(2008) 10 MAD CK 0057

In the Madras High Court

Case No : Writ Petition No. 28333 of 2003 and W.P.M.P. No. 34604 of 2003

D. Ramani and Others	APPELLANT
Vs	
Registrar, Central Administrative Tribunal, Madras Bench and Others	RESPONDENT

Date of Decision : 14-10-2008

Acts Referred:

Central Excise and Customs Department Senior Tax Assistants (Grade C Posts) Recruitment Rules, 2003 — Rule 5
Customs Department Inspector (Examiner) (Group C posts) Recruitment Rules, 2002 — Rule 12

Citation : (2008) 10 MAD CK 0057

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

Bench : Division Bench

Advocate : Balan Haridoss, for the Appellant; Vijay Narayanan for R. Parthiban, for for Respondents (2 to 4), S. Udayakumar, ACGSC for Respondents (5 and 6) and N.R. Chandran for Akbar Row, for Respondents (7 and 8), for the Respondent

Final Decision : Dismissed

Judgement

K. Kannan, J.—Petitioners who are third parties to O.A. No. 495 of 2003 have obtained leave for challenging the order dated 4.9.2003

passed commonly with O.A. No. 995 of 2002, as affected parties.

I The core issue:

2. The issue centres around interpretation of Rule 12 of Customs Department Inspector (Examiner) (Group ''C'' posts) Recruitment Rules, 2002

and Rule 5 of Central Excise and Customs Department Senior Tax Assistant (Group ''C'' posts) Recruitment Rules, 2003, hereinafter called the

Rules of 2002 and Rules of 2003 respectively. The said rules have a bearing on the entitlement to promotion to the post of Inspector, which is an executive cadre. By the impugned order, the Central Administrative Tribunal upheld the contentions of the applicants before it, who were in the

technical line of the Excise Department as Data Entry Operators Grade B and C (abbreviated as DEOs Gr B and Gr C), to consider them for

promotion to the posts of Inspector alongside the claim of the present petitioners who were in the ministerial cadre in the same Department.

II. Phases of cadre re-structuring

3. The computerization ushered in Customs and Excise Department compelled some changes through bifurcation of existing cadre in the late

1980s. The restructuring fell into two streams: (i) Ministerial side and (ii) the Technical side, so called, of persons who were trained in computers.

The respondents framed Electronic Data Processing Discipline (Group B Technical Posts) Recruitment Rules, 1992, which saw the constitution of

the cadre of persons who were originally appointed as Key punch operators, Terminal Operators and Lower Division Clerks (LDCs) performing

their duties as terminal operators but they were deemed to have been appointed as DEOs Gr A and treated as en bloc seniors to those appointed

after the commencement of the rules. They were asked to express their willingness on or before 16.03.1993 to be considered for appointment to

the post of DEOs Gr A, failing which it was presumed that they were not willing to be considered for the said post. The next higher grades were

DEOs Gr B and DEOs Gr C.

4. The 1992 Rules prescribed that all further promotion should be considered only under the said relevant rules and that they would not be

considered for promotion to the post as prescribed in the Customs Department Group-C Recruitment Rules. Along with the persons who had

made such options, the 5th respondent viz., the Chief Commissionerate of Customs appointed the persons who were performing the duties of Data

Entry Operators in various Central Excise Commissionerate on inter-commissionerate transfer. In all these processes, the persons who were

working as Lower Division Clerks in the Ministerial side chose to remain as such and the next avenue for the promotion to them was Upper

Division Clerk (UDC), the Upper Division Clerk Special Grade, UDC Special Pay and Tax Assistants.

5. The next phase of restructuring was done in the year 2002 when on the

ministerial side, Assistants, Tax Assistants and UDC (Special Pay) and

all the technical side Data Entry Operators Gr B and Gr C were re-designated as Senior Tax Assistants. The next avenue for promotion available

to them was to the post of Inspector (Examiners).

6. This phase is the most crucial one when two sets of rules were made which have given rise to a spate of litigations. They were called the

Customs Department Inspector (Examiner) (Group C Post) Recruitment Rules, 2002 and Central Excise and Customs Department Senior Tax

Assistant (Group C Post) Recruitment Rules, 2003. After the 2003 Rules were notified, a Circular No. 41/2003 was issued on 10.06.2003 calling

for certain classes of persons who were referred to in Clause (a) of para 12 in 2002 Rules, inviting them to express their willingness to consider

them for promotion for the grade of Inspector (examiners) and subject themselves to physical tests. By this Circular, the persons who had been re-

designated as Senior Tax Assistant from the technical side, who entered the pre-restructured cadre of DEOs Gr B and C were excluded from

reckoning, by the fact that only Tax Assistants, who had put in two years of experience in such post were treated as eligible for being considered

for promotion.

III. The relevant Rules of 2002 and 2003:

7. It would be relevant to reproduce the relevant rules and if we have come by an interpretation which according to us is correct, we would have

arrived to the final conclusions to determine the relative merits of the contention of the rival parties. Customs Department Inspector (Examiner)

(Group ''C'' Posts) Recruitment Rules, 2002:

PROMOTION:(a) By selection from those candidates working in the following pre-restructured cadres:

(i) Tax Assistant with two years service as Tax Assistant or 5 years service as Tax Assistant and Upper Division Clerk put together, (ii)Upper

Division Clerk with 5 years service in the grade, and

(iii) Stenographer (Grade II0 and Stenographer (Grade III) with 5 years regular service as Stenographer.

