

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTINGS: BILASPUR

Original Application No.203/00285/2018

Bilaspur, this Wednesday, the 22nd day of January, 2020

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

1. Himanshu Varma, S/o Late Shri P.C.Varma,
Age about 57 years, presently working as
Superintendent Central Excise and Central Tax,
Raipur (Chhattisgarh)-492001
2. P.K.Kale S/o Late Shri P.R. Kale,
age about 55 Years, Presently working as Superintendent
Central Excise and Central Tax,
Raipur(Chattisgarh)492001.
- 3 .S.C.Agrawal S/o Late Shri J.P.Agrawal,
age about 55 years, Presently working as Superintendent
Central Excise and Central Tax,
Raipur (Chattisgarh) 492001.
- 4.Nisheet Chandra Mathur, S/o Late Shri M.C.Mathur,
age about 54 Presently working as Superintendent
Central Excise and Central Tax, Raipur(Chattisgarh)492001.
- 5.Chandra Kumar Sahu , S/o Shri Saheb Ram Sahu, age about 57
years, Presently working as Superintendent Central Excise and
Central Tax, Raipur(Chattisgarh)492001.
- 6.A.H.Khan S/o Late Shri I.H.Khan,
age about 55 years, Presently working as Superintendent
Central Excise and Central Tax,
Raipur (Chattisgarh)492001.
7. Pankaj Saran S/o Late Shri Siaraghubir Saran,
age about 58 years, Presently working as Superintendent
Central Excise and Central Tax,
Raipur (Chattisgarh) 492001.
8. Rakesh Gauraha S/o Late Shri Bhagawat Prasad Gauraha,

age about 57, Presently working as Superintendent
Central Excise and Central Tax,
Raipur (Chattisgarh) 492001.

9. A. Babu Rao S/o Shri A.V.Rao, age about 54,
Presently working as Superintendent
Central Excise and Central Tax,
Raipur(Chattisgarh)492001.

10.S.P.Deshpande S/o Shri Prabhakar K Deshpande
Age 59 years, Presently working as Superintendent
Central Excise and Central Tax,
Raipur(Chattisgarh)492001.

11.Nrusingh Patra, Shri S.C.Patra, age 57 years,
Presently working as Superintendent
Central Excise and Central Tax,
Raipur(Chattisgarh)492001.

12. Gopal Prasad Joshi S/o Late Shri Banmali Joshi,
Age about 52 years, Presently working as Superintendent
Central Excise and Central Tax,
Raipur(Chattisgarh)492001.

-Applicants

(By Advocate-**Shri A.V. Shridhar**)

V e r s u s

1.Union of India, through its Secretary,
Ministry of finance Department of Revenue,
North Block, New Delhi, Pin-110001

2. Central Board of Excise & Customs,
Through- Chairman, Revenue Department,
North Block, New Delhi -110008

3. Chief Commissioner, Customs,
Central Excise and Central Tax,
Cadre Controlling Authority, Madhya Pradesh,
Chhattisgarh & Nagpur Region, 48
Administrative Area, Area Hills, Hoshangabad Road,
Bhopal (M.P.)-462001.

4. Pr. Commissioner of Central Excise &
Central Tax, Raipur (Chhattisgarh)-492001

5. Mr. Jasram Kindo, Age about years,
57 Presently working as Superintendent
Central Excise and Central Tax
O/o Asstt. Commissioner (Audit) CGST
Central Excise & Audit Circle,
Vyapar Vihar Bilaspur (C.G)-495004

6. Mr. Kripanand Bharti Age about 56 years,
Presently working as Superintendent
Central Excise and Central Tax,
O/o Bhopal Audit Commissionerate,
48 Maida Mill Arera Hills, Hoshangabad Rd,
Bhopal(M.P.)462011

7. Gangadhar Majhi , Age about 53 years,
Presently working as Superintendent
Central Excise and Central Tax,
O/o Commissioner CGST, Central Excise
GST Bhawan, Tikrapara, Raipur (C.G.) 492001

- Respondents

(By Advocate-Shri Gopa Kumar, learned Assistant Solicitor
General along with Shri Himanshu Shrivastava)

ORDER (Oral)

By Navin Tandon, AM:-

The applicants are aggrieved that the private respondents Nos.5, 6 and 7, who were juniors to the applicants in Inspector Grade were promoted to the Superintendent before the applicants. Now after promotion

to the post of Superintendent, the applicants are not being given seniority as per 'catch up' rule.

2. The applicants have made the following submissions:-

2.1 They were appointed as Inspector (Custom and Central Excise Department) on various dates in 1985, 1986 and 1987 respectively as mentioned in Para 4.2 of the Original Application.

