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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 651/97
M.A.No. 754/97

New Delhi this the 26th Day of August 1997

Hon'ble Dr. Jose P. Verghese, Vice Chairman (J)
