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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION NO. 180/00612/2015

Monday, this the 11th day of November, 2019

CORAM

**Hon'ble Mr. E.K.Bharat Bhushan, Administrative Member
Hon'ble Mr.Ashish Kalia, Judicial Member**

T. Valsala, Aged 55 years,
W/o P.C.Raju, Senior Tax Assistant,
Central Excise, Air Cargo Complex,
UB Centre, Karippur Airport, Calicut District,
Residing at Poovathumoottil,
Bhasuram, Girinagar,
NSS engineering College PO, Olavakkode,
Palakkad District – 678 008.

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Applicant

(By Advocate - Mr. T.C. Govindaswamy)

Versus

1. The Union of India,
represented by the Secretary
to Government of India, Ministry of Finance,
Department of Revenue, North Block, New Delhi – 110 001.
2. The Chief Commissioner of Central
Excise & Customs, Central Revenue Buildings,
I.S. Press Road, Kochi – 18.
3. The Commissioner of Central Excise & Customs,
Central Revenue Buildings,
I.S.Press Road, Kochi – 18.

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Respondents

(By Advocate - Mr.Sinu G. Nath, ACGSC)

This application having been heard on 1st November, 2019, the
Tribunal on 11th November, 2019 delivered the following :

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ORDER

HON'BLE MR. ASHISH KALIA, JUDICIAL MEMBER -

The relief claimed by the applicant are as under:

“(i) Call for the records leading to the issue of Annexure A1 and quash the same to the extent it excludes the applicant for promotion to the post of Inspector of Central Excise;

(ii) Declare that the applicant is entitled to be considered for promotion on relaxed standards and direct the respondents accordingly;

(iii) Direct the respondents to consider the applicant for promotion as Inspector of Central Excise by applying the relaxed standards and direct further include the name of the applicant at the appropriate place and direct further to grant the consequential benefit of promotion as Inspector of Central Excise from the date of promotion of those who are included in Annexure A1 with all further benefits arising therefrom;

(iv) Award costs of and incidental to this Application;

(v) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.”

2. The brief facts of the case are that the applicant was initially appointed as a Group-D under the respondents on 31.8.1989. She was promoted as Lower Division Clerk w.e.f. 1.4.2005, Tax Assistant during the year 2011 and as Senior Tax Assistant w.e.f. 1.4.2014. The applicant submitted that on cadre restructuring the posts in the cadre of Inspector was increased and in order to enable consideration of those in the feeder cadre for promotion as Inspector, there was one time relaxation of the residency period vide Annexure A2 letter. The applicant being a member of the Schedule Caste community though qualified in physical standard/endurance was not

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subjected to a separate interview or nor she was considered by applying the relaxed standards. When Annexure A1 list was published applicant's name was found omitted. Out of 48 vacancies meant for Scheduled Caste community only 23 persons were included in the final list. The applicant submitted a representation but there was no response from the respondents. Aggrieved the applicant has filed the present OA.

3. Notices were issued to the respondents and they entered appearance through Shri Sinu G. Nath, ACGSC who had filed a detailed reply statement contending that 106 vacancies were available in the grade of Inspectors for promotion in the year 2015-16, wherein 48 vacancies were reserved for SC, 25 for ST and 33 were unreserved. Regular annual DPCs were conducted for considering promotion to the cadre of Inspectors from the cadres of Senior Tax Assistants and Stenographer Grade-II. The Central Excise and Land Customs Department Inspector Recruitment Rules, 2002 (hereinafter referred to as the 2002 Recruitment Rules) provides that promotion to the cadre of Inspectors are to be made by selection from Senior Tax Assistants with two years regular service in the grade and Stenographer Grade-II with two years regular service in the grade. As per provisions of Note 5 under Column 12 of the Schedule to the above 2002 Recruitment Rules where juniors who have completed their qualifying or eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of the requisite qualifying service by more than half of

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such qualifying or eligibility service of two years whichever is less and have successfully completed their probation period for promotion to the next higher grade along with their juniors who have already completed such qualifying or eligibility service. Smt. Usha M. Iyer, Stenographer Grade-II who had joined this commissionerate on inter-commissionerate transfer had completed the qualifying service and had been included in the consideration list. Therefore, all the Senior Tax Assistants who were senior to Smt. Usha M. Iyer and had completed half of the qualifying or eligible service i.e. one year service were also became eligible to be considered for promotion. Accordingly, 27 candidates including the applicant who were senior to Smt. Usha M. Iyer were called for physical standard/endurance test prescribed for the post of Inspectors on 31.3.2015. On successful completion of the physical test, the applicant along with other candidates were called for interview before the DPC held on 31.3.2015 for promotion to the post of Inspector. The DPC comprised of Chairman, who is the Commissioner of Cadre Controlling Central Excise Commissionerate, two members of the rank of Additional/Joint Commissioner and Deputy Commissioner of Income tax Department as member. The said committee was constituted as per the guidelines in the 2002 Recruitment Rules read with Ministry's letter dated 24.10.2007. Since one of the members of the Committee belonged to SC/ST category, no separate SC/ST member was included in the committee. As per the Recruitment Rules, if any one of the members belongs to the SC/ST category no separate SC/ST member was required to be included in the

