

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of Order : 22-09-04

Original Application No.214/2001.

Hari Narain Meena S/o Shri Prabhati Lal Meena, aged about 31 years, r/o 146, Income Tax Colony, Jyoti Nagar, Jaipur.

... Applicant.

v e r s u s

1. The Union of India through the Commissioner, Central Excise, New Central Excise Building, C-Scheme, Jaipur-I.
2. The Additional Commissioner, Personnel and vigilance, Central Excise Department, Jaipur-I, Jaipur.

... Respondent.

Mr. Nand Kishore counsel for the applicant.
Mr. Vijay Singh proxy counsel for
Mr. Bhanwar Bagri counsel for the respondents.

CORAM

Hon'ble Mr. M. L. Chauhan, Judicial Member.
Hon'ble Mr. A. K. Bhandari, Administrative Member.

: O R D E R :
(per Hon'ble Mr. M. L. Chauhan)

The applicant is aggrieved on account of his non-selection in the grade of Inspector, Custom and Central Excise (Pay Scale of Rs.5500-9000) pursuant to the DPC/Review DPC held for filling up the vacancies for the year 1997-98 and 1998-99 and has filed this Original Application thereby praying for the following reliefs :-

"i) In view of the facts and ground mentioned in 4&5 of this OA it is humbly prayed that this Hon'ble Tribunal may graciously be pleased to allow this Original Application.

ii) The respondents may be directed to conduct

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the selection of Inspector held on 18/19.3.1998. On the strength of DOPT's circular dated 27.3.1997 and the applicant be declared as qualified on the basis of Bench mark grading in alternative.

iii) by an appropriate order or direction, the action of the respondents in clubbing the vacancy of the year 1997-98 and 1998-99 may be declared as illegal and the second selection so conducted by the respondents without calling the applicant may kindly be quashed and set-aside and may be declared as illegal and the said selection should be conducted afresh after providing opportunity of hearing to the applicant.

iv) Any other appropriate order or direction, which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case, may also kindly be passed in favour of the applicant.

v) Cost may also be awarded to the applicant."

2. The facts of the case are that for filling up 29 vacancies, 11 vacancies for the year 1997-98 and 18 vacancies for the year 1998-99, for promotion quota of Inspector, a DPC/Review DPC was held on 03.07.1998 and 06.08.1998, respectively. The said Review DPC held on 06.08.1998 prepared two year wise select panel for filling up of 11 vacancies for the year 1997-98 and 18 vacancies for the year 1998-99 as per the vacancy based roster. It may be stated here that on earlier occasion i.e. on 18/19.03.1998 physical test/interview of applicant and 25 candidates for promotion in the grade of Inspector were taken only for filling up 11 vacancies for the year 1997-98. Since number of vacancies subsequently made available for promotion to the grade of Inspector were 29 (11 vacancies for the year 1997-98 and 18 vacancies for the year 1998-99), accordingly interview of more candidates were also taken by the said Review DPC held on 06.08.1998. Accordingly, two select panel were prepared on the basis of aggregate of the marks obtained by the candidates in the ACRs as well as in interview. Out of total 100 marks (80 for ACRs and 20 for interview) in terms of Ministry's instruction dated 09.05.1991 (Annexure-10 with the reply). The candidates including the applicant

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who could not be selected for select panel for the year 1997-98 due to obtaining less marks than the selected candidates, were again considered for the preparation of panel of 18 candidates for filling up the 18 vacancies for the year 1998-99 by the said Review DPC held on 06.08.1998. In all 22 candidates including the applicant could not be selected by the said review committee and granted promotion to the grade of Inspector.

3. It may be relevant to mention here that there are two promotional avenue available for the Tax Assistant, which are Deputy Office Superintendent L-II in the pay scale of Rs.5000-8000 and Inspector in the pay scale of Rs.5500-9000. Since the applicant was not selected for promotion to the post of Inspector, however, subsequently he was promoted to the grade of Deputy Office Superintendent L-II by the DPC in its meeting held on 14.09.1998, as the promotion to the said post was on the basis of seniority-cum-fitness (non selection basis) and consequently 13 candidates including the applicant were promoted as Deputy Office Superintendent L-II vide office order No.106/98 dated 28.09.1998 (Annexure-22 with the reply). It was also mentioned in the said office order that if any officer is not willing to join as Deputy Office Superintendent L-II then his forego letter/refusal for promotion may be forwarded to the office of Commissioner Central Excise, Jaipur. Out of 13 promoted candidates, 7 candidates submitted their requests of refusal for promotion to the grade of Dy. Office Superintendent L-II and remaining 6 officers including applicant willingly joined as Dy. Office Superintendent L-II. It may be stated here that the applicant did not made any grievance regarding his non promotion to the post of Inspectors at the relevant time. Subsequently the respondents vide letter dated 17.2.1999 changed the criteria for selection to the post of Inspectors of Central Excise and Narcotics Inspectors. This decision was taken in the 79th Meeting of Departmental Council on Item No.15 of 73rd Meeting and it was decided that promotion to the post of Inspector of Central Excise and Inspector of Narcotics will be made on the basis of Instructions of DOPT dated 27.03.1997. It was

