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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 2475/2002

New Delhi, this the 11th day of November, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri S.A. Singh, Member(A)

1. Ghasi Ram Meena
S/o Shri Lohre Ram Meena
L-11/66-B, DDA Flats
Kalkaji, New Delhi
2. Om Prakash Meena
S/o Shri Shiv Charan Meena
L-2/69-S, DDA Flats
Kalkaji, New Delhi
3. Jagdish Prasad Meena
S/O Late Shri G.S. Meena
L-11/62-B, DDA Flats
Kalkaji, New Delhi
4. Radhey Shyam
S/o Late Shri Narayan Ram Meena
Qr. No. 1951/III NH-I
Faridabad, Haryana
5. Ram Manohar Meena
S/o Shri Mahesh Kumar Meena
L-11/109-B, DDA Flats
Kalkaji, New Delhi
6. Babulal Meena
S/o Shri Gram Sahai Meena
R2H-831, Raj Nagar, Gali No. 15
Palam Colony, New Delhi
7. Prithvi Raj Meena
S/o Shri C.L. Meena
F-1, Kaka Nagar, New Delhi . . . Applicants
(By Dr. M.P. Raju, Advocate).

versus

Union of India, through

1. Secretary
Department of Revenue
Ministry of Finance
North Block, New Delhi
2. Chief Commissioner of Customs &
Central Excise, Delhi Zone
Central Revenue Building
IP Estate, New Delhi
3. Mr. Telesphere Kujur
Commissionerate of Central Excise, Delhi
CR Building, IP Estate, New Delhi

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4. Mr. Lallu Ram Meena
Commissionerate of Central Excise, Delhi
CR Building, IP Estate, New Delhi

5. Mr. Chandra Bhan Meena
Commissionerate of Central Excise, Delhi
CR Building, IP Estate, New Delhi .. Respondents
(Shri R.V. Sinha, Advocate for official respondents and
Shri S.S. Tiwari, Advocate for private respondents)

ORDER

Justice V.S. Aggarwal

Applicants are Inspectors in the office of the Chief Commissioner of Customs and Central Excise. By virtue of the present application, they seek that the Departmental Promotion Committee meeting held in July 2002 whereby their claim for promotion to the post of Superintendent Grade B has been ignored is illegal. It should be declared that they are entitled to be considered for promotion if they are eligible and within the zone of consideration and that the promotion made ignoring their claim is invalid.

2. The applicants believe that as per the recruitment rules dated 17.12.1996, a minimum of 8 years of service is required for promotion as Superintendent Grade B. A notification was issued by the Government of India dated 30.9.1997 by which the recommendations of the Fifth Central Pay Commission were accepted and implemented. Consequential changes in the recruitment rules were directed to be effected in full compliance of the acceptance and implementation of the recommendations.

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As per the notification, the ~~posts~~ of Superintendent Group B was granted the scale of Rs.6500-10500. This was the conversion scale of Rs.5500-9000 which was the conversion scale of Rs.2000-3500. The applicants contend that they have completed 8 years of service and are eligible to be considered for promotion against the 46 posts to be reserved for the Scheduled Castes and Scheduled Tribes because the total number of posts being considered for promotion is 931. Contending that the just claim of the applicants is being ignored, the present application has been filed claiming the reliefs already referred to above.

3. The application has been contested. In the counter reply, the respondents pleaded that in the cadre restructuring undertaken in the Customs and Central Excise department, Delhi Commissionerate, 931 posts of Superintendent of Central Excise had been sanctioned. Taking into account new posts/vacancies on account of cadre restructuring and also other routine vacancies of the year 2002-03, the Departmental Promotion Committee for promotion to the grade of Superintendent Central Excise for 521 vacancies was held in July 2002. As per the recruitment rules of Superintendent of Central Excise, Inspectors with 8 years of service in the grade are eligible for promotion. The crucial date for determination of eligibility was 1.1.2002 in the case of the Departmental Promotion Committee year 2002-03. The method of promotion is by selection. Since there were

