applicant(s)

Shri S.P. Saxena.

Advocate for applicants

Versus

Union of India & others

Respondents

Shri V.D. Vadhavkar for Shri M.I. Sethna. Advocate for Respondent

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

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?
- (3) Library ✓

Shanta
(SMT. SHANTA SHASTRY)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 619/2001 & 685/2001

THIS THE 31st ~~THE~~ DAY OF MAY, 2002

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

O.A. NO. 619/2001

D.B. Shimpi,
Tax Assistant, Tech. Section,
Office of Central Excise Commissioner,
M.K. Road, Bombay-20.

.. Applicant

By Advocate Shri S.P. Saxena

Versus

1. Union of India
through the Secretary,
Ministry of Finance,
Dept. of Revenue, Central Board of
Revenue, Central Board of Excise &
Customs, New Delhi-110 011.
2. The Chief Commissioner of
Central Excise, Western Zone,
Churchgate, Bombay-20.
3. The Commissioner, Cadre Controlling
Authority, Central Excise Building,
(Bombay-IV) Ranade Road, Dadar,
Bombay-28.
4. The Commissioner of Central Excise
and Customs, Pune-1.
5. T.L. Jagadale, Inspector of Central
Excise, Office of Commissioner,
Central Excise, Bombay-I,
Churchgate, Bombay-20.
6. Mrs. R.B. Jogdand,
Inspector of Central Excise,
Office of Commissioner of Central
Excise, Aurangabad, N-5, Town Centre,
Aurangabad-3.
7. Mrs. T.A. Tandel,
Inspector of Excise, Office of
Commissioner of Central Excise, M-III,
Ranaday Road, Dadar, Bombay-28.
8. Mrs. Meeta P. Pandya,
Inspector of Excise, Office of
Commissioner of Central Excise, M-III,
Ranaday Road, Dadar, Bombay-28.

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9. B.B. Yelmeli,
Inspector of Central Excise,
Office of Commissioner of Central
Excise, Mumbai-II, Pirmal Chambers,
Parel, Bombay-12.
10. Smt. Anita P. Mada,
Inspector of Central Excise,
Office of Commissioner of Central Excise,
Mumbai-II, Pirmal Chambers,
Parel, Bombay-12.
11. Smt. L.R. Pillai,
Inspector of Central Excise,
Office of Commissioner of Central Excise,
Mumbai-V, C.G.O. Complex,
Bandra (E), Mumbai-400 051.
12. A.P. Hingorani,
Inspector of Central Excise,
Office of Commissioner of Central Excise,
Mumbai-V, C.G.O. Complex,
Bandra (E), Mumbai-400 051.
13. Smt. Beena Abhichandani,
Inspector of Excise, Central,
Office of Commissioner of
Central Excise, M-III, Ranaday Road,
Dadar, Bombay-28.
14. Mrs. Bhavana Deshpande,
Inspector of Ventral Excise,
Office of Commissioner of Central
Excise, aurangabad N-5, Town Centre,
Aurangabad-3.
15. Ajaykumar Singh,
Inspector of Central Excise,
Office of Commissioner of Central
Excise, Mumbai-II, Pirmal Chambers,
Parel, Bombay-12.
16. Shridhar Kulkarni,
Inspector of Central Excise,
Office of Commissioner of Central
Excise, M-I. M.K. Road, Mumbai-20.
17. S.D. Kadam,
Inspector of Central Excise,
Office of Commissioner of Central
Excise, M-I, M.K. Road, Mumbai-20.
18. R.B. Nair,
Inspector of Excise, Office of
Commissioner of Central Excise,
M-III, Ranaday Road, Dadar, Bombay-28.
19. Ssmt. T. Johnson,
Inspector of Excise, Office of
Commissioner of Central Excise,
M-III, Ranaday Road, Dadar, Bombay-28.

