

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.2937 of 2014

Reserved on: 04.04.2019
Pronounced on: 08.04.2019

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Ms. Aradhana Johri, Member (A)

Prem Singh, Aged 62 years
S/o Sh. Kanshi Ram,
Retired from the post of STA
Office of Commissioner of Central Excise,
Delhi
R/o Gali No.I, C-11, Kanti Nagar Extn.,
Delhi-51. ...Applicant

(By Advocate: Shri Yogesh Sharma)

Versus

Union of India through

1. Secretary,
Ministry of Finance,
Department of Revenue,
Govt. of India, North Block,
New Delhi.
2. The Commissioner of Central Excise,
Delhi-I, C.R. Building, I.P. Estate,
New Delhi -2. ...Respondents

(By Advocate: Shri S.M. Zulfiqar Alam)

O R D E R

Hon'ble Ms. Aradhana Johri, Member (A):

The applicant - Shri Prem Singh was appointed in the
Central Board of Excise & Customs [hereinafter referred to
as CBEC] as Sepoy on 24.06.1976 and his appointment

was confirmed on 01.09.1980. Subsequently, he was appointed as Lower Division Clerk, Upper Division Clerk (*ad hoc*) later regularized, Tax Assistant and Sr. Tax Assistant. For the next promotion to the post of Inspector, he had to pass a departmental examination which would be followed by a DPC. Though he appeared in the examination but since he was over age, he was not considered for promotion. This OA has been filed due to this grievance.

2. It is the contention of the applicant that the only reason he was not considered for promotion to the post of Inspector is that he was overage, whereas persons junior to him in the seniority list were promoted. He has claimed that as per the order of the Chandigarh Bench of this Tribunal passed in the case of **Prem Singh vs. UOI** [OA No.202/PB/2009 decided on 17.03.2010] the age limit is not for promotion but for appearing in the written test. When this benefit was not given to the applicant, he sent a legal notice to the department but has not received any reply as yet. He has stated that it is a settled principle of law that consideration of a promotion in a fair manner is a legal right as held by the Hon'ble Supreme Court in **Dwarka Prasad and Ors. V/s. Union of India & Ors.** [2004 (1) ATJ (SC) 591].

3. He has claimed the following reliefs:-

- i) *That the Hon'ble Tribunal may graciously be pleased to pass an order directing the respondents to consider the case of the applicant for his promotion in the grade of Inspector (Central Excise) in the pay scale of Rs.6500-10500 w.e.f. 29.08.2005 i.e. from the date of promotion of junior persons by way of extending the benefit of judgment dated 17.03.2010 passed by the Hon'ble CAT Chandigarh Bench in OA No.202/PB/2009 with all consequential benefits including the arrears of difference of pay and allowances and revision of retirement benefits with arrears and interest.*
- ii) *Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicant along with the litigation."*

4. The respondents have denied the claims of the applicant. They have stated that the candidates have to fulfill the conditions of eligibility service and passing of departmental examination for promotion to the grade of Inspector as prescribed in Note-2 under Column 12 of Central Excise and Land Customs Department Inspector Recruitment Rules, 2002 dated 29.11.2002, which reads as under:-

"Candidate shall be required to pass such written test as may be determined by the Central Board of Excise & Customs from time to time. The maximum age of eligibility for the departmental candidates shall be 45 years which shall be relaxed to 47 years in the case of candidates belonging to Scheduled Castes or Scheduled Tribes category. However, those of the officials who were not considered for such promotion upto the age of 45 or 47 years, as the case may be, shall be granted the benefit of relaxation in age limited upto 50 years in order to enable a fair opportunity of a minimum of two chances. However, those officials who were considered for promotion upto the age of 45 or 47 years, as the case may be, on two or more occasions and were not found fit for promotion shall not be eligible for relaxation."

The respondents have further stated that the Chandigarh Bench of this Tribunal in **Prem Singh's** case (supra) has interpreted the age limit prescribed under the rules to be the age for appearing in the examination. The respondents have also stated that as per the rules and interpretation of the Chandigarh Bench of this Tribunal and even after relaxation, the age limit is 50 years whereas the applicant was 52 years at the time of writing the examination. Therefore he cannot be considered eligible for promotion to the post of Inspector within the existing recruitment rules.

5. Heard Sh. Yogesh Sharma, learned counsel for the applicant and Shri S.M. Zulfiquar, learned counsel for the respondents.

