

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 22nd day of November, 2010

ORIGINAL APPLICATION NO. 244/2006

CORAM

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

1. Deepak Jaitly (STA) son of Shri B.K. Jaitly
2. Saurabh Mathur (STA) of Shri M.P. Mathur
3. Sharavati Kumar Saran (STA) son of Shri M.R. Saran
4. Smt. Uma Sarva (STA) W/o Shri Umesh Sarva
5. Anand Jain (STA) son of Shri S.L. Jain
6. Mohammad Raffik (STA) son of Haziz Abdul Rehman
7. Pankaj Bhatt (STA) son of Shri R.S. Bhatt
8. Girdhar Sharma (STA) son of Shri M.L. Sharma
9. Sameer Mathur (TA) son of Shri M.P. Mathur
10. Mukesh Kumar (TA) son of Shri Ram Lal Ji

.....Applicant

(By Advocate: Mr. Sorabh Purohit)

VERSUS

1. Union of India through Secretary to the Government, Ministry of Finance, Department of Revenue, Central Board of Excise & Customs, New Delhi.
2. Chief Commissioner, Central Excise Department, Jaipur Zone, Jaipur, New Central Revenue Building, Statue Circle, Rajasthan, Jaipur.
3. Additional Commissioner (P&V), Central Excise, Jaipur -I, New Central Revenue Building, Statue Circle, Jaipur.
4. Shri Hemant Kumar Jain, Adhoc Inspector, Central Excise Division, Udaipur.
5. Shri Ramsharan Gurjar, Steno Grade II, P.A. to Commissioner Customs, Jaipur, Statue Circle, Jaipur.

.....Respondents

(By Advocate: Mr. Hemant Mathur)

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

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"(a) That by appropriate order or direction it be declared that the order dated 06.07.2006 (Annexure A/1) and order dated 17.05.2006 (Annexure A/2) are arbitrary, capricious, irrational, unwarranted and untenable be quashed and set aside.

(b) That by appropriate orders, directions or instructions applicants be declared eligible for promotion to the post of Inspector and the respondents be directed to hold the DPC for the post of Inspector by taking applicants in the zone of consideration and their names be included in the eligibility list.

(c) That by appropriate orders, instructions or directions it be declared that if any promotion order made/passed during the pendency of this OA adversely affecting the rights of the applicants may kindly be taken on record and quashed and set aside the same.

(d) Any other relief which the Hon'ble Tribunal thinks just and proper in the circumstances of the case in favour of the humble applicants may also be allowed.

(e) Cost of the OA be awarded to humble applicants."

2. Briefly stated facts of the case are that the respondents issued a letter dated 17.05.2006 (Annexure A/2) to all the Chief Commissioners of Central Excise/Customs whereby they were directed to implement the direction given by the Andhra Pradesh High Court vide order dated 02.03.2005 passed in Writ Petition No. 7963/2004, order dated 07.03.2005 passed in Writ Petitions No. 2378/2005 & 45/2005. As can be seen from the said letter, the decision to implement direction given by the Hon'ble Andhra Pradesh High court was accorded pursuant to the Board's decision held on 08.05.2006, which is in the following terms:-

"(i) The amended RRs of Inspectors, Sr. Tax Assistants (STA) and Tax Assistants (TA) were published in the Gazette of India on 07.12.2002, 20.01.2003 and 05.05.2003 respectively. Thus the cadre restructuring in respect of these grades were made effective from the respective dates on which the amended RPs were notified. Accordingly, the Commissionrates will work out the vacancies in

the cadre of Inspectors prior to 07.12.2002 and in the cadres of Tax Assistants and UDCs prior to 05.05.2003 for filling up the vacancies from amongst the officers eligible for promotion as per the RRs existing at that time. Wherever DPCs have been held after commencement of the new Recruitment Rules, the DPC may be reviewed, and wherever DPCs have not been held the same may be held w.r.t. the position obtaining prior to the notification of the new RRs. Wherever pre-restructured vacancies are less than the actual number of officers eligible for promotion as per the rules then obtaining, then only such number of officers will be considered for promotion as in equivalent to the vacancies and the post will be filled up. Under no circumstances the pre-revised sanctioned strength should be exceeded.

(ii) The promotion to the cadre of Inspector effected in pursuance of the High Court order dated 02.03.2005 will be subject to the outcome of the SLPs filed against the order and presently pending in the Supreme Court."

