

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00678/2016

Reserved on : 29.11.2019
Pronounced on: 04.12.2019

C O R A M

HON'BLE MR. JAYESH V. BHAIKAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER



Shri Prakash Singh, son of Shri Basant Kumar Singh, resident of F-85, P.C. Colony, Kankarbagh – Patna-20.

.... Applicant.

By Advocate: - Mr. A.K. Singh

-Versus-

1. Union of India through the Secretary (Revenue), Ministry of Finance, Department of Revenue, North Block, New Delhi.
2. The Chairman, Central Board of Excise & Customs, Ministry of Finance, Department of Revenue, North Block, New Delhi.
3. The Chief Commissioner, Cadre Controlling Authority, Central Excise & Service Tax, Ranchi Zone, Central Revenue Building, Bihar Chand Patel Marg, Patna.
4. Dilip Kumar, Superintendent, Central Excise, Jamshedpur.
5. Shakti Bhushan, Superintendent, Customs, Thakurganj, District- Kishanganj.
6. Alok Kumar Singh, Superintendent, Central Excise, Ranchi Pin Code- 834001.
7. Arbind Kumar Singh, Central Excise, Jamshedpur, Pin Code- 826001.
8. Raj Kumar, Superintendent, Central Excise, Patna.
9. Rajeev Kumar, Superintendent, Central Excise, Jamshedpur- Pin Code- 826001.
10. Binod Kr. No. 1, Superintendent, Central Excise, Patna.
11. Aftab Alam, Superintendent Customs, Raxaul, Champaran – 845305.
12. Rajeev Ranajn Sinha, Superintendent Customs Division, Muzaffarpur- 842101.
13. Amod Kumar Thakur, Superintendent Land Customs Station, Raxaul, Champaran- 845305.
14. Lakhi Narayan Das, Superintendent Central Excise, Dhanbad- 826001.
15. Uday Shankar Singh, Superintendent, Audit Commissionerate, Patna.
16. Ajay Kumar Sinha, Superintendent Customs, Patna.
17. Laxman Thakur, Superintendent DGCEI, Jamshedpur-831001.
18. Chunki Hansda, Superintendent Customs, Raxaul-845305.
19. Devendra Pratap Singh, Superintendent, Central Excise, Gaya-823001.
20. Naveen Chandra, Superintendent Central Excise, Headquarter, Patna.



21. Ram Karan Safi, Superintendent Customs, Raxaul- 845305.
22. Shashi Sarat, Superintendent Central Excise, Jamshedpur-831001.
23. Dadhi Bal Ranjan, Superintendent, Central Excise, Jamshedpur-831001.
24. Shailendra Kumar, Superintendent Customs, Kishanganj-855101.
25. Shailesh Kumar Singh, Superintendent Central Excise, Jamshedpur-831001.
26. Ashok Kumar Choudhary, Superintendent, Central Excise, Dhanbad-826001.
27. Ashish Kumar, Superintendent, Central Excise, Ranchi-834001.
28. Sanjay Kumar Chaudhary, Superintendent, Central Excise, Outer Circle Road, Bistupur, Jamshedpur-831001.
29. Abha Bara, Superintendent, Central Excise, Ranchi.
30. Sunil Baitha, Superintendent, Central Excise Division, Patna.
31. Urmila Khalkho, Superintendent Central Excise, Patna.
32. Bali Ram Paswan, Superintendent Custom, Forbesganj.
33. Ashok Kumar Das, Superintendent, Central Excise, Ranchi- 834001.
34. Srikant Chaudhary, Superintendent, Central Excise, Jamshedpur-831001.
35. Anil Kumar Das, Superintendent, Central Excise, Jamshedpur-831001.
36. Narayn Kumar, Superintendent Audit Commissionerate, Central Excise, Patna.
37. Smt. Maxima Demta, Superintendent Central Excise, Ranchi- 834001.
38. Jai Shankar Prasad, Superintendent Central Excise, Dhanbad- 826001.
39. Onkar Nath Singh, Superintendent Central Excise.
40. Shiv Narayan Ram, Superintendent Audit Commissionerate, Central Excise, Patna.
41. Subhash Prasad, Superintendent, Central Excise, Jamshedpur.
42. Anil Kiro, Superintendent Central Excise, Headquarter, Patna.
43. R.K. Thakur, Superintendent, Customs, Raxaul.
44. Sanjay Prasad, Superintendent Customs, Headquarter, Patna.
45. Arun Prakash, Superintendent, Audit Commissionerate, Central, Excise, Patna.
46. Raman Nand Singh, Superintendent Customs, Headquarter, Patna.
47. Prabhat Kumar, Superintendent Central Excise, Jamshedpur.
48. Rajeev Kumar Prasad, Superintendent Service Tax Division, Patna.
49. Sudhir Kumar, Superintendent Central Excise, Dhanbad.
50. Kamakhya Narayan Prasad, Superintendent Central Excise, Jamshedpur.
51. R.N. Pathak, Superintendent Custom, Raxaul.
52. Manmohan Sharma, Superintendent Central Excise Division, Bhagalpur.
53. Putul Mishra, Superintendent C.L.O Central Excise, Patna.
54. Bhubnesh Tiwary, Superintendent Central Excise, Bokaro- 827001.
55. Amin-Al-rashid, Superintendent Central Excise, CLO, Patna.
56. Umesh Thakur, Superintendent Service Tax Division, Patna.
57. Sanjay Kumar Sahay, Superintendent Custom Headquarter, Patna.
58. U.K. Singh Customs, Superintendent Custom, Muzaffarpur.
59. Nand Lal Pandey, Superintendent, Central Excise Outer Circle Road, Bistupur, Jamshedpur-831001.
60. Sant Lal Shah, Superintendent Customs, Raxaul.
61. R.K. Singh, Superintendent, Central Excise, Jamshedpur.
62. Abhineshwar Kumar, Superintendent Custom (H) Patna.
63. Dharendra Kumar Singh, Superintendent, Central Excise, Jamshedpur.
64. Rajeev Ranjan Mishra, Superintendent Custom, Raxaul.
65. Prakash Sahay, Superintendent Custom, raxaul.