(b) By selection from those Candidates working int he following restructured cadres:

(i) Senior Tax Assistant with two years regular service in the grade;

(ii)Stenographer Grade II with 2 years regular service in the grade;

(c) Failing the method of recruitment specified under Clause (b) above, by selection from Tax Assistant and Stenographers Grade III having not

less than 10 years service including the service to be included for this purpose under the provisions of the rules regulating the method of recruitment

to the post of Tax Assistant.

Note 1: Promotion under Clause (a) above shall be operative only for a period of two years from the date on which the restructured cadres

mentioned under Clause (b) come into existence.

The service rendered under the new Grade in the restructured cadres shall be counted towards considering the eligibility for promotion under

Clause (a) above. Group ''C'' Departmental Promotion Committee - Chairman, Commissioner of Custom.

To

Additional / Joint Commissioner of the Customs

Assistant/Deputy Commissioner of Income Tax.

Note: Where none of the members belongs to the Scheduled Caste or Scheduled Tribe category, a Group ''A'' officer belonging to Scheduled

Caste or Scheduled Tribe category shall also associate as a member of the Departmental Promotion Committee.

Not applicable

Members

Member

NOTE 2: Candidate shall be required to pass such written test as may be determined by the Central Board of Excise and Customs from time to

time. The maximum age of eligibility for the departmental candidates shall be 45 years which shall be relaxable to 47 years in the case of candidates

belonging to the Scheduled Caste or the Scheduled Tribes. 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 of age limit 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 limit 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 this relaxation. Central Excise and Customs Department

Senior Tax Assistant (Group ''C'' Post) Recruitment Rules 2003:

5. Initial Construction-(i) All the persons appointed on the regular basis at the time of commencement of these rules to the Grade of Assistant, Tax

Assistant, Upper Division Clerk (Special Pay), Data Entry Operator Grade ''B'' and ''C'' shall be deemed to have been appointed as Senior Tax

Assistants under these rules. the serviced rendered by them before commencement of these rules shall be taken into account for deciding the

eligibility for promotion to the next higher grade. (ii) Assistants (Rs. 5000 - 8000) and Data Entry Operator Grade (Rs. 5000 - 8000) are being

redesignated as Senior Tax Assistants in the same scale of pay. Therefore, the Assistants and Data Entry Operator Grade ''C shall be placed

enblock senior to the other categories. However, their inter-se-placement shall be done according to the date from which they had actually been

appointed to these grades on regular basis subject to the condition that their inter se placement in their respective category shall not be altered. (iii)

The Date entry Operator Grade ''B'' (Rs. 4500 - 7000) and Tax Assistants ((Rs. 4500 - 7000) have been placed in their higher scale of 5000 -

8000 and they shall be placed below the Assistant and Data Entry Operator Grade ''C and their inter-se placement shall be fixed in accordance

the date of regular appointment to the respective grade subject to the condition that their inter-se placement in respective category shall not be

disturbed. (iv)Upper Division Clerk with special pay shall be placed below Assistant, Date Entry Operator Grade ''C'' Data Entry Operator Grade

''B'' Tax Assistants. (v) The present employees would be required to pass the required or suitable departmental examination, as specified by the

Competent Authority, from time to time, in Computer application and relevant procedures within two years failing which they would not be eligible

for further increments.

8. The notification of the rules and the circular seemed to contain mutually inconsistent positions which gave rise to the litigations not merely in the

State of Tamil Nadu but elsewhere before the Central Administrative Tribunal Benches at Bangalore and Chandigarh, Andhra Pradesh High Court

and Bombay High Court. The Central Administrative Tribunal at Bangalore and

High Court at Andhra Pradesh High Court interpreted the Rules in

such a way that it found only the persons in the ministerial cadre who had attained the position as Tax Assistant, UDC Special Pay and

Stenographers Grade-II and Grade III with five years experience as eligible for consideration for promotion to the post of Inspector (Examiners).

The Madras Bench of the Central Administrative Tribunal, while quashing the Circular that excluded out of reckoning Data Entry Operators Grade

B and C, relied on the decision of Central Administrative Tribunal, Chandigarh Bench, which held that the persons who had been re-designated as

Senior Tax Assistant from the technical side were also entitled to be considered for promotion and their experience in the pre-restructured cadre

as Data Entry Operators Grade B and C should also be counted. The two streams of opinion have arisen on account of varying interpretation

given to the rules of 2002 and 2003.

IV, The mode of approach adopted by the Tribunal:

9. This writ petition which examines the decision of the Madras Bench of the Central Administrative Tribunal came about when the Circular No.