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large number of vacancies, due to shortage of eligible candidates even the normal zone could not be drawn with its permissible size. The drawal of the zone from out of the seniority list of Inspectors starting from top of the list came to a halt at a stage beyond which the next candidate available was not having the required 8 years of service. There are some Inspectors with more than 8 years of service in the grade in Delhi Commissionerate who joined that Commissionerate on inter-Commissionerate transfer basis from other Commissionerates. They were accommodated in Delhi Commissionerate keeping in view their request for transfer on compassionate grounds on basis of undertaking furnished by them that they were ready to forego their seniority. Such Inspectors were placed at the bottom of the seniority list of Inspectors of Delhi Commissionerate and were treated on par with new entrants and became junior most Inspectors in the Delhi Commissionerate. Some of these Inspectors who were accommodated in Delhi Commissionerate on basis of undertaking furnished by them to forego their seniority and were transferred from other Commissionerates and were placed at the bottom of the seniority list claim that they are eligible for promotion as they have the required number of years of service. They had contended that the Jabalpur Bench of this Tribunal in OA No. 331/1993 in the case of Manohar J. Motiramani v. Union of India decided on 3.12.1996 had held that the service rendered by an Inspector in his parent Commissionerate would also count for the purpose of determining his eligibility service

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for promotion to the next higher post. However, the inter-Commissionerate transferee Inspectors otherwise eligible on account of length of service could not be placed in the consideration zone as they are junior to Inspectors who are otherwise ineligible and do not have the requisite length of service.

4. In the case of Scheduled Tribe category Inspectors who joined Delhi Commissionerate in 1998 although the condition of counting 8 years' past service in the parent Commissionerate is fulfilled, there are other Scheduled Tribe candidates borne on Delhi Commissionerate who joined as Inspectors in 1995 and are not eligible for promotion as they do not have the requisite qualifying service. Keeping in view the same, the matter was referred to the Ministry/Central Board of Excise and Customs wherein it was recommended to relax the service conditions and to incorporate the provision 'considering senior ineligible candidates' in the recruitment rules. The Ministry in consultation with the Department of Personnel and Training has not acceded to the relaxation of the rules. It is in this back-drop that it has been asserted that the applicants 1 to 5 have completed 8 years of service in the year 2002 only. As the crucial date for determining eligibility standards is 1.1.2002, 5 of the applicants are not fulfilling the length of service condition for the year 2002-03. The other two applicants do fulfil the conditions of 8 years of length of service.

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5. We have heard the parties learned counsel. It is not being disputed that out of 520 vacancies, 39 vacancies were available for the Scheduled Tribes (para 4.5 of the counter reply).

6. The short controversy in pursuance of the facts that were not disputed that came up for consideration, therefore, was as to whether when seniors as per the recruitment rules have not fulfilled the minimum qualification and the experience for the years of service while the juniors fulfil the said requirement whether juniors can be considered for promotion or not.

7. Some of the facts which can be delineated and are not in dispute are that for promotion to the post of Superintendent Group B one has to have experience of 8 years as an Inspector. The applicants came to the Delhi Commissionerate on their request and were placed at the bottom of the list. They have completed 8 years of service on the crucial date while their seniors who joined in 1995 have not completed the said minimum number of years of service. It is this particular controversy that prompted the respondents not to promote the applicants. Admittedly in the recruitment rules, there is no provision that if junior is eligible, senior may automatically be considered. The request for incorporating such a condition has since been rejected.



8. The question as to whether seniority and eligibility for promotion have to go arm in arm has been considered more often than once. In the case of **State of Mysore and Another v. Syed Mahmood and Others**, [1968] 3 S.C.R. 363, the Supreme Court was concerned with a matter where promotion to the post of Senior Statistical Assistant was based on seniority-cum-merit. It was held that in spite of their seniority, officers junior to them could be promoted if they were unfit to discharge the duties of the post. It was held further that promotion could not be claimed as a matter of right by virtue of seniority alone. In the case of **Scientific Advisor to Raksha Mantri and Another v. V.M. Joseph**, (1998) 5 SCC 305, the Supreme Court again held that eligibility for promotion cannot be confused with seniority because they are two different and distinct factors. Service rendered by Shri V.M. Joseph before his unilateral transfer was held to be counted for determining his eligibility for promotion in the organisation to which he was transferred. The decision in the case of **R.Prabha Devi and Others v. Government of India, through Secretary, Ministry of Personnel and Training, Administrative Reforms**, JT 1988 (1) S.C.488 in fact provides the answer to this question. It was held that when certain length of service in a particular cadre is prescribed then unless a person possesses that qualification, he cannot be considered eligible for promotion. If a junior is eligible then a senior automatically will not become eligible. Seniority cannot be substituted for eligibility. The Supreme Court held:-