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committee. A separate list of SC candidates called for the interview on 31.3.2015 was placed before the DPC and the committee followed the procedure prescribed in Annexure R1(b) letter. As per Annexure R1(b) the interview board shall assess the suitability or otherwise of the candidate for holding the post of Inspector and at the end of the selection procedure each official considered for the promotion shall be assessed as 'fit' or 'unfit'. The officials assessed as 'fit' shall be arranged in the order of their seniority in the feeder grade. The DPC did not adopt any separate interview for SC/ST candidates called for the interview. Since the DPC assessed the applicant as 'unfit' she was not included in the select panel for promotion to the post of Inspector. There was no discrimination or deliberate omission of the applicant in the select panel. Respondents pray for dismissing the OA.

4. Heard Shri T.C. Govindaswamy, learned counsel appearing for the applicant and Shri Sinu G. Nath, ACGSC learned counsel appearing for the respondents. Perused the record.

5. Annexure R1(a) Central Excise and Land Customs Department Inspector Recruitment Rules, 2002 provides for a 'Saving' clause. It reads thus:

“7. Saving – Nothing in these rules shall affect reservation, relaxations of age limit and other concessions required to be provided for the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, Ex-serviceman and other special categories of persons in accordance with the orders issued by the Central Government from time to time in this regard.”

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As submitted by the respondents there were 106 vacancies available in the grade of Inspectors for promotion in the year 2015-16, wherein 48 vacancies were reserved for SC, 25 for ST and 33 were unreserved. Respondents conducted DPC for considering promotion to the cadre of Inspectors from the cadres of Senior Tax Assistants and Stenographer Grade-II. The 2002 Recruitment Rules provides that for promotion to the cadre of Inspectors selection from Senior Tax Assistants with two years regular service in the grade and Stenographer Grade-II with two years regular service in the grade are to be made. As per provisions of Note 5 under Column 12 of the Schedule to the above 2002 Recruitment Rules where juniors who have completed their qualifying or eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of the requisite qualifying service by more than half of such qualifying or eligibility service of two years whichever is less and have successfully completed their probation period for promotion to the next higher grade along with their juniors who have already completed such qualifying or eligibility service.

6. In the present case one Smt. Usha M. Iyer, Stenographer Grade-II who had joined this commissionerate on inter-commissionerate transfer had completed the qualifying service and had been included in the zone of consideration for promotion. Therefore, the respondents considered all Senior Tax Assistants who were senior to Smt. Usha M. Iyer and had

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completed half of the qualifying or eligible service for promotion. The applicant along with others who were senior to Smt. Usha M. Iyer were called for physical standard/endurance test prescribed for the post of Inspectors on 31.3.2015. The applicant was successful in the physical test and she along with others were called for interview before the DPC held on 31.3.2015 for promotion to the post of Inspector.

7. To ascertain whether any discrimination was meted out to the applicant, we have directed the respondents to produce the DPC records. The respondents have produced the DPC records. On perusal of the same we find that a separate statement is prepared showing the names and service particulars of candidates belonging to Scheduled Caste community who are eligible for considering for promotion to the cadre of Inspector against the vacancies of 2015-2016. In that statement 3 candidates names are shown and the applicant is placed at third position wherein the result of interview is shown against the applicant as 'Fail'. That being the position the DPC recommended the applicant as 'Not Fit' for promotion to the cadre of Inspector against the vacancies of 2015-2016. This shows that separate consideration was given to the candidates of reserved category.

8. We also find that the DPC comprised of Chairman, who was the Commissioner of Cadre Controlling Central Excise Commissionerate with two members of the rank of Additional/Joint Commissioner and Deputy

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Commissioner of Income tax Department as member. As contended by the respondents the said committee was constituted as per the guidelines in the 2002 Recruitment Rules read with Ministry's letter dated 24.10.2007 and since one of the members of the Committee belonged to SC/ST category no separate SC/ST member was included in the committee.