41/3003 was issued on 10.06.2003 making reference only to para 12 (a) of Rules of 2002 for identifying the class of persons who would be

eligible consideration for promotion. In effect, they were excluding for reckoning for promotion the persons who had arrived at the post of Senior

Tax Assistant from the technical side. It prompted the persons who had attained Data Entry Operators Grade B and ''C'' to challenge the Circular

by filing O.A. 495/03 and yet another connected matter filed by the affected parties in O.A.NO.995/02. The writ petitioners who were not made

parties made a vain bid to implead themselves before the Tribunal and after the common orders were issued in the manner referred to above, they

sought to challenge the order in O.A. 495/2003 as deserving to be set aside and for other consequential reliefs. The Tribunal focused its attention

to the question that needed to be examined viz. whether the Requirement of Rule of 2002 under column 12 (a) would apply to the exclusion of

column 12 (b). If the answer was yes then the Circular was to be upheld and if it was otherwise, the Circular was liable for quashment and the

persons who were re-designated as Senior Tax Assistants from the post of Data Entry Operators Grade B and C were not entitled to be considered.

V. Appraisal of the rival contentions:

10. On the first reading of para 12(a) it would seem that the three categories of persons who had been enumerated were alone to be considered

since the requirement of two years regular service as Senior Tax Assistant in the grade could not have been available for the persons from the

technical Grade since the re-designation of DEO Grade B and C itself was done for the first time only in 2003. Note-I also seemed to provide for

promotion for persons in para 12(a) when it limited the consideration of the category only for a period of two years. it was as if the persons in cl(b)

were to be eclipsed because none of them could have served as Tax Assistants for a period of 2 years and it was after this gestation that would

have made them eligible. According to the writ petitioners, the two years was a specific limitation in order that the category of persons in para

12(b) gained experience in matters such as subject of law and others subjects relevant for qualifying for the higher post and during that period, only

the persons in 12(a) who had gained experience on the ministerial side shall be exclusively considered and after the completion of two years, the

persons falling that category in paragraph 12 (b) & (c) could be considered.

11. If the Rules of 2002 were to be considered on a stand-alone basis, it would give rise to such an interpretation that would make the

consideration of the Data Entry Operators Grade B and C impossible. Rules of 2003 however creates the fiction which, while describing the initial

constitution, states that all the persons appointed on the regular basis at the time of the commencement of the rules as Data Entry Operators Grade

B and C, along with others specified therein, shall be deemed to have been appointed as Senior Tax Assistants under these rules and the service

rendered by them before the commencement of these Rules shall be taken into account for deciding the eligibility for promotion to the next higher

Grade. This rule makes it clear that DEO Grade B and C were entitled to reckon the years of service rendered by them as such before the

commencement of the Rules as though they were holding the posts as Senior Tax Assistants. If this were not so, it would be meaningless to allow

only for Assistants in the Ministerial grade along with Tax Assistants and UDC Special Scale to be considered when they were all redesignated at the same time as Senior Tax Assistants. The scale of pay of Assistants was Rs. 5,000/- to Rs. 8,000/-, Tax Assistant''s scale of pay was Rs.

4,500/- to Rs. 7,000/- and UDC special pay carried scale of pay of Rs. 4000/- to Rs. 6500/-. DEO Grade B and C who were in the higher

scales of pay at Rs. 4,500/- - Rs. 7,000/- would have been left out of consideration, while UDC special pay carrying the scale of Rs. 4,000/- to

Rs. 6500/- would have been considered. No rational basis for such an interpretation emerges from examining all the relevant issues. It was only by

reading para 12 (a) & (b) along with the rules of 2003 Clause 5, it became possible for the Central Administrative Tribunal, Madras Bench to

uphold the contention of applicants before it. This was again the reason how the Chandigarh Bench of the Central Administrative Tribunal as well

as the Bombay High Court viewed the situation to give it a purposive interpretation to accede to the pleas of Data Entry Operators Grade B and C

as falling within the parameters of panel for promotion to the higher grade as Inspectors. The Madras High Court had also found in its judgment

dated 13.04.2007 in W.P . No. 8361 of 2004 and batch, with reference to the distinction made between the persons in the Ministerial side

aspiring for promotion to Inspectors and from the technical side for similar aspirations, that rules of 2002 themselves betrayed discrimination

amongst persons performing similar nature of the duties and struck down the said rules. Although, the decision is reported to have been challenged

before the Supreme Court the subsequent development have been that after the Bombay High Court decisions, the Department itself has altered its

stand and appears to have considered the persons from the technical side also for promotion without operating para 12(a) exclusively. This is

reported to be so for officers in all Divisions except the Madras Division, on account of the pendency of this writ petition. The Department also

appears to have originally filed a writ petition challenging the decision of the Central Administrative Tribunal, Madras Bench, but later withdrew it,

for the uniform application of promotion to both the categories after the decision of the Bombay High Court was confirmed in SLP before the

Supreme Court.

12. Considering not merely the case on its merits to arrive at this conclusion, we have the satisfaction of seeing that the benefit of interpretation that

the Department itself has made on an All India basis, other than for Tamil Nadu, shall enure for their benefit as well and place them at par.

Conclusion:

13. In the circumstances, we find that the decision of the Central Administrative Tribunal, Madras Bench, accords with law and dismiss the writ

petition filed by the petitioners. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

