

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**O.A. No.2505/2016
M.A. No.2281/2016**

**Reserved On:01.12.2017
Pronounced On:06.12.2017**

**HON'BLE MR.V.AJAY KUMAR, MEMBER (J)
HON'BLE MS. NITA CHOWDHURY, MEMBER (A)**

1. Laxmi Kant Gaur
S/o Late Sh. Trilok Chand Gaur
Aged 44 years,
Working as Tax Assistant in the
Central Excise Commissionerate
Delhi-I.
2. Surender Kumar
S/o Sh. Ram Ashish Rai
Aged 46 years
Working as Tax Assistant in the
Central Excise Commissionerate
Delhi Zone.
3. Ras Bihari Singh
S/o Lt. Sh. Hardev Singh
Working as Tax Assistant in the
Central Excise Commissionerate
Delhi-II.
4. Vinod Kumar
S/o Sh. Rohtash Singh
Aged 41 years
Working as Tax Assistant in the
Central Excise Commissionerate
Delhi-I.
5. Aloke Rakshit
S/o Sh. Rabindra Nath Rakshit
Aged 47 years
Working as Tax Assistant in the
Central Excise Audit-I,

Delhi.

6. Aditya Ranjan
S/o Sh. Harendra Kumar Singh
Aged 32 years
Working as Tax Assistant in the
CCU, Delhi-I.
7. Darshan Kumar Mahto
S/o Sh. Jalim Mahto
Aged 32 years,
Working as Tax Assistant in the
Central Excise Appeal-I,
Delhi.
8. Manish Kumar Gupta
S/o Sh. Naresh Kumar Gupta,
Aged 30 years
Working as Tax Assistant in the
Central Excise Commissionerate
Delhi-I.
9. Narender Kumar
S/o Sh. Pratap Singh
Aged 28 years,
Working as Tax Assistant in the
Central Excise Commissionerate
Delhi-I.
10. Arun Jain
S/o Sh. Vinod Kumar Jain
Aged 26 years
Working as Tax Assistant in the
Central Excise Commissionerate
Delhi-II.
11. Hardeep Singh
S/o Sh. Jaswant Singh
Aged 26 years
Working as Tax Assistant in the
Central Excise Commissionerate
Delhi-I.

12. Chandervesh
 S/o Sh. Mohinder Singh
 Aged 31 years,
 Working as Tax Assistant in the
 Central Excise Commissionerate
 Delhi-III, Sonipat.

... Applicants

(By Advocate: Shri L. Ojha)

Versus

Union of India
 Through Revenue Secretary,
 Ministry of Finance,
 Department of Revenue,
 North Block,
 New Delhi.

... Respondents

(By Advocate: Shri Gyanendra Singh)

ORDER

By Hon'ble Ms. Nita Chowdhury, Member (A)

MA No.2281/2016

This application has been filed by the applicants for joining together in a single application.

2. For the reasons mentioned in the MA, the same is allowed.

OA No.2505/2016

3. This Original Application (OA) has been filed by the applicants claiming the following reliefs:-

“(i) To direct the Ministry of Finance, Department of Revenue to insert the protective clause in notification issued on 28th of September, 2015 regarding new RRs 2015 called the “Central Excise and Customs Department, Executive Assistant (Group ‘B’, Non-Gazetted posts) Recruitment Rules, 2015” with a note to the effect that “the eligibility service shall continue to be same for

persons holding the feeder posts on regular basis on the date of notification of the revised rules”.

(b) To pass any other or further order as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the submissions as well as in terms of statutory rules, in the interest of justice and equity”.

4. The facts, in brief, are that applicants joined Customs and Central Excise Department in the year 2014 as Tax Assistant (TA) as per the provisions then existing in the Recruitment Rules (RRs) 2003 and were expecting promotion to the post of Senior Tax Assistant (STA) after completion of 3 years' service. Further, they have submitted that after the implementation of the new RRs of 2015, the career prospects of the applicants have been adversely affected as they have been deprived of promotion and financial benefits which would have accrued to them by virtue of their promotion to the posts of STA after attaining 3 years of qualifying service as per old RRs. Being aggrieved by this action of the respondents while implementing the new RRs of 2015, applicants approached the concerned authority but their grievances have not been redressed, which forced them to approach this Tribunal by filing this OA.

5. They have further submitted that the new RRs of 2015 suffers from legal infirmity as there is no protective clause as per the direction contained in OM No.AB-14017/12/88-Estt. (RR) dated 25.03.1996 regarding “retention of existing eligibility service” issued by DOP&T.

Relevant Para 3.1.3. reads as under:-

“3.1.3 Where the eligibility service for promotion prescribed in the existing rules is being enhanced (to be in conformity with the guidelines issues by this Department) and the change is likely to affect adversely some persons holding the feeder grade posts on regular basis, a note to the effect that the eligibility service shall continue to be the same for persons holding the feeder posts on

regular basis on the date of notification of the revised rules, could be included in the revised rules”.

6. Applicants further aver that they were initially appointed as TA which is the cadre post of STA. As per the old RRs of 2003, the qualifying service of TA for promotion to the next post of STA is 3 years and from STA to DOS, a non-executive cadre, Group ‘B’ post is 2 years of regular service. As per the new RRs of 2015, both the cadres of STA and DOS have been merged and a new post/cadre with designation as Executive Assistant (EA) has been created and qualifying service of TA to EA is 10 years, whereas as per the old RRs of 2003, applicants can become STA on rendering 3 years service as TA and thereafter as DOS on completing 2 years regular service. Hence, according to the new RRs of 2015, applicants have to wait for 10 years to be promoted to the post of EA. Both the post of DOS and STA are in the same grade pay of Rs.4200.