"15. The rule-making authority is competent to frame rules laying down eligibility condition for promotion to a higher post. When such an eligibility condition has been laid down by service rules, it cannot be said that a direct recruit who is senior to the promotees is not required to comply with the eligibility condition and he is entitled to be considered for promotion to the higher post merely on the basis of his seniority. The amended rule in question has specified a period of eight years' approved service in the grade of Section Officer as a condition of eligibility for being considered for promotion to Grade I post of CSS. This rule is equally applicable to both the direct recruit Section Officers as well as the promotee Section Officers. The submission that a senior Section Officer has a right to be considered for promotion to Grade I post when his juniors who have fulfilled the eligibility condition are being considered for promotion to the higher post, Grade I, is wholly unsustainable. The prescribing of an eligibility condition for entitlement for consideration for promotion is within the competence of the rule-making authority. This eligibility condition has to be fulfilled by the Section Officers including senior direct recruits in order to be eligible for being considered for promotion. When qualifications for appointment to a post in a particular cadre are prescribed, the same have to be satisfied before a person can be considered for appointment. Seniority in a particular cadre does not entitle a public servant for promotion to a higher post unless he fulfils the eligibility condition prescribed by the relevant rules. A person must be eligible for promotion having regard to the qualifications prescribed for the post before he can be considered for promotion. Seniority will be relevant only amongst persons eligible. Seniority cannot be substituted for eligibility nor it can override it in the matter of promotion to the next higher post. The rule in question which prescribes an uniform period of qualified service cannot be said to be arbitrary or unjust violative of Article 14 or 16 of the Constitution. It has been rightly held by the Tribunal:

"When certain length of service in a particular cadre can validly be prescribed and is so prescribed, unless a person possesses that qualification, he cannot be considered eligible for appointment. There is no law which lays down that a senior in service would automatically be eligible for promotion. Seniority by itself does not outweigh experience."

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A Bench of this Tribunal in the case of **G.Radhakrishna Sarma v. Union of India and Others**, (1993) 23 ATC 500 at Hyderabad was also concerned with a similar question and concluded:-

"We are not impressed with the argument of the respondents that it would create unrest. This cannot be a ground for violating the recruitment rules. The question here is one of choice between eligible candidates and ineligible candidates and surely eligible candidates should have preference over ineligible candidates. It is reasonable to presume that the intention of the respondents is to go on ordering ad hoc promotions only to those LDCs who are senior to the applicant till they attain the eligibility condition of 8 years' service and then in one stroke order them on a regular basis. This would mean misusing the system of ad hoc promotions."

We find, therefore, that merely because the applicants were juniors but were eligible, their claim for promotion could not be ignored for purposes of consideration. In fact our attention had been drawn towards the advice of the Ministry of Finance, Department of Revenue on 30.5.2003 to the Additional Commissioner of Central Excise, Delhi whereby it was pointed that a senior eligible person cannot block consideration of a junior eligible person. Therefore, this particular plea of the respondents in the facts will not be of any avail.

9. Resultantly, we allow the present application and direct:-

- (a) that the claim of the applicants should be considered for promotion to Superintendent Group

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'B' irrespective of the fact that their seniors had not fulfilled minimum qualification of 8 years of service;

(b) that the claim of the applicants can be considered only if they also fulfil the said qualifications as per the recruitment rules on a specific date for a particular year; and

(c) necessarily their claim has to be considered in accordance with the rules and instructions regarding which no further opinion need be expressed. They should be within the zone of consideration besides being eligible.

No costs.



(S.A. Singh)
Member (A)



(V.S. Aggarwal)
Chairman

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