

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 180/00217/2017

Tuesday, this the 28th day of August, 2018.

CORAM:

HON'BLE Mr. E.K. BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

HON'BLE Mr. ASHISH KALIA, JUDICIAL MEMBER

1. Jini Rasak V.A, 27 years,
W/o. Azeem Hafeez,
Tax Assistant, Office of the Commissioner of
Central Excise, Central Revenue Buildings,
I.S. Press Road, Cochin – 682 018.
2. Sujatha E., 30 years,
W/o. Nikil K.A,
Tax Assistant, Central Excise Head Quarters Office,
Kozhikode – 673 001.
3. Najiya P.A, 31 years,
W/o. Shiyas V.N,
Tax Assistant, Office of the Principal Commissioner of
Central Excise, Customs & Service Tax,
Central Revenue Buildings, I.S. Press Road,
Cochin – 682 018.
4. Anju K.U, 31 years,
W/o. Kishor S.
Tax Assistant, Office of the Principal Commissioner of
Central Excise, Customs & Service Tax,
Central Revenue Buildings, I.S. Press Road,
Cochin – 682 018.
5. Arunkumar S., 31 years,
S/o. N. Sobhakumaran Nair,
Tax Assistant, Central Excise Head Quarters,
ICE Bhavan, Press Club Road,
Thiruvananthapuram – 695 001.
6. Sabarinath V.S, 31 years,
S/o. B. Sivadasan,
Tax Assistant, Office of the Assistant Commissioner of
Customs, Customs Division, ICE Bhavan,
Press Club Road, Thiruvananthapuram – 695 001.

7. P.V. Indulal, 29 years,
S/o. Premranjan,
Tax Assistant, Office of the Central Excise Headquarters,
ICE Bhavan, Press Club Road, Statue,
Thiruvananthapuram – 695 001.
8. Ponni Chandran, 30 years,
W/o. Adarsh,
Tax Assistant, Customs Division, 6th Floor,
ICE Bhavan, Press Club Road, Statue,
Thiruvananthapuram – 695 001.
9. Anand Babu, 29 years,
S/o. Sudheer Babu,
Tax Assistant, Office of the Principal Commissioner of
Central Excise, Customs & Service Tax,
Central Revenue Buildings, I.S. Press Road,
Cochin – 682 018.
10. Sethu R., 31 years,
S/o. P. Rajeevan,
Tax Assistant, Office of the Assistant Commissioner of
Central Excise, Customs and Service Tax,
Kottayam Division, V. Publishers Buildings,
Sreenivasa Iyer Road, Kottayam – 686 001.
11. Neelima Sathyan, 39 years,
W/o. P.K. Rajeev,
Tax Assistant, Office of the Principal Commissioner of
Central Excise, Customs & Service Tax,
Central Revenue Buildings, I.S. Press Road,
Cochin – 682 018.
12. Mathews M. Poullose, 25 years,
S/o. M.M. Poullose,
Tax Assistant, Office of the Assistant Commissioner of
Central Excise, Central Excise Bhavan,
Kathrikadavu, Cochin – 682 017.
13. Muneer K., 26 years,
S/o. Muhammed K.,
Tax Assistant, Office of the Commissioner of Audit,
Central Excise & Customs,
Central Revenue Buildings, I.S. Press Road,
Cochin – 682 018.

14. Bony Mathew, 29 years,
S/o. Mathew,
Tax Assistant,
Office of the Customs Preventive Division,
Catholic Centre, Broadway, Cochin – 682 031.
15. Jasmin Basheer Kavapurayil, 30 years,
W/o. Ubaidh V.M,
Tax Assistant, I.S Press Road, Cochin – 682 018.
16. Navaneeth Mohan, 33 years,
S/o. M.R. Mohan,
Tax Assistant, Office of the Assistant Commissioner of
Central Excise, Customs & Service Tax,
Central Revenue Buildings, Mananchira,
Kozhikode – 673 001.
17. M.K. Vincent, 59 years,
S/o. M.L. Kuriakose,
President, Kerala Central Excise Ministerial Officers
Association, Central Revenue Buildings,
I.S. Press Road, Cochin – 682 018. - **Applicants**

[By Advocate Mr. C.S.G. Nair]