3. Pursuant to the said decision taken by the respondents, an order dated 06.07.2006 (Annexure A/1) was issued by the Office of Commissioner Central Excise, Jaipur, to convene review DPC for promotion to the grade of Inspector from amongst pre-structured Tax Assistants/UDCs/Stenographers/Draftsman in the office of the Commissioner, Central Excise Jaipur. For that purpose, eligible officers as per the list enclosed with this letter were directed to present on 11.07.2006 at Central Excise (Headquarter), NCRB, Statue Circle Jaipur, for the physical test to be followed by interview on 12.07.2006. It is these orders which are under challenged before this Tribunal.

4. The grievance of the applicants is that while resorting to such process, the very basis of cadre restructuring, which was done by the respondents to work stagnation and thereby conferring promotion channels to the category of the applicants will be defeated and also

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that vacancies have not been correctly worked out. When the matter was listed on 11.07.2006, this Tribunal while issuing the notices had not granted any mandatory stay. However, in order to protect the interests of the applicants, the respondents were directed to permit the applicants to undertake the selection test which was to be held in pursuant to the impugned order dated 06.07.2006 (Annexure A/1) on provisional basis and their result was to be kept in sealed cover.

5. Notice of this application was given to the respondents. The respondents have filed their reply. In the reply, the respondents have categorically stated that the applicants were not entitled to be included in the eligibility list, annexed with Annexure A/1, for the reasons that they were direct recruited as Data Entry Operators in the year 1994-95 and working as Data Entry Operators till 20.01.2003/05.05.2003 (the date whey they have been re-designated as STA/TA (restructured cadre). It is further stated that the applicants were not amongst the feeder cadres eligible for promotion to the post of Inspector as per old Recruitment Rules of Inspector 1979 for filling up vacancies which exists prior to 07.12.2002 (when new Recruitment Rules of Inspectors 2002 were published). Therefore, the applicants were not called for Physical test and interview for promotion to the grade of Inspector against the vacancies which exist prior to 07.12.2002 as per old Recruitment Rules of Inspector, 1979 vide letter dated 06.07.2006. The respondents have stated that as per the old Recruitment Rules of Inspector, 1979, the post of Inspector was to be filled in by promotion on the basis of "Selection Method" from amongst UDC/Stenographers Grade III with 5 years regular service, Stenographer Grade II with 2

years Service and Draftsman/Woman Searcher with 7 years service in the grade. The respondents have further stated that as per Ministry's letter dated 05.08.1988 and order dated 30.01.1989, Tax Assistants with 2 years service in the grade of UDC/Tax Assistant together were eligible for promotion. It is further stated that in the eligibility list, the Tax Assistants being on a higher scale were placed en-block above the UDCs. It is further stated that as per Ministry's letter dated 07.03.1989, stenos with 5 years in the grade III and II taken together were eligible to be considered for promotion to the grade of Inspector.

6. The respondents have further stated that in compliance of the Ministry's letter 17.05.2006, a review DPC was scheduled to be held on 26.11.2002 for regular promotion to the grade of Inspector as per old Recruitment Rules of Inspector, 1979 for filling up 148 regular vacancies existing prior to 07.12.2002 (i.e. when the New Recruitment Rules of Inspector, 2002 were published). According to the respondents, in total 133 candidates falling amongst pre-structured cadres of TA/UDC/Steno/Draftsman, who were the feeder cadres for promotion to the grade of Inspector as per old Rules of 1979, were taken into the zone of consideration by the said review DPC. It is further stated that out of them, 73 officers who were not considered earlier for regular promotion to the grade of Inspector have been called for Physical Test and interview vide order dated 06.07.2006. Therefore, the grievance of the applicants is not justified. The respondents have placed on record the copy of the old Recruitment Rules as well as letter dated 05.08.1988, order dated 30.01.1989 and letter dated 07.03.1989 on record to show the feeder categories which

were eligible for promotion to the post of Inspector according to old Recruitment Rules of Inspector, 1979. The respondents have also placed on record the order dated 23.09.2008 (Annexure MA/1) along with MA No. 369/2008 in which it has been stated that out of 10 persons, 8 persons have been promoted to the post of Inspector in the pay scale of Rs.6500-10500 on ad hoc basis with effect from the date of their joining pursuant to the DPC held on 23.09.2008.