66. Neeraj Kumar, Superintendent Central Excise Division, Bhagalpur- 812001.
67. Binod Kumar Sinha, Superintendent Central Excise (H), Patna.
68. Tripurari Sharan, Superintendent, Custom Raxaul.
69. B.N. Sahay, Superintendent Central Excise, Bokaro.
70. Rajendra Kumar Sinha, Superintendent, Central Excise, CLO, Patna.

.... Respondents.

By Advocate: - Mr. H.P. Singh, Id. Sr. SC with Mr. Radhika Raman

ORDER



Per Dinesh Sharma, A.M:- In the instant OA, the applicant has prayed for considering his case for giving him the correct seniority in the cadre of Superintendent Group 'B' in the seniority list of Superintendent Group 'B' working in Central Excise/Customs/Audit Commissionerate, Patna/Ranchi-I/Ranchi-II(Bokaro)/Dhanbad/Jamshedpur as on 01.01.2015 (corrected upto 01.04.2015) by counting his services rendered by him in Indore Commissionerate prior to his Inter-Commissionerate transfer to Patna. This should be done by inserting the name of the applicant at least above respondent no. 5 (SL. No. 48 in the list) who was appointed along with the applicant in the year 1986 in the cadre of Inspector at Indore Commissionerate where he was junior to the applicant.

2. The case of the applicant, in brief, is that though he was senior to respondent no. 5 when he was appointed in the year 1986, the respondent no. 5 joined Patna Commissionerate on inter-Commissionerate transfer on 18.01.1988 while the applicant was transferred to Commissionerate of Central Excise, Patna on similar



transfer on 14.07.1991. The applicant was already confirmed (on 04.05.1990) and had acquired the status of permanent employee at Indore Commissionerate while the respondent no. 5 acquired the status of permanent employee after confirmation of his service as Inspector at Patna Commissionerate on 13.02.1992. Since the applicant lost his seniority (from 4.8.86 to 22.07.91) in respect of his service rendered at Indore Commissionerate, his services to the post of Inspector were once again confirmed on 17.03.1994 at Patna Commissionerate. Following this, while respondent no. 5 was promoted to the post of Superintendent on 25.09.2002 the applicant was promoted to this post only on 01.08.2008 by counting his seniority w.e.f. 22.07.1991, i.e. from the date of his joining in the Patna Commissionerate. The respondents have now come out with list of Superintendent Group 'B' working in Central Excise etc. Commissionerate at Patna on 01.01.2015 where the name of the applicant appears at sl. No. 131 whereas the name of respondent no. 5 appears at Sl. No. 48. The applicant has questioned this list on ground of his being senior to respondent no. 5 having been appointed along with the respondent no. 5 and joined the Indore Commissionerate earlier than respondent no. 5 and also acquiring the status of permanent employee before respondent no. 5. The applicant claims that if his claim for giving benefit of more than 4 years of service as a permanent employee in the grade of Inspector at Indore Commissionerate had been considered by the respondents, he would have been entitled to promotion along with respondent no. 5 (in 2002 instead of the year

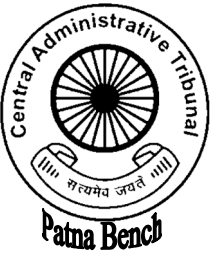
2008) and would have been placed at least above respondent no. 5 in the above mentioned seniority list and hence, the OA.