Versus

1. Union of India represented by the Secretary,
Department of Revenue, North Block,
New Delhi – 110 001.
2. Chairman,
Central Board of Excise & Customs,
North Block, New Delhi – 110 001.
3. Chief Commissioner of Central Excise,
Customs & Service Tax, Central Revenue Buildings,
I.S. Press Road, Cochin – 682 018.
4. Commissioner of Central Excise, Customs &
Service Tax, Central Revenue Buildings,
I.S. Press Road, Cochin – 682 018.
5. Secretary,
Department of Personnel and Training,
North Block, New Delhi – 110 001. - **Respondents**

[By Advocate : Mr. T.C. Krishna, Senior PCGC]

The application having been heard on 09.08.2018, the Tribunal on 28.08.2018 delivered the following:

O R D E R

Per: Ashish Kalia, Judicial Member:

Applicants are seeking the following reliefs in this O.A.

“i) to direct the respondents to grant one time relaxation to the existing Tax Assistants at the time of commencement of New Recruitment Rules Annexure A-5 dt. 28.9.2015, for consideration for promotion to the post of Executive Assistants as per Annexure A-1 Recruitment Rules by quashing Annexure A-16.

ii) to direct the 3rd / 4th respondents to fill up the vacancies of Senior Tax Assistants as on 27.9.2015 on the basis of Annexure A-1 Recruitment Rules.

iii) to grant such other relief or reliefs that may be prayed for or that are found to be just and proper in the nature and circumstances of the case.

iv) grant cost of this O.A”

2. The brief facts of the case are that applicants 1 to 16 are presently working as Tax Assistants under the 3rd respondent. Applicant No.17 is the President of the Association in which applicants 1 to 16 are members. As per Annexure A1 RR, Tax Assistants who have 3 years of regular service in the grade and have passed the departmental examination in Computer Application and relevant procedures were entitled for promotion as Senior Tax Assistants (STA). STA with 2 years of regular service was entitled for promotion as Inspector of Central Excise in Executive Stream as per Annexure A2. Upon cadre restructuring, as per Annexure A5, a new post of Executive Assistant was created in place of STA which is filled up by 60% promotion from the cadre of TA with 10 years of regular service in the grade and who have passed the departmental examination. The 5th respondent directed all the departments to publish the draft Recruitment Rules for inviting comments from the stakeholders before finalising the Rules (Annexure A4). The 2nd respondent denied an opportunity to the existing

employees for expressing their views about the new RRs and its implications. The 2nd respondent has circulated Annexure A14 proposal for one time relaxation in the Recruitment Rules and called for comments from the Cadre Controlling Authorities which was agreed by the 3rd respondent as per Annexure A15. However, the 2nd respondent did not agree to the proposal for onetime relaxation. The Central Board of Direct Taxes (CBDT) which is also under the 1st respondent like the 2nd respondent, have not amended the Rules for Executive Assistants so far. The draft R.Rs. were published and called for suggestions from stake holders. Moreover CBDT granted one time relaxation to the existing tax assistants. Those who were selected along with the applicants and were allotted to Income Tax Department could get promotion as Executive Assistants whereas those who were allotted to the Central Excise Department are stagnating due to the arbitrary action of the 2nd respondent. Central Board of Direct Taxes and Central Board of Excise and Customs are two wings of revenue department and discrimination is shown to the employees in CBEC.

3. According to the applicants there are a number of vacancies of Senior Tax Assistants which were in existence even before the publishing of the new Recruitment Rules for the post of Executive Assistant. Such of those vacancies of Senior Tax Assistants now called Executive Assistant, are to be filled up as per the then existing Annexure A.1 Recruitment Rules of Senior Tax Assistant. Representations were submitted for filling up of the vacancies of Senior Tax Assistant as on 27.9.2015 based on the then existing Rules (Annexure A1). No action was taken by the 3rd/4th respondents in this regard. Being aggrieved the applicants approached this Tribunal for redressal of their grievance.

4. Notices were issued and respondents put their appearance and filed their detailed reply statement contesting the claim of the applicants.

