

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 2nd day of November, 2009

ORIGINAL APPLICATION No.46/2005

CORAM:

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. B.L.KHATRI, ADMINISTRATIVE MEMBER

1. Govind Parashar s/o Shri Mohan Lal, r/o B-8, Radha Vihar, New Sanganer Road, Sodala, Jaipur.
2. Hemant Arora s/o D.P.Arora; r/o Pratap Nagar, Sanganer, Jaipur
3. Mukesh Kumar s/o Shri Ram Narain Kayath, r/o Hasanpura, Jaipur
4. Sita Ram s/o Khushal Ch. Saini, r/o Near Power House Road, Chomu.
5. Devendra Kumar s/o Shri Manik chand r/o C-80, Ram Nagar, Shastri Nagar, Jaipur

All Working as Tax Assistant (Old Data Entry Operator Grade-A) At O/o Commissioner Central Excise, Jaipur

.. Applicants

(By Advocate: Shri Rajendra Vaish)

Versus

1. Union of India
through Secretary,
Finance, Government of India,
Department of Revenue,
Central Board of Excise and Customs,
North Block,
New Delhi.

2. Commissioner, Central Excise Jaipur 1st,
NCR Building, Statue Circle,
Jaipur.
3. Shri Narain Lal Meena, Adhoc Inspector,
Br. Central Excise,
Jaipur-II.
4. Sanjay Raizada,
Anti Evasion Br.,
Central Excise Jaipur-II,
NCR Building,
Statue Circle,
Jaipur
5. Kailash Chand Kabra,
Sr. Tax Assistant,
Pay Cell, Central Excise Comm. 1st,
NCR Building, Statue Circle,
Jaipur.
6. Akashya Kumar Sharma,
Sr. Tax Assistant,
Administration Dr.
Central Excise Comm.II
NCR Building, Statue Circle,
Jaipur.

.. Respondents

(By Advocate:)

ORDER

Per Hon'ble Mr. M.L.Chauhan, M(J)

The applicants who were initially appointed as Data Entry Operator (DEO) Grade-A has filed this OA thereby praying for the following reliefs:-

- i) By an appropriate order or direction the impugned order dated 6.2.2003 Annexure A/12 and 31.12.2004 Annexure A/13 may be declared as arbitrary, illegal, unjustified and may kindly be quashed and set aside and the 37 UDC's in the pay scale of 4000-6000 erroneously fixed as Senior Tax Assistant in the pay scale

of 5000-8000 may be directed to be fixed as Tax Assistant in 4000-6000 below the applicants.

- ii) By an appropriate order or direction the respondents may be directed to shift the private respondents and redesignate as Tax Assistant in the pay scale of 4000-6000 and be placed junior to the applicants and the erroneous illegal redesignation and refixation of the private respondent and consequent order dated 06.02.2003 Annexure A/12 and seniority dated 31.12.2004 Annexure A/13 is arbitrary, illegal, unjustified and needs to be quashed and set aside and the post of Senior Tax Assistant and further posts be filled by promotion after drawing the redesignation/refixation of such UDCs below the applicants in the cadre of Tax Assistant (4000-6000).
- iii) Any other appropriate order or direction which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case may kindly also be passed in favour of the applicant.
- iv) Costs of the Application may kindly be awarded in favour of the applicant.

2. Briefly stated, facts of the case are that from the very inception in the Central Excise and Customs Department, Group-C posts consist of different cadres namely Lower Division Clerk (LDC), Upper Division Clerk (UDC), Assistant, DEO-A, DEO-B and DEO-C. It is also not in dispute the seniority list in respect of DEO as well as clerical cadre which consist of LDC, UDC and Assistant were being maintained separately. It is also not disputed that respondents have taken up exercise for restructuring of the posts in the Central Excise as per policy decision dated 3.8.2001 (Ann.A/2) and in order to give effect to the policy decision ^{taken} vide order dated 3.8.2001 the respondents also framed Recruitment and Promotion Rules in respect of the post of Tax Assistant (Group-C) post and Senior Tax Assistant (Group-C) Recruitment Rules. These rules were notified vide

