

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

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Date of Order : 18.10.2001.

O.A.NO. 589/1995

1. Bharat Lal Meena S/o Shri Jagan Lal Meena, aged around 32 years, R/o 122/21, Mansarovar, Jaipur, presently posted as Tax Assistant in the Office of Assistant Commissioner, Central Excise Division, Jaipur (R), Jaipur.
2. N.L.Sharma S/o Shri Kishori Lal Sharma, aged around 29 years, R/o V&P Lakher Teh. Amer, Dist. Jaipur, presently posted as Tax Assistant in the office of Commissioner, Customs and Central Excise, Jaipur.
3. Raja Ram Meena, S/o Shri Lal Chand Meena, aged around 34 years, R/o 8-B-51, Mahaveer Nagar III, Kota, presently working as Tax Assistant in the office of Central Excise Division, Kota (Raj).

.....Applicants.

VERSUS

1. Union of India through Secretary, Ministry of Finance, Department of Revenue, Government of India, new Delhi.
2. Chairman, Central Board of Customs & Excise, North Block, New Delhi.
3. Commissioner, Central Excise and Customs, New Central Revenue Building, Statue Circle, Jaipur.
4. Shri Dilip Kumar Vaseeta, Inspector in the office of Assistant Commissioner, Customs Division, Jaisalmer (Raj).
5. Shri R.S.Kataria, Inspector, Office of Assistant Commissioner, Customs Division, Jodhpur (Raj).

.....Respondents.

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CORAM :

Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.A.P.Nagrath, Administrative Member

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None appears for the applicants.

Mr. Bhanwar Bagri, Advocate, present for the respondents.

O R D E R

Per Mr.A.P.Nagrath, Administrative Member :

All the three applicants of this application are aggrieved with the promotion of respondents No. 4 and 5 to the post of Inspector and they have filed this application with the following reliefs :-

"i) That the proceedings of review D.P.C., result of which culminated into order dt. 26.10.95 may be declared as unlawful. The order of promotion dt. 26.10.95 based on the review D.P.C. may kindly be set aside and quashed in so far as respondent No. 4 and 5 is concerned; and

ii) That the official respondents may be directed to arrange the names of eligible candidates in following manner:

iii) That the official respondents may kindly be directed to adhere to the rules of 1979 as provided in the amendment dt. 5.8.1988 (Anx.A/4), Instructions dt. 20.7.1995 (Annexure A/6) may be directed to be ignored being contrary to the rules framed under Article 309 of the Constitution of India; and

iv) That the respondents may be directed to convene a review DPC in accordance with relief prayed for above; and

V) Any other appropriate order or direction which the Hon'ble Tribunal thinks just and proper in the facts and circumstances even the same has been not specifically prayed



for but which is necessary to secure ends of justice may kindly also be issued."

2. The applicants are Tax Assistants and their further advancement is to the post of Inspector. As per the Recruitment Rules 25% of the posts of Inspector are filled up from amongst the Stenographers, Tax Assistants (T.As) and U.D.Cs, for which the qualifying service has also been prescribed. The private respondents Shri Dilip Kumar Vaseeta and Shri R.S.Kataria, belonged to the category of Stenographers before their promotion. The grievance of the applicants is that these two private respondents had not completed two years of qualifying service as Stenographer Grade II/III combined. They have assailed the action of the official respondents in treating the private respondents No. 4 and 5 above the applicants in the zone of eligibility and their bone of contention is that since they were Tax Assistants which is a grade higher than the grade of Stenographers Grade III, they should have been placed over and above the private respondents.

3. In this case, we did not have the benefit of assistance from the applicants' side as at the time of arguments the learned counsel for applicants was not present. We had allowed a week's time to the learned counsel for applicants for filing written submissions but it appears that he has not chosen to file any written submissions on behalf of the applicants. The learned counsel for the respondents while reiterating the stand of the department as given in the written reply, also produced before us an order dated 3.9.1996 by which the applicants had been promoted to officiate as Dy. Office Superintendent Grade II in the pay scale of Rs. 1400-2300. The order dated 3.9.1996 has been taken on record. On 20.9.2001, the learned counsel had produced an order dated 26.8.1998 promoting the applicants to the post of Inspector in the grade of Rs. 5500 - 9000, which is also taken on the record. The learned counsel contended that in view of these two orders viz. dated 3.9.1996 and 26.8.1998, applicants' cause of grievance no more survives. However, since there has been no representation on behalf of the applicants, it is not for us to



conclude whether the applicants would still like to press this application. We proceed to decide this application on the basis of the averments made in the application, reply and rejoinder filed by the respective parties. The only issue for adjudication is, whether promotion of respondents No. 4 and 5 was in order and in accordance with the rules.

