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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

1. OA No.1571/2003-
2. OA No.2262/2003 -
3. OA No.1331/2003.

New Delhi this the 21st day of April, 2004.

HON'BLE MR. V.K. MAJOTRA, VICE-CHAIRMAN (A)
HON'BLE MR. SHANKER RAJU, MEMBER (J)

OA No.1571/2003

1. Kapil Dev,
S/o Sh. K.C. Singh,
R/o 29/III Central Excise Colony,
Mangal Pandey Nagar, Meerut, U.P.
2. Sanjeev Kumar Chadha,
S/o late Sh. S.L. Chadha,
R/o T-51, Pallavpuram,
Phase II, Meerut, U.P.
3. Ajay Kumar Agarwal,
S/o late Sh. H.O.P. Agarwal,
R/o 1047/3, Shastri Nagar,
Meerut, U.P.

-Applicants

(By Advocate Mrs. Rani Chhabra)

-Versus-

1. Govt. of India,
Ministry of Finance,
through its Secretary,
Department of Revenue,
Central Board of Excise and Customs,
North Block, New Delhi.
2. The Chief Commissioner,
Customs and Excise,
17-C, Vidhan Sabha Marg,
Lucknow.
3. The Commissioner,
Customs and Excise,
Sarvodaya Nagar,
Kanpur.
4. The Chief Commissioner,
Customs and Excise,
Meerut Zone, Meerut.
5. Kamlesh Chandra Pathak,
6. Pawan Sharma
7. Anirudh Singh
8. Raj Kumar

-Respondents

(By Advocates Shri R.N. Singh and Sh. D.R. Gupta)

OA No.2263/2003

1. Anirudh Singh,
s/o late Sh. S.P. Singh,
B-3, 304, Aravali Apartments,
Sector 34, Noida, UP.
2. Pawan Kumar,
S/o Shri Krishan Murari,
W-46, Govind Gali, Babarpur,
Shahdara, Delhi-32.
3. Rajkumar,
S/o late Sh. Kashi Ram,
R/o 47, Ram Ganj Railway Road,
Hapur, UP.
4. Vivek Kr. Goel,
S/o late Sh. Satya Prakash Goel,
L-Block, Shastri Nagar,
Meerut, UP.
5. Neeraj Bhatt,
S/o Sh. G.B. Bhatt,
B-3/302, Arawali,
Sector-34, Noida, UP.
6. Rajender Singh Rawat,
S/o late Sh. K.S. Rawat,
B-89, Gali No.2, Vinod Nagar West,
Delhi-92. -Applicants

(By Advocate Shri V.S.R. Krishna)

-Versus-

1. Union of India through
the Secretary (Revenue),
Ministry of Finance & Companay Affairs,
North Block,
New Delhi-110001.
2. Chairman,
Central Board of Excise & Customs,
Department of Revenue,
Ministry of Finance & Company Affairs,
North Block, New Delhi-110001. -Respondents

(By Advocate Shri R.N. Singh)

OA No.1331/2003

1. Ram Prasad s/o Sh. Dharam Pal Singh,
H.No.355, Kamla Nehru Nagar,
Ghaziabad (UP).
2. Smt. Asha Sharma, w/o late Sh. S.K. Sharma,
H.No.77, Shastrri Nagar, Ghaziabad (UP).
3. Sh. Maharaj Singh s/o Sh. Bindravan,
H.No.514, Kamla Nehru Nagar,
Ghaziabad (UP).

4. Sh. Nandan Singh Rawat s/o Sh. P.S. Rawat, H.No.364, Kamla Nehru Nagar, Ghaziabad (UP).
5. Sh. Sanjay Madhwar s/o late Sh. C.K. Madhwar, H.No.55-A, Panchwati Colony, Ghaziabad (UP).
6. Sh. Bijender Singh Rawat, S/o late Sh. S.S. Rawat, H.No. 513, Kamla Nehru Nagar, Ghazabad (UP).
7. Sh. Kamlesh Chandra Pathak, S/o Sh. T.D. Pathak, H.No. 784, Kamla Nehru Nagar, Ghaziabad (UP).
8. Sh. Rajesh Kumar Raju s/o Sh. R.B. Gupta, H.No.873, Kamla Nehru Nagar, Ghaziabad (UP).

-Applicants

(By Advocate Shri D.R. Gupta)

-Versus-

1. Union of India through the Secretary, Ministry of Finance, Deptt. of Revenue, North Block, New Delhi.
2. The Chairman, Central Board of Excise and Customs, North Block, New Delhi.
3. The Chief Commissioner, Customs and Excise, 17-C, Vidhan Sabha Marg, Lucknow (UP).
4. The Chief Commissioner, Customs & Excise, Meerut Zone, Meerut (UP).