separate notification. The Central Excise and Customs Department Senior Tax Assistant (Group-C Post) Recruitment Rules, 2003 were notified vide notification dated 16th February, 2003 (Ann.A/4) whereas the Central Excise and Customs Department Tax Assistant (Group-C Posts) Recruitment Rules, 2003 were notified vide notification dated May 2, 2003 (Ann.A/3). As can be seen from Ann.A/3, the persons who were appointed on regular basis and holding the post of UDC and DEO Grade-A on the commencement of these rules were deemed to have been appointed as Tax Assistant under the rules. It was further provided that the service rendered by such persons in respective post before commencement of the rules shall be taken as regular service rendered on the post of Tax Assistant for the purpose of promotion etc. So far as Recruitment Rules for the post of Senior Tax Assistant are concerned, all the persons appointed on regular basis at the time of commencement of these rules to the grade of Assistant, Tax Assistant, UDC (special Pay), DEO Grade-B and C were deemed to have been appointed as Senior Tax Assistant under these rules. The grievance of the applicants in this case is that the post of DEO Grade-A which was in the revised scale of Rs. 4000-6000 and post of the UDC which was also in the similar scale were designated as Tax Assistant whereas the post of UDC (Special Pay) which was also in the same scale viz. Rs. 4000-6000 but drawing the special pay of Rs. 140/- which was subsequently treated as special allowances has been re-designated as Senior Tax Assistant in the higher pay scale of Rs. 5000-8000. Further grievance of the applicants is that

applicants are working as DEO Grade-A in the scale of Rs. 1150-1500 revised to Rs. 4000-6000 from the date of their initial appointment in the year 1994-95 whereas respondent No.4 to 6 who have been now re-designated as Senior Tax Assistant in the higher scale of Rs. 5000-8000 were initially appointed as LDC and were subsequently promoted to the post of UDC in the pay scale of Rs. 1200-2040 revised to Rs. 4000-6000 much after joining of services of the applicants in the revised scale of Rs. 4000-6000. It is based on these facts that the applicants have filed this OA thereby praying for the aforesaid reliefs.

According to the applicants, grant of special pay/special allowances to 37 UDCs will not justify their re-designation in the higher pay scale of Rs. 5000-8000 as Senior Tax Assistant. It is on the basis of these facts that the applicants have prayed that 37 UDCs drawing special pay may be re-designated as Tax Assistant in the scale of Rs. 4000-6000 and be placed junior to the applicants.

The applicants have also prayed for quashing the order dated 6.2.2003 and 31.12.2004 (Ann.A/12 and A/13). It may be stated that vide Ann.A/12, 73 persons ^{who} were appointed on regular basis to the grade of Tax Assistant scale Rs. 4500-7000, DEO Grade-B scale Rs. 4500-7000 and UDC (Special Pay) scale Rs. 4000-6000 + 140 special pay were deemed to have been appointed as Senior Tax Assistant in the scale of Rs. 5000-8000 w.e.f. the date of commencement of the rules i.e. 16.1.2003. Ann.A/13 is combined seniority list of Tax Assistant as on 31.12.2004.

3. Notice of this application was given to the respondents. The respondents have filed reply. In nutshell, the stand taken by the respondents is that promotion of private respondents vide impugned order No. 24/2000 dated 6.2.2003 (Ann.A/12) is strictly as per Rule 5(1) of the Recruitment Rules for the post of Senior Tax Assistant which stipulate that all officials appointed on regular basis at the time of commencement of these rules to the post of Tax Assistant, UDC (special pay), DEO Grade-B and C are deemed to have been appointed as Senior Tax Assistant under these rules. According to the respondents, vide impugned order, 73 persons have been re-designated as Senior Tax Assistant w.e.f. 20.1.2003. It is further stated that out of 73 officials, 24 were regular Assistant, 12 were DEO Grade-B and 37 were regularly appointed UDC (special allowance of Rs. 140 p.m. (out of this 29 were ad-hoc Tax Assistant who has already functioned as UDC special allowance + 8 UDC special allowance) for doing complex nature of work. According to the respondents, prior to restructuring of the cadre, seniority list of UDC and UDC (special pay) was being maintained common and seniority list of DEO Grade-I was maintained separately. The respondents have also placed on record copy of the seniority list in respect of these 2 categories as Ann.R/6 and R/7. It is further stated that private respondents were appointed as UDC (special pay/special allowance) in the pay scale of Rs. 4000-6000 + 140 special allowance for doing complex nature of work before commencement of Recruitment Rules of Senior Tax Assistant and some of them were also promoted as Tax Assistant within old cadre