2.2 They have been granted promotion to the post of Superintendent Central Excise where they were performing their duties sincerely.

2.3 Combined Cadre Seniority List of Inspectors have been published on 18.07.2002 wherein they are at seniority list No. 248, 215, 231, 216, 235, 213, 225, 208, 193, 214, 198, and 259 respectively (as mentioned in Para 4.5 of the O.A.)

2.4 Respondents Nos.5, 6 and 7 joined as Inspector on 10.09.1986, 09.09.1986, 09.10.1987 respectively and their

names find place at Serial No.244, 246 and 274 respectively in the said combined seniority list.

2.5 Private respondents Nos.5 and 6 were juniors to applicants Nos.1 to 11 and respondent No.7 was junior to applicant No.12. Respondents Nos.5, 6 and 7, being reserved category candidates, got promoted as Superintendent on 26.12.2002, 23.09.2002 and 10.04.2003 respectively, whereas the applicants have been promoted to the post of Superintendent on 15.10.2007 (applicant No.1 to 8, 10), 26.12.2002 (applicant No.9), 25.05.2007(applicant No.11) and on 08.02.2008 (applicant No.12) respectively.

2.6 All India Seniority list of Superintendents of Central Excise are compiled in accordance with the seniority list prepared by Zone. Promotion to the post of Assistant Commissioner is effected on the basis of All India Seniority. All India seniority list available in department web site is prepared only upto 31.12.2006. Private respondents were placed at serial No.1901, 4206 and 4443

of said seniority list respectively, whereas names of the applicants except applicant No.9 is not figuring in the list.

2.7 The office of respondent No.3 circulated draft zonal seniority list of Superintendents of Central Excise dated 23.02.2018 (Annexure A/5) in which the private respondents Nos.5, 6 & 7 are placed at serial No.2, 3 and 5 respectively whereas applicants were placed at Serial No.78, 61, 72, 62, 75, 59, 67, 56, 39, 60, 48 and 91 respectively.

3. They have prayed for the following reliefs:-

“8.i) Hon’ble Court may kindly be pleased to call entire record pertaining to combined seniority of applicants.

8.ii) Hon’ble Court may kindly be pleased to direct competent authority to prepare the fresh combined seniority list in the cadre of superintendent central excise, by the following the principle of catch up rule and instructions of DoPT existing as on date in this regard as discussed supra.

8.iii) Hon’ble Court may kindly be pleased to direct respondent authority to consider eligible candidates for promotion to the post of Assistant Commissioner, Central Excise after preparation of seniority list of Superintendent of Central Excise following the catch up rule.

8.iv) Hon'ble Court may kindly be pleased to grant other reliefs in the circumstances of the case."

4. The respondents have filed their reply as well as some submissions have been made in M.A. No.719/2019 (application for vacating the stay order) in which the following have been stated:

4.1 The respondents have filed their parawise reply as under:-

"Brief facts of the case:

On the basis of the recommendation of this review DPC held on 24.06.2014 Zonal seniority was re-assigned to the SC/ST officers w.e.f.23.09.2002 and accordingly vide this letter C.No.II(34)07/CCU/2010/Pt-1 dtd. 25.6.2014 and 19.8.2014, the revised/amended seniority list was sent for incorporating the changes in All India Seniority List which was maintained by the CBEC/DGHRD, New Delhi. The AISL seniority list was revised on the basis of amendment sent by the Bhopal Zone vide letter dated 25.6.2014.

DGHRD, CBEC issued the final integrated All India Seniority List of Superintendent of Central Excise for the period 1998-2006 in 2011. The first correction/rectification list to All India Seniority List of Superintendent of Central Excise was issued by DGHRD in 2013 vide O.M. F.No.8/B/38/HRD (HRM)/2010 dated 1.11.2013 and the second correction/rectification list was issued vide OM

*F.No.8/B/38/HRD(HRM)/2010/0-III
20/26.03.2015.*

dated

Being aggrieved by this decision, the affected officers of General Category made several representations to Board/DGHRD/CC, Bhopal zone. Further, 10-12 officers have filed appeal before CAT, Jabalpur on the said matter. The matter is still pending with the Hon'ble Tribunal.

Since this office is maintaining Zonal Seniority List of Superintendents and now as per guidelines of Board vide letter dtd. 27.10.2017 directing that the seniority list of Superintendents is revised adhering to the instructions contained in DoPT's OM dtd. 30.09.2016 wherein it has been held that "no further promotions of reserved category persons to unreserved posts will be made based on the DOPT OM dtd. 10.08.2010".

