

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 3118/2002

New Delhi this the ~~2.7.04~~ day of June, 2004

HON'BLE MR. SHANKER RAJU, MEMBER (A)
HON'BLE MR. SARWESHWAR JHA, MEMBER (A)

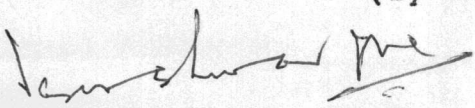
In the matter of:

1. Shri Kuldeep Singh
F-7, Kaka Nagar
New Delhi-110003.
2. Shri R.K. Tyagi
E-119, Mayur Vihar-II,
New Delhi-110091.
3. Shri Vinod Kumar Kundra,
Road No.31, H.No.12, Punjabi Bagh Extention
New Delhi-36
4. Shri.K.K.Dhasmana
F-17, Kaka Nagar,
New Delhi-110003.
5. Shri.Arun Bhatnagar
2/36, Sector 16,
Faridabad (Haryana)
6. Shri G.P.Singh
F-13, Kaka Nagar,
New Delhi-110003
7. Shri.S.S.Jhajharia,
F-5, Kaka Nagar,
New Delhi-110003
8. Shri Tilak Raj
F-8, Kaka Nagar,
New Delhi-110003
9. Shri K.S.Garia
Block No.5, H.No. 623,
Lodhi Colony,
New Delhi-110003.
10. Shri Vinod Kumar Bharel,
2, Masjid Moth Village, New Delhi.



11. Shri Harinder Pal Singh
3532, D 111, Vasant Kunj,
New Delhi.
 12. Shri Dharam Pal Sharma
435/19, Faridabad.
 13. Shri D.R.Khatkar
171, Dharamkunj Apartments,
Plot No.40, Sector 9,Rohini,
New Delhi-110085.
 14. Shri M.P.Taneja
G-24, Preet Vihar,
New Delhi-110092.
 15. Shri O.N.Sharma,
233, Sector 16-A,
Faridabad.
 16. Shri G.K.Wasan,
A-90, Amar Colony,
Lajpat Nagar,
New Delhi-110094.
 17. Shri S.P.Agarwal,
Flat No.95, NACEN Complex, Sector 29,
Faridabad.
 18. Mrs.Jyoti Wadhawan,
M-165, G.K.-II,
Delhi-48.
 19. Shri Sarvir Singh Yadav
197/14, Gurgaon,
 20. Shri R.S.Phogat,
446/14, Gurgaon.
 21. Shri V.K.Chanana,
998/4, Gurgaon.
 22. Shri R.K.Chibber,
37 A/ AG I, Vikaspuri,
New Delhi-110018.
 23. Shri B.S.Rajpal,
244/7, Gurgaon.
-Applicants.
(By Advocate : Shri Ajay Veer Singh Jain)

Versus



1. Union of India
Through the Secretary,
Ministry of Finance & Ors.
North Block,
New Delhi.
2. Chief Commissioner of Central Excise,
Delhi Zone, I.P.Estate,
New Delhi
3. Commissioner , Central Excise Commissionerate,
Delhi-I, I.P.Estate,
Delhi.
4. Additional Commissioner, Central Excise,
Delhi-I, I.P.Estate,
Delhi.
5. Secretary , Staff Selection Commission,
Block No.12, CGO Complex,
New Delhi-110003.
6. Shri Ram Chander, Superintendent, Central Excise and Customs,
C/O, Commissioner , Central Excise Commissionerate,
Delhi-I, I.P.Estate,
Delhi.
7. Shri J.S.Tonk, Superintendent, Central Excise and Customs,
C/O, Commissioner , Central Excise Commissionerate,
Delhi-I, I.P.Estate,
Delhi.
8. Shri Mohan Lal, Superintendent, Central Excise and Customs,
C/O, Commissioner , Central Excise Commissionerate,
Delhi-I, I.P.Estate,
Delhi.
9. Shri O.P.Kataria, Superintendent, Central Excise and Customs,
C/O, Commissioner , Central Excise Commissionerate,
Delhi-I, I.P.Estate,
Delhi.
10. Shri Madan lal, Superintendent, Central Excise & Customs,
C/O, Commissioner , Central Excise Commissionerate,
Delhi-I, I.P.Estate,
Delhi.

