

Central Administrative Tribunal
Principal Bench: New Delhi

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O.A. No. 1490/97

New Delhi this the 25th day of January, 2001

Hon'ble Mr. V.K. Majotra, Member (A)
Hon'ble Mr. Shanker Raju, Member (J)

1. Shri Kanwar Lal,
son of Late Shri Ratiram,
R/o EC 5, DDA MIG Flats,
Rajouri Garden, G 8 Area,
New Delhi- 110064.
2. Shri Rakesh Kumar
son of late Shri NR Haldunia,
r/o H 435, Nanakpura,
New Delhi-110021
3. Shri Tilak Raj,
son of Shri BD Sharma,
r/o F 118, Moti Bagh I,
New Delhi-110021
4. Shri Kuldeep Singh,
s/o Late Shri Munsha Singh,
r/o 1871A/15, Govindpuri Extn.,
New Delhi-110019.

-Applicants

(By Advocate: Shri Sanjeev Behal)

Versus

1. Union of India,
through
The Secretary to the Govt of
India, Ministry of Finance,
Department of Revenue,
North Block, New Delhi.
2. The Chairman,
Central Board of Excise
and Customs, North Block,
New Delhi.
3. The Chief Commissioner (DZ),
CR Building, IP Estate,
New Delhi-110 002
4. The Commissioner,
Central Excise,
CR Building, IP Estate,
New Delhi-110 002

-Respondents

(By Advocate: Shri R.R. Bharti)

O R D E R

Mr. V.K. Majotra, Member (A)

The applicants, four in number, have challenged
order dated 29.5.97 (Annexure A-I) regarding

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re-structuring of Groups B & C posts in Customs and Central Excise Departments conveying sanction of upgradation of 913 posts of Inspectors to the level of Superintendents in the Central Excise and upgradation of 214 posts of Preventing Officers in the Customs Department to the level of Superintendents (Prev), Customs in the pay scale of Rs. 2000-3500 alleging that procedure for promotion for filling up the upgraded posts had not been laid down and the main consideration of continuous length of service of Inspectors in a Commissionerate was ignored as basis for upgradation. It is alleged that whereas 138 posts in the Commissionerate of Central Excise, Delhi were upgraded, instead of considering Inspectors who have completed 15 years of service in Delhi Commissionerate, persons junior to them on the basis of length of service in a Commissionerate were preferred.

2. The applicants claim that they have been appointed as Inspectors Central Excise on promotion since 1981. It is stated that the Government accepted the demand of the Indian Federation of Central Excise and Executive Officers for upgradation of the posts of Inspectors who had served continuously for more than 15 years in order to remove stagnation among them. Initially, only 9 upgraded posts were allocated to Delhi Commissionerate vide Circular dated 10.9.96 and the applicants failed to conceive the real import of the scheme. According to the applicants, the respondents have made the seniority list maintained by each Commissionerate as the basis for upgradation. As a matter of fact, the basis for upgradation and promotion should have been

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continuous length of service in a Commissionerate. They plead that the initial date of joining the Commissionerate and not inter-se-seniority from different sources should have been the basis for upgradation and promotion. The applicants have alleged that several persons junior to them have been shown senior to them in the seniority list and considered for upgradation and promotion. The applicants have sought quashing of order dated 29.5.97 regarding upgradation of 138 posts of Inspectors as Superintendents as also the quashing of norms and guidelines for upgradation of Inspectors to the post of Superintendents contained in letters dated 23.7.96 and 21.2.97. The applicants have also sought revision of the seniority list for the 1993.

3. In their counter, the respondents have stated that though promotions against all the 138 upgraded posts of Superintendent of Central Excise have been made w.e.f. 30.9.97, the applicants have not challenged the promotion order dated 30.9.97. According to the respondents, the basic issue in the present case has already been decided on 26.8.97 in OA No. 651/97 filed by Shri I.C. Joshi & Ors. clarifying the manner in which the upgraded posts of Superintendent should be filled and in which the applicant Shri Kanwar Lal had joined as impleader. Thus, the instant OA is not maintainable. The respondents have pointed out that the OA contains mutually contradictory statements. While it is stated in Para-4(ii) that the applicants are not challenging the seniority list of Inspectors, one of the reliefs claimed is revision of the seniority for the year 1993.

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4. The respondents have maintained that the representations made by the applicants were rejected vide letter dated 10.6.97 (Annexure R-II). According to the respondents, the latest seniority lists of Inspectors of Delhi Commissionerate as on 31.12.93 was widely circulated among all the formations of the Customs and Central Excise with direction for the controlling officers to circulate it among the officers working under their charge. The respondents have further stated that promotions against the upgraded posts have already been made vide order dated 30.9.97. According to the respondents, though the upgradation of the post of Inspectors is aimed at removal of stagnation, it was never intended to make promotions to the upgraded posts in violation of the existing rules, instructions and prescribed procedure ignoring the seniority of eligible officers. Fulfilling the eligibility criteria does not mean that all the officers who have completed 8 years regular service as Inspector have to be promoted to the grade of Superintendent. The respondents have maintained that promotion to upgraded posts can be made only on the basis of seniority in accordance with the relevant rules. If the applicants have any grievance in regard to the position assigned to them in the seniority list they are free to seek redressal of that grievance through appropriate proceedings. The respondents have also maintained that seniority in any cadre is reckoned from the date of regular appointment to the grade and not from the date of ad hoc promotion, therefore, applicants' claim to count their service as Inspector from the date of ad hoc appointment i.e. 6.3.81 is invalid. According to the respondents, seniority

allocated to certain persons mentioned as junior by the applicants has been strictly in accordance with DOP&T instructions. Seniority in regard to inter collectorate transferees from other Commissionerates have also been accorded correctly as per departmental instructions.

