

(2009) 02 MAD CK 0006

In the Madras High Court

Case No : Writ Petition No. 16239 of 2008 and M.P. No. 1 of 2008

A.G. Rajan Senior Tax Assistant, Directorate General of
Central Excise Intelligence, Chennai Zonal Unit

APPELLANT

Vs

The Central Administrative Tribunal, Madras Bench and
Others

RESPONDENT

Date of Decision : 17-02-2009

Acts Referred:

Citation : (2009) 02 MAD CK 0006

Hon'ble Judges : P.K. Misra, J;A. Kulasekaran, J

Bench : Division Bench

Advocate : R. Subramanian for S. Hemalatha, for the Appellant; B. Santhakumar, SCCG for Respondents 2 to 5, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Misra, J.—The present petitioner filed O.A. No. 399 of 2008 before the Central Administrative Tribunal, Madras Bench, (hereinafter

referred to as ""The Tribunal"" for quashing the circulars dated 5.3.2008 and 31.5.2008 and consequently to direct the respondents to conduct

departmental promotional examination based on seniority and for consequential benefits. Such Original Application having been dismissed at the

admission stage by giving some reasons, the present writ petition has been filed.

2. The averments, which were made before the Tribunal and reiterated in this writ petition, are to the following effect:

The petitioner was working as Senior Tax Assistant and due for promotion to the post of Intelligence Officer. Earlier the petitioner had made a

representation to the authorities concerned to take steps for promoting the eligible persons, but the respondents by letter dated 1.3.2005 had

intimated that ""draft Recruitment Rules of Intelligence Officer in respect of DRI/ DGCEI are under finalisation at Ministry and necessary action will

be taken only after new RRs are approved"". Subsequently, however, even though the Recruitment Rules had not been finalised, the respondents

issued Circular dated 5.3.2008 calling for willingness of the candidates for departmental promotional examination for the post of Intelligence

Officer on the basis of the existing rules of the year 1990. At that state, the present petitioner / applicant had given his willingness. Subsequently,

however, another Circular dated 31.5.2008 was issued calling for similar willingness. At that stage, the petitioner filed Original Application for

quashing such circulars dated 5.3.2008 and 31.5.2008.

3. One of the contentions raised was to the effect that since earlier the Department had indicated that steps for promotion would be taken after

finalisation of the draft rules, there was no justification to take steps for filling up the post on the basis of the old rules.

4. The Tribunal dismissed the Original Application by observing that on an earlier occasion when the Circular dated 5.3.2008 was issued, the

petitioner himself has indicated his willingness and, therefore, he was estopped from challenging such circular dated 5.3.2008 and the subsequent

circular dated 31.5.2008. The Tribunal further held that, though it was contended that no rules have been framed, the rules of the year 1990 were

in existence and, therefore, it cannot be said that promotions were being made de hors the rules.

5. As already indicated, the Original Application was dismissed at the stage of admission, even though no counter had been filed on behalf of the

Department. However, in the present writ petition, counter has been filed on behalf of the respondents. In such counter it has been indicated that

even though earlier the present petitioner had been informed that promotion would be considered only after finalisation of the draft rules, since the

rules have not been finalised, steps were taken to fill-up the post in accordance with the existing rules and accordingly willingness was called for as

per Circular dated 5.3.2008 and the petitioner himself has indicated his willingness. Therefore, there is no justification for the petitioner to file the

Original Application because subsequently another circular dated 31.5.2008 was issued.

6. In the Circular dated 5.3.2008, which is available at Page No. 17 of the typed set of papers, it has been indicated that an examination would be

held for appointment to the post of Intelligence Officer and the candidates willing to appear in the examination may convey their willingness. The

petitioner by letter dated 7.3.2008, indicated his willingness to appear at the examination to be conducted for the post of Intelligence Officer. On

31.5.2008, the present Respondent No. 3 issued a Corrigendum, whereunder it was indicated that Tax Assistant and Stenographers Gr.III who

would be completing five years regular since in the grade as on 30.06.2008 may also submit their willingness to appear at the examination.

7. It is apparent that by issuance of the aforesaid Corrigendum, number of persons in the feeder category has increased. The main ground of attack

as indicated in the Original Application was to the effect that the Department, while replying to the representation of the petitioner, has stated that

promotion would take place only after finalisation of the draft rules and, therefore, there is no justification on the part of the Department to take

steps for filling up the promotional post, even without finalising the draft rules. As already noticed, when the Department has issued the Circular

dated 5.3.2008 inviting willingness of the candidates to appear at the examination as per the existing Rules, the present petitioner had indicated his

willingness to appear at such examination. At that stage, the petitioner did not raise any grievance that the promotional post should be filled up only

after the new Rules are in place. It is also to be noticed that in the earlier representation of the petitioner, prayer had been made that steps should

be taken to fill up the post. It is obvious that the petitioner did not have any grievance when the Circular dated 5.3.2008 was issued. Merely

because subsequently a further Corrigendum was issued on 31.5.2008 increasing the field of eligible candidates, it cannot be said that the right of

the petitioner has been affected in any manner.

8. It is of course true that he may have to face stiffer competition inasmuch as number of eligible candidates would be more. But, that cannot be a

justifiable ground to quash the process of selection. Merely because there is increase in the number of eligible candidates, the entire process cannot

be set at naught. The right of an eligible candidate to be considered for promotion when the employer thinks it appropriate to fill up the promotional

post does not imply that the employer is required to fill up the promotional post as soon as the vacancy crops up, unless the rules contemplate

preparation of a panel for promotion every year. It is not the case of the petitioner that a panel of suitable candidates was required to be prepared

every year for the purpose of filling up the promotional post in which event, he could have raised a justifiable argument that the persons who are

not eligible earlier can be made eligible merely because there is delay in preparation of the panel. Moreover, it would not be reasonable to stall the

process of promotion indefinitely merely because certain draft rules were under consideration of the Department.

9. In the present case, the authorities concerned had taken a conscious decision not to fill up the promotional post. It cannot be said that such a

decision, at that stage, was arbitrary. In this connection, it may be noted as observed in Dr. Ramulu and another, etc. Vs. Dr. S. Suryaprakash

Rao and others, that it is open to the appropriate authority not to fill-up the vacancy. Under similar circumstances, in the decision reported in Dr.

Ramulu and another, etc. Vs. Dr. S. Suryaprakash Rao and others, , such contentions had been negated.

10. Having regard to all these aspects, we do not find any scope to interfere with the order passed by the Tribunal. The writ petition is accordingly

dismissed. No costs. Consequently, the connected miscellaneous petition is closed.