7. We have heard learned counsel for the parties and have gone through the material placed on record. From the material placed on record, it is evident that the respondents conducted review DPC for the post of Inspector pursuant to the judgment of the Hon'ble High Court of Andhra Pradesh and for that purpose, guideline was issued vide impugned order dated 17.05.2006 (Annexure A/2). As can be seen from the decision taken by the Board, relevant portion of which has been reproduced in the earlier part of the judgment, it is evident that the Amended Recruitment Rules of Inspector were published in the Gazette on 07.12.2002 whereas in respect of Sr. Tax Assistants/Tax Assistants, same were published on 20.01.2003 and 05.03.2003. The cadre restructuring in respect of these grades were made effective from the respective date on which Amended Recruitment Rules were notified. It is also evident that Review DPC was undertaken in respect of the vacancies in the category of Inspector which exists prior to 07.12.2002 and for that purpose all eligible officers for promotion as per Recruitment Rules existing at that time were required to be considered. It is further mentioned that review DPC was to be held in respect of vacancies in the cadre of Inspector prior to 07.12.2002 and

in no circumstances, the pre-revised sanctioned strength should be exceeded and such selection was further made subject to the outcome of SLP filed against the order pending the Hon'ble Supreme Court. The respondents have placed on record the old Recruitment Rules of Inspector, 1979 prior to its amendment as Annexure R/1 alongwith order dated 05.08.1988 (Annexure R/2), order dated 30.01.1989 (Annexure R/3) and order dated 07.03.1989 (Annexure R/4), perusal of which reveals that Data Entry Operator is not the feeder category for promotion to the post of Inspector as per un-amended Rules. Admittedly, Amended Recruitment Rules of Inspector was published on 07.12.2002 and came into effect on that date. It is also not in dispute that on account of restructuring of the cadre, Data Entry Operator and UDC were deemed to have been appointed as Tax Assistants in the pay scale of Rs.4000-6000 with effect from 05.05.2003. This is evident from the order dated 28.05.2003 (Annexure R/5). Thus the applicants who belonged to the category of Data Entry Operator were re-designated/deemed to have been appointed as Tax Assistants as on 05.05.2003. Thus it only after 05.05.2003 when the applicants were re-designated as Tax Assistants, they constitute the feeder cadre to the post of Inspector. Since the Review DPC for promotion to the post of Inspector was to be held in respect of the vacancies which has arisen prior to coming into force the Amended Recruitment Rules, which was published on 07.12.2002 and the Data Entry Operator was not the feeder category and the feeder category as per the old Recruitment Rules of Inspector, 1979 were UDC/Stenographer Grade II & II/Draftsman/Woman Searcher, Tax Assistant, as such we see no infirmity in case the applicants who belong to Data Entry Operator

were not called for the purpose of physical test/interview pursuant to the impugned order dated 06.07.2006 (Annexure A/1). As already noticed above, the category of Data Entry Operator was re-designated as Tax Assistant with effect from 05.05.2003 (Annexure R/5), as such their cases for promotion to the post of Inspector against future vacancy in accordance with the Amended Recruitment Rules of Inspector, which was published on 07.12.2003, were considered and subsequently out of 10 persons, 8 persons were granted promotion to the post of Inspector vide order dated 23.09.2008 (Annexure MA/1). The respondents in the reply affidavit has shown that there were 148 vacancies of Inspector vacant for which review DPC was held, which were to be filed as per un-amended Rules of Inspector, 1979 from amongst pre-structured cadre of TA/UDC/Steno/Draftsmen by 100% promotion in terms of Ministry letter dated 19.07.2001 and 05.06.2002, as such the contention raised by the applicants that vacancies have not been correctly worked out cannot be accepted as the applicants have not controverted the specific plea taken by the respondents in the reply by filing rejoinder. Further the applicants have also failed to show how the judgment of Hon'ble Andhra Pradesh High Court has not been correctly implemented. Since in the present case the respondents have acted in accordance with the judgment of Hon'ble High Court of Andhra Pradesh, it is not permissible for us to entertain any contention raised by the applicants against the judgment rendered by Hon'ble High Court.

8. In view of what has been stated above, we are of the view that the applicant has not made out any case for the grant of relief. Accordingly, the OA is dismissed with no order as to costs.

Anil Kumar
(ANIL KUMAR)

MEMBER (A)

M.L. Chauhan
(M.L. CHAUHAN)

MEMBER (J)

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