* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on July 04, 2013
Judgment Delivered on July 17, 2013

\+ W.P.(C) 2859/2013

P.S.PRUTHI ..... Petitioner

Represented by: Mr.C.Harishankar with Mr.S.Panda, Advocate

versus

UNION OF INDIA & ORS. ..... Respondents

Represented by: Mr.Rajeeve Mehra, ASG with Mr.Jatan Singh, Mr.Sumeet Qureshi with Mr.Gaurav Sharma, Advocates

\+ W.P.(C) 4140/2013

UNION OF INDIA ..... Petitioner

Represented by: Mr.Rajeeve Mehra, ASG with Mr.Jatan Singh, Mr.Sumeet Qureshi with Mr.Gaurav Sharma, Advocates

versus

P.S.PRUTHI & ORS. ..... Respondents

Represented by: Mr.C.Harishankar with Mr.S.Panda, Advocates for R-1

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE V.KAMESWAR RAO

V. KAMESWAR RAO, J.

1. The aforesaid two petitions have been filed against an order passed by the Central Administrative Tribunal, Principal Bench, New Delhi dated February 07,2013 in Original Application No.4405/2012 and as such are being disposed of by this common order. Writ Petition No.2859/2013 has been filed by Mr.P.S.Pruthi, the applicant before the Tribunal challenging the order passed by the Tribunal to the extent the Tribunal has rejected the challenge by the petitioner to the appointment of the respondents No.3 to 5 as members of the Central Board of Excise and Customs (CBEC). He has been seeking entitlement to be appointed as member of CBEC against the vacancy which arose on December 31, 2012 with a consequent relief of quashing the appointment of respondent No.5 as member.

2. Writ petition No.4140/2013 has been filed by the Union of India challenging the order of the Tribunal whereby the Tribunal has granted the relief to Mr.P.S.Pruthi by holding that since Mr.P.S.Pruthi has rendered more than one year of regular service in the prescribed post as on December 31, 2012, that is the date of occurrence of the fourth vacancy in the Financial Year 2012-13, the Selection Committee ought to have considered him for appointment as Member CBEC in its initial meeting itself and could not exclude him from the eligibility list.

3. For convenience/clarity we shall be referring Mr.P.S.Pruthi petitioner in Writ Petition No.2859/2013 as '*the petitioner*' and Union of India, the petitioner in WP(C) No.4140/2013 as '*the respondent*'. We may

state here that there are common respondents in both the Writ Petitions and are arrayed as R-3, R-4 and R-5. They are addressed as such in this judgment.

4. The petitioner is a 1978 batch officer of Indian Revenue Service and is presently serving as Chief Commissioner of Customs and Central Excise, Chandigarh. As per the Recruitment Rules the next higher post is that of Member, Central Board of Excise and Customs (CBEC), which is an ex cadre post to be filled up on deputation/absorption. The recruitment to the post of Member CBEC is governed by the Central Board of Excise and Customs (Chairman and Members) Recruitment Rules, 2006, which were promulgated by way of notification dated February 02, 2006. The following was the position under the Recruitment Rules of 2006.

> *(a) The post of Member is a selection post meaning, thereby, that it is to be filled on the basis of merit-cum-seniority.*
>
> *(b) The method of recruitment, to the post, is stipulated as "deputation/ absorption".*
>
> *(c) Officers of the Central Government appointed on regular basis in the grade of ₹22,400-24,500, with*
>
> > *(i) 15 years experience in administering and running the indirect tax administration in the Central Government, with 10 years field experience,*
> >
> > *(ii) high professional merit and excellence, and*
> >
> > *(iii) impeccable reputation of integrity, were eligible.*
> >
> > *(iv) The candidate was required to be of a maximum*

age 56 years, on the date of closing of applications.