However, on re-examination of the matter, the Zonal seniority of Superintendent has been restored as it existed before review DPC dated 05.06.2014 i.e. restoring the seniority of general category candidate as it exists on or after 23.9.2002. However, the seniority of 29 officers of reserved category, who were promoted by applying the principles of 'Own Merit' is subject to review DPC for re-assigning their seniority, which will be determined by Review DPC in due course. Accordingly, the revised zonal seniority list of Superintendent have been submitted to DGHRD for incorporating necessary changes in the All India Seniority List of Superintendents for the period 01.01.1998 to 31.12.2006. The DGHRD have also immediately incorporated the necessary changes in All India Seniority List of Superintendents for the period 01.01.1998 to 31.12.2006."

5. Heard the arguments of the learned counsel for both the parties and have also gone through the pleadings available on record.

6. Learned counsel for the applicant has submitted that the concept of 'catch up' rule, was enunciated by the Hon'ble Supreme Court in the case of *Union of India and others vs. Virpal Singh Chauhan* (1995) 6 SCC 684. It was held that even though a candidate belonging to the SC or ST is promoted earlier on the basis of reservation and on the application of the roster, this would not entitle such a person to seniority over a senior belonging to the general category in the feeder cadre. However, a senior belonging to the general category who is promoted to a higher post subsequently would regain seniority over the reserved candidate who was promoted earlier. This rule came to be known as the catch-up rule.

6.1 Learned counsel for the applicant submitted that as held by Hon'ble Supreme Court in the case of *Virpal*

Singh Chauhan (supra), the above catch up rule is applicable to the applicants.

6.2 He further brought our attention to Hon'ble Supreme Court Judgment in ***Sudhakar Baburao Nangnure vs. Noreshwar Raghunathrao Shende*** in SLP (Civil) Nos.8769-8771 of 2018 decided on 05.03.2019 in which also it has been held similarly.

7. Learned counsel for the respondents submitted that Hon'ble Supreme court in Civil Appeal No. 2368 of 2011 in the case of ***B.K. Pavitra and others-II vs. The Union of India and others*** dated 10.05.2019 has held that there is no requirement for having the catch up rule.

7.1. Learned counsel for the respondents also submitted that similar issue was dealt with by the Chandigarh Bench of this Tribunal in O.A. No.060/00254/2017 (***Maheshinder Singh Dhindsa vs. Union of India and others***) decided on 08.02.2018. However, the said order has been stayed by Hon'ble High Court of Punjab and

Haryana and the case has also been adjourned sine-die to await the decision of Hon'ble Supreme Court.

8. We have considered the matter.

9. The Hon'ble Supreme Court in the case of

B.K.Pavitra-II (supra) has held as under:-

*“13. On 1 October 1995, a two judge bench of this court held in **Union of India vs Virpal Singh Chauhan** (“**Virpal Singh**”) that the state could provide that even if a candidate belonging to the SC or ST is promoted earlier on the basis of reservation and on the application of the roster, this would entitle such a person to seniority over a senior belonging to the general category in the feeder cadre. However, a senior belonging to the general category who is promoted to a higher post subsequently would regain seniority over the reserved candidate who was promoted earlier. This rule came to be known as the catch-up rule. The two judge bench directed that the above principle would be followed with effect from the date in the judgment in Sabharwal.”*

“138. Though, we have not accepted the above submission which was urged by Ms Jaising on behalf of the intervenors, we will have to decide as to whether the Reservation Act 2018 is unconstitutional. The challenge in the present case is to the validity of the Reservation Act 2018 which provides for consequential seniority. In other words, the nature or extent of reservation granted to the SCs and STs at the entry level in appointment is not under challenge. The Reservation Act 2018 adopts the principle that consequential seniority is not an additional benefit but a consequence of the promotion which is granted to the SCs and STs. In protecting consequential seniority as an incident of promotion, the

Reservation Act 2018 constitutes an exercise of the enabling power conferred by Article 16 (4A). The concept of creamy layer has no relevance to the grant of consequential seniority. There is merit in the submission of the State of Karnataka that progression in a cadre based on promotion cannot be treated as the acquisition of creamy layer status. The decision in Jarnail rejected the submission that a member of an SC or ST who reaches a higher post no longer has a taint of untouchability or backwardness. The Constitution Bench declined to accept the submission on the ground that it related to the validity of Article 16 (4A) and held thus:

“34...We may hasten to add that Shri Dwivedi’s argument cannot be confused with the concept of “creamy layer” which, as has been pointed out by us hereinabove, applies to persons within the Scheduled Castes or the Scheduled Tribes who no longer require reservation, as opposed to posts beyond the entry stage, which may be occupied by members of the Scheduled Castes or the Scheduled Tribes.”