6. During the course of arguments, learned counsel for the applicant placed on record a Circular No.A.32022/08/2009-Ad.III.A dated 12.11.2011 issued by Ministry of Finance, Department of Revenue, Central Board of Excise & Customs in which all Cadre Controlling Authorities under the CBEC have been directed to comply with the order of Chandigarh Bench of this Tribunal in **Prem Singh's** case (supra). They have also enclosed Board's minutes which contain the following resolutions as well:-

“3. **BMB No.30/2011**

Issue in brief: The upper age limit applicable for promotion to the grade of Inspector from feeder cadres – Follow up action on the order dated 17.03.2010 passed by the Hon’ble CAT, Chandigarh Bench in OA No.202/PB/2009 filed by Shri Prem Singh.

3.1 Inviting Board’s attention to the decision of the Hon’ble CAT in OA No.202/PB/2009, it is stated that it had resulted in interpreting the “maximum age limit” condition under Note 2, Column 12 in the Schedule to the Central Excise and Land Customs Department Inspector (Group ‘C’ Posts) Recruitment Rules, 2002, as applicable for passing of the written test for promotion to the grade of Inspector from feeder cadres and not for actual promotion. A proposal for amending RRs whereby maximum age limit for appointment on promotion be stipulated as 50 years was therefore proposed.

3.2 The Board considered the provisions of the rule and felt that the decision of the CAT was appropriate in terms of the language contained therein. Simultaneously, the Board was of the view that there apparently was no reason to debar an individual from being promoted as Inspector at any point of time in service once the requisite exam had been cleared by the candidate. The Board therefore did not favour the imposition of an age limit cap for promotion to the grade of Inspector. Simultaneously, the Board also felt that prescribing an age limit criteria for availing the opportunity of the written test was also not warranted. While directing JS (Admn) to therefore extend the benefit of the Hon’ble CAT’s decision to the applicant herein, it also directed applying the ratio of the said judgment to all non-applicants as well. It is also called for issuance of a circular to clarify the same.”

7. The applicant has used this Circular to buttress his claim that the Board has decided that there should be no age limit for actual promotion to the post of Inspector.

8. Learned counsel for the respondents has filed CBEC Circular No.A-32022/8/2009-Ad.III.A dated 03.11.2014, which refers to the above mentioned Circular dated

12.09.2011 filed by the applicant's counsel, and provides a clarification in light of the decision of Chandigarh Bench of this Tribunal as follows:-

"I am directed to say that the Board had vide its letter No.A-32022/08/2009-Ad.III.A dated 12.09.2011 to all Cadre Controlling Authorities informed that the Board had accepted the order dated 17.3.2010 of the Hon'ble CAT, Chandigarh Bench in O.A. No.202/PB/2009 filed by Shri Prem Singh. In the said order, the Hon'ble CAT noted that while there was an age limit prescribed in Note 2 under Column 12 in the Schedule to the Central Excise & Land Customs Department Inspector (Group 'C' Posts) Recruitment Rules, 2002, the Recruitment Rules did not provide for any age limit for promotion once the examination was cleared within the prescribed age limit. The Board's minutes dated 13.07.2011, also enclosed to the said letter, stated that a decision had been taken to apply the ratio of the judgment to non-applicants as well. Subsequently, the Board issued letter dated 18.7.2012 to all Cadre Controlling Authorities clarifying that the requisite amendment of the Inspector Recruitment Rules, 2002 has not yet been finalized and the existing Recruitment Rules will remain in operation until the new Recruitment Rules are published in the Gazette of India.

2. In this connection, it is stated that clarifications on the subject have been sought by various field formations. The matter has been examined and the earlier clarification is again reiterated that once the written examination has been passed within the age limit prescribed under Note 21 under Column 12 of the Schedule of said Recruitment Rules, there would be no further age limit for granting promotion to the grade of Inspector.

3. This was the interpretation given by the Hon'ble CAT Chandigarh which was accepted for implementation. The Board's further letter dated 18.7.2012 stated that the RR of 2002 would hold the filed until new RRs are notified. There is no contradiction between the two clarifications. Other than the relief granted by the Hon'ble CAT, Chandigarh, all other conditions of the RR, 2002 remained the same."

9. From a perusal of the Circulars filed by the applicant and the respondents, it is clear that the earlier Circular dated 12.09.2011 has been replaced by the Circular dated

03.11.2014. Since the Recruitment Rules of 2002 have not been amended, therefore, they will hold the field and these Recruitment Rules provide for an age limit of 50 years, which, after the Tribunal's interpretation, means the age limit for appearing in the departmental examination.

10. In light of the above discussion we are of the considered opinion that since the Recruitment Rules provide for an age limit of 50 years which the applicant had already crossed when he appeared for the written examination and a clarification to this effect has been issued by the CBEC vide Circular dated 03.11.2014, the applicant is not entitled to be considered for promotion to the post of Inspector.

11. OA is devoid of merits and is dismissed. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(V.Ajay Kumar)
Member (J)

/AhujA/