

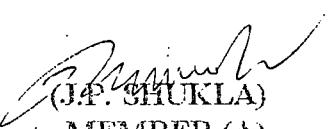
26

**THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
**JAIPUR BENCH, JAIPUR**  
**ORDER SHEET**

APPLICATION NO.: \_\_\_\_\_

licant(s) \_\_\_\_\_ Respondent (s) \_\_\_\_\_

ocate for Applicant (s) \_\_\_\_\_ Advocate for Respondent (s) \_\_\_\_\_

ES OF THE REGISTRY	ORDERS OF THE TRIBUNAL
	<p><u>02.11.2007</u></p> <p><u>OA No. 498/2002 with MA 331/2006</u></p> <p>Mr. Ashish, Proxy counsel for Mr. R.D. Rastogi, Counsel for applicant. Mr. Gaurav Jain, Counsel for respondents.</p> <p>MA No. 331/2006 has been moved by the applicant thereby annexing copy of the Circular No. A.32011/18/2003-Ad.IIIA dated 08.10.2003, issued by the Central Board of Excise &amp; Customs. As per this Circular, the Central Board of Excise and Customs had given one time relaxation of qualifying service and eligibility condition regarding passing of departmental examination and issued direction to the effect that the otherwise eligible officials (including those who have become eligible after relaxation in qualifying service), who have not passed the departmental examination, may also be promoted on purely ad hoc basis subject to their passing the requisite examination by 31.12.2003, failing which they will stand reverted. It is pleaded that similar benefits in the recruitment rules of Inspector should also have been extended to the applicant, who belongs to the Income Tax Department.</p> <p>Notice of this MA was given to the respondents. The respondents have filed reply. In the reply, the respondents have categorically stated that the functioning of both these departments are different and the rules issued by the Central Board of Excise &amp; Customs are not applicable in Income Tax Department. It is not a case of discrimination and the present MA is wholly misconceived and required to be rejected.</p> <p>We have considered the submission made by the learned counsel for the parties. We are of the view that the Government of India has granted relaxation in respect of official of Central Board of Excise &amp; Customs. It cannot be construed that the similar benefits in the recruitment rules of Inspector of Central Excise Customs should be made applicable in Income Tax Department for promotion to the post of Inspector as the condition of service of both these departments are different and are governed by different rules. The present MA is wholly misconceived and the same is dismissed.</p> <p>Heard learned counsel for the parties on OA. For the reasons dictated separately, the OA is disposed of.</p> <p> (J.P. SHUKLA) MEMBER (A) ahq</p> <p> (M.L. CHAUHAN) MEMBER (J)</p>

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

OA No.498/2002.

Jaipur, this the 2<sup>nd</sup> day of November, 2007.

**CORAM :** Hon'ble Mr. M. L. Chauhan, Judicial Member.  
Hon'ble Mr. J. P. Shukla, Administrative Member.

Radhey Shyam Verma  
S/o Shri Lallu Ram Verma,  
R/o 77/169, Mansarovar,  
Jaipur.

... Applicant

By Advocate : Shri R. D. Rastogi.

Vs.

1. Union of India  
Through Secretary to the Government of India,  
Ministry of Finance,  
Department of Revenue, North Block,  
New Delhi.
2. The Central Board of Direct Taxes,  
Represented by its Chairman,  
Ministry of Finance,  
New Delhi.
3. The Chief Commissioner of Income Tax,  
New Central Revenue Building,  
Statue Circle,  
Jaipur.
4. Ram Kishan Bairwa  
S/o Shri G. Ram,  
Income Tax Inspector, presently posted at  
Office of Additional Commissioner of Income Tax  
Range 6, Jaipur.
5. Hemant Kumar Jonwal,  
S/o Shri Devi nararyan Janwal,
6. Department of Personnel & Training  
Through its Secretary, Government of India,  
New Delhi.

... Respondents.

By Advocate : Shri Gaurav Jain for Respondent No.1,2,3&6.  
None for other respondents.

## : O R D E R (ORAL) :

The applicant has filed this OA against the order dated 18/19.06.2002 and 8.8.2002, Annexure A/8 & A/9 respectively whereby the grievance of the applicant raised in the representation/legal notice was rejected. The applicant has also challenged the legality and validity of OM dated 17.09.1998 and OM dated 8.09.1998 whereby the Government of India has fixed the criteria for determining the crucial date of eligibility for the purpose of promotion.

