

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.2093/1996

NEW DELHI, THIS THE 13TH DAY OF MARCH, 2000.

HON'BLE MR.JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE MR.V.K.MAJOTRA, MEMBER (A)

1. Central Excise Executive Officers
Association, Commissionerate Meerut,
represented by its General Secretary
Shri SNS Yadav.
2. Shri S.N.S.Yadav
R/o 761 B.Shastri Nagar,
Ghaziabad (U.P.)
(Excise Inspector) ...

Applicants

(None for the applicants)

vs.

1. Union of India
represented by the
Secretary to Govt.,
Department of Revenue,
Ministry of Finance,
New Delhi.
2. Chairman,
Central Board of Excise and Customs,
North Block,
New Delhi.

...Respondents

(None for the respondents)

ORDER (ORAL)

Shri V.K.MAJOTRA, MEMBER(A):-

Parties and their Advocates are absent. We proceed to dispose of the OA in their absence in terms of Rule 15 of the Central Administrative Tribunal (Procedure) Rules, 1987.

2. The applicants have impugned order dated 10.9.1996, Annexure-I relating to restructuring of Groups 'B' and 'C' posts in Customs and Central Excise departments whereby sanction to the upgradation of 716 posts of Inspectors to the

level of Superintendents in the Central Excise and upgradation of 429 posts of Preventive Officers in the Customs department to the level of Superintendents (Gr.'B') in the pay scale of Rs.2000-3500 in various Commissionerates in the first phase of re-structuring of Groups 'B' and 'C' posts under the Central Board of Excise and Customs was accorded. The corresponding posts in the Inspector level were to be abolished simultaneously with the filling up of the upgraded posts of Superintendents.

3. The applicants through this OA have challenged the allocation of the said 716 posts to different zones alleging that the same has been made without any rationale resulting in creation of 194 posts for Bombay Commissionerate, while only 29 posts have been created in Uttar Pradesh. According to the applicants, the distribution of these upgraded posts should have been in accordance with the proportion of Inspectors in different zones. There are 1561 Inspectors in U.P.zone, 1282 in Delhi zone and 3257 in Bombay zone. The next promotional avenue for Inspectors is in the category of Superintendents. Though a minimum experience of 8 years makes them eligible for the post of Superintendents, there was a grave stagnation in the level of Inspectors and there was no promotion even after they have^d put in 15 years of service. Upgradation of 716 posts of Inspectors to the level of Superintendent and 429 posts of Preventive Officer to the level of Superintendents was aimed at alleviating stagnation of Inspectors. The applicant association have made a representation against the impugned order on 16.9.1996 which has remained unattended. The applicants have sought quashing of that part of the impugned order dated 10.9.1996, Annexure-I relating to allocation of upgraded posts to different zones and also direction to the respondents to reallocate the upgraded posts in proportion to the number of posts of Inspector level in each zone.

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4. The respondents have taken a preliminary objection relying on the case of **D.S.Dhanoa vs. Union of India**, AIR 1991 SC 1745 by contending that creation and abolition of posts is the prerogative of the executive so also is the power to reduce or abolish them. Another preliminary objection raised by the respondents is that the applicants have confused a right to be considered for promotion with mere chance of promotion, the latter would certainly not be a condition of service. The respondents have also pointed out that the applicants have not joined the essential parties in the OA as any redistribution of the upgraded posts in the manner demanded in the OA is bound to adversely affect the interests of the Inspectors in Bombay and other Commissionerate who have not been impleaded as parties to the OA. The respondents have kept the following guidelines for determining the number of posts to be upgraded and their distribution to various Central Excise Commissionerate/Customs Houses in the first phase of restructuring:-

- "(a) In the first phase, the upgradation was to cover the Inspectors/Preventive Officers who have completed 17 years of service as on 1.8.96.
 - (b) As seniority of Inspectors/Preventive Officers is maintained only commissionerate wise/custom house wise, the seniority lists maintained in the commissionerate/custom houses shall form the basis of determining the number of posts required to be upgraded in each Commissionerate/Custom House.
 - (c) In the seniority lists of respective Commissionerate, all those who figure above the senior-most officer of 1980 Batch shall be deemed to have completed the 17 years of service.
 - (d) It is possible that in cases of some promotee officers, they may have got promotion at an earlier date but in the seniority list, they are clubbed together with the officers of later batches having regard to the requirement of
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rota-quota system. In their cases also, therefore, the guiding principle shall be that those who are placed along with 1979 batch or earlier batches alone shall be included.