9. As per Annexure R1(a) if any one of the members belongs to the SC/ST category, no separate SC/ST member was required to be included in the committee. Moreover, a separate list of SC candidates called for the interview on 31.3.2015 was placed before the DPC and the committee followed the procedure prescribed in Annexure R1(b) letter. As per Annexure R1(b) the interview board shall assess the suitability or otherwise of the candidate for holding the post of Inspector and at the end of the selection procedure each official considered for the promotion shall be assessed as 'fit' or 'unfit'. The officials assessed as 'fit' shall be arranged in the order of their seniority in the feeder grade. Further the respondents contended that the DPC did not adopt any separate interview for SC/ST candidates called for the interview. Since the DPC assessed the applicant as 'unfit' she was not included in the select panel for promotion to the post of Inspector. Moreover, the DPC generally looks into the record of the candidate to find out whether he or she has necessary positive qualification for the higher post, such as personality, educational qualifications, initiative, strength of character, a readiness to assume individual responsibilities etc., all general

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qualities associated with the higher post particularly being an executive cadre and also to assess the candidates belonging to SC/ST separately by way of concession/relaxation. In short a subject evaluation is carried out on the candidates appearing for the interview by the members of the DPC. It is evident from the result of the selection that two separate lists were made out of which one was for reserved candidates alone. Therefore, the contention raised by the applicant that separate consideration was not given to reserved category candidates is baseless. The respondents have adopted all steps to protect the interest of the SC/ST candidates. Later as stated by the respondents in the statement filed by them on 21st August, 2019 that the applicant was considered for promotion during the year 2016-2017 and was promoted to the cadre of Inspector of Central Excise vide order dated 31.3.2016 which the respondents have produced as Annexure R3.

10. In view of the above we do not find any merit in the matter. Accordingly, the OA is dismissed. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures in O.A. No.180/00612/2015

1. Annexure A1 - True copy of the Order bearing No.45/2015 dated 31.03.2015 issued from the office of the 3rd respondent.
2. Annexure A2 - True copy of the letter bearing C.No.II/39/1/2015-Conf. Dated 27.03.2015 issued from the office of the 3rd respondent.
3. Annexure A3 - True copy of letter bearing C.No.IV/16/52/2015-RTI/1741 dated 11.05.2015 received by the applicant's husband under the Right to Information Act.
4. Annexure A4 - True copy of representation dated 27.04.2015 submitted by the applicant to the 2nd respondent.
5. Annexure A5 - True copy of representation dated 25.05.2015 submitted by the applicant to the 2nd respondent.
6. Annexure R1(a) - True copy of relevant pages of the Central Excise and Land Customs Department Inspector Recruitment Rules, 2002.
7. Annexure R1(b) - True copy of the letter dated 27.08.2008.
8. Annexure A6 - True copy of government of India, Department of Personnel & Training OM bearing F.No.35.034/7/97-Estt(D) dated 08.02.2002.
9. Annexure A7 - True copy of Department of Personnel OM bearing No.27/2/71-Estt (SCT) dated 27.11.1972.
10. Annexure A8 - True copy of Personnel and Administrative Reforms OM bearing No.36021/10/76-Estt (SCT) dated 21.01.1977.
11. Annexure A9 - True copy of Department of Personnel & Training OM bearing No.36012/23/96-Estt (Res) Vol.II dated 03.10.2000.
12. Annexure A10 - True copy of order dated 16.08.2012 in OA No.5/2012 rendered by this Hon'ble Tribunal.
13. Annexure A11 - True copy of Communication bearing F.No.C.30013/40/2015-Ad.IVA dated 07.08.2015, from Government of India, Ministry of Finance, Central Board of Excise & Customs.
14. Annexure A12 - True copy of Communication bearing F.No.C.300013/20/2014-Ad.IVA dated 16.10.2015, from Government of

India, Ministry of Finance, Central Board of Excise & Customs.

- 15.** Annexure MA1 - True copy of communication bearing C.No.II/9/01/2013 Con Cx dated 26.08.2013, issued by the Superintendent (Vigilance), from Government of India, Ministry of Finance, Central Board of Excise and Customs, along with its enclosure.
 - 16.** Annexure MA2 - True copy of Annual Performance Assessment Report of the applicant for the period 2013-2014.
 - 17.** Annexure MA3 - True copy of the Annual Confidential Report of the applicant for the period 2014-15.
 - 18.** Annexure R2(c) - True copy of the Ministry's letter F.NoA34011/2012.Ad III A dated 08.09.2014
 - 19.** Annexure R2(d) - True copy of the OM No.36012/23/96-Estt(Res) Vol.II dated 3.10.2000.
 - 20.** Annexure R2(e) - True copy of the OM No.22011/5/86-Estt.(D) Dated 10.04.1989 of the DOP&T.
 - 21.** Annexure R3 - True copy of Order dated 31.03.2016 for promotion to the cadre of Inspector of Central Excise.
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