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- 11. Shri Nanak Chand Verma, Superintendent, Central Excise & Customs, C/O, Commissioner , Central Excise Commissionerate, Delhi-I, I.P.Estate, Delhi.
- 12. Shri K.K.Girdhar, Superintendent, Central Excise and Customs, C/O, Commissioner , Central Excise Commissionerate, Delhi-I, I.P.Estate, Delhi.
- 13. Shri Lakshman Singh Chandolia, Suptt, Central Excise & Customs, C/O, Commissioner , Central Excise Commissionerate, Delhi-I, I.P.Estate, Delhi.
- 14. O.P.Bissiyar , Superintendent, Central Excise and Customs, C/O, Commissioner , Central Excise Commissionerate, Delhi-I, I.P.Estate, Delhi.
- 15. Shri Raj Mal , Superintendent, Central Excise and Customs, C/O, Commissioner , Central Excise Commissionerate, Delhi-I, I.P.Estate, Delhi.
- 16. Shri V.S.Harit , Superintendent, Central Excise and Customs, C/O, Commissioner , Central Excise Commissionerate, Delhi-I, I.P.Estate, Delhi.
- 17. Shri Tarsem Lal , Superintendent, Central Excise and Customs, C/O, Commissioner , Central Excise Commissionerate, Delhi-I, I.P.Estate, Delhi.
- 18. Shri Harbhajan Das, Superintendent, Central Excise and Customs, C/O, Commissioner , Central Excise Commissionerate, Delhi-I, I.P.Estate, Delhi.
- 19. Shri B.S.Bhandari, Superintendent, Central Excise and Customs, C/O, Commissioner , Central Excise Commissionerate, Delhi-I, I.P.Estate, Delhi.
- 20. Shri Brijesh Kumar, Superintendent, Central Excise and Customs, C/O, Commissioner , Central Excise Commissionerate, Delhi-I, I.P.Estate, Delhi.

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21. Shri Birdu Ram Mahayach,
Superintendent,
Central Excise & Customs,
C/o Commissioner, Central Excise Commissionerate,
Delhi-I, I.P. Estate, Delhi

..... Respondents
(By Advocate : Shri R.N. Singh, proxy for
Shri R.V. Sinha)

ORDER

BY SHRI SARWESHWAR JHA, MEMBER (A):

The applicants have impugned the order No.133/98 dated 30.6.1998 issued by the respondents fixing the seniority of Superintendents of Central Excise & Customs. They have prayed that the said impugned order as well as the seniority list enclosed therewith be set aside with directions to the respondents to correct the seniority list as per rules.

2. The facts of the matter, briefly, are that the applicants are Superintendents in the Commissionerate in Delhi in the Department of Central Excise and Customs, Ministry of Finance, Government of India. They have been in the service of the Respondents, after having joined them on varying dates from 1975 to 1977. The applicants stood at specific serial Nos. in the said seniority list. However, from what has been submitted by them in paragraphs 4.2 to 4.11, it is observed that they have alleged that some juniors have been allowed to go over them in matters of seniority, which has led to supersession of the applicants by their juniors and has also caused delayed promotion. They are expecting a meeting of the DPC for promotion to the posts of Assistant Commissioner (Junior Time Scale) any moment, in which case

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their interests will be adversely affected if the anomaly in their seniority is not removed in time. They have submitted representations to the respondents, but have not received any response from them (respondent No.3).

3. The respondents in their reply have, however, submitted, among other things, that the OA is barred by the principle of res judicata, though they have not explained how the said principle is attracted in this case. On perusal of the detailed reply, it is, however, observed that the matter relating to seniority of the applicants and similarly placed persons was considered by the Tribunal earlier also while deciding OA No.2523/199 (Annexure R). Seniority of Shri Ram Chander, an SC candidate, seems to have been dealt with by the respondents in great detail as his case appears to be causing major grievance to the applicants. The said Shri Ram Chander joined as Inspector at the Jaipur Commissionerate on 4.10.1978 on the basis of the merit panel of 1977 examination and, on trifurcation of the Delhi Commissionerate as Jaipur, Delhi and Chandigarh Commissionerates. When he joined the Delhi Commissionerate in the year 1982, his seniority was fixed above Shri Pushpinder Singh, who was the first candidate in the merit panel of 1977 batch and below Shri I.C. Sharma in the seniority list of Inspectors as on 1.4.1982. This mistake in the fixation of seniority of Shri Ram Chander appears to have been realised by the respondents in what has been submitted by them in paragraph 2 of their counter reply. They have, however, not been able to throw light on the facts and grounds on which the seniority was

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fixed in the absence of relevant file. However, on the basis of representation from one Shri J.S. Tonk, the matter was examined in consultation with the SSC and it was observed that the said Shri Tonk was senior to Shri Ram Chander in the combined merit panel of SSC. This led to revision in the seniority of Shri J.S. Tonk and he was promoted to the grade of Superintendent w.e.f. 1.12.1990 against a vacancy reserved for SC.

