

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH 'GULESTAN' BUILDING NO:6
PRESCOT ROAD, BOMBAY:1

Original Application No. 190/93, 191/93 and 192/93

11th the Friday day of March 1997.

CORAM: Hon'ble Shri B.S. Hegde, Member (J)

Hon'ble Shri P.P. Srivastava, Member (A)

M.S.H. Kazi
General Secretary
Central Excise & Customs,
Collectorate Class III
Driver's Association
52/2135/VII, C.G.S. Colony
Antop Hill
Bombay.

V.D. Kharat
52/2135/VII
C.G.S.Colony,
Antop Hill,
Bombay.

... Applicants in
O.A. 190/93.

Vijay Janu Gaikawad
General Secretary,
Central Excise & Customs
Collectorate, Group 'D'
Officers Union
Bombay -II

Having their office at
Piramal Chambers, 8th floor
Room No.806, Jijibhai Lane,
Lalbaug, Parel,
Bombay.

Sudhir Arjun Keer,
House No.105 G.S.M.
Behind Golfadevi Temple Road,
Worli Koliwada,
Bombay.

... Applicants in
O.A. 191/93.

A.Subramanyam
President,
Central Excise & Customs
Tele-communication Staff Association
Block No.14, Sector A
C.G.S. Colony,
Bhandup (E)
Bombay.

D.A. Rahate,
Shah Chawl,
Opp. Mamta Apartment,
Near Railway Station,
Ulhasnagar
Dist. Thane.

... Applicants in
O.A. 192/93.

By Advocate Shri J.G. Gadkari.

V/s.

Union of India
represented by the Secretary
Ministry of Finance,
Department of Revenue
North Block,
New Delhi.

Chairman
Central Board of
Excise & Customs,
North Block
New Delhi.

... Respondents in
all O.As.

By Advocate Shri Wadhavkar for Shri M.I. Sethna.

ORDER

{ Per Shri B.S. Hegde, Member(J) }

Heard counsel for the parties. As the issues raised in these O.As are identical they are disposed of by a common order.

2. The applicants in these O.As are challenging the Constitutional validity of Recruitment Rules 1979 relating to recruitment to the post of Inspectors by promotion as it restricts the promotional avenues only to Upper Division Clerk, Tax Assistants, Stenographers, Women Searchers and Draftsmen, excluding Motor Vehicle Drivers. The contention of the applicants is that though they possesses equal educational and other qualifications such as physical fitness, their services were not included in the feeder category for the purpose of promotion to the post of Inspectors. Therefore, they contend that the Rule did not give equal opportunity to Motor Vehicle Drivers and thus violative of Article 14 and 16 of the Constitution. It is true, that the promotional avenue to the post of Inspector is open only to Upper Division Clerk, Stenographers, Draftsmen, Women Searcher with five years service on their passing written test

and physical fitness. The educational qualification for the post of Inspector is Degree from a recognised University or equivalent. The duties of Motor Vehicle Drivers are used for preventive and anti-smuggling activities of the department and they participate in the said work, alongwith their officers. Many of them have received awards for actually participating in and are being instrumental in detecting the cases and participating in the raids etc, nevertheless there is no promotional avenue to Motor Vehicle Drivers but the U.D.Cs and others have been given better opportunities.

3. On the other hand the respondents in their reply submitted that the main grievance of the applicants in these O.As are that they have no promotional avenue thus challenging the recruitment rules for promotion to the post of Inspector in which under the feeder cadre of category of Motor Vehicle Driver has not been included. The respondents however submitted that the Tribunal cannot give directions for amending the recruitment rules or direct the department to adopt a particular mode for giving promotion in the earlier O.A. 170/89 decided on 26.6.91. The Tribunal in that O.A. has observed that it cannot amend the recruitment rule. However, they direct the respondents to consider the prayer of drivers and amend the rules if necessary. It is for the department to make necessary rules in this regard obviously without giving any relaxation in respect of eligibility criteria as compared to others. Pursuant to the direction issued by the Tribunal in O.A. 170/89 the respondents have introduced a further higher grade, applicable to the drivers after their reaching