(e) As regard the officers, who opted for inter-Commissionerate transfers and have in the process lost the credit of the years of service put in by them prior to their joining the new Commissionerate, (in such cases it was widely known that any Officer opting for inter-Commissionerate transfer had to forgo the seniority in his parent Commissionerate), such officers may not be allowed to claim the credit of the years of service put in by them in their parent Commissionerate. In their case also, their placement in the seniority list will decide whether or not they pass the eligibility criteria of 17 years of service in their present Commissionerate.

(f) Further as per instructions 22.5% posts have also been provided in the upgradation to cater for reservation of SC/ST candidates."

5. The respondents have further explained that the U.P. zone comprising of Allahabad, Kanpur and Meerut Commissionerate maintains a common seniority list. As per the seniority of this zone, Annexure R-I, there were 22 Inspectors with more than 17 years service in the zone as on 1.8.1996. However, by the impugned order this zone has been sanctioned 29 upgraded posts of Superintendents of Central Excise. The requirement of Commissionerate in other zones has also been worked out on the same basis keeping in view the number of Inspectors of Central Excise with more than 17 years of service. The respondents have maintained that the upgradation is a one time measure to alleviate stagnation. The allocation of upgraded posts cannot be made in proportion to the sanctioned strength of Inspectors in each Commissionerate as such a step will defeat the very purpose of upgradation and will further

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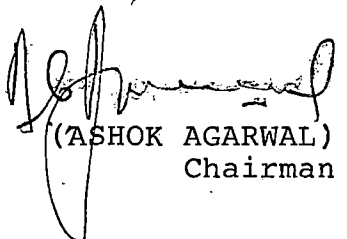
aggravate the stagnation position in some Commissionerate where it is already acute. However, they propose to review the position at the time of second phase of upgradation during which the posts shall be released on all India basis.

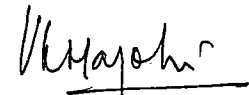
6. We have perused the material available on record. Upgradation of 716 Inspector level posts in the Central Excise and 429 posts of Preventive Officers to the level of Group 'B' Superintendent of Central Excise in the grade of Rs.2000-3500 in the first phase of restructuring of Groups 'B' and 'C' posts under the Central Board of Excise and Customs is a laudable scheme to reduce stagnation at the level of Inspectors. For determining the number of posts for upgradation and their allocation to various Central Excise Commissionerate/Custom Houses in the first phase of restructuring, Government have adopted rational guidelines as described above and while upgrading the posts of Inspectors in the U.P. zone comprising of Allahabad, Kanpur and Meerut a bench-mark of 17 years of service as on 1.8.1996 ^{for upgradation in} to the level of Superintendents of Central Excise has been kept in view. We find that the respondents have adopted an equitable and rationale basis for allocation of posts for upgradation at the level of Inspectors to the level of Superintendents to alleviate stagnation among the Inspectors. We cannot agree with the applicants that the allocation in different Commissionerate zones should have been in proportion to the sanctioned strength of Inspectors in each Commissionerate. As per the guidelines stated above and the criteria adopted for allocation of upgraded posts to various Commissionerate zones, we find that whereas the allocation as per Annexure-I is quite in order, just and proper, the allocation as suggested by the applicants on the basis of proportion of sanctioned strength of Inspectors in each Commissionerate would defeat the purpose of upgradation and further aggravate the stagnation position in some Commissionerate where it is already acute. If the allocation was to be made as suggested by the applicants that would have certainly harmed

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the interests of their colleagues who have been stagnating in other Commissionerates and have not been made a party in the present O.A.

7. In view of the reasons discussed above, the restructuring of groups 'B' and 'C' posts in Customs and Central Excise departments vide Annexure-I dated 10.9.1996 cannot be faulted with. Accordingly O.A. is dismissed being devoid of merit. No costs.


(ASHOK AGARWAL)
Chairman


(V.K. MAJOTRA)
Member (A)

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