purely on ad-hoc basis against short term vacancies after selection by the DPC. It is further stated that special pay/allowance granted to the private respondents was for doing complex nature of work in the respondent department and the same cannot be treated as cash allowances which is given on different parameters i.e. cash handling on the basis of cash disbursed at different rates viz. Rs. 75, 150, 200, 250 and 200 p.m. as the case may be. It is specifically stated that no person has been designated as Senior Tax Assistant on the basis of getting cash handling allowance. The respondents have also stated that keeping in view the complex nature of job being performed by the UDC drawing special pay, it was decided vide Ministry letter No.A-26011/4/97-AD-II (A) to deferred revision of pay scale in respect of UDC and the UDC drawing special pay for complex nature of job. It is further stated that DOPT vide OM dated 22.4.1998 has decided that special pay would henceforth be termed as special allowance as recommended by the 5th Pay Commission. Therefore, all the 37 persons appointed on regular basis to the grade of UDC (special allowance) in the pay scale of Rs. 4000-6000 + special allowance of Rs. 140 p.m. at the time of commencement of rules of Senior Tax Assistants are re-designated as Senior Tax Assistant by the impugned order No.24/3 dated 6.2.2003 and another order No.56/03 dated 9.5.2003 w.e.f. 20.1.2003 in terms of Rule 5(1) ibid. Thus, according to the respondents, the applicants have got no case whatsoever.

4. We have heard the learned counsel for the applicants and gone through the material placed on record.

5. The question which requires our consideration is whether the impugned order whereby UDC (special allowance) has been re-designated as Senior Tax Assistant (Ann.A/12) and the seniority list of Senior Tax Assistant (Ann.A/13) is required to be quashed and set-aside. As can be seen from the facts as noticed above, the basis for quashing appointment of the private respondents who were working as UDC with special pay/allowances on regular basis in the revised scale of Rs. 4000-6000 is that UDCs were in the revised scale of Rs. 4000-6000 like the applicants who were also working as DEO Grade-A in the revised scale of Rs. 4000-6000 should have also been merged and re-designated in the cadre of Tax Assistant in the pay scale of Rs. 4000-6000. According to the learned counsel for the applicants, grant of special pay to persons appointed on regular basis as UDC (special pay) at the time of commencement of the Recruitment Rules of Senior Tax Assistant/Tax Assistant will not make difference and will not confer additional benefit of merger and re-designation in the higher scale of Rs. 5000-8000. In order to decide this issue, it will be useful to quote relevant portion of Central Excise and Customs Department Senior Tax Assistant (Group-C post) Recruitment Rules, 2003 published in official gazette under GSR No.93(E). At this stage, we wish to quote para 5(1) of the Rules of the Senior Tax Assistant Recruitment Rules, 2003 which is in the following terms:-

"5. Initial Constitution:- (i) All the persons appointed on the regular basis at the time of commencement of these rules to the Grade of Assistant, Tax Assistant, Upper Division Clerk (Special Pay), Data Entry Operator Grade-B and C shall be deemed to have been appointed as Senior Tax Assistant under these rules.

The service rendered by them before commencement of these rules shall be taken into account for deciding the eligibility for promotion to the next higher grade."