5. We have heard the learned counsel of both sides and perused the material on record.

6. The learned counsel of the applicants has stated that promotion against upgraded posts created for removal of stagnation among the Inspectors has to be based on the length of service of the applicants as Inspectors in Delhi Commissionerate and not seniority in service. The learned counsel contended that persons who had come on transfer to Delhi Commissionerate on compassionate grounds were not entitled to count service rendered by them in the former Commissionerate for the purpose of seniority in the new Commissionerate. However, several such persons and many more who had been accorded higher seniority than the applicants were considered for upgradation to the post of Superintendents. The learned counsel stated that seniority list for the year 1993 should be quashed and set aside for various anomalies in it. The learned counsel relied on order dated 26.8.97 passed in OA-651/97, Shri I.C. Joshi & Ors. Vs. Union of India & Ors.

7. The learned counsel of the applicants maintained that the Court has not considered seniority as having any consequence in selection. Drawing support from 79(1999) Delhi Law Times 319 Delhi High Court in the matter of

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Delhi Transport Corporation & Ors. decided on 22.3.99 he contended that the seniority list prepared in the past cannot be put against the petitioners.

8. There is no gain-saying that upgradation of the post of Inspector has been made to remove stagnation among the Inspectors. Agreeing with the learned counsel of the respondents we are of the view that promotions to the upgraded posts have to be made in accordance with the existing rules, instructions and prescribed procedure. Under the Recruitment Rules of 1986, the post of Superintendent in Central Excise has to be filled from among candidates having 8 years regular service in the grade. The method of recruitment is selection. It cannot be said that seniority has no role at all in the process of selection. Zone of consideration has to be formulated from the eligible candidates. Persons who do not fall within the zone of consideration as per their seniority cannot be considered for promotion. To illustrate, if there are only three posts for promotion and the zone of consideration 15, the top 15 eligible persons only can be considered for promotion to 3 posts. The next 15 may also be eligible but will not be considered as they do not fall within the zone of consideration. In the present case, the number of upgraded posts are limited. The seniority list of the Inspectors cannot be given a complete go bye. It has to be seen as to who under the rules are eligible for promotion as Superintendents and from amongst such persons who have completed 15 years of service in the grade. It is true that people who have come on transfer from other Commissionerates lose their seniority on joining

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another Commissionerate but in case such persons have been allotted a higher seniority say, erroneously/mischievously, their allocated seniority has to be challenged by the affected as per the prescribed procedure, rules and instructions on the subject.

9. The learned counsel of the applicants has taken exception to the higher position accorded to various persons in the seniority list as compared to the applicants. According to him, several persons have been assigned seniority not with reference to their date of joining in the Delhi Commissionerate on transfer on compassionate grounds. He maintained that there are various patent anomalies and errors in the seniority list. He has relied on the case of Delhi Transport Corporation & Ors. (Supra). In our view, the facts in the present case and that case are distinguishable. Whereas in that case the respondents had not issued any notice to the petitioners when the seniority list was issued, petitioners were not shown as belonging to Scheduled Caste in the seniority list, which was found to be affecting their rights in the Constitution. In the present case, we find that the seniority list in the grade of Inspectors as on 31.12.93 was widely circulated vide Memo dated 15.4.94 (Annexure A-14), among all the formations of the Customs and Excise with direction for controlling officers to circulate it among the officers working under their charge. The General Secretary, Grade-C Executive Officers' Association was also supplied a copy. Objections, if any, were invited before 31.5.94. Obviously, the applicants had full opportunity to

challenge seniority allocated to them or others. They did not avail the same. The respondents have further explained that while preparing the seniority list, they had kept in view various instructions and guidelines on the subject issued by DOP&T and the CBEC from time to time. According to them even the seniority of all inter Collectorate transferees from other Commissionerate has been fixed in strict accordance with the instructions on the subject. The principles for according seniority between the direct recruits and the promotees have also been followed. In the above backdrop the applicants are not entitled to seek any revision in the seniority list of the year 1993. Their prayer in this regard is, therefore, rejected.

10. However, the directions made in the matter of Shri I.C. Joshi & Ors (Supra) shall be applicable in the present case as well. These directions are as follows:-

"1) In the light of the findings above, the promotion to all the upgraded posts of Superintendents shall be made strictly by selection from among the candidates who possesses the requisite number of years of regular service in the grade in accordance with the Recruitment Rules of the gradation list prepared on the basis of length of service in the grade.

2) The promotion made by the order dated 30.9.1996 (in the first phase) are set aside, but those promoted will continue to stay as Superintendents on an ad hoc basis until newly selected candidates join their posts. In case any of the persons now promoted by the previous order dated 30.9.1996, get selected subsequently, they will be deemed to be in continued regular service from the date of their initial appointment as Superintendents".

11. This OA is allowed in the above terms. No order as to costs.

S. Raju
(Shanker Raju)
Member (J)

V.K. Majotra
(V.K. Majotra)
Member (A)