(Emphasis supplied)

139. In sustaining the validity of Articles 16 (4A) and 16 (4B) against a challenge of violating the basic structure, Nagaraj applied the test of width and the test of identity. The Constitution Bench ruled that the catch-up rule and consequential seniority are not constitutional requirements. They were held not to be implicit in clauses (1) to (4) of Article 16. Nagaraj held that they are not constitutional limitations or principles but are concepts derived from service jurisprudence. Hence, neither the obliteration of those concepts nor their insertion would violate the equality code contained in Articles 14, 15 and 16. The principle postulated in Nagaraj is that consequential seniority is a concept purely based in service jurisprudence. The incorporation of consequential seniority would hence not violate the constitutional mandate of equality. This being the true constitutional position, the protection of consequential seniority as an incident of promotion does not require the application of the creamy layer test. Articles 16 (4A) and 16 (4B) were held to not obliterate any of the constitutional limitations and to fulfil the width test. In the above view of the matter, it is evident that the concept of creamy layer has no application in assessing the validity of the Reservation

Act 2018 which is designed to protect consequential seniority upon promotion of persons belonging to the SCs and STs.”

9.1 Hon’ble Supreme Court in the case of **Sudhakar**

Baburao Nangnure (surpa) has held as under:-

“37. The decision in Virpal Singh Chauhan (supra) led to the Constitution (Eighty-fifth Amendment) Act 2001 with effect from 17 June 1995. Clause (4A), as amended, expanded the ambit of the earlier provision by enabling the State to also provide for consequential seniority, while making the provision for reservation in matters of promotion. Clause (4A) of Article 16, in its present form, reads thus:

“(4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.”

38. The principle which has been enunciated in Virpal Singh Chauhan (supra) has come to be known as the ‘catch-up’ rule. In Ajit Singh Januja v State of Punjab²⁸ (“Ajit Singh I”), a three judge Bench of this Court adopted the catch-up rule propounded in Virpal Singh Chauhan (supra). This Court held that a balance has to be maintained so as to avoid reverse discrimination and a rule or circular which gives seniority to a candidate belonging to the reserved category promoted on the basis of the roster point would violate Articles 14 and 16 of the Constitution.

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“45 In Panneer Selvam (supra) the issue before a two Judge Bench of this Court was thus:

“1.1. (i) In the absence of policy decision taken by the State/rules framed pursuant to the enabling provision of Article 16(4-A) of the Constitution of India, whether a reserved category candidate promoted on the basis of reservation earlier than his senior general category candidate in the feeder category can claim consequential seniority in the promotional post?” Rule 12 of the sub-rules to the Tamil Nadu Highways and Engineering Service provided as follows:

“12. Reservation of appointment.- The rule of reservation of appointments (General Rule 22) shall apply to the appointment of Assistant Divisional Engineers by direct recruitment and recruitment by transfer separately and the appointment of Assistant Engineers by direct recruitment.” Under Rule 12, reserved category Assistant and Junior Engineers had secured promotion as Assistant Divisional Engineers earlier than their counterparts belonging to the general category as a result of accelerated promotion following the rule of reservation.”

46. Justice R Banumathi, speaking for the two Judge Bench held that Rule 12 did not provide for consequential seniority to candidates drawn from the reserved category who are granted accelerated promotion and, in the absence of a specific provision or policy, consequential seniority could not be granted.”

10. Perusal of the above judgments of Hon'ble Supreme Court it is very clearly indicated that there is no illegality or irregularity in promoting SC and ST candidates on out of turn basis if rule so provided. Further it has also been held that such reserved candidates can be provided consequential seniority if such a rule is provided for in

their rule books. The same stand has been taken by Hon'ble Supreme Court in the case of ***Sudhakar Baburao Nangnure*** (supra).

11. Perusal of all the above also indicates that in case the reserved candidates are being provided in accelerated promotion it automatically does not apply that they will be given consequential seniority. It has to be provided for in the service rules.

12. No such rule of Govt. of India has been placed before us which would indicate that the consequential seniority is to be provided to the candidates of reserved category. In the absence of such rule, it implies that the catch up rule, as held in ***Virpal Singh Chauhan's*** case will hold fort. Therefore, the catch up rule is to be provided by the respondents in all cases of accelerated promotion to the reserved candidates.

13. In the instant case principle of catch up rule will be applicable in case of accelerated promotion to the reserved

category, since no rules are provided for consequential seniority.

14. In the present Original Application, it is clear that private respondents have been promoted as Superintendent ahead of applicants based on the reservation in promotions. Therefore, their seniority in the Superintendent Grade should be decided as per the catch up rule as held by Hon'ble Supreme Court in the matters of *Virpal Singh Chauhan* (surpa).

15. Accordingly, Original Application is allowed. Respondents are directed to prepare the revised seniority list as per catch up rule within 120 days from the date of communication of this order. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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