As can be seen from the rule, as reproduced above, alongwith other categories, UDCs (Special Pay) who were appointed on regular basis at the time of commencement of these rules were held deemed to have been appointed as Senior Tax Assistant. Admittedly, the applicants have not challenged validity of these rules on the basis of contention raised in this OA and as noticed above viz. that redesignation of all persons appointed on regular basis at the time of commencement of these rules to the post of UDC (Special Pay) to higher post of Senior Tax Assistant is arbitrary and discriminatory, inasmuch as, UDC and DEO Grade-A in the revised pay scale of Rs. 4000-6000 have been merged and appointed to the re-designated cadre of Tax Assistant in the pay scale of Rs. 4000-6000 whereas UDC (Special Pay) who are also in the same pay scale of Rs. 4000-6000, though they are drawing Rs. 140 as special pay/allowance cannot be said to be in better footing and thus could not have been merged and re-designated in the newly created cadre of Senior Tax Assistant and these rules are discriminatory. From the material placed on record it is evident that 73 persons were appointed on regular basis at the time of commencement of these rules to the grade of Assistant, Tax Assistant, UDC (Special Pay), DEO grade-B and 'C' and all these persons have been re-designated as Senior Tax Assistant w.e.f. 20.1.2003. It has further been clarified by the respondents that out of these 73 persons, 29 were regular Tax Assistant, 12 were DEO Grade-

B and 37 were regular UDC (Special Allowance) of Rs. 140 p.m. out of which 29 persons were functioning as UDC (Special Allowance) and were granted ad-hoc promotion as Tax Assistant whereas only 8 UDCs (Special Allowance) were doing complex nature of work. Thus, from the material placed on record, it is evident that only 8 UDCs (Special Allowance) were holding the post immediately before commencement of the new rules whereas 29 UDCs (Special Allowance) were working against higher post of Tax Assistant on ad-hoc basis. Since these 29 ad-hoc Tax Assistants were appointed on regular basis on the post of UDC (Special Allowance), thus by virtue of the provisions of Rule 5(1) as reproduced above, they can be deemed to have been appointed as Senior Tax Assistant under Senior Tax Assistant Recruitment Rules, 2003. As already noticed above, the applicants have not challenged validity of Rule 5(1) of these rules. The Apex Court has repeatedly held that till the recruitment rules are held invalid or unconstitutional, court cannot grant relief ignoring mandate of rule, even if the rules are apparently discriminatory and unless vires of the rules are challenged. As already noticed above, the applicants have not challenged validity of the statutory rule 5(1) *ibid*. Thus, in the absence of challenge to the statutory rules, it is not permissible for us to ignore the mandate of the rules which stipulate that all the persons appointed on regular basis at the time of commencement of these rules to the grade of Assistant, Tax Assistant, UDC (Special Pay), DEO Grade B and C shall be deemed to have been appointed as Senior Tax Assistant under the rules. According to us,

the applicants have not made out any case for quashing the impugned order Ann.A/12 whereby 73 persons have been appointed as Senior Tax Assistant w.e.f. commencement of the rules i.e. 16.1.2003.

6. The view which we have taken is in conformity with the law laid down by the Apex Court in the case of Union of India vs. S.K.Saigal and Ors., (2009) 1 SCC (L&S) 856. That was a case where 5 year qualifying service was prescribed for the departmental candidates who were in the pay scale of Rs. 2200-4000 for promotion to the higher pay scale of Rs. 3000-4500 whereas 8 years service in the pay scale of Rs. 2000-3500 was prescribed for outside candidates willing to come on deputation in the aforesaid scale. The Tribunal granted relief on the ground that departmental candidate could not be discriminated vis-à-vis the deputationists. The High Court upheld the Tribunal's order. The matter was carried to the Apex Court. The Apex Court has held that in the absence of challenge to the statutory rule, mandate of rule could not be ignored. It was further held that Government is not bound to promote respondents merely because in some cases the Government has done so in order to comply the High Court order.