7. They have also relied on the OM No.AB.14017/48/2010 of DOP&T dated 31.10.2010, and prayed that “the eligibility service shall continue to be same for persons holding the feeder posts on regular basis on the date of notification of the revised rules” may be inserted in the OM of 31.10.2010. In support of their claim, they have relied on the judgment of Delhi High Court in **W.P. (C) No.4959/2014** titled as **Rajesh Kumar Giri & Others Vs. U.O.I. & Others**. They have thus prayed that the OA be allowed.

8. The respondents have filed their reply and submitted that Department of Personnel and Training has issued guidelines in O.M. No.AB-14017/48/2010-Estt (RR) dated 31.12.2010 regarding framing/amendment/relaxation in Recruitment Rules, regarding

eligibility service, the file was sent to DoP&T and in their reply they have stated that the proposal for providing eligibility service of three years in the grade of TA for promotion to the grade of EA as protection clause at the time of notification of RRs is not agreed to as the same is even less than half of prescribed eligibility service for promotion from the Grade Pay Rs.2400/- to Grade Pay Rs.4200/- which is ten years. They have further submitted that after the cadre review order dated 18.12.2013, the post of D.O.S., and S.T.A. have been merged (having the same grade pay of Rs.4200/-). Now, as per above mentioned guidelines dated 31.10.2010 issued by DoP&T, para 3.12.2 of the guidelines provides that the qualifying service for promotion from one grade to another is necessary so that there is no premature promotion or undue jump in pay and also to ensure that the officer has sufficient opportunity to demonstrate his competence/potential for holding the higher post. The qualifying service in the present case, from 2400/- grade pay to 4200/- grade pay is 10 years, as clearly mentioned in the para 3.12.2 of the above mentioned DoP&T guidelines. They have thus submitted that the applicants have not come to the court with clean hands and their OA deserves to be dismissed.

9. We have heard the learned counsel for the parties and gone through the pleadings.

10. The issue involved in this case is whether applicants can claim benefit of old RRs of 2003 which are beneficial to them and not new

RRs of 2015 which are applicable to all similarly placed persons. The judgment of the Delhi High Court in **Rajesh Kumar Giri's case** (supra) relied upon by the applicants, is not of any help as in the peculiar facts and circumstances of the case, the Hon'ble High Court has noted as under:-

“12. We are more than a little bit surprised from the response for the reason the response overlooks the fact that Recruitment Rules can always be amended prospectively and if need be even retrospectively. **The Ministry of Home Affairs, having conceded to the fact that it was by oversight that the DOPT OM dated December 31, 2010 was overlooked when the Recruitment Rules of the year 2001 were promulgated,** and that the eligibility service for promotion prescribed in the existing Rules stood enhanced and the change adversely affected persons holding the feeder grade posts on regular basis, it became necessary to pen a note in the new Recruitment Rules to the effect that the eligibility service shall continue to be the same for persons holding the feeder post on regular basis on the date of notification of the revised Rules, as per para 3.1.3 of the DOPT OM dated December 31, 2010.”

The High Court has also noted in that judgment that “We are more than a little bit surprised from the response for the reason the response overlooks the fact that Recruitment Rules can always be amended prospectively and if need be even retrospectively”. The decision of the High Court in **Rajesh Kumar Giri's case** (supra) was based on the peculiar circumstances of that case where the respondents had themselves conceded that it was by oversight that the DOP&T OM was overlooked.

12. In this view of matter, there is a very detailed order of the Hon'ble Apex Court in **P.U. Joshi & Others Vs. Accountant General 2003 (2) SCC 632** wherein it has been found that framing

of Recruitment Rules is a policy matter which falls within the realm of the Executive/Department/Expert Bodies and no one can challenge it by saying that the same is not beneficial. Further, there is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights 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. This question has been dealt in detail by the Hon'ble Supreme Court in ***P.U. Joshi & Others Vs. Accountant General 2003 (2) SCC 632*** and the relevant para 10 reads as under:

“10. We have carefully considered the submissions made on behalf of both 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 promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and 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 Tribunals, at 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 to change the rules relating to a service and alter or amend and vary by addition/substruction the qualifications, eligibility criteria and other conditions of service including avenues of promotion**, from time to time, as the administrative exigencies 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 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 his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights 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”.

Thus, applicants are not entitled to any relief in view of the judgment of the Apex Court in **P.U. Joshi's case** (supra).

13. Further, the respondents have cogently brought out in para 8 above that after the cadre review order dated 18.12.2013, the post of D.O.S., and S.T.A. have been merged (having the same grade pay of Rs.4200/-). Now, as per above mentioned guidelines dated 31.10.2010 issued by DoP&T, para 3.12.2 of the guidelines provides that the qualifying service for promotion from one grade to another is necessary so that there is no premature promotion or undue jump in pay and also to ensure that the officer has sufficient opportunity to demonstrate his competence/potential for holding the higher post. The qualifying service in the present case, from 2400/- grade pay to 4200/- grade pay is 10 years, as clearly mentioned in the para 3.12.2 of the above mentioned DoP&T guidelines. In view of the above, as we do not find that there is any discrimination between those already appointed as TA under the RRs of 2003 and the replacement RRs issued in 2015. The

qualifying service in the present case, from 2400/- grade pay to 4200/- grade pay is 10 years and hence revised cadre rules provided for eligibility service is not discriminatory to any of the persons of this service.

14. In view of above, we find that there is no merit in the instant OA. Accordingly, the same is dismissed. No costs.

(NITA CHOWDHURY)
MEMBER (A)

(V. AJAY KUMAR)
MEMBER (J)

Rakesh