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20. K.G.R. Nair,
Inspector of Central Excise,
Office of Commissioner of
Central Excise, Mumbai-II,
Pirmal Chambers, Parel, Bombay-12.
21. T.R. Nair,
Inspector of Central Excise,
Office of Commissioner of
Central Excise, M-I, M.K. road,
Mumbai-20.
22. Smt. J.K. Cheri,
Inspector of Excise, Office of
Commissioner of Central Excise,
M-III, Ranaday Road, Dadar,
Bombay-28.
23. M.D'Souza,
Inspector of Central Excise,
Office of Commissioner of
Central Excise, M-I,
M.K. Road, Mumbai-20.
24. Smt. Sujata Vaidyanathan,
Inspector of Excise, Office
of Commissioner of Central Excise,
M-III, Ranaday Road, Dadar,
Bombay-28.

... Respondents

By Advocate Shri V.D. Vadhavkar for Shri M.I. Sethna.

O.A. NO. 685/2001

U.D. Nandedkar,
Tax Assistant,
Office of Excise Commissioner,
Mumbai-VI, Thana.

... Applicant

By Advocate Shri S.P. Saxena

Versus

1. Union of India
through the Secretary,
Ministry of Finance,
Dept. of Revenue, Central Board of
Revenue, Central Board of Excise &
Customs, New Delhi-110 011.
2. The Chief Commissioner of
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3. The Commissioner, Cadre Controlling
Authority, Central Excise Building,
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4. The Commissioner of Central Excise
and Customs, Pune-1.

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5. T.L. Jagadale, Inspector of Central Excise, Office of Commissioner, Central Excise, Bombay-I, Churchgate, Bombay-20.
6. Mrs. R.B. Jogdand, Inspector of Central Excise, Office of Commissioner of Central Excise, Aurangabad, N-5, Town Centre, Aurangabad-3.
7. Mrs. T.A. Tandel, Inspector of Excise, Office of Commissioner of Central Excise, M-III, Ranaday Road, Dadar, Bombay-28.
8. Mrs. Meeta P. Pandya, Inspector of Excise, Office of Commissioner of Central Excise, M-III, Ranaday Road, Dadar, Bombay-28.
9. B.B. Yelmeli, Inspector of Central Excise, Office of Commissioner of Central Excise, Mumbai-II, Pirmal Chambers, Parel, Bombay-12.
10. Smt. Anita P. Mada, Inspector of Central Excise, Office of Commissioner of Central Excise, Mumbai-II, Pirmal Chambers, Parel, Bombay-12.
11. Smt. L.R. Pillai, Inspector of Central Excise, Office of Commissioner of Central Excise, Mumbai-V, C.G.O. Complex, Bandra (E), Mumbai-400 051.
12. A.P. Hingorani, Inspector of Central Excise, Office of Commissioner of Central Excise, Mumbai-V, C.G.O. Complex, Bandra (E), Mumbai-400 051.
13. Smt. Beena Abhichandani, Inspector of Excise, Central, Office of Commissioner of Central Excise, M-III, Ranaday Road, Dadar, Bombay-28.
14. Mrs. Bhavana Deshpande, Inspector of Ventral Excise, Offrifice of Commissioner of Central Excise, aurangabad N-5, Town Centre, Aurangabad-3.
15. Ajaykumar Singh, Inspector of Central Excise, Office of Commissioner of Central Excise, Mumbai-II, Pirmal Chambers, Parel, Bombay-12.

16. Shridhar Kulkarni,
Inspector of Central Excise,
Office of Commissioner of Central
Excise, M-I. M.K. Road, Mumbai-20.
17. S.D. Kadam,
Inspector of Central Excise,
Office of Commissioner of Central
Excise, M-I, M.K. Road, Mumbai-20.
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Commissioner of Central Excise,
M-III, Ranaday Road, Dadar, Bombay-28.
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21. T.R. Nair,
Inspector of Central Excise,
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Mumbai-20.
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Commissioner of Central Excise,
M-III, Ranaday Road, Dadar,
Bombay-28.
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Inspector of Central Excise,
Office of Commissioner of
Central Excise, M-I,
M.K. Road, Mumbai-20.
24. Smt. Sujata Vaidyanathan,
Inspector of Excise, Office
of Commissioner of Central Excise,
M-III, Ranaday Road, Dadar,
Bombay-28.

