



सत्यमेव जयते

न्यायालय मुख्य आयुक्त विकलांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES

विकलांगजन सशक्तिकरण विभाग / Department of Empowerment of Persons with Disabilities

सामाजिक न्याय और अधिकारिता मंत्रालय / Ministry of Social Justice and Empowerment

भारत सरकार / Government of India

Case No.5884/1021/2016
5901/1021/2016

Dated:- 16.09.2016

In the matter of:

Shri Hariom Pandit,
Executive Assistant, 0328
14 Type 2 C.P.W.D. Colony,
Melcom Quarters, Near White Church,
Indore-452001
Email-<hopandit@gmail.com>

..... Complainant
(Case No.5884/1021/2016)

Smt. Meena Chouhan,
Executive Assistant, 0329
Office of the Customs, Central Excise & Service Tax,
Manik Bagh Palace, Post Box No. 10,
Indore-452001 (M.P.)

..... Complainant
(Case No. 5901/1021/2016)

Versus

Central Board of Excise & Customs,
(Through : Chairman) 0330
North Block,
New Delhi-110001.

.... Respondent No. 1

Customs, Central Excise & Service Tax,
(Through : Chief Commissioner) 0331
48, Administrative Area, Hills, Hoshangabad Road,
Bhopal - 462011 (M.P.)

.... Respondent No. 2

Customs, Central Excise & Service Tax,
(Through : Principal Commissioner) 0332
Manik Bagh Palace, Post Box No. 10,
Indore (M.P.)

..... Respondent No. 3

Date of hearing : 05.09.2016

Present :

1. Shri Hariom Pandit, Complainant
2. Smt. Meena Chouhan, Complainant absent.
3. S/o Rajpal Singh, US, Department of Revenue & Anil Arya, Assistant Commissioner, on behalf of Respondent.

ORDER

The above named complainants, namely, Shri Hariom Pandit an employee with 100% visual impairment and Ms. Meena Chouhan, an employee with 100% visual impairment filed complaints dated 02.02.2016 and 04.02.2016 respectively before the Chief Commissioner for Persons with Disabilities under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to the 'Act' regarding grant of adequate opportunity for appearing in the examination for promotion.

.....2/-

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(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)

(Please quote the above file/case number in future correspondence)

2. The complainants submitted that they are working as Executive Assistant in the Central Board of Excise and Customs in Indore. They submitted number of representations to their establishment against denial of promotions to him on PH quota. Upon the intervention of this Court, the complainants were promoted to the post of UDC vide Office order dated 27.06.2011 of the Office of the Chief Commissioner Customs & Central Excise & Service Tax, Kanpur w.e.f. 13.10.1999. Their colleague Shri L.R. Ninave was promoted to the post of Tax Assistant on 07.12.2002. Therefore, they applied for promotion to the post of Tax Assistant as there were 48 posts vacant at that time. They passed the written test for promotion to the post of Sr. Tax Assistant on 23.08.2006. They requested for promotion with retrospective effect on 07.12.2002.

3. The matter was taken up with the respondent vide this Court's letter dated 28.03.2016, and 28.04.2016 respectively.

4. The respondent vide letter No. II(39)07/2009/ET./P.t/-1/CCA-6862 dated 18.04.2016 submitted that their office has considered the request of the complainant for promotion to the grade of pre-restructured Tax Assistant w.e.f. 07.12.2002, however he was not passed the departmental examination mandatory for promotion. He has requested for relaxation in passing of departmental examination in terms of point no. 22 of DoP&T Om dated 29.12.2005. Their office forwarded his request to CBEC, New Delhi for concurrence. The Board vide letter dated 14.08.2015 in consultation with DoP&T has intimated that provisions made in para 22 of DoP&T O.M. dated 29.12.2005 are not for exemption from passing the departmental examination, as passing the departmental examination is pre-requisite requirement/qualification for filling up the post, which is also written in Recruitment Rules of the said post, but rust to relax the standard of suitability of PwD candidate. Thus, the request of Shri Hariom Pandit for retrospective promotion to the grade of pre-structured Tax Assistant was not considered and communicated to him vide letter dated 15.01.2016. Further, Shri Hariom Pandit has submitted that he has passed departmental examination of Senior Tax Assistant on 23.08.2006 which is of higher standard than one required for pre-restructured Tax Assistant. In this regard as per the opinion of DoP&T, Shri Pandit has not passed the said examination on the crucial date which is pre-requisite for promotion. Accordingly, he is not eligible for promotion as Tax Assistant w.e.f. 07.12.2002. Regarding benefit of relaxation ranted by the Board at para 3 of letter dated 08.10.2003 meant for promotion to the post of Inspector, the same benefit cannot be extended by this office to Shri Hariom Pandit for promotion to the post of pre-structured Tax Assistant. Moreover, no such directions have been given by the Board in the letter dated 08.10.2003 to extend the benefits for promotion to the grade of pre-restructured Tax Assistant.

5. A copy of letter dated 18.04.2016 received from the respondent was forwarded to the complainant (in Case No.5884/1021/2016) vide this Court letter dated 02.05.2016 for his comments.