4. Correction in the seniority of Shri Tonk led to filing of OA No.223/1991 by one Lachhman Singh who claimed seniority over Shri J.S. Tonk in the merit panel. The Tribunal, while disposing of the said OA, directed the respondents to consider Shri Lachhman Singh for promotion to the post of Superintendent with effect from the date on which Shri Tonk had been promoted. Accordingly, Shri Lachhman Singh was promoted to the said post on notional basis and his seniority was fixed above Shri Tonk vide order No.238/96 dated 13.9.1996.

5. As fixation of seniority of Lachhman Singh led to representations from a number of other persons who alleged their seniority having been disturbed by revision of the seniority of Shri Lachhman Singh, a review DPC was held on 22.6.1998 which granted promotion to them with reference to their immediate juniors in the SSC merit panel (Estt. Order No.133/1998 dated 30.6.1998). Incidentally, all these officers were already serving in the grade of Superintendent at the time of holding of the review DPC. It has also been submitted by the respondents that almost all the reserved category Inspectors of 1977 batch of

Lachhman Singh

Delhi Commissionerate have already been promoted as Assistant Commissioners in the year 2002 on the basis of their revised seniority in the grade of Superintendent.

6. The respondents have admitted that individual representations for reconsideration of their seniority were received in October/November, 2002. But as the case had been initiated way back in the year 1982 when the seniority of Shri Ram Chander had been fixed, they made efforts to locate the relevant file, but the same is not available. During the said period, the respondents issued the seniority list of Inspectors/Superintendents and also promotion orders from time to time, and at no stage did the applicants challenge their respective seniority in the published seniority lists. They have also taken us through their particular submission that the seniority of the Government servants is determined in accordance with the general principles of seniority contained in MHA O.M. No. 9/11/55-RPS dated 22.12.1959, in which one of the basic principles enunciated is that seniority follows confirmation and consequently permanent officers in each grade shall rank senior to those who are officiating in that grade. They have also taken us through the modification in the said position as brought about vide Department of Personnel & Training O.M. No.20011/5/90-Est.(D) dated 4.11.1992 (Annexure R-1) in which seniority being determined by the order of merit indicated at the time of initial appointment and not according to the date of confirmation has been referred to. There is also a reference to the orders being not reopened even if in some cases seniority has already been

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challenged or is in dispute, if the same has already been fixed according to existing principles. The respondents have taken a very firm position on the question of whether the seniority list had been duly circulated as and when they had been issued and have asserted that the same had been duly circulated on time.


7. On perusal of the facts of the matter as submitted by both the sides, it is observed that seniority of the Superintendents of Central Excise & Customs has been fixed/revised on the basis of the claims made by the individual officers from time to time with reference to their merit position and the respondents have carried out the necessary rectification on the basis of their findings about the merit position of the said individuals in the original merit list as prepared by the Staff Selection Commission. This aspect of the matter also appears to have been gone into while deciding OA No.2523/1991. The basic principle that promotion should be granted to the seniors with reference to the dates on which juniors, if any, have been granted such promotions, also appears to have been kept in view in some stray cases. Expectedly, the respondents have also made reference to the broad principles regarding fixation of seniority as laid down by the Ministry of Home Affairs/ Department of Personnel & Training as referred to hereinabove, and have, perhaps for the reason that the relevant file is not available, taken the position that the applicants should have questioned the seniority assigned to the individuals as named by them as and when the said seniority was fixed. On the face of it, it looks quite unclear whether the respondents shall


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be in a position to resolve the matter with reference to the relevant file on the subject, as the same is not available. It is also noticed that some of the individuals and, particularly, the entire 1977 batch of Inspectors of Central Excise have already become Assistant Commissioners and, in the process, their seniority in the grade of Superintendent has become a fait accompli, leaving hardly any room for reopening without causing unnecessary cascading effect, which, at this stage, may be difficult for the respondents to avoid.

8. Under these circumstances and keeping in view the facts and background of the case and after having heard the learned counsel for the parties, we are of the considered opinion that the only viable solution available at this stage is that the respondents give a fresh consideration to the representations as have been submitted to them by the applicants and dispose them of with reference to the relevant papers as are available with them and also the latest development in the matter including whether the applicants have, in the meantime, been promoted to the next higher grade, thereby mitigating their grievances to that extent. The respondents shall ensure disposal of the said representations by issuing a reasoned and speaking order within three months from the date of receipt of a copy of this order.

9. With this, the OA stands disposed of in terms of the above observation/direction.


 (Sarweshwar Jha)
 Member (A)


 (Shanker Raju)
 Member (J)