... Respondents

By Advocate Shri V.D. Vadhavkar for Shri M.I. Sethna.

ORDER

[Per: Smt. Shanta Shastri, Member (A)]

The issue and law point involved in these 2 O.As is common, the facts are also similar, and the advocates for the applicant as

well as the respondents are also the same in both the cases. We are, therefore, proceeding to decide ^{the} matter by a common order.

O.A.No.619/2001:

2. The applicant is a civilian Group 'C' employee working as Tax Assistant in the office of Commissioner of Central Excise, Mumbai VI. He was initially appointed as LDC on 1.6.1984. Thereafter he was promoted to the post of UDC in September, 1991. He passed the Departmental Examination (Inspectors) conducted by the respondents in April, 1994. He was further promoted to the post of Tax Assistant in December, 1994. The next promotion is to the post of Inspector (Ordinary Grade) of Excise. The promotion to the post of Inspector is by "Selection method", according to the Recruitment Rules. According to the Central Excise and Land Customs Department Group C Posts Recruitment Rules 1979, the quota for Inspectors' post between direct recruitment and promotees is 75:25. The feeder posts for promotion to the post of Inspector are UDC, Stenographers Senior Grade, Draughtsman and Women Searchers. A combined seniority list of all the Tax Assistants from feeder posts is prepared for purposes of promotion out of the 25% quota. In this combined seniority list of Tax Assistants as on 1.1.1999, the applicant was at serial No.70 whereas the respondents No.4 to 23 were listed below ^{the} applicant between Serial No.75 to 140. Thus, they were junior to the applicant. The candidates for promotion to the post of Inspector are also required to pass such physical standards and pass such written tests and physical tests and conform to such age limit as may be specified by the Central Board of Excise and Customs from

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time to time. Accordingly, the respondents issued a letter on 18.12.1989 giving instructions regarding awarding of marks and written tests etc. A further letter was issued on 11.7.1990 giving clarifications. Subsequently by another letter of 9.5.1991, the selection procedure contained in the letter dated 18.12.1989 was modified. Keeping these Recruitment Rules in mind a DPC was held to fill up the post of Inspectors and Central Excise in 1996. The applicant along with many others was considered for promotion to the post after having undergone physical test. However, he was not promoted by the DPC although one Mrs. S.K. Kondnani was promoted.

3. The applicant has submitted that no DPC was held for the year 1997 and 1998. Only direct recruits were appointed. In the meantime the selection process was again modified and fresh instructions were issued on 17.2.1999. According to this, the candidates could be considered for promotion to the post of Inspector, upto the maximum age limit of 38 years, relaxable upto 40 years in the case of backward class candidate. Further, those officials who were not considered for such promotion upto the age of 38/40 years were to be granted the benefit of relaxation in age limit up to 45 years to enable them to have an opportunity of minimum of 2 chances, but those who were considered for promotion upto 38 to 40 on 2 or more occasions were not to be eligible for relaxation in the age limit. This revised procedure came into effect from 1.4.1999.

4. The applicant states that the respondents issued two orders on 22.3.1999 and 75 employees were promoted to the post of Inspectors on regular basis by the orders. The name of the applicant however, did not appear in any of these orders.

Whereas his juniors i.e. Respondent No.4 to 23 were promoted. The respondents in the second order issued on the same date promoted nineteen persons on ad hoc basis. But the applicant's name was not included even for ad hoc promotion. The applicant, therefore, submitted a representation on 29.4.1999, regarding his non promotion. The respondents replied to the applicant by the impugned letter dated 16.9.1999. The applicant again submitted another representation on 20.12.1999, followed by a reminder on 5.5.2000. He was again informed by the respondents vide impugned letter dated 4.10.2000, that his representation was found to be devoid of merits. Being aggrieved the applicant has approached this Tribunal.

5. The respondents submit that the applicant was considered once by the DPC in 1996. But was not found fit in the DPC held on 9th and 10th October, 1996. The respondents admit that no DPC could be held till ⁴3.2.1999. The DPC was held on 3.2.1999 for the vacancies of the year 1997-98. Once again the applicant could not find place in the Select List.