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6. Yet for another reason the applicant is not entitled to any relief. Admittedly, the promotion to the 29 posts of Inspector for vacancy arising in the year 1997-98 and 1998-99 was made pursuant to the review DPC held on 06.08.1998. The applicant did not made any grievance regarding his non selection to the post of Inspector for about 2 years. The applicant made first representation on 15.03.2000 (Annexure-1 with the reply). In this representation the grievance ventilated by the applicant was that he should be reverted from the higher post of Deputy Office Superintendent L-II to the post of Tax Assistant so that he should be in a position to get his candidature considered for promotion to the post of Inspector. Obviously the applicant has prayed that he should be reverted to the post of Tax Assistant so that in future he can seek promotion to the post of Inspector which grade carried a little higher scale then the Deputy Office Superintendent L-II. Even at that statge the applicant did not made any grievance regarding his non selection pursuant to the DPC held on 06.08.1998 whereby he was not selected to the post of Inspector.

6.1 It is for the first time, vide representation dated 20.06.2000 that he made a grievance regarding his non selection pursuant to the DPC held on 06.08.1998, as according to the applicant he was interviewed only in respect of vacancies arising for the year 1997-98 whereas he was not interviewed for the purpose of 18 vacancies for the year 1998-99. Even the said representation was rejected. The same was conveyed to the applicant vide letter dated 20.07.2000 (Annexure A-6). It is only thereafter the applicant has filed this OA.

7. According to us, the present application is beyond limitation and the same cannot be entertained in view of the provisions contained in Section 21 of the Administrative Tribunals Act 1985. The cause of action arose in favour of the applicant in the year 1998 when the review DPC held on 06.08.1998, which prepared two year wise select list panels for filling up the vacancies for the year 1997-98 and 1998-99, did not included the name of the

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applicant. That apart, the applicant was promoted to the post of Deputy Office Superintendent L-II vide order dated 28.09.1998 (Annexure-22 with the reply). In that letter it was clearly mentioned that in case person so selected forego/refuse the promotion, they should submit their request of refusal of promotion. Out of 13 promoted candidates only 7 candidates submitted their requests for refusal of promotion whereas the remaining 6 candidates including the applicant willingly join the post of Deputy Office Superintendent L-II and it was only thereafter he was promoted as Deputy Office Superintendent L-II on 16.11.1998 on regular basis against a permanent post of Deputy Office Superintendent L-II. Even at that stage the applicant did not made any grievance regarding his promotion to the post of Inspector and accepted promotion in the grade of Deputy Office Superintendent L-II. As already stated above, for the first time, the applicant pleaded vide representation dated 15.03.2000 (Annexure A-1) with the authorities that he be reverted to the post of Tax Assistant so that he can seek further promotion to the post of Inspector, which post carries higher grade then Deputy Office Superintendent L-II. Even at that stage the applicant has not made any grievance regading his non selection to the post of Inspector made in the year 1998. Thus it was not open for the applicant to raise issue after a lapse of about 2 years vide his representation dated 20.06.2000 that he has not been interviewed and selected for the vacancies of Inspectors for the year 1998-99 and he was only interviewed for vacancies for the year 1997-98 and requested on that basis that fresh interview be held, more particularly when the respondents in their reply have categorically stated that two separate select lists arising in the year 1997-98 and 1998-99 was prepared by the DPC in his meeting held on 06.08.1998 and the case of the applicant was considered for the vacancies arising in both these years but he could not be selected. The submission made by the learned counsel for the applicant that since his representation was decided vide letter dated 20.07.2000 (Annexure-6), as such the application is within limitation, cannot be accepted as the cause of action has accrued in favour of the applicant in the year 1998 as such he should have filed the OA within the time prescribed under Section 21 of the Administrative Tribunals Act 1985. The applicant

further made clear that the procedure outlined in that circular will be effected from 01.04.1999. A copy of this letter has been placed on record as Annexure-13 with the reply filed by the respondents.

3.1. The applicant for the first time made a representation dated 15.03.2000 (Annexure A-4) whereby he sought reversion from the post of Deputy Office Superintendent L-II to the post of Tax Assistant as he want to avail the channel for promotion to the post of Inspector. In this representation he did not made any grievance regarding his non-selection/promotion to the post of Inspector pursuant to DPC/Review DPC held on 06.08.1998. Subsequently he made another representation dated 20.06.2000 for promotion to the grade of Inspector thereby contending that his case has not been properly considered. The said representation was rejected and disposed of vide letter dated 10.07.2000 (Annexure A-4) as communicated to the applicant by office of the Commissioner, Central Excise, Jaipur, letter dated 20.07.2000 (Annexure A-6). Feeling aggrieved by the rejection of his representation, the applicant has filed this OA. In the OA, the applicant initially sought following two reliefs :- i) selection to the grade of Inspector, Custom, by the DPC/Review DPC held for filling up the vacancies for the year 1997-98 and 1998-99 and ii) and reversion from grade of Deputy Office Superintendent to Tax Assistant for consideration to the grade of Inspector in forthcoming CPC.