3. A written statement has been filed by the respondents where they have claimed that the OA has no merit and is fit to be dismissed. The applicant came to the Central Excise Commissionerate, Patna in 1991 after knowing fully well that such transfer would involve loss of seniority and has challenged that order after 25 years and, therefore, on ground of delay itself the prayer is not maintainable. Such a challenge in this OA which is after 25 years from the date of joining and 7 years from the date of promotion is not maintainable in the guise of challenging the seniority list published in the year 2015 and, therefore, the OA is barred by period of limitation. The respondents also quoted a decision of the Hon'ble Allahabad High Court in the judgment dated 01.09.1999 in **Naresh Kumar Gupta & Ors. Vs. Union of India & Ors.** CAT, Allahabad 1994 (4) AWC 3079 (page 8 of WS). They have also quoted other decisions of the Hon'ble Apex Court in support of their argument that persons who have slept over their rights have no right to claim relief after a considerable span of time. They have also alleged that the eligibility for promotion and seniority are two distinct and separate concepts and while an employee may put up a claim for considering his eligibility by counting his service rendered at a previously held post, this would not affect his seniority and the turn for promotion which depends on seniority.



4. The applicant has filed a rejoinder, again asking for ante-dating his promotion to the post of Superintendent w.e.f. the date of respondent no. 5 stating that as per their recruitment rules, Inspectors who have put in 8 years of regular service are eligible to be considered for promotion to the post of Superintendent. The applicant has quoted order dated 03.08.2012 of Chandigarh Bench of CAT in case of **Balwinder**

Singh Matharoo and Ors. Vs. Union of India (OA No. 338/PB/2012).



5. Witten arguments have also been filed both by the applicant and the respondents.

6. We have gone through the pleadings and heard the arguments of the learned counsels of both the parties. The main issue here is whether the applicant should have been promoted when respondent no. 5, who is alleged to be junior to him was promoted as Superintendent in the year 2002. The respondents have questioned the right of the applicant to agitate this issue now before this Tribunal after a lapse of more than a decade since the promotion of respondent no. 5. On the face of it, such objection by the respondents is reasonable. If the applicant was in any way aggrieved by the promotion of his junior in the year 2002, he should have raised the issue within a reasonable time after that, or in any case in the year 2008, when the applicant himself was promoted (6 years after the person who he claims to be his junior). The issue is, thus, obviously barred by period of limitation and has been raised now in the guise of challenging the seniority list of



Superintendents published in the year 2015. The applicant has nowhere questioned that granting of bottom seniority to him at the time of his transfer was wrong. Thus, in effect, his challenge is not for his position in the seniority list at Patna Commissionerate, but for questioning the promotion made to his junior in the year 2002. It was argued by the learned counsel for the applicant that the act of the respondents was illegal and ultra vires and therefore it could be challenged at any time and therefore the law regarding limitation did not apply to his case. We do not agree with this line of argument since the action of the respondents in promoting officers in the order of their seniority if they fulfilled other conditions of eligibility, is in no way illegal. We have gone through the various decisions cited by the parties and have found the position summed up in the decision of **N.D. Azad & Ors. Vs. UOI & Ors.** by Hon'ble CAT, Principal Bench in OA 3326 of 2013 and we quote it below:-

“ It is now settled legal position that on Inter Commissionerate transfer while a transferee loses his seniority and is placed at the bottom of the seniority list in the new Commissionerate, yet he does not forgo the length of service rendered by him prior to his transfer. Thus, while he loses seniority, does not lose the service already rendered by him. Therefore, if in the new Commissionerate, despite being at the bottom of the seniority list, if he is senior enough to fall within the zone of consideration for next promotion, his eligibility for such promotion shall be determined after counting his service rendered prior to ICT.”

7. The learned counsel for the respondents has also brought to our notice that in the appeal filed before the Hon'ble Delhi High Court in the same case, it was observed by the Hon'ble High Court as follows:-



“The aforesaid observations are in consonance with the decision of this Tribunal in O.A. No. 651/1997, I.C. Joshi Vs. Union of India & Ors. decided on 26th August, 1997. This decision was made subject matter of challenge before the High Court and then before the Supreme Court. The decision of the Tribunal was affirmed. Therefore, on inter-Commissionerate transfer, officer would be placed at the bottom of the seniority list, but for the purpose of eligibility, the service rendered in the earlier Commissionerate would be counted. Learned counsel for the parties are ad idem and state that, this means that the seniors, who are eligible, would be considered first for promotion. Only if there are vacant posts and the seniors are not eligible for promotion, then the juniors would be considered.”

71. The aforesaid decisions leave us in no doubt about the applicant having no merit in this case and hence, even if the delay in filing the OA was to be ignored the relief claimed by him cannot be granted. The OA is, therefore, dismissed. No order as to costs.

[Dinesh Sharma]
Administrative Member
Srk.

[Jayesh V. Bhairavia]
Judicial Member