6. The respondents contend that the Ministry had issued a Circular on 28.7.1978 clarifying that the Ministerial Officers can avail themselves of as many chances as possible upto the age of 38 years for promotion to the post of Inspector. Earlier vide circular dated 6.10.1975 it had been clarified that officials who were either not considered for such promotion in the normal course or if they were considered and approved for promotion but could not be promoted due to non availability of vacancies they may be given 2 additional chances for consideration for promotion in the normal course so long as they were below 45 years of age. In view of this, the officers who had been considered in the past

and were found unfit more than once are not eligible for this concession. It was also clarified that such ministerial officers will be allowed instead 2 chances upto 45 years for the purpose of promotion to the executive grade.

7. The respondents have also drawn our attention to a Note below Col.12 in the Recruitment Rules of the post of Inspector, wherein it is stated that the candidates will be required to possess such physical standards and pass such written test and physical test and conform to such age limits as may be specified by the Central Board of Excise and Customs from time to time. In view of this, since the respondents had earlier issued letter dated 6.10.1975 (at page 68) about the age limit of 38 years the respondents' action, in not considering the applicant for promotion after he had attained the age of 38, is justified.

8. The respondents submit that the applicant had attained the age of 38 years as on 24.9.1997, and he had been considered twice for promotion by the DPCs held on 9th and 10th October, 1996 and on 3.2.1999 for the vacancy years 1996-97 and 1997-98 respectively before he attained the age of 38 years. Therefore, the question of giving him any additional chance for the year 1998-99 and subsequent DPCs did not arise.

9. The applicant contends that if the DPC had been held in 1997 and 1998, the applicant being below 38 years of age, would have got two additional chances for being considered for promotion. The fault is of respondents in not holding the DPC in 1997 and in 1998. Further the revised instructions of 1999 are applicable only w.e.f 1.4.1999 and they would ^{not} have any effect on the selection procedure followed by the DPC for 1997 and 1998 vacancies. The applicant also contends that he was never

informed of any adverse report or any other reasons as to why he was not selected for the post of Inspector. The applicant therefore has sought to quash and set aside the impugned orders promoting the Respondents Nos 4 to 23 and to direct the respondents to hold separate DPCs for the vacancies^{of} each of the years of 1997-98 and 1999 as per Rules and to consider the applicant for promotion to the post of Inspector of Excise against the vacancies of each year as per the DOPT guidelines dated 10.4.1989 and to grant him promotion from the date from which his junior was promoted with all consequential benefits with interest due thereon.

10. The learned counsel for the applicant has taken us through the relevant Recruitment Rules of 1979. Under the Recruitment Rules for the post of Inspector (Ordinary Grade) in Col.7 the age for direct recruits has been prescribed as 20 to 25 years, relaxable upto 35 years in the case of Govt. Servants who have ~~be~~ put in minimum 3 years service in the Department. In Col.9 on whether age and educational qualification as prescribed for direct recruits will apply in the case of promotees it has been said "No". The learned counsel for the applicant argues that the age limit does not apply in the case of promotees and therefore, applicant should have been considered for promotion for the vacancies of 1997-98 as well as 1999 as no age limit is there for promotees. The applicant further submits that he was fully qualified and eligible according to the DOP&T guidelines of 10.4.1989, the Bench Mark for Group "C" post is "Good". The written departmental examination is to be passed only once. The respondents adopted a marking system as per letter dated 9.5.1991^h (page 35 of the OA). Those with "Very Good" assessment cannot

overtake the applicant even though it may be a Selection post. He further contends that the age limit of 38 years should be for all. Otherwise it is discriminatory. In the DOPT guidelines there is no scope for interview at all. According to the applicant even the instructions contained in the letters dated 6.10.1975 and 1978, will not hold good when the rules have been framed in 1979. Further, the DOP&T OM has to be observed as it is common to all the Ministries and Departments. The learned counsel for the applicant is relying on the judgement in *Rajinderkumar Gaur vs. State of Rajasthan 2002 (1) SLJ Jodhpur CAT 317*. According to the applicant by restricting the consideration for promotion to 2 (two) chances upto 38 years is not sound and rationale. The applicant has been ignored even for ad hoc promotion. In the light of this, according to the applicant he ought to have been cleared for promotion.

