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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

OA.1072/95

dt. 3-4-98

Between

1. N. Madhava Rao
2. A. Mohan Kumar
3. BLN Varma
4. Shaik Hussain

and

1. Chairman
Central Board of Excise & Customs
Govt. of India
New Delhi

2. Commissioner
Central Excise & Customs
Govt. of India, LB Stadium Road
Basheer Bagh, Hyderabad

: Applicants

: Respondents

Counsel for the applicants

: P. Naveen Rao
Advocate

Counsel for the respondents

: K. Bhaskar Rao
CGSC

CORAM

HON. MR. R. RANGARAJAN, MEMBER (ADMN.)

HON. MR. B.S. JAI PARAMESHWAR, MEMBER (JUDL.)

Order

Oral order (per Hon. Mr. B.S. Jai Parameshwar, Member(J)

Heard Sri Phaniraj for Sri P. Naveen Rao for the applicants and Sri K. Bhaskar Rao for the respondents.

1. There are four applicants in this OA. They are working as UDCs under the respondent organisation. The next promotion to them is to the post of Tax Assistants. It is submitted that the post of UDC is a cadre post and is governed by statutory rules. During the year 1988 some of the posts of UDCs were upgraded in the scale of pay of Rs.1350-2200 and designated as Tax Assistants and decided to abolish equal number of posts of UDCs. However, while abolishing the posts, only Special Pay posts were abolished. The posts of Tax Assistants is an Ex-cadre post created by an Executive order and is not borne on the regular establishment of the Department. The eligibility criterion to fill up the post of Tax Assistant is that the UDC must have put in a minimum service of three years on regular basis and they should have passed the Departmental examination prescribed for promotion to the cadre of UDC to the grade of Inspector of Central Excise with minimum of 40% and above marks in each paper and whoever secured the said percentage of marks was entitled to be appointed as Tax Assistant on the basis of seniority-cum-fitness in the cadre of UDC.

2. The next promotional post of UDC is to that of Inspector of Central Excise. It is submitted that the post of Inspectors of Central Excise is governed by the Central Excise and Land Customs Department Group-C posts (Recruitment) Rules, 1979. According to the said rules, the post of Inspector of Central Excise can be filled up by direct recruitment

and by promotion. Seventy five per cent posts are reserved for direct recruitment and 25% for promotion. Promotion is to be made by selection from amongst the UDCs/Stenographer Grade III with five years service, UDCs with 13 years of service as UDCs/LDCs taken together subject to the condition that such a person should have put in a minimum of two years of service in the grade of UDC, Stenographer Gr.II with two years of service, Stenographer Gr.II or Stenographer Gr.III with 12 years of service as Stenographer, UDC, and LDC if any taken together subject to the condition that the person should have put in a minimum of two years of service as Grade III Stenographer or UDC.

3. Women Searcher with 7 years of service and Draftsmen with seven years of service were also eligible for the promotion to the post of Inspector of Central Excise. Thus they submit that the post of Tax Assistant has not been mentioned in the Feeder category for promotion to the post of Inspector of Central Excise. They submit that Ministry of Finance order dated 5-8-88 issued instructions to treat the case of Tax Assistants as a separate group-C category for promotion to the post of Inspector of Central Excise as per the guidelines laid down therein in the said order that Tax Assistants are entitled to be considered along with UDCs for promotion to the post of Inspector of Central Excise. They submit that they were not considered for promotion and hence they submitted an individual representation requesting the respondents to call them for interview and for consideration for promotion to the post of Inspector of Central Excise. Their requests were negatived by the Assistant Commissioner(Estt.), office of Respondent-2,

in his letter dated 20-7-1995 vide No.II/26/5/95-CS (Annexure VI). Hence, they have filed this OA to call for records relating to and connected with the proceedings No. C.II/26/5/95-CS dated 20-7-95 of Respondent-2 and to declare the decision of the respondents contained therein as arbitrary, illegal and unconstitutional and consequently to direct the respondents to review all the promotions made to the posts of Inspector of Excise and Customs, taking into consideration the seniority in the substantive cadre of UDCS for promotion to the post of Inspector of Central Excise and Customs and to make promotions accordingly with all consequential benefits.

4. On 13-9-95 an interim order was passed to the effect that any promotion that is going to be made to the post of Inspector of Central Excise and Customs will be subject to the result of this OA.

5. The respondents have filed their counter stating that consequent upon the recommendation made by IV Pay Commission 33 1/3rd of UDCS Posts were upgraded to the post of Tax Assistants - a new cadre created in the higher scale of pay in Rs.1350-2200 and equal number of UDCS were abolished. The sanction of the President was also obtained vide No.26011/10/86-Ad.II (A.P.C) dated 11-3-88 and approval of the Department of Personnel and Expenditure. It is stated that the Central Board of Central Excise and Customs prescribed selection method and promotion from Tax Assistant cadre in its letter dated 5-8-88 and 30-1-89 (Annexure F-3 & R-4). As per Board's order dated 11-3-88, 5-8-88 and 30-1-89 Tax Assistant posts ^{ve} _{ve} has to be filled up by promotion and on suitable system of selection based on an examination and amongst UDCS those who had completed

three years of service and had passed Departmental examination prescribed for promotion of UDCs to the grades of Inspector of Central Excise & Customs with minimum marks of 40% and above in each paper and the promotions will be based on the principles of seniority.