7. The matter can also be looked into from another angle. It is settled position that matter relating to creation/abolition of posts, formation/restructuring of cadre, source/mode of recruitment, prescription of qualification, selection criteria, evaluation of service records etc. are the matters which fall within the exclusive domain of the employer. What steps should be taken for improving

efficiency of the administration is also the prerogative of the employer. It is not permissible for us while exercising the power of judicial review to interfere with the policy decision so taken by the Government unless the action of the Government is contrary to the constitutional or statutory provisions or is patently arbitrary or vitiated due to mal-afide. Further, we cannot suggest the manner in which the employer should structure or restructure the cadre for improving the efficiency of the administration. The applicants have not made out a case that the decision so taken by the Government is contrary to the constitutional or statutory provisions or is patently arbitrary or vitiated due to mala-fide. Rather the respondents have granted promotion to the Senior Tax Assistant strictly in accordance with the provisions contained in the Recruitment Rules, as noticed above. At this stage, we wish to reproduce para-37 of the judgment of the Apex Court in the case of Union of India vs. Pushpa Rani and Ors., (2008) 2 SCC (L&S) 851 whereby the Apex Court has reiterated the settled legal position, which thus reads:-

"37. Before parting with this aspect of the case, we consider it necessary to reiterate the settled legal position that matters relating to creation and abolition of posts, formation and structuring/restructuring of cadres, prescribing the source/mode of recruitment and qualification, criteria of selection, evaluation of service records should be taken for improving efficiency of the administration is also the preserve of the employer. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provision or is patently arbitrary or is vitiated due to mala fides. The court cannot sit in appeal over the judgment of the employer and ordain that a particular post be filled by direct recruitment or promotion or by transfer. The Court has no role in determining the methodology of recruitment or laying

down the criteria of selection. It is also not open to the court to make comparative evaluation of the merit of the candidates. The court cannot suggest the manner in which the employer should structure or restructure the cadre for the purpose of improving efficiency of administration."

Even on this ground also, the applicants are not entitled to any relief.

8. To the similar effect is also the decision of the Apex Court in the case of P.U.Joshi and Ors. vs. Accountant General,Ahmedabad and Ors. 2003 SCC (L&S) 191. That was a case where Supervisors as well as Section Officers were in the same pay scale. Their seniority was also common. The Government took a decision to bifurcate and restructure the Indian Audit and Accounts Department into Accountant General (Accounts and Entitlement) and Accountant General (Audit). Consequent upon such bifurcation, it was only Section Officers who were held entitled for promotion to the post of Assistant Accounts Officer. The matter was challenged by the Supervisors on the ground that common seniority list in respect of Supervisors and Section Officers are being maintained by the Department and also pay scale of these posts are same, as such, they cannot be discriminated for the purpose of promotion and pay scale. The Cuttack Bench of the CAT allowed the OA. The matter was carried to the Apex Court. The Apex Court held that the Cuttack Bench of the CAT committed a grave error in granting equality in status and trade of a person like the respondents private parties at par with Section Officers with higher qualification merely because common seniority list was prepared ignoring the fact that

it was not for the purpose of promotion but it was only for non-functional grade. In para-10 of the judgment, the Apex Court held as under:-

"10. We have carefully considered the submissions made on behalf of both the parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotion and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunal, as any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State of change the rules relating to a service and alter or amend and very by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigency may need or necessitate. Likewise the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding right or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."

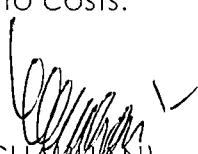
The ratio as laid down in P.U.Joshi (supra) is squarely applicable in the facts and circumstances of this case. In this case also, the applicants are pleading discrimination of providing higher pay scale to the private respondents on account of restructuring of

the cadre on the ground that pay scale of the post of applicants who are DEO Grade-A are same to that of the UDC with a slight difference that they are being special pay of Rs. 140/- p.m. Thus, in view of the law laid down by the Apex Court, as noticed above, it is not permissible for us to interfere with the policy decision taken by the Government by framing recruitment rules, more particularly, when the applicants have not made out any case within limitations or restrictions envisaged in the Constitution of India.

8. Thus viewing the matter from any angle, we are of the view that the applicants have not made out a case for grant of relief. Accordingly, the OA is dismissed with no order as to costs.


(B.L.LAKHATRI)

Admv. Member


(M.L.CHAUHAN)

Judl. Member

R/