11. The respondents reiterated their arguments and stated that they have gone strictly according to the Rules and available instructions and therefore, the applicant's non promotion is justified.

O.A.No.685/01:

12. As already pointed out the facts are similar as indicated in the case of the applicant in O.A. No.619/01. The applicant in this O.A. is junior to the applicant in O.A.No.619/01. The same arguments were advanced on behalf of the applicant as well as the respondents in this present application.

13. We have heard learned counsel for the parties and have given careful consideration to the pleadings. We have also perused the Recruitment Rules and the various circulars relied

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upon by the applicants as well as Respondents. The learned Counsel for the Respondents had been directed to produce the Original File. Respondents have accordingly produced the original records. In another case, the Central Excise and Land Customs Department Group C posts Recruitment Rules, 1979 as amended upto 31.3.1992 have also been produced. These are taken on record. In these Recruitment Rules, there is no Note, under Col.12 as was included in the earlier version of the Recruitment Rules, at page 19 of the O.A. We, therefore, have to take the amended Recruitment Rules into consideration, as the applicants' case was considered in 1996, and in 1999. Since this Note is missing in the amended Recruitment Rules, there cannot be any age limit as far as promotees are concerned, and therefore, the applicants would be entitled to be considered for promotion even beyond the age of 38 years for the vacancies which arose in 1997, 1998 and even in 1999 prior to 1.4.1999. We hold, therefore, that the action of the respondents in denying further chance for promotion to the applicants beyond the age of 38 years is not justified and therefore a Review DPC for the years 1997 and 1998 vacancies is required to be held for considering the applicants for promotion to the post of Inspector of Central Excise (Ordinary Grade).

13. The applicants have also questioned their non selection by the DPC held in 1999. According to the applicants, the respondents failed to adhere to the guidelines prescribed by the DOP & T which are the General Guidelines. Instead the respondents have resorted to a marking system which is not correct. In fact, the marking system introduced on 18.12.1989 had been struck off earlier.

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14. Also the Bench Mark being "Good" for the post, even if somebody got "Very Good" that person could not supersede the person with good assessment. We have seen the original record. The respondents have allowed marks for the Annual Confidential Reports as well as for the interview. In the case of the applicant in O.A. No.619/01, he secured 60 marks for the ACRs and 10 marks for the interview, altogether he got 70 marks which no doubt amounts to a 'Good' Assessment. The other applicant got 70 marks for the ACRs and only 5 marks for the interview. Thus both were not selected for promotion. Although this system was followed in respect of all the candidates, there is some force in the applicants' arguments that since the Bench mark was only "Good" ^{they} ~~they~~ ought to have been considered for promotion. However, this is a selection post and therefore, better merit would prevail even though the Bench Mark may be only "Good". Therefore, we do not consider it advisable to interfere with the Assessment done by the DPC, as the procedure has been followed uniformly in respect of all the candidates.

15. In view of the discussion above, we hold that the applicants in both the above O.As are entitled for consideration for promotion to the post of Inspector even after attaining the age of 38 years till the new instructions issued on 17.2.1999 ^{became} ~~became~~ effective from 01.4.1999. Therefore, the respondents are directed to convene a Review DPC for the vacancies of 1997 and 1998 and consider both the applicants for promotion, and if selected the applicants shall be promoted from the dates their juniors were promoted with all consequential benefits. This exercise be carried out within a period of 3 months from the date of receipt of a copy of this order.

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16. In the facts and circumstances, both the O.As are partly allowed. We do not order any costs.

Shanta S-

(Smt. Shanta Shastri)
Member (A)

Birendra

(Birendra Dikshit)
Vice -Chairman

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Order/Judgement despatched
to Applicant/Respondent (s)
on *24/5/52*

dl 31/5/52
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to Applicant/Respondent (s)
on *24/5/52*

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