

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.3009 of 2003

New Delhi, this the 4th day of June, 2004

HON'BLE MR.KULDIP SINGH, MEMBER(JUDL)

HON'BLE MR.S.A. SINGH, MEMBER (A)

1. Parag Jain
S/o Shri Bhagirath Ram Jain
349 Kamla Nehru Nagar,
Ghaziabad.

2. Pankaj Singh
S/o Shri Y.R. Singh
30/2 Jagriti Vihar,
Meerut.

...Applicants

By Advocate: Mrs. Rani Chhabra.

Versus

1. Government 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,
19-C Vidhan Sabha Marg,
Lucknow.

3. The Commissioner,
Customs and Excise,
Sarvodya Nagar,
Kanpur.

4. The Chief Commissioner,
Customs and Excise,
Meerut Zone,
Meerut.

...Respondents

(By Advocate: Shri R.N. Singh, Counsel for Shri R.
V. Singh, Counsel

Shri D.R. Gupta, Counsel for
private respondents)

O R D E R

By Hon'ble Mr.Kuldip Singh, Member(Judl)

The applicants who are working as Data Entry Operators under respondent No.4, i.e., Chief Commissioner of Customs and Excise, Meerut Zone have filed the present OA under Section 19 of the AT Act seeking following

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reliefs:-

(a) To quash the order No.176/2003 dated 25.11.2003 so far it relates to UDCs (Special Pay) S.No.59 onwards.

(b) To direct the respondents to prepare list of Sr. Tax Assistant (STA) according to Rule 5 of the Sr. Tax Assistants Rules 2003.

2. Data Entry Operators were given the pay scale of UDC w.e.f. 1.1.1996 in pursuance of the Vth CPC. It is further alleged that the Government of India Ministry of Finance decided for restructuring all the Central Excise Commissionerate with the intention to rationalise the structure of various formations as well as workload of the staff of the department. Accordingly restructured scheme was prepared and various cadres were amalgamated and brought under the common nomenclature so as a result of restructuring in various cadre posts, Recruitment Rules for various posts were also published.

3. In this case we are concerned with the post of Senior Tax Assistants and Tax Assistants.

4. Vide notification dated 16.1.2001 rules relating to Central Excise and Customs Department Senior Tax Assistants (Group 'C' posts) Recruitment Rules, 2003 came into effect from the date of publication in the

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official gazette, i.e. 20.1.2003. According to Rule 5 of STA all UDCs with special pay were deemed to have been appointed as STA under these rules.

5. Thereafter on 2.5.2003 Recruitment Rules with regard to the post of Tax Assistant was published and the persons appointed on the regular basis and holding the post of UDC and Data Entry Operator Grade A were deemed to have been appointed as Tax Assistant. Rule 4 (4) stated that UDC and Data Entry Operators Grade 'A' shall be placed en-block senior and their inter se placement shall be fixed in accordance with the date of regular appointment to the respective grade subject to the condition that their inter se placement in the respective grade shall not be disturbed.

6. The grievance of the applicants is that no combined list of UDC and Data Entry Operators have been finalised but various UDCs after the promulgation of the rules have been given special pay and have been placed as STA whereas they are juniors to Data Entry Operators and they should have been placed as TA and those UDCs have been given special pay clandestinely and as such have stolen march over the applicants.

7. Thus the applicants have prayed for quashing of the order which relates to the UDC (Special Pay) and have also sought a direction to the respondents to prepare a list of Rule 5 STA Rules, 2003.

8. The OA is being contested by the respondents as well as private respondents.

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9. The respondents have pointed out that earlier also three OAs were decided by a common order by a Co-ordinate Bench of this Tribunal and one of the OA bears the No.OA 1571/2003 which was filed by similarly situated person and it has been so mentioned in para 4.17 of the present OA itself. According to para 4.18 of the OA the applicant has alleged that the TA rules being issued the respondents had failed to issue amalgamated list of UDC and DEO, according to the date of their regular appointment in the respective grade since the respondents failed to issue such list and in the meantime have tried to give benefit to certain UDCs promoting them as UDC (special pay) on misconstruction of certain letters issued by the Board, therefore, OA 1571/2003 has been filed and therein directions were sought to the respondents to issue amalgamated list of DEOs and UDCs.

10. The respondents further submitted that since the issue raised in the present OA has already been decided so the judgment given by the said Co-ordinate Bench of this Tribunal is binding on this court so the same judgment should also be applied to this case also.

11. We have given our thoughtful consideration to the matter involved and have also gone thoroughly through the judgment given in OA 1571/2003.

12. We find that in the said judgment there is a reference of the judgment of the Madras Bench in the case of K.G. Raghuselvan Vs. U.O.I. (OA 558/2003) decided on 13.12.2003 wherein Rule 4(4) of the TA Recruitment

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Rules had been declared ultra vires and directions had been issued to the respondents to redetermine the seniority after consultation with the employees/representative of associations on a fair and rational basis. Thus it may have caused delay in issuing the amalgamated list of UDCs and this has been so held in K.G. Raghuselvan (Supra). In OA 1571/2003 the court has also gone to the extent that the rules of TA has come into force on 2.5.2003 and the UDC who have been promoted on backlog vacancies as STA, their regularisation is valid in accordance with the erstwhile statutory rules and in support of this the court had also relied upon the Apex Court decision in K. Kuppuswamy and Another Vs. State of T.N. and Others, 1998 SSC (L&S) 1694.

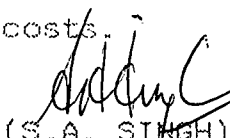
13. In our view also since the matter is covered by the decision given in OA 1571/2003 and the applicant otherwise being Data Entry Operator at best can be deemed to have become TA but cannot challenge the initial constitution of STA particularly so when the UDCs who have been promoted against backlog of vacancies and for promotion against backlog vacancies any earlier RR can be applied and not the eRRS which came into force subsequently. For this we can conveniently refer to the case of Y.V. Rangiah Vs. J.S. Riniyasa Rao, 1983 (3) SCC 284.

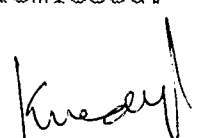
14. Assuming for the sake of arguments that some of the UDCs have been given special pay clandestinely who may be junior to the applicants but since amalgamated seniority list has not yet been published so to that extent the OA is premature because it is only after the

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publication of the amalgamated list the applicant can come to know who are the UDCs who are junior to him and have been given special pay de hors the rules. So for the time being the applicant merely being a TA cannot challenge the induction of the officials into the cadre of STA.

15. In view of the above, we find that the OA has no merits and the same is liable to be dismissed. No costs.


(S.A. SINGH)
MEMBER (A)


(KULDIP SINGH)
MEMBER(JUDL.)

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