(v) *No person, with less than 1 year's residual service, on the date of occurrence of the vacancy for which the selection was being made, was eligible for consideration.*

5. On June 08, 2006, vide a confidential note, guidelines for selection to the post of Chairman and Member in the CBEC and Central Board of Direct Taxes (CBDT), as approved by the Hon'ble Prime Minister, were issued. Para 2 of the said guidelines, inter-alia, contain the following stipulations:-

(a) *In order to save time, instead of circulating each vacancy separately, a panel, valid for one year, of 1.5 times the number of anticipated vacancies for that year, rounded to the nearest whole number, would be prepared.*

(b) *The said panel would be required to be approved by the Appointments Committee of Cabinet [ACC].*

(c) *Consequent to such approval, selection would be made strictly in the order given in the said panel, with the approval of the Finance Minister.*

(d) *In case it was felt that a deviation from the panel was necessary, the same would be sent, with full justification, to the ACC, for approval with the concurrence of the Finance Minister.*

(e) *If a panellist, whose turn had come for Member, had less than 1 year's residual service on the date of occurrence of the vacancy, he would be passed over without any further procedure.*

6. An amendment to the abovementioned guidelines dated June 08, 2006 with regard to the date with respect to which the requirement of one year service as Chief Commissioner, was to be reckoned, was introduced by way of confidential note dated July 13, 2006 of the Cabinet Secretary. The said amendment was inter-alia to the extent that a Chief Commissioner is required to have one year of service as on 1st of April of the year for which the panel is prepared.

7. The Recruitment Rules of 2006 were amended by way of Central Board of Excise and Customs (Chairman and Members) Recruitment (Amendment) Rules 2008 on December 24, 2008 and thereafter by the Central Board of Excise and Customs (Chairman & Members) Recruitment (Amendment) Rules 2012. The amendment in so far as the present case is concerned is to the following effect:

Amendment of 2008

> *Officers of the Central Government appointed on a regular basis in the grade of pay Band–4 ₹37400-67000 with Grade Pay of ₹12000/- per month.*
>
> *AND possessing the following essential qualification:-*
>
> *(i) Having at least 15 years of experience in administering and running the indirect tax administration in the Central Government with at least 10 years of experience in the field formations of Central Board of Excise and Customs.*
>
> *(ii) Having high professional merit and excellence; and*
>
> *(iii) Having impeccable reputation of integrity.*

Note:

1. *The normal eligibility conditions of maximum age of 56 years on the date of closing of applications shall not be applicable in cases of absorption.*

2. *No person with less than 1 year residual service on the date of occurrence of vacancy for which selection is being made shall be eligible for consideration.*

Amendment of 2012

Officers of the Central Government having one year regular service in the grade of HAG pay scale of ₹67000-79000 per month.

AND possessing the following essential qualification:-

(i) Having at least 15 years of experience in administering and running the indirect tax administration in the Central Government with at least 10 years of experience in the field formations of Central Board of Excise and Customs.

(ii) Having high professional merit and excellence; and

(iii) Having impeccable reputation of integrity.

Note:

1. *The normal eligibility conditions of maximum age of 56 years on the date of closing of applications shall not be applicable in cases of absorption.*

2. *No person with less than 1 year residual service on the date of occurrence of vacancy for which selection is being made shall be eligible for consideration.*

8. For preparing the panel for the post of Member, CBEC for the

Financial Year 2012-13, the applications were invited by the respondent vide circular dated October 21, 2011 from the officers of the Central Government appointed on regular basis in pay band -4 ₹37400-67000 with grade pay of ₹12000 per month (revised HAG scale of pay of ₹67000-79000). Suffice would it be to state that the circular refers only to the fact that the posts have to be filled in terms of Recruitment Rules of 2006 as amended on December 24, 2008. No reference is made to the guidelines issued on June 08, 2006 and/ or July 13, 2006. The last date for receipt of the applications was fixed as November 30, 2011.

9. The petitioner applied for the said post vide application dated November 28, 2011. The Committee of Secretaries met in the month of July, 2012 and prepared the panel of 3 officers, i.e., the respondents 3 to 5 herein. The petitioner's name was not considered on the ground that he was not having, on April 01, 2012, the length of at least one year service as Chief Commissioner as the petitioner was appointed as Chief Commissioner on September 09, 2011. Accordingly the respondent Nos. 3 to 5 were appointed as Members, CBEC on August 02, 2012, August 09, 2012 and September 03, 2012 respectively.

10. It may be clarified here that the 4 vacancies for which the panel was to be prepared, were to arise on May 01, 2012, August 01, 2012, December 31, 2012 and January 31, 2013. It so happened that one Smt.Sreela Ghosh, Member, CBEC who was to superannuate on January 31, 2013 pursuant to which the 4 vacancies were to arise, took voluntary retirement on September 04, 2012. Against this vacancy the 5th respondent was appointed. This aspect was clarified by the learned counsel for the petitioner before us at the time of the arguments.