4. Reply to the OA was filed by the respondents thereby contraverting the allegation levelled by the applicant. Subsequently the applicant thinking that the relief as prayed for by him may not be granted by this Tribunal, sought further amendment in this OA. The applicant was permitted to file amended OA. In the amended OA now the applicant has prayed that the respondents may be directed to conduct the selection of the Inspector held on 18/19.03.1998 on the strength of DOPT circular dated 27.03.1997 and the applicant be declared as qualified on the basis of Bench mark grading. In the alternative by an appropriate order or direction the action of the respondents in clubbing the vacancy of the year 1997-98 and

1998-99 may be declared illegal and the second selection conducted by the respondents without calling the applicant may be quashed and set aside.

5. The respondents in their reply has categorically stated that no panel was prepared on the basis of physical test/interview taken on 18/19.03.1998 for the purpose of filling up of 11 vacancies for the year 1997-98. In fact Review DPC was held on 06.08.1998 for the purpose of preparing two year-wise select list panel for filling up of 11 vacancies for the year 1997-98 and 18 vacancies for the year 1998-99 as per the vacancy based roster. Accordingly interview of more candidates in addition to the candidates who were interviewed on 18/19.03.1998 were also taken by the review DPC held on 06.08.1998 and two select panels were prepared on the basis of aggregate of marks obtained by the candidates in ACRs as well as in interview in terms of instructions dated 09.05.1991 (Annexure R/10). The case of the applicant was considered for the vacancies arising for the year 1997-98 and also again for filling up the vacancies for the year 1998-99 but the applicant could not be selected as he has obtained less marks than the selected candidates. In view of this specific averment made by the respondents in their reply, the contention of the applicant that the respondents have clubbed the vacancies for the year 1997-98 and 1998-99 cannot be accepted. Similarly further prayer of the applicant that selection held on 18/19.03.1998 be held on the basis of DOPT circular dated 27.03.1997 where different criteria was adopted for the purpose of promotion to the post of Inspector also cannot be accepted. The circular issued by the DOPT vide OM dated 27.05.1997 was adopted by the respondents vide letter dated 17.02.1999 (Annexure R/13). It is clear from Para 5 of this Circular that the procedure outlined in the circular for the promotion to Grade-C of Central Excise/Narcotics Inspector will be effected from 01.04.1999. In view of what has been stated above, it is not understood on what basis the applicant is claiming that selection held in the year 1998 should be made pursuant to OM dated 27.03.1997 when the same was made applicable w.e.f. the future date i.e. 01.04.1999. Thus, the applicant has not made out any case so as to grant relief as prayed for in this OA.

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7. According to us, the present application is beyond limitation and the same cannot be entertained in view of the provisions contained in Section 21 of the Administrative Tribunals Act 1985. The cause of action arose in favour of the applicant in the year 1998 when the review DPC held on 06.08.1998, which prepared two year wise select list panels for filling up the vacancies for the year 1997-98 and 1998-99, did not include the name of the

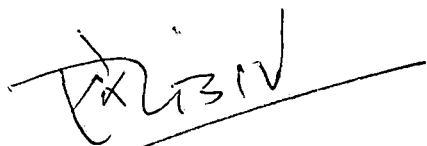
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has not given any reason why he waited till 20.06.2000 when representation regarding so called irregularity in the selection made for the post of Inspector pursuant in DPC/review DPC held on 12.03.1998 and 06.08.1998 respectively was made for the first time. As such, the OA is liable to be dismissed on this count also.

8. Yet for another reason the applicant is not entitled to any relief. Admittedly pursuant to review DPC held on 06.08.1998 promotion of 29 Inspectors were made on the basis of procedure prescribed for promotion outlined in order dated 09.05.1991 (Annexure-10) . By way of this OA, the applicant wants that the selection should be held on the basis of instructions issued by the DOPT vide OM dated 27.03.1997, which criteria was made applicable/effective from 01.04.1999 as can be seen from letter dated 17.02.1999 (Annexure-13 with the reply). The applicant has not made anyone of the affected party as respondents in this case. Even on this ground, the applicant is not entitled for any relief.

9. Viewing the matter from any angle the applicant is not entitled to any relief. Accordingly, the OA is dismissed.


(A. K. BHANDARI)
MEMBER (A)


(M. L. CHAUHAN)
MEMBER (J)