-Respondents

(By Advocate Shri R.N. Singh)

ORDER (ORAL)

By Mr. Shanker Raju, Member (J):

As the facts of these OAs are inter-related having common question of law, to avoid multiplicity, OAs are disposed of by this common order.

2. In OA-1571/2003 applicants were appointed as Data Entry Operators Grade 'A' (DEO 'A'). On implementation of 5th Central Pay Commission's recommendations with the consultation of Department of Expenditure, Ministry of Finance, DEO 'A' have been placed in the pay scale of Rs.4000-6000 w.e.f. 1.1.1996 and were given the scale of UDC.

3. On decision by the Ministry of Finance to restructure all the Central Excise Commissionerate to rationalise and to bring computerisation notification dated 3.8.2001, was issued.

4. By a letter dated 19.7.2001, as a result of nomenclature of various grades and posts was to be changed, it was made clear that no direct recruitment was to be made for various grades for the year 2001-02 without the approval of the Ministry/Department, as the Cabinet has approved only one time relaxation for filling up the vacancies by promotion in all cadres.

5. Draft recruitment rules for various posts have been circulated for the posts of Inspector, Tax Assistant etc. As per clause 4 of the Rules service rendered by the UDCs or DEOs would be counted for promotion, although no specified date of reckoning seniority has been given.

6. Applicant preferred OA-66/2000 before the Tribunal challenging the draft rules and a stay was granted not to hold any DPC. However, subsequently the OA was dismissed.

7. By a letter dated 3.2.2003 Government directed the Chief Commissioners not to make promotions and regularisation to the pre-restructuring cadre of UDC and Tax Assistants (TAs) till further orders. By an order dated 10.4.2003 issued by the Department of Revenues it has been provided that vacancies which are to be filled up by promotion would be sum of back log of all vacancies which had occurred between 1.4.2001 and 31.12.2002 in the ratio of 2:1 for direct recruits and promotees.

8. Recruitment Rules were finalised and notified vide notification dated 2.5.2003. In the preamble it has been provided that the earlier rules are superseded. As per Rule 4 (1) initial constitution of Central Excise and Custom Department TAs (Group 'C' post) Recruitment Rules, 2003 the persons appointed on regular basis holding the post of UDC and DEO 'A' on the commencement of these rules are to be deemed appointed as TAs and their earlier service rendered should have to be reckoned as regular service. However, under clause 4 it is provided that UDCs and DEOs 'A' shall be placed enbloc seniors and inter-se placement has to be done in accordance with date of regular appointment to the respective grade.

9. No amalgamated list of UDCs and DEOs 'A' has been prepared from various Commissionerate. As per letter dated 12.6.2003 issued by the Chief Commissioner of Customs and Central Excise at Lucknow TAs/UDCs/LDCs promoted on ad hoc basis had been accorded approval and were regularised.

10. This has given rise to the present OA. Learned counsel for applicant contends that High Court of Bombay in WP-6957/2003 in S.S. Dondre v. Union of India, decided on 17.10.2003 has upheld the restructuring and also that the regular service of DEOs 'A'/UDCs on regular appointment is to be reckoned for the purposes of rules. In this furtherance learned counsel states that regularisation of ad hoc erstwhile UDCs is not in consonance with the policy of pre-restructuring and is not to be undertaken as per the clarifications of Government of India, Ministry of Finance dated 9.7.2003. According to the learned counsel the amalgamated list is to follow clause 4 of the recruitment rules and those incumbents who were regular UDCs and DEOs are to be part of initial constitution. As no promotion or regularisation to the pre-restructuring cadre is to be given promotion on ad hoc basis of the juniors cannot be regularised. According to the learned counsel the action of the respondents is contrary to the recruitment rules.

11. Learned counsel for applicants has a grievance that by according regularisation with retrospective effect Rule 4 of the recruitment rules goes redundant.

12. Official respondents represented by Sh. R.N. Singh, learned counsel vehemently opposed the contentions and states that OA cannot be maintained as PT was allowed without proper notice to respondents and is bad in law in view of the decision of the High Court in CWP No.7381/2000 in State of Gujarat v. R.S. Yadav, decided on 21.2.2002.

13. It is further stated that as no amalgamated list is issued the same is only an apprehension. He also states that in para 4.9 of the OA wrong facts have been averred. According to him, ad hoc promotion was made as per old rules which were in vogue and ad hoc appointment was given after relaxation though no review DPC was held they have been treated as regularised under the old rules.

14. Shri D.R. Gupta, learned counsel appearing for private respondents brought to our notice a decision of the Madras Bench of the Tribunal in OA-558/2003 and others in K.G. Raghulselvan v. Union of India, decided on 13.12.2003, wherein Rule 4 (4) of the Central Excise Rules ibid has been declared ultra vires. According to him the directions were issued to re-determine the seniority after consultation with the employees/representatives of associations on a fair and rational basis.