5. It is submitted on behalf of the respondents that the CBEC vide letter F.No. A. 32011/03/2015.Ad.IIIA dated 02.08.2016, directed all Cadre Controlling Authorities under CBEC and Director Generals “to conduct DPCs on the basis of the existing RRs for the respective grades. As regards filling up of pre-cadre and post-cadre vacancies in all the grades, it is advised that the existing RRS for the relevant vacancy year will be applicable for holding of DPCs. As per CBEC's direction vide the above letter dated 02.08.2016, DPC was conducted and the Principal Commissioner of Central Excise, Customs & Service Tax, Cochin, vide Annexure R.1 Establishment Order No. 84/2017 dated 31.03.2017 promoted 21 Tax Assistants, including all 17 applicants, to the cadre of Senior Tax Assistant, with effect from 01.04.2017. Based on these facts respondents prayed for dismissal of the O.A.

6. Applicants filed the rejoinder and reiterated their contentions and claim in the O.A.

7. Respondents filed an additional reply statement and submitted that DPC for the promotion of Tax Assistants to Senior Tax Assistants (re-designated as Executive Assistants) was conducted as per the DOPT instruction F.No. A.312011/03/2015-Ad.III A dt. 02.08.2016. Promotion order is also issued on 31.03.2017 to the 21 officers including the applicants. Even though the Recruitment Rules for the newly created posts of Executive Assistants (which is created by the merger of Senior Tax Assistants and Deputy Office Superintendents w.e.f 18.12.2013) was issued on 28.09.2015, the above promotions were effected as per the Recruitment Rules for Senior

Tax Assistants, 2003. The DPC was conducted on 31.03.2017 and the promotion order was effective from 01.04.2017. As per DOPT consolidated instructions the promotions will have only prospective effect even in the cases where the vacancies relate to earlier years. Annexure R1A is the copy of instruction in Swamy's Manual on the issue.

8. We have heard the learned counsel for the parties at length, perused the pleadings and have carefully considered the rival submissions.

9. This Tribunal find force in the submissions made by the learned standing Counsel appearing for the respondents. In order to appreciate the Rule position, para 6.4.4. regarding *Promotions only prospective in Swamy's Establishment and Administration Manual* is reproduced hereunder:

“6.4.4. *Promotions only prospective:* While promotions will be made in the order of the consolidated select list, such promotions will have only prospective effect even in cases where the vacancies relate to earlier years(s). “

10. On a careful reading of the above rule position, we would come to the conclusion that the applicants herein are entitled for seniority from the date of their joining on the promoted post i.e. from 1.4.2017 in accordance with the laid down principle that the promotion should be prospective and not retrospective. Our this view has been fortified by the ruling of the Hon'ble Supreme Court in the case of in ***Central Provident Fund Commissioner & Anr. v. N. Ravindran & Ors. 1995 (Supp (4) SCC 654*** on the basis of which this Bench of the Tribunal in the case of ***K.P.Girija & Ors. v. Union of India & Ors.*** in O.A. No.1047 of 2012 dated 31.05.2016 wherein the present issue is discussed by relying on judgements as under:

“13. Annexure R2(c) is a decision of the Division Bench of the Hon'ble High Court in OP (CAT) No. 335 of 2010 dated 12.4.2012. In that case it was held by the Hon'ble High Court that Annexure A1 therein promoting 6000 JTOs to the post of Sub Divisional Engineer is a regular promotion

order and the seniority of the officers promoted therein shall be as per the list appended. It was stated that there was no mention that the promotions were subject to the quota rota rule or that the seniority therein would be subject to any change consequent to the departmental competitive examination. It was specifically held that though the departmental competitive examination was conducted calculating the number of vacancies for the previous years, none of the persons who were successful therein are entitled to have their seniority counted from a date before which they joined duty. It was so held in the light of the 3 Judges Bench decision of the Apex Court in ***Central Provident Fund Commissioner & Anr. v. N. Ravindran & Ors. - 1995 Supp(4) SCC 654.*** “