2. Briefly stated, the facts of the case are that the applicant at the relevant time was working as Senior Income Tax Assistant in the Income Tax Department. The next promotional avenue available to the applicant was to the post of Inspector. The promotion to the post of Inspector has to be made as per rules and one of the eligibility condition for promotion to the post of Inspector was that the candidate of feeder channel who have passed the departmental examination for the post of Inspector as on the crucial date relevant to the recruitment year for which the vacancies are available for filling up by way of promotion are to be considered for promotion. The criteria for fixing the crucial date of eligibility was governed by the OM dated 8.09.1998 read with OM dated 13.10.1998 issued by the DOP&T. As per the model Calender the crucial date for the purpose of

*W*

eligibility for the Panel for the year 2000-01 covering the period from 1.04.2000 to 31.03.2001 will be 01.01.2000 meaning thereby that only those officers fulfilling the eligibility condition as on 1.1.2000 will be considered for 2000-01 Panel which become due from 1.04.2001. Since the applicant has not qualified the departmental examination for Inspector as on the relevant crucial date i.e. 1.1.2000, as such, the applicant was not granted promotion against the vacancy of Inspector pertaining to the Recruitment year 2000 and the persons junior to the applicant who were otherwise qualified and has passed the departmental examination were promoted. Against this, the applicant submitted a legal notice and representation which were rejected vide impugned order dated 18/19.06.2002 (Annexure A/8) and 8.08.2002 (Annexure A/10). Feeling aggrieved by the said action of the respondents the applicant has filed this OA thereby praying for quashing of these impugned orders as also Government of India OM No.22011/3/98-Estt (D) dated 17.9.98 and para No.9 of G.I. Department of Per. And Trg. OM No.22011/9/98-Estt (D) dated 8.9.98, being arbitrary with a direction to the respondents that fresh criteria be adopted for fixing the crucial date of eligibility of the officers for consideration to the DPC. According to the applicant for the purpose of promotion to the post of Income Tax Inspectors eligibility of the incumbents must have been seen either on the date of creation/approval of vacancy or on the date of meeting of Departmental

Promotion Committee. According to the applicant his name find mentioned at Sl. No.84 of the seniority list of the feeder category whereas 8 persons who have been promoted and whose names find mentioned in Para 4 (IV) are junior to the applicant. The applicant has also indicated their seniority position in that para. It may be relevant to state here that out of 8 persons who have been promoted as Income Tax Inspector the applicant has impleaded 2 junior most persons as Respondent No.4 & 5 as party in this OA. According to the applicant he passed the qualifying examination for Income Tax Inspector and declared qualified for the same w.e.f. 30.05.2000 vide order dated 1.05.2001 (Annexure A/1). It is further stated that the Government came out with restructuring plan revising the sanctioned strength (creation of post) at different level in Income Tax Department. It is further averred that the different steps taken by Govt. are as follows :-

- i) Approved by cabinet : 31.08.2000
- ii) Coveyance of Cabinet decision to Department of Income Tax : 6.9.2000
- iii) Notification of revised sanctioned strength : 24.10.2000
- (iv) Concurrence of Department of Expenditure : 20.10.2000  
(Annex.A/2)  
Dt. 4.6.2001, P.17.
- (v) Final allocation of post For different levels : 30.03.2001"

*402*

Thus, according to the applicant the process of creation of post started on and after 31.8.2000, as such, the crucial date of eligibility could not have been fixed as 1.1.2000.

3. The legality of the OM notification has been challenged on the ground that it is invalid arbitrary, legal being violative of Article 14 and 16 of the Constitution of India. It does not bear any nexus with the object sought to be achieved. It is further bad for the reason that it is not relatable to date of creation of vacancy. This part of the pleading mentioned in para 5 of the OA. It is on these basis the applicant has filed this OA.