11. On November 16, 2012 a further circular was issued by the respondent for one post of Member, CBEC which is to fall vacant on December 31, 2012. The circular which was communicated to the petitioner, stipulates that in terms of the Recruitment Rules of 2006 as amended on May 30, 2012 the post is to be filled on deputation/ absorption basis. Further it stipulates that "*the above vacancy is proposed to be filled up from amongst the officers who fulfill the eligibility condition as on November 26, 2012.*" The petitioner submitted application for this vacancy also vide his letter dated November 22, 2012.

12. On December 26, 2012 the petitioner filed the Original Application No.4405/2012 before the Tribunal wherein he inter-alia challenged the appointment of respondent Nos.3 to 5 in terms of circular dated October 21, 2011 and seeks a prayer for quashing the circular dated November 16, 2012 and further for recasting of the panel of the financial year 2012-13. It is the case of the petitioner before the Tribunal that he was holding the post of Chief Commissioner with effect from September 09, 2011 and he has one year of service on the date of occurrence of the vacancy and as such he is entitled to be considered.

13. The respondent contended that the petitioner does not have one year of service as on April 01, 2012, as such he was not considered.

14. The Tribunal held as the petitioner has already rendered more than one year of regular service as on December 31, 2012, the selection Committee ought to have considered him for appointment as Member, CBEC in his initial meeting itself.

15. Mr.C.Harishankar, learned counsel for the petitioner would submit that there is no stipulation in the Rules which requires the eligibility to be

seen as on April 01st of the panel year. According to him the condition stipulated by the guidelines dated June 08, 2006 and July 13, 2006 would not be applicable in the case of the petitioner as the condition has not been incorporated in the Recruitment Rules. According to him the Recruitment Rules as amended on May 30, 2012 only stipulate that officer of the Central Government having one year regular service would be entitled to be considered for appointment as Member. Since no further condition has been attached to such a stipulation in Recruitment Rules it necessarily means that an incumbent must have one year regular service on the date of occurrence of vacancy. He would submit that if the Rule making authority intended that such condition is required to be fulfilled it would have incorporated such a stipulation in the Recruitment Rules itself which were amended twice in the year 2008 and 2012, after the guidelines were issued. The authority having not incorporated the stipulation of the guidelines in the Recruitment Rules now cannot invoke such a stipulation to oust the consideration of the petitioner. During the submissions before us, Mr.C. Harishankar, learned counsel appearing for the petitioner would submit that vacancies were to arise on May 01, 2012, August 01, 2012, December 31, 2012 and January 31, 2013. According to him one officer was to demit office only on January 31, 2013, it so happened that the said officer took premature retirement on September 04, 2012. According to Mr.Harishankar the committee of Secretaries which met in the month of July, 2012 could not have foreseen such an eventuality. He would further submit that on the officer taking premature retirement on September 04, 2012, the post became vacant and the respondent No.5 was accommodated against the same. He has filed a summary of his submission wherein reliance is placed

on the judgment of the Supreme Court reported as 1997 (10) SCC 419, *State of Rajasthan v. R. Dayal*.

16. Mr.Rajeeve Mehra, learned Addl. Solicitor General would rely upon the guidelines issued on July 13, 2006 to support the action of the respondent. The counsel for the respondent has also filed written submissions. The same have been considered.

17. The only question which falls for our consideration is whether the Committee of Secretaries could have overlooked the candidature of the petitioner in the initial meeting in the month of July 2012 on the ground that he did not have one year service as on April 01, 2012?

18. In this regard suffice would it be to state that the Recruitment Rules are very clear. It is the admitted case of both the sides that the Recruitment Rules does not prescribe April 01 of the panel year i.e. 2012 as the date for fulfilling the eligibility of one year service.