15. In so far as ad hoc promotion and regularisation of private respondents is concerned, by placing reliance on a decision of the Apex Court in K. Kuppusamy and Anr. v. State of T.N. and Others, 1998 SCC (L&S) 1694, it is contended that till amendment and notification of the rules under Article 309 of the Constitution, which has prospective effect, the earlier rules are to be in vogue and would have to be applied. An executive instruction on notification of restructuring would not override the statutory rules which stood in its effect till amendment. Accordingly, what has been contended is that under the old rules having regard to the backlog vacancies applicants have been regularised are to form part of initial constitution of the rules and are seniors. He

also places reliance on a decision of the Apex Court in Union of India v. Anil Kumar and Others, 1999 SCC (L&S) 1020 to contend that no Government can resort to actions depriving the promotional avenues without any credible reasons.

16. Learned counsel for official respondents in so far as decision of the Madras Bench is concerned, states that the same cannot be treated as a precedent, as the same has been passed on consent and admission by the Counsel and the Tribunal is not precluded from taking a different view.

17. In OA-1331/2003 applicants are working as UDCs and have sought quashing of the declaration of merger of cadre of DEO 'A' with UDCs and LDCs and declaration of Rule 4 of the recruitment rules ibid as unconstitutional. According to Sh. Gupta applicants being UDCs are in direct line of promotion for the post of TAS and are to be considered for promotion against the vacancies under the old recruitment rules. The action of cancelling the departmental action is misconceived. It is contended that seniority of DEO should not be counted from the date of appointment as they were in the lower scale and the only criteria for seniority should be scale of pay.

18. Official respondents' counsel Sh. R.N. Singh, vehemently opposed the contentions and stated that the cadre re-structuring has taken place and detailed discussion with the representative staff of the association. According to him, the object of merger was to rationalise/form grades into a similar and uniform

structure. DEOs have to play a greater role to feeding data into computer, as such they are to be given preference in seniority.

19. In OA-2262/2003 LDCs and UDCs challenge the merger of the cadre of non-ministerial technical stream of DEOs with ministerial LDCs and UDCs. According to the learned counsel unequal have been treated as equals. DEOs have been advantageously placed at the entry level and their avenues of promotion are better than applicants, which is discriminatory violative of Article 14 of the Constitution. By drawing a table it is contended that the two cadres are distinct and could not have been merged. He prays quashing of these rules and notification dated 2.5.2003.

20. Official respondents have vehemently opposed the contentions.

21. On careful consideration of the rival contentions of the parties, we are of the considered view that the decision of the Madras Bench of the Tribunal in Raghulselvan's case (supra) has upheld the validity of merger and reckoning of regular service in the initial constitution. However, the Madras Bench has declared Rule 4 (4) of the Central Excise and Customs Tax Assistants Group 'C' Rules as ultra vires with a direction to the respondents to recast the seniority. The contention that this has been a consent order on the admission of respondents cannot be treated as a precedent, cannot be countenanced as Union of India cannot be dissected. The stand taken by the respondents on behalf of Government through a statement by the Counsel is valid throughout the Benches of the Tribunal

as the stand is not of the Counsel but of the Government which holds good even in these cases. Accordingly, the claim as to merger of UDCs with LDCs cannot be countenanced and in view of the decision of the Madras Bench of the Tribunal and High Court of Bombay this plea is unfounded and is rejected.

22. As regards seniority is concerned, we find that the OAs are pre-mature as the amalgamated list is yet to be recast by respondents. As the rules/notification have come only on 2.5.2003, the seniority shall be recast not in the light of Rule 4 (4) of the rules but as per the directions of the Madras Bench of the Tribunal.

23. In so far as claim of applicants in OA-1571/2003 is concerned, we find that new recruitment rules have been finalised on 2.5.2003 till then the old recruitment rules cannot be whittled down by an administrative instruction, i.e., notification of amalgamation and these rules remain in vogue till 1.5.2003. The UDCs who have been promoted on backlog vacancies as Tax Assistants and their regularisation is valid in accordance with the erstwhile statutory rules and we are fortified in our conclusion by the decision of the Apex Court in Kuppusamy's case (supra).

24. As regards objection as to maintainability of OA-1571/2003 as the PT was allowed without notice on administrative side by the Hon'ble Chairman, as we do not grant any substantial relief to applicants except with an observation to follow the seniority post amalgamation in accordance with the directions of the Madras Bench, taking

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into consideration all the contentions put-forth by various cadres, objection cannot be sustained. The OAs stand disposed of accordingly. No costs.

Let a copy of this order be placed in the case file of each case.

Shanker Raju
(Shanker Raju)
Member (J)

'San.'

V.K. Majotra
(V.K. Majotra)
Vice-Chairman (A)

21.4.04