6. It is further stated that all the Tax Assistant posts were created in the year 1988 as per rules framed in 1979. Hence, ~~many~~ of the Tax Assistant posts as feeder cadre in the Recruitment rules 1979 was not necessary. The Board in its letter dated 5-8-88 and 30-1-89 created the posts of Tax Assistant and detailed the norms and method of effecting the promotion to the cadre of Tax Assistant and from the cadre of Tax Assistant. They submit that as regards 1995 selection the DPC considered only 32 names from the cadre of Tax Assistant/Stenographer Gr.II/III as the vacancies anticipated were only 14. The applicants were not considered as they were not within the zone of consideration. They were informed by letter No.II/26/5/95-CS dt.20-7-95 ("nnex.6). They submit as regards their request for considering them for promotion taking the seniority in the cader of UDC. Promotion to the grade of Inspector of Central Excise from Tax Assistants is made on the principles as stipulated in the Board's letter dated 5-8-88 and 30-1-89. In these two orders it was clearly mentioned that the Tax Assistant would be placed above the UDCs in the Consideration List for promotion to the post of Inspector of Central Excise. Consequent upon the issuance of the notification and the Board's letter the Department had issued instructions on promotion prospects of Tax Assistants wherein it was mentioned in the Consideration list for

promotion to the Grade of Inspector, Tax Assistants in the higher scale would be placed above in the seniority. The above order has not been challenged though issued in 1988 and 1989.

7. The applicants submit that the duties of Inspector of Central Excise involves specific skills and expertise dealing with the Taxation system and Tax Assistant is the post where ministerial staff have an opportunity to learn the technical work and acquaint with the specific skill that is essential in discharging the duties of Inspector on Promotion. In making a Tax assistant senior to UDC these facts were taken into consideration. If the seniority list are not maintained that will lead to pay anomaly of problems. The scale of Inspectors is Rs.1640-2900 whereas the Scale of DOS(L-II) is Rs.1400-2300. Tax Assistants are specially created in regard to technical work during their tenure with an intention to make their job easy when they are promoted to Inspector posts.

8. Board of Central Excise and Customs issued two letters in regard to promotion to the post of Inspector in the Department. The two relevant letters bearing No.A.26011/10/86-Ad.II.A(PC) dated 5-8-88 and 30-1-89, which are enclosed as Annexure R-3 and R-4 to the OA. From these two letters it is evident that the Tax Assistants will be placed above UDCs in the seniority list en bloc for consideration for promotion to the post of Inspectors. It is stated in the letter dated 30-1-89 that pending amendment to the Recruitment Rules for the posts of Inspector of Central Excise and DOS (L.II) and framing of Recruitment rules for the post of Tax Assistant, the posts of Inspector of Central Excise and DOS(L.II) may be filled up on the above lines. Thus, from

the letter dated 30-1-89 it is evident that the recruitment rules framed under Articles 309 of the Constitution is not amended yet. Only the Executive order has been issued to place Tax Assistants above UDCs in the seniority list for consideration for the post of Inspectors.

9. We asked the learned counsel for the respondents whether the recruitment ^{rule} can be replaced by an Executive order and if so he was asked to show relevant rules in this connection. The learned counsel for the respondents produced a letter dated 2-4-88 addressed to the Commissioner of Central Excise from the Deputy Secretary to Government of India. In the letter it is stated that a temporary ban in the amendment/relaxation/ of Recruitment Rules was imposed and it continues to be operative. Hence, the respondents are free to adhere to the Executive letter dated 30-1-89 for the purpose of promotion to the cadre of Inspectors though Recruitment Rules are not amended incorporating Executive order.

10. Rule framed under Article 309 of the Constitution is sacred. No Executive order can supersede the order passed under the said Article of the Constitution. Mere issue of Executive order do not give any right to the ^{respondents} applicant to supersede the Recruitment Rules framed under Article 309 of the Constitution and adhere to the Executive order issued in that connection. Hence, we do not agree with the principle, laid down in the Executive order for fixation of seniority of Tax Assistants and UDCs for the purpose of promotion to the post of Inspector Central Excise. Hence, we set aside the impugned order of the respondents dated 20-7-95 and direct the

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respondents to adhere to the Recruitment Rules in force on the date of promotion to the post of Inspector of Central Excise and review the list already made.

11. With the above direction the OA is ordered accordingly.

प्राप्तिक्रिया
CERTIFIED TO BE TRUE COPY

P. Naveen Rao

केता चंद्रा
CASE NO. 1
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