

**Central Administrative Tribunal
Hyderabad Bench**

OA No.48/2019

Hyderabad, this the 30th day of December, 2019

Hon'ble Mr. B. V. Sudhakar, Member (A)

1. Manish Kumar Choubey, aged 32 years (Gr.B)
S/o Lalmuni Choubey,
Inspector (Preventive Officer)
Custom House,
Visakhapatnam.
2. Dhananjay,
S/o S. Nandan
Aged 36 years
Inspector (Preventive Officer)
Custom House,
Visakhapatnam.
3. Rajesh Kumar
S/o Shital Prasad Yadav,
Aged 39 years
Inspector (Preventive Officer)
Custom House,
Visakhapatnam. ... Applicants.

(By Advocate: Shri P. Ramachander Rao proxy of Dr. P.B.Vijay Kumar)

Vs.

1. Union of India represented by Chairman
Central Board of Indirect Tax & Customs (CBIC)
Rajpath Marg, E Block, Central Secretariat
New Delhi – 110 011.

2. Chairman, Central Board of Excise & Customs
Rajpath Marg, E Block, Central Secretariat
New Delhi – 110 011.
3. Chief Commissioner of Customs,
Customs House
GST Bhavan
Port Area,
Visakhapatnam – 35.
4. Principal Commissioner of Customs
Custom House
Port Area,
Visakhapatnam – 35. ... Respondents

(By Advocate: Mr. B. Laxman, proxy of Smt. K. Rajitha, Sr. CGSC) :

O R D E R (Oral)

The OA has been filed to declare that the applicants are entitled to count their notional service from the date on par with that of the direct recruit juniors, who were selected through the same selection process of CGLE, 2008 and who joined early in the post of Inspector (Preventive Officer), consequent to proceedings dated 26.12.2018.

2. Brief facts of the case are that the applicants were selected to the post of Inspector (Preventive Officer) through SSC CGLE 2008 and allocated to Visakhapatnam Custom House along with other candidates. The applicants were issued letters for Physical and Medical tests and

they appeared along with their batch-mates selected through the same examination. The applicants were working in the respondents organization at different Commissionerates under different cadre controlling authorities, but under the overall ambit of the Central Board of Excise and Customs. The applicants were offered the offer of appointment after 01.01.2011, which is the crucial date for determining the eligibility criteria for further promotions. Due to the delay in offer of the appointment, the applicants are now short of the qualifying service of 8 years in the feeder cadre, for their promotion to the next higher grade. The juniors to the applicants, who were selected on direct recruitment through the same examination, were offered letter of appointment before 01.01.2011 and thereby completed the requisite qualifying service in the feeder cadre of Inspector for promotion to the next higher grade. In fact, they were promoted to the post of Superintendent from 01.01.2019, vide order dated 26.12.2018. The inaction of the respondents in promoting the applicants, though represented, is violative of Articles 14 and 21 of the Constitution of India. Aggrieved, the OA has been filed.

3. The contentions of the applicants are that the action of the respondents in issuing the appointment orders to the applicants on a later date than their juniors, as per the merit ranking assigned by the Staff Selection Commission (SSC), is irregular. The delay has deprived

the next promotion on par with their juniors, who were promoted w.e.f. 01.01.2019 vide order dated 26.12.2018. The mistake in belatedly releasing the appointment orders of the applicants is that of the respondents, therefore, the respondents should not penalize the applicants, by denying their promotion on par with their juniors.

4. Heard both the counsel and perused the pleadings on record.
5. The applicants were working in different Commissionerates of the respondents organization, controlled by the Central Board of Excise and Customs. They were offered the offer of appointments after 01.01.2011, consequent to the selection as Inspector through SSC CGLE 2008. The juniors of the applicants, who were selected on direct recruit basis through the same examination were offered letter of appointment before 01.01.2011, thereby, presenting the advantage of completing the qualifying service in the feeder grade of Inspector and getting promoted to the next higher grade of Superintendent. The delay in issuing the appointment orders to the applicants along with those of direct recruitment is because of the inaction of the respondents, as per the version of the applicants. Further, since the applicants were working in the respondents organization, the character and antecedents have already been verified by the respondents. Therefore, insisting for Police Verification Report (PVR) is not required for the applicants, is another

claim of the applicants. The applicants have cited the Hon'ble Apex Court Judgement in Union of India v. Sadhna Khanna and Government of NCT of Delhi v. Rakesh Beniwal, wherein the Hon'ble Apex Court reiterated that the Government cannot be permitted to take advantage of their own mistake. The same was highlighted in A.K.Laxmipathy vs. Rai Saheb Pannalal Lahoti Charitable Trust, 2010(1) SCC 287 and Rekha Mukherjee vs. Ashis Kumar Das, (2005) 3 SSC 427.

6. After hearing both the counsel and after going through the facts and circumstances stated in the OA, ends of justice would be met, if the respondents are directed to dispose of the representations made by the applicants on 12.10.2018 and 15.10.2018, keeping in view the judgements cited by the applicants in the OA and the submissions made in the representations, by issuing a speaking and reasoned order within a period of 8 weeks from the date of receipt of a copy of this order. Ordered accordingly.

7. The OA is accordingly disposed of at the admission stage without going into the merits of the case. There shall be no order as to costs.

(B. V. SUDHAKAR)
Member (A)

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