19. Interestingly neither the Recruitment Rules prescribe nor does the circular dated October 21, 2012 stipulates, April 01, 2012 as the date on which the eligibility of one year of regular service shall be required to be fulfilled. The position of law in so far as the cut off date for determining the eligibility for the purpose of appointment is clear in terms of the judgments of the Supreme Court in (2003) 7 SCC 517, *M.A.Murthy v. State of Karnataka,* (2007) 4 SCC 54, *Ashok Kumar Sarkar v. Union of India*, (2011) 9 SCC 438 *Alka Ojha v. Rajasthan Public Service Commission*. In the judgment of *Alka Ojha's* case (supra) the Supreme Court has held as under:-

> *"15. The question whether the candidate must have the prescribed educational and other qualifications as*

on the particular date specified in the Rule or the advertisement is No. longer res integra. In Bhupinderpal Singh v. State of Punjab (2000) 5 SCC 262, this Court referred to the earlier judgments in A.P. Public Service Commission v. B. Sarat Chandra (1990) 2 SCC 669, District Collector and Chairman, Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi (1990) 3 SCC 655, M.V. Nair (Dr.) v. Union of India (1993) 2 SCC 429, Rekha Chaturvedi v. University of Rajasthan 1993 Supp. (3) SCC 168, U.P. Public Service Commission, U.P., Allahabad v. Alpana (supra) and Ashok Kumar Sharma v. Chander Shekhar (supra) and approved the following proposition laid down by the Punjab and Haryana High Court (Bhupinderpal Singh's case (supra) SCC p.268, para 13)

> *"13. ...(i) that the cut off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cut off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications and that if there be no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the competent authority.*

16. The same view was reiterated in M.A. Murthy v. State of Karnataka (2003) 7 SCC 517 and Ashok Kumar Sonkar v. Union of India (2007) 4 SCC 54. Therefore, the Full Bench of the High Court rightly held that a candidate who does not possess driving licence on the last date fixed for submission of the application is not eligible to be considered for selection".

20. In the case in hand the facts are a little peculiar. As noted above neither the Recruitment Rules nor the circular dated October 21, 2011 prescribe an officer to have one year of service in the post of Chief Commissioner as on April 01, 2012. The circular dated October 21, 2011 only prescribes November 30, 2011 as the date by which the applications have to be sent to the department. If the law as propounded by the Supreme Court and as referred above is applied then an officer should meet the eligibility requirement of one year service as on November 30, 2011. That is not the stand of the respondent. They insisted upon in terms of the guidelines April 01, 2012 as the date on which Chief Commissioner should have one year of service. On both the dates the petitioner herein did not have one year service as Chief Commissioner. The Committee of Secretaries could not have considered his candidature.

21. The submission of Mr.C.Hari Shankar that the requirement is to be seen on the date of occurrence of vacancy that is December 31, 2012 does not hold good in view of the position of law. The reliance placed by Mr.C.Harishankar, learned counsel for the petitioner on the judgment of the Supreme Court in *R.Dayal's* case (supra) is misplaced. In the said case the Supreme Court was concerned with the issue, which rule shall be applicable for making appointments against vacancies arising after amendment. The Supreme Court held that those vacancies which have arisen after amendment shall be governed by the amended eligibility conditions. The issue in hand is totally different and has no applicability in the facts of this case.

22. Further the prescription of April 01 of the panel year i.e. 2012, as the

date on which a Chief Commissioner should meet the eligibility criteria of one year service has not caused any prejudice to the petitioner inasmuch as the petitioner did not have one year service on the date by which the applications were received i.e. November 30, 2011 and also on April 01, 2012 which is a date beyond November 30, 2011. Hence the preparation of panel by the Committee of Secretaries without considering the name of the petitioner cannot be faulted. The Committee of Secretaries has prepared the panel of three officers who have been appointed as Members of CBEC on varying dates, the last one being on September 03, 2012 (respondent No.5) which is a date before September 09, 2012 the earliest date when petitioner had fulfilled the requirement of one year service. On this ground also, the panel having been exhausted by appointing respondent No.5 on September 03, 2012, the appointment of respondent No.5 cannot be said to be illegal.

23. As against the remaining one vacancy which arose on December 31, 2012, a circular dated November 16, 2012 has been issued by calling applications and the petitioner who fulfils the eligibility has also applied against the same. The process which has been initiated must be taken to its logical end. This is only possible if the order of the Tribunal dated February 07, 2013 in Original Application No.4405/2012 is set aside. We do so accordingly for the reasons stated above.

24. Accordingly, we dispose of the two writ petitions setting aside the impugned order dated February 07, 2013 passed by the Tribunal and disposing of O.A No.4405/2012 filed by the petitioner with a direction that all officers who applied pursuant to the circular dated November 16, 2012 would be considered for being appointed as a Member CBEC. The process of empanelment be completed within 3 months from date of receipt of this

decision by the concerned department.

25. No costs.

(V.KAMESWAR RAO)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

JULY 17, 2013
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