

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

APPLICATION NO.: _____

Applicant(s)

Respondent (s)

Advocate for Applicant (s)

Advocate for Respondent (s)

NOTES OF THE REGISTRY	ORDERS OF THE TRIBUNAL
	<p>23.05.2007</p> <p><u>OA No. 37/2003</u></p> <p>Mr. P.V. Calla, Counsel for applicant. None present for respondents.</p> <p>Heard. The OA is disposed of by a separate order for the reasons recorded therein.</p> <p> (TARSEM LAL) MEMBER (A)</p> <p> (KULDIP SINGH) VICE CHAIRMAN</p> <p>AHQ</p>

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

Jaipur, the 23rd day of May, 2007

ORIGINAL APPLICATION NO. 37/2003

CORAM:

**HON'BLE MR. KULDIP SINGH, VICE CHAIRMAN
HON'BLE MR. TARSEM LAL, MEMBER (ADMN.)**

Harendra Singh Krishnia son of Late Shri Kana Ram Ji, aged about 43 years, at present working on the post of Inspector, Central Excise (IAD) Office of the Commissioner, Central Excise & Customs, Jaipur Zone, Jaipur. Resident of Village & Post Akwa, District Sikar. (Rajasthan).

By Advocate: Mr. P.V. Calla

.....Applicant

Versus

1. The Union of India through Secretary, Central Board of Excise & Customs, North Block, New Delhi.
2. The Commissioner, Central Excise, New Revenue Building, Statue Circle, Jaipur.
3. Shri Y.K. Gupta, Superintendent, Central Excise Division, Udaipur.

By Advocate: None

.....Respondents

ORDER (ORAL)

Applicant has filed this OA seeking for the following reliefs:-

- (i) declared that the action of the respondents in as much not promoting the applicant on the post of Superintendent Group 'B' in the pay scale 6500-10500 may be declared illegal.



- (ii) The official respondents be directed to include the name of the applicant in the impugned order Annexure A/1 at appropriate place i.e. above his junior and grant all consequential benefits at par with his juniors.
- (iii) By an appropriate order or direction the impugned order may be declared illegal and if need be the promotion of the private respondent may kindly be declared illegal.
- (iv) Any other relief which the applicant is found entitled, in the facts and circumstances of the present case, may also be granted in favour of the applicant.
- (v) The Original Application may kindly be allowed with costs.

2. The facts of the case, in brief, are that the applicant is an Ex-Army man and in pursuance to an advertisement issued by the Department, he applied for the post of Inspector in Central Excise & Income Tax Department. He was selected for the said post and was placed at sl. No. 4 as per Annexure A/3. However, when he came to join the said post in the Department, the Department refused to give appointment to him on the ground that at the time of applying the application in the Department, he was in the army and thus he was not eligible to be given appointment under Ex-Serviceman quota. The applicant approached this Tribunal by filing OA No.697/1992 which was allowed vide order dated 12.11.1993 wherein the respondents were directed as under:-



"In the result, we accept the OA and set aside Annexure A-8 (Appendix E) dated 11/16.12.86. We direct the respondents to give the appointment to the applicant under the list or panel prepared and declared of the examination conducted in 1985 and the results declared in 1986. We further direct that the appointment will be notional and the applicant shall not be entitled for any back wages. However, the services will be counted from the date other similarly situated persons were appointed and his seniority shall be regulated accordingly.

3. Accordingly, the applicant joined his services on 23.07.1996. Thereafter, the applicant continued to work as Inspector for about 7 years and 4 months. Vide order dated 23.09.2002, the Department has issued an order where certain ad hoc promotions were given to the post of ad hoc Superintendent, Group 'B'. The name of the applicant was not included in the list. The applicant challenged the same as many of his juniors including Ballu Ram Kuldeep and the last junior Shri Y.K. Gupta have also been given appointment as ad hoc Superintendent. The main ground of the respondents for not giving appointment to the applicant to the post of ad hoc superintendent was that he has not completed 8 years of qualifying service, which was required as per recruitment rules (Annexure A/2).

[Signature]

4. The respondents have contested the OA. They have stated in their reply the applicant has not completed 8 years of qualifying service so his name could not be included in the list of promoted candidates who have been given ad hoc promotion to the post of Ad hoc superintendent.

5. The Learned counsel for the applicant argued that since the earlier OA of the applicant has been allowed wherein he was not allowed wages. However, his past service was directed to be treated as notional one. Thus he had in fact rendered 8 years of service. He should also have been given ad hoc promotion to the post of Ad hoc superintendent.

6. However, going through the rules, we find that for promotion to the post of Superintendent, rules provides in column no. 12 as under:-

"Promotion:

Inspector of Central excise (ordinary Grade) with 8 years regular service in the grade, if any, rendered in the grade of Inspector (Senior Grade)."

Perusal of these rules show that for promotion to the post of Superintendent, 8 years of regular service in the grade of Inspector is required and since the applicant had

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only 7 years and 4 months of regular service. However, we
also find that there is ~~revision~~ ^{a person} in the rules vide order dated
17.12.1986 of the Govt. of India, Ministry of Finance,
Department of Revenue. The Para 6 of which reads as
under:-

"6. POWER TO RELAX:- Where the Central Government is of opinion that it is necessary or expedient so to do, it may, by order and for reasons to be recorded in writing and in consultation with the Union Public Service Commission, relax any of the provisions of these rules with respect to any class or category of person."

7. Learned counsel for the applicant submitted that since there is power to relax and the applicant had been ordered by this Tribunal to be given appointment and his notional service may be counted for purpose of giving ad hoc promotion to the post of Ad hoc superintendent.

8. However, the power of relaxation is with the Central Government where it is necessary expedient and after in consultation with the UPSC can relax the rules. This exercise has not been done by the Central Government before issuing the impugned order dated 23.09.2002 (Annexure A/1) when ad hoc promotions were given to various candidates. Government should also have to consider this



aspect. They should have consulted the matter with the UPSC for relaxation and only then necessary order be passed. Hence, we direct the respondent to consider this aspect and refer the matter for relaxation as per rules and then take a decision thereafter whether the applicant can be given promotion to the post of ad hoc Superintendent or not. This exercise should be completed within a period of three months from the date of receipt of a copy of this order.

9. With these observations, the OA is disposed of accordingly with no order as to costs.

Tarsem Lal
(TARSEM LAL)
MEMBER (A)

Kul
(KULDIP SINGH)
VICE CHAIRMAN

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