6. The complainant (in Case No.5884/1021/2016) vide his rejoinder dated 02.05.2016 submitted that as per department's letter the complainant has been treated as senior to his colleague

Shri L.R. Ninave. Shri Ninave was given an opportunity to appear in the written test for the post of Tax Assistant. Accordingly, he was eligible for the post of Tax Assistant. He has requested to provide him an opportunity to appear in the written test for the promotion of Tax Assistant on the basis of the organizational set up as on or before 20.01.2003.

7. On considering the reply of the respondent No.2 dated 18.04.2016 and rejoinder dated 02.05.2016 of the complainant (in Case No. 5884/1021/2016), a hearing was scheduled on 05.09.2016.

8. In the meanwhile, a letter dated 09.08.2016 was received from Smt. Meena Chouhan submitting that due to her family circumstances she will not be able to attend the hearing on 05.09.2016. She also submitted that whatever her colleague Shri Hari Om Pandit, complainant in Case No.5884/1021/2016 argued and on the basis of that decision taken by this Court is acceptable to her.

9. Shri Hariom Pandit, complainant (Case No. 5884/1021/2016) reiterated his written submissions and submitted that he was promoted on the post of UDC on 27.06.2011 w.e.f. 13.10.1999 notionally. My junior Shri L.R. Ninave was given opportunity for appearing in the Departmental Examination for the post of Tax Assistant. That as per Note to Point No. 13 to Tax Assistant Recruitment Rules, 1996, I had the right to appear in the Departmental Examination in the year 2002. In fact, my junior employee has been given the opportunity to appear in the Departmental Examination, also being the senior, I have the eligibility to appear in the Departmental Examination. Keeping this view in mind, for getting the promotion on the post of Tax Assistant as per present Departmental procedure, kindly grant me opportunity to appear in the Departmental Examination.

10. The representative of the respondent No. 1 submitted that the complainants were promoted to the post of UDC notionally w.e.f. 13.10.1999. They had completed 3 years regular service as on 13.10.2002 and, therefore, they were eligible for consideration in the DPC held on 14.07.2006 for promotion to the grade of Tax Assistant (pre structured). However, both the officers have not passed prescribed Departmental Examination for promotion in the Grade of Tax Assistant (pre-structured) as prescribed in the Recruitment Rules of Tax Assistant (pre structured). As the Officers were promoted as UDC in the year 2011 (notionally) w.e.f. 13.10.1999, they could not appear in the Departmental examination for promotion to the grade of Tax Assistant (pre-structured).

11. The representative of Respondent No. 2 has submitted a copy of letter No.II(39)31/2010/Et-I/14446 dated 02.09.2016, which was taken on record. He submitted that the submissions made in the said letter are self-explanatory.

12. It is seen from the letter No.II(03)13/CCU/BZ/2014/2717 dated 17.04.2015 of Chief Commissioner (Bhopal Zone), Customs, Central Excise & Service Tax, Bhopal that they had

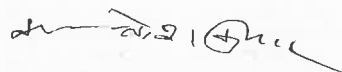
mentioned in its letter that the above officers were promoted on 27.06.2011 to the grade of UDC notionally w.e.f. 13.10.1999. As a result, they could not get an opportunity to appear at the departmental examination for the post of Tax Assistant (pre-restructured). However, they have subsequently passed the departmental examination for promotion to the grade of Senior Tax Assistant on 23.08.2006 (post of erstwhile Tax Assistant was merged and re-designated as Sr. T.A. w.e.f. 20.01.2003). In the circumstances, it is felt that the requirement of passing departmental examination for promotion to the grade of Tax Assistant (pre-restructured) in case of Shri Hariom Pandit (VH) and Smt. Meena Chouhan (VH), has been complied with subsequently. Accordingly, they should be considered for promotion to the grade of Tax Assistant (Pre restructured) notionally w.e.f. 07.12.2002.

13. The Respondent No. 2 after examining the matter in consultation with DoP&T, conveyed the following to the complainants:-

"DoP&T has opined that as regards giving relaxed standard to persons with disabilities, provisions made in para 22 of DoP&T's O.M. dated 29.12.2005 are not for exemption from passing the Departmental Examination, as passing the Departmental Examination is pre-requisite requirement/qualification for filling the post, which is also written in Recruitment Rules of the said post, just to relax the standard of suitability of PwD candidates."

14. After hearing the parties and perusal of the record, this Court is of the view that as a special case, one opportunity within three months on the receipt of this Order should have been given to the complainants to qualify the Departmental Examination as the complainants were promoted to the post of UDC notionally w.e.f. 13.10.1999 vide order No. 16/2011 dated 27.06.2011 and had thus completed three years regular service in the year 2002. If the complainants clear the examination, they should be notionally promoted to the post of Tax Assistant w.e.f. 07.12.2002 when Shri L.R. Ninave, a junior to complainants was promoted to the post of Tax Assistant. This should not be taken as a precedent for future.

15. The case is accordingly disposed off.



(Dr. Kamlesh Kumar Pandey)
Chief Commissioner
for Persons with Disabilities