4. Notice of this application was given to the respondents. Respondents have filed reply in which they have stated that the DPC was convened on 19.06.2001 for considering promotion of 167 officials from different feeder cadres to the post of Inspectors. These vacancies were of the recruitment year 2000-2001. The crucial date for determining eligibility for promotion against the vacancies of the above year was 1.1.2000 in view of OM dated 8.9.1998 read with OM dated 13.10.1998 and also in accordance with OM dated 17.9.1998 and thus, the cases of those officials who had qualified the departmental examination for Inspector as on 1.1.2000 and fulfilled the other eligibility conditions as on the date were

considered for promotion. Since the applicant was not eligible for promotion against the above vacancies as he had not qualified the departmental examination as on 1.1.2000 i.e. before the crucial date and fixed as per above referred OMs. Therefore, the applicant could not be considered. It is admitted fact that the officials junior to the applicant in the feeder cadre who were otherwise eligible were considered for promotion and were rightly promoted. According to the respondents, their action is in accordance with the guidelines provided by the DOP&T. In the reply, the respondents have given the reason why the crucial date of 1<sup>st</sup> January has been taken into consideration for the purpose of promotion. It has been stated that 1<sup>st</sup> January as the crucial date has also resolved the problem with reference to ACRs to be considered by the DPC. In the earlier dispensation, it was the practice to consider ACRs up to the year previous to the panel year. This often delayed convening of the DPCs. With the introduction of Model Calendar for DPCs vide OM No.22011/1/98-Estt (D) dated 8<sup>th</sup> September, 1998, a panel is now required to be ready before the commencement of the panel year. For example, promotion panel for the year 2001-2002 commencing from 1<sup>st</sup> April 2001 is required to be ready by 31<sup>st</sup> March 2001. Therefore the spade work of preparation of the panel has to be initiated much in advance. The crucial date for eligibility, in the said illustration, would be 1.1.2001 and the spade work, as per the Model Calendar for DPCs

*loz*

may have to be initiated in July 2000 as ACRs for the year 2000-2001 would not be due when the spade work is initiated/DPC is held. The DPC may be considering the ACRs only upto 1999-2000. This was a major source of delay which has been eliminated by issuing the aforesaid instructions. Further reason given in support of fixing the cut of date is that the modified scheme of things (Model Calendar for DPCs) also ensures that the crucial date January 1<sup>st</sup> is kept nearer the date of DPC which is to be held by November of the previous year in case of financial year based vacancy year. It is further stated that there is nothing wrong in fixing the crucial date of eligibility. Some date has to be fixed as crucial date and fixing of crucial date is an action, which is in accordance with the provisions of Constitution. It is further stated that in case the date is not fixed then it may be an arbitrary action but fixing of date is quite legal and is in accordance with the provisions of law. The respondents have categorically stated that the entire year has to be taken into consideration and a particular date for creation of post is not relevant while interpreting the Rule of law. The guidelines are issued by the Central Government after taking into consideration all the facts and circumstances and interest of all its employees. The issuance of OM is a policy matter of the Central Government and no interference is called for in the policy matter of the Government. It is further stated that the applicant has challenged the validity of

the OM issued by the DOP&T without impleading Department of Personnel and Training as a party. As such, the validity of the OM cannot be judged. However, subsequently Department of Personnel and Training was impleaded as Respondent No.6 in the OA. Detail reply has been filed on behalf of Respondent No.6 as to what was the cut off date prior to issuance of DOP&T OM issued on 8.9.1998 and as to how the criteria for determination of eligibility date as prescribed vide OM No.22011/7/86-Estt (D) dated 19<sup>th</sup> July 1989 was changed pursuant to decision rendered by the Apex Court and in consultation with the UPSC.

5. The applicant has filed rejoinder thereby reiterating the submissions made in the OA.

6. We have heard the learned counsel for the parties and gone through the material placed on record.

7. The main thrust of the applicant is that the crucial date for the purpose of promotion to the post of Income Tax Inspector has to be seen either on the date of creation/approval of the vacancy or on the date of meeting of departmental promotion committee and no cut off date could have been prescribed for adjudging the eligibility of the incumbents and any prescription to that effect would be invalid, illegal, arbitrary and violative of Article 14 of the Constitution of India.