11. In the present case, DPC conducted as per the DOP&T instructions dated 2.8.2016 and promotions were given effective from 31.3.2017 to the applicants herein. The recruitment rules were framed and issued only on 28.09.2015. The above promotions were effective as per the newly framed recruitment rules for Senior Tax Assistants 2003. The DPC was conducted on 31.3.2017 and promotion orders were effective from 1.4.2017. The cardinal principle of promotions is that the promotions to the post will only have to be considered from that date even in the cases where vacancies relate to earlier orders as stated in para 6.4.4. of Swamy's Compilation as quoted above. If we apply the principle in the present case, the newly created post as brought into the cadre by framing of new recruitment rules issued on 28.9.2015 under Article 309 of the Constitution of India and DPC was conducted thereafter and promotions were given effect. Thus the rules which hold the field narrates the prospective effect be given to all promotions from the date of new recruitment rules. The department has merged two posts, Senior Tax Assistant and Deputy Office Superintendent in order to give benefit of higher post and give effect to after framing of the recruitment rules. Then the question does not arise to give the promotion from the retrospective date. In view of the judgements referred to hereinabove, the present claim of promotion from the date of applicants' joining on the newly created post

cannot be accepted. There is nothing wrong by giving the applicants promotion to the newly created post of Senior Tax Assistants with effect from 1.4.2017 as discussed above.

12. In view of the what is stated above and respectfully following the principle of law laid down by the Hon'ble Apex Court, we find no merit in the present O.A. Accordingly, it is dismissed. Parties are directed to bear their own costs.

(Ashish Kalia)
Judicial Member

(E.K. Bharat Bhushan)
Administrative Member

sj*

Applicant's Annexures

- Annexure A1 - True copy of the Recruitment Rules for the post of STA published on 16.2.2003.
- Annexure A2 - True copy of the Recruitment Rules of Inspector of Central Excise published on 29.11.2002.
- Annexure A3 - True copy of O.M No. AB 14017/48/2010 Estt. (RR) dt. 31.12.2010 issued by the 5th respondent.
- Annexure A4 - True copy of the O.M No. AB-14017/61/2008 Estt. (RRs) dt: 13.10.2015 issued by the 5th respondent.
- Annexure A5 - True copy of the Recruitment Rules for the post Executive Assistant, published on 28.9.2015.
- Annexure A6 - True copy of the Recruitment Rules for Inspector of Central Excise on 26.12.2016.
- Annexure A7 - True copy of the Recruitment Rules for the post of Executive Assistant and Inspector of Income Tax.
- Annexure A8 - True copy of the Recruitment Rules for the post of Inspector of Income Tax.
- Annexure A9 - True copy of the Rules for the post of Senior Tax Assistant in the Income Tax Department.
- Annexure A10 - True copy of the Order No. 77/2015-16 dt: 5.8.2016.
- Annexure A11 - True copy of the letter dt: 17.9.2015 issued by the 2nd respondent.
- Annexure A12 - True copy of the representation dt: 16.4.2016 submitted by the 17th applicant.
- Annexure A13 - True copy of the letter F.No. A. 32011/03/2015-Ad.III.A dt: 2.8.2016.
- Annexure A14 - True copy of the Communication F. No. 32018/86/2015-Ad.III A. dt: 2.12.2015.
- Annexure A15 - True copy of the letter C. No. II/39/21/2013 CC (KZ)I dt: 17.12.2015.
- Annexure A16 - True copy of the letter F. No. A.32018/86/2015-Ad.III (A) Pt. dt: 27.10.2016 issued by the 1st respondent.

Annexure A17 - True copy of the Office Memorandum No. HRD/ CM/ 122/1/2015-16/6744 issued by the CBDT.

Annexure A18 - True copy of the Resolution dt: 24.11.2016.

Annexure A19 - True copy of the true representation submitted by the 3rd applicant.

Annexure A20 - True copy of the letter F. No. A.32011/03/2015-Ad.III (A) dt: 11.2.2017 issued by the 2nd respondent.

Annexure A21 - True copy of the Establishment Order No. 20/2017 dt: 30.3.2017.

Annexure A22 - True copy of the Establishment Order No. 128/2017 dt: 29.6.2017.

Annexure A23 - True copy of the Establishment Order No. 182/2017 dt: 1.6.2017.

Annexure A24 - True copy of the Office Order No. 60/2017 dt: 11.4.2017.

Annexures of Respondents

Annexure R1 - True copy of the Establishment Order No. 84/2017 dated 31.03.2017.

Annexure R1A - True copy of the instruction in Swamy's Manual

Annexure R1B - True copy of O.M dated 11/4/2007 of DoP&T.