the maximum of present grade. The initial grade of Rs. 950 - 1500. Further promotion to the grade of Rs. 1200 - 1800 and further promotion to the grade of Rs. 1320 - 2040. So far as the post of Inspector is concerned the grade is Rs. 1640 - 2900. Therefore, the question of comparing to that of Inspector is not justified. The promotion is 75 % by direct recruitment and 25 % by promotion. UDCs with 5 years experience, UDCs with 13 years of total service as UDC and LDC, Stenographers (Senior Grade) with two years experience and total 12 years service. Women Searcher with 7 years service. Similarly the case of Draftsman. Therefore, the learned counsel for the respondents firmly urged that challenging the question of equating Drivers with that of Inspector does not arise. Since similar matters have been agitated in the earlier O.A. and the matters have been considered by the Tribunal, it is not open to the applicant to agitate the same again which is barred by principles of Res-judicata. Needless to mention, that the Recruitment Rules framed in exercise of powers conferred by proviso to Article 309 of the Constitution is a statutory one and therefore, the constitutional validity of the recruitment Rules has to be upheld. In this connection the learned counsel for the respondents relied upon the decision of the Supreme Court in the case of Swapan Kumar Choudhary and others V/s. Tapas Chakravorty and others (1995) 30 ATC 568 and the Apex Court held:

" Although the Single Judge of the High Court was right in stating that if electrical, mechanical and civil engineers could form part of one cadre, so could, chemical engineers. But by giving the directions, in question, the

High Court almost revised the recruitment Rules which was not within its competence. Also, by directing the State to make available the higher post to Deputy Chief Inspector of Factories (Chemical) a legal error was committed, as the same amounted to laying down conditions of service of government employees, which either the State Legislature in exercise of its powers under Article 309 of the Constitution or the State Government in exercise of the power under the proviso to that article, can do. However, since a strong case for forming a common cadre for all exists, the State Government is required to apply its mind to this aspect of the matter and, so too, to make available the same pay scale to all types of Inspectors of Factories."

4. In the light of the above, and pursuant to the direction issued by the Tribunal, the pay scale of Drivers have been revised and made into three categories and scope for promotional avenue to the revised scale is also provided, but they cannot ask for equation with that of U.D.Cs and Tax Assistants, who only are made eligible for promotion to the post of Inspector by way of promotion. The learned counsel for the respondents has relied upon another decision of the Madras Bench in the case of R Gandadharan and Anr. V/s. Union of India and others XII - 1987(3) CAT SLJ 586, wherein the Tribunal held:

" Mere equation of scales does not give right automatically to be considered for Selection. This needs a conscious decision of administration which has not been done in the case. Therefore ~~the Government have~~ got a right to specify the feeder categories from which a particular post is to be filled up.

Based on such consideration the post of Head Clerk, as a feeder category post for Advertising Inspector.

5. The learned counsel for the applicant has relied upon another decision of the Supreme Court in the case of G.D. Kelkar and others V/s. Chief Controller of Imports and Exports and others (1966). On perusal of the said decision, we are of the view, that decision does not in any way help the case of the applicants in the category of inclusion of Feeder category for promotion is concerned.

6. Since the respondents have already provided further promotional avenue to Motor Vehicle Drivers, we do not think, that there is any justification on the part of the applicants in agitating the matter further equating them with that of UDCs and Tax Assistants so as to enable them to get the promotion to the post of Inspector. Matters of equation and inclusion in the feeder cadre are the matters of policy decision of the Government for which the Tribunal cannot interfere.

7. In the facts and circumstances of the case, we do not see any merit in the O.A. Accordingly O.A. is dismissed. No order as to costs.

(P.P. Srivastava)
Member (A)

(B.S. Hegde)
Member (J)

NS

*Original kept
in 190/43*