10/

For that purpose, reliance has been placed by the learned counsel for the applicant on the decisions of the Apex Court in the case of Union of India vs. M. Jagammaya, 1977 (1) SLR 614 and Narender Chadha vs. Union of India, 1986 (1) SLR 437. We fail to understand how the applicant can take assistance from the decision of the Apex court rendered in the aforesaid cases. In the case of M. Jagammaya (supra) the issue involved was regarding the dispute between two group of officers. Further whether the requirement of 10 year of experience of service as laid down in the letter dated 16 January 1950 and the office Manual published in 1955 thereby changing criteria of 10 years to 8 years experience have any force of law and whether such criteria can be changed by way of administrative instructions in the absence of rule. It was not a case dealing with cut off date for the purpose of promotion. Rather, it was a case dealing with the question regarding determination of eligibility criteria on the basis of instructions referred as above. Thus, this decision is not applicable in the facts and circumstances of this case.

7.1 Similarly, the Apex Court in the case of Narender Chadha (supra) was also not dealing with the question of fixing the cut off date for promotion. The issue before the Apex Court was whether it was permissible for the Departmental Promotion Committee who met in the year 1970 to consider the case of only those officers who have

completed 4 years of service in the feeder post as on 31.12.1966. The Apex Court held that it was not proper for the DPC to ignore those persons who had completed 4 years of regular service meanwhile and have become eligible for consideration when their cases were taken up for consideration by the Committee in the year 1970. Thus, the case cited is also not applicable in the facts and circumstances and issue involved in this case.

8. The issue that what should be the cut off date for the purpose of promotion has been considered by the Apex Court in the case of Ramrao and others vs. All India Backward Class Bank Employees Welfare Association and others, 2004 SCC (L&S) 337 wherein it was held by the Apex Court that the cut off date can be provided in terms of the provisions of the statute or executive order. Therefore, those who fall within the purview thereof would form a separate class. It was further held that such a classification has a reasonable nexus with the object which the decision of the Bank to promote its employees seeks to achieve. Such classification would neither fall within the category of creating a class within a class or an artificial classification so as to offend Article 14. Whenever such a cut off date is fixed, a question may arise as to why a person would suffer only because he comes within the wrong side of the cut off date, but the fact that some persons or a section of society would face hardship, by itself cannot be a

ground for holding that the cut off date so fixed is ultra vires of Article 14. The Hon'ble Supreme Court in this case has relied upon the decision of the Apex Court in the case of All India Reserve Bank Retired Officers Assn. v. Union of India, 1992 SCC (L&S) 517, D. S. Nakara v. Union of India, 1983 SCC (L&S) 145, Union of India v. P. N. Menon, 1994 SCC (L&S) 860. The decision rendered in P.N. Menon's case was followed by the Apex Court in the case of State of Rajasthan v. Amrit Lal Gandhi, 1997 SCC (L&S) 512. At this stage, it will also be useful to quote the decision of the Apex Court in the case of Ashok Kumar Sonkar v. Union of India and Others, (2007) 2 SCC (L&S) 19. In this case the question which comes before the Apex Court was that what may be the cut off date for the purpose of eligibility in the absence of any cut off date specified in the advertisement or in rules. The Apex Court after relying on a number of decisions has held that fixing of cut off date is necessary and in order to avoid uncertainty, it was held that in the absence of any rule or any specific date having been fixed in the advertisement, last date of filing of the application would be the cut off date for the purpose of determining the eligibility. At this stage it will be useful to reproduce Para 17 & 18 of the judgment, which thus reads as under :-

"17. In Bhupinderpal Singh v. State of Punjab, 2000 SCC (L&S) 639 this court moreover disapproved the prevailing practice in the State of Punjab to determine the eligibility with reference to the date  
10/

of interview, inter alia, stating @SCC p. 267-68, para 13)

"13. Placing reliance on the decisions of this Court in Ashok Kumar Sharma v. Chander Shekhar, 1997 SCC (L&S) 913, A. P. Public Service Commission v. B. Sarat Chandra, 1990 SCC (L&S) 377, Distt. Collector & Chairman, Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi, 1990 SCC (L&S) 520, Rekha Chaturvedi v. University of Rajasthan, 1993 SCC (L&S) 951, M. V. Nair (Dr.) v. Union of India, 1993 SCC (L&S) 512 and U.P. Public Service Commission v. Alpana, 1994 SCC (L&S) 742, the High Court has held that (i) that the cut off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cut off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications; (ii) that if there be no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the competent authority. The view taken by the High Court is supported by several decisions of this Court and is therefore well settled and hence cannot be found fault with. However, there are certain special features of this case which need to be taken care of and justice be done by invoking the jurisdiction under Article 142 of the Constitution vested in this Court so as to advance the cause of justice."

18. Yet again in Shankar K. Mandal v. State of Bihar, 2003 SCC (L&S) 1145 this Court held that the following principles could be culled out from the aforementioned decisions : (SCC p. 523, para 5)

"(1) The cut off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules.

(2) If there is no cut off date appointed by the rules then such date shall be as

appointed for the purpose in the advertisement calling for applications.

(3) If there is no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications were to be received by the competent authority."

9. Thus, in view of the law laid down by the Apex Court in various cases as reproduced above, the contention of the Learned Counsel for the applicant that the fixing of cut off date is arbitrary cannot be accepted. As per the decision rendered by the Apex Court as noted above, fixing of cut off date is necessary in order to avoid uncertainty and it is further held that in case if some of the persons comes within the wrong side of the cut off date thereby facing hardship, it is held that this fact by itself cannot be a ground for holding that cut off date so fixed is ultra vires of Article 14. It is further held that cut off date can be fixed as per rule or by administrative instructions. In that eventuality, it is that date which shall be considered for the purpose of eligibility in the absence of any date specified then the eligibility criteria can be determined with reference to other mode namely the last date appointed by which the applications have to be received by the competent authority. As already stated above, in the instant case the cut off date has been determined/fixed as per OM dated 8.9.1998. The respondents have also given the reason why the crucial date of 1<sup>st</sup> January is relevant for

Wl✓

the purpose of promotion. Admittedly, the vacancies pertain to the year 2000-2001. The applicant has qualified the examination on 1.5.2001, as such, he was not eligible for promotion to the post of Income Tax Inspector as on 1.1.2001 in terms of instructions issued by the DOP&T and as per the Model Calendar which thus reads as under : -

SUGGESTED MODEL CALENDAR FOR DPCs

---

Events (1)	Financial Year based (2)	Calendar Year based (3)
(i) Vacancy Year	2000-2001	2000
(ii) Crucial date for Determining Eligibility	January 1, 2000	January 1, 2000

---

10. Thus, according to us, the respondents have not committed any infirmity by taking the cut off date for determination of eligibility as on 1.1.2000. Admittedly, the applicant has not qualified the examination on that date, as such, he was not eligible for promotion. Thus,

*lll*

the respondents have not committed any infirmity by ignoring the claim of the applicant.

11. Learned Counsel for the applicant has argued that it is a case of discrimination inasmuch as the respondents granted relaxation in the eligibility condition for promotion against the vacancies for the year 2002-2003. We have given due consideration to the submission made by the Learned Counsel for the applicant. We are of the view that such a contention cannot be accepted in view of the stand taken by the respondents in the reply. In the reply, the respondents have stated that the relaxation granted in the eligibility condition for promotion against the vacancies for the year 2002-2003 was general relaxation to all the employees of the Department for the reasons that due to certain circumstances the departmental examination for the year 2001 which ought to have been conducted in May/June 2001 could be held only in January 2002 and its result was declared in July 2002. This delay in conducting the examination and also declaration of result rendered a number of employees ineligible for promotion against the vacancies for the year 2002-2003 because they were not qualified as on the crucial date i.e. 1.1.2002. It is further stated that, if the examinations had been held as per normal schedule, i.e. May/June 2001 the employees qualifying the same would have satisfied the eligibility condition date for consideration for promotion against those vacancies.

14

Thus, according to the respondents this was a general relaxation granted owing to special circumstances and were not meant to give benefit to only a few employees. It is further stated in the reply that this relaxation was applicable only for the vacancy year 2002-2003, not for any earlier or subsequent years.

12. We fully agree with the stand taken by the respondents in the reply. Thus, it cannot be said to be a case of discrimination and the contention raised by the Learned Counsel for the applicant requires outright rejection.

13. For the reasons stated above, there is no merit in this case. Accordingly the OA is dismissed with no order as to costs.

*Ramul*  
(J. P. SHUKLA)  
ADMINISTRATIVE MEMBER

*Omwar*  
(M. L. CHAUHAN)  
JUDICIAL MEMBER

P.C./