4. The Rules for regulating the service conditions and method of recruitment of employees working in the department of Central Excise and Customs are known as Central Excise and Customs Department Group 'C' Posts Recruitment Rules, 1979 (hereinafter referred to as 'the Rules'). The post of Tax Assistant was created for the first time in the year 1988 by up-grading number of posts from the category of UDCs. The promotion to the post of Inspector as per the Rules is from the following categories :-

- "(i) Tax Assistant (TA) - 1350-2200
- (ii) U.D.C. - 1200 - 2040
- (iii) Stenographer Gr.II- 1400-2300
- (iv) Stenographer Gr.III- 1200-2040
- (v) Women Searcher - 1200-2040
- (vi) Draftsman - 1200-2040

On promotion to the post of Inspector, qualifying service for the feeder grades has also been specified. The respondents had convened a D.P.C. on 19.7.1995 and 20.7.1995 for promotion to the post of Inspector and 19 eligible candidates were asked to be present for the physical test and interview. The proceedings of this D.P.C. were not finalised apparently, in view of the instructions received from the Board of Customs and Central Excise vide letter dated 20.7.1995 (Annex.R/IV). This letter laid down the guidelines for determining the placement of the staff in the zone of consideration. The applicants contend that this letter dated 20.7.1995 is in contradiction of the Rules which stood slightly amended by the Ministry of Finance letter dated 5.8.1988 (Annex.R/II) after the category of Tax Assistants had been introduced. The main ground of attack Grade II is that the Stenographers who had not completed two years of qualifying service as per the Rules but who had completed five years of qualifying



service while considering their tenure in Grade II & Grade III, could have been placed above the Tax Assistants. Thus, the applicants assailed the promotion of Shri Dilip Kumar Vaseeta and Shri R.S.Kataria, stating that when the D.P.C. met on that day they had not completed two years of qualifying service as Stenographers Grade II and they could not have been placed above the applicants. The basis for this plea is that the Stenographers Grade III are in a scale lower than that of the Tax Assistants and service rendered in that lower scale, cannot go in favour of the respondents No. 4 and 5 to make them eligible over and above the applicants.

5. The entire controversy is around the letter dated 20.7.1995 (Annex.A/6) issued by the Ministry of Finance, Government of India, Department of Revenue. The applicants' plea is that the clarification given in this letter is contradictory to the Rules. We have carefully perused the Rules and the orders dated 5.8.1988 and 20.7.1995. We find that the Rules stipulate certain period of qualifying service for each of the categories of UDC, Stenographers, Women Searcher and the Draftsman for being considered for promotion to the post of Inspector against 25% quota. With the introduction of the post of Tax Assistant in the cadre, an amendment was issued vide letter dated 5.8.1988 with the guideline that the Tax Assistants with two years service in the grade or with five years total service in the grade of UDC and Tax Assistant taken together, will be eligible for promotion to the post of Inspectors. In the case of Stenographers the Rules provide for two years qualifying service for Stenographers Grade II. Vide letter dated 7.3.1989 (Annex.R/III), it has been clarified that in case of Stenographers Grade II, who have not completed two years of service in the grade but have completed five years service as Stenographer Grade III and Grade II taken together, will be eligible for consideration for promotion to the grade of Inspector. A reading of this clarification of letter dated 7.3.1989 makes it clear that it is only the Stenographers in Grade II, who have been made eligible by



in the event <sup>a</sup> Stenographer in Grade II has not completed two years in the grade the length of service in Grade III is also taken into account and if he has completed five years, he becomes entitled for consideration. The post of Inspector is being filled-up as per the Rules from six different categories and different grades. In this back ground the department has prescribed certain length of service for each category and only after completing that qualifying service the staff of that particular category becomes entitled to be considered for promotion. It has been explained by the respondents that as per rules and instructions, the TAs are kept enblock above the UDCs and the placement of TAs and UDCs viz-a-viz Stenographers Grade II and III was done on the basis of one to one comparison made on the basis of their date of completion of the prescribed qualifying service. To determine their respective placement, the senior most Stenographer was compared with the senior most TA and the one who completed the qualifying service first was kept above the other. After determining the placement of the first candidate on the above basis, the second was again compared with the senior most candidate of the other cadre and with those down below in the order of seniority to determine their placements. This procedure was followed by the D.P.C. till they reached the zone of 16 candidates for filling up six vacancies.

6. We have carefully considered this procedure, the Recruitment Rules and the clarifications given by the Ministry of Finance, Department of Revenue. We have not been able to find any contradiction in the rules and the clarifications. The purpose of clarifications is to remove any doubts or confusion which might arise in a situation like this where the intake to one category of post i.e. the post of Inspector, is from six different feeding cadres. The clarifications given cannot be stated to be discriminatory or favouring a particular cadre against the other. We do not find any reason to interfere in the procedure adopted by the respondents. We do not find any merit in this application and the same is liable to be dismissed.

7. We, therefore, dismiss this O.A. as having no merits but with no order as to costs.

*Arif D*  
(A.P.Nagrath)  
Adm.Member

*S.K. Agarwal*  
(S.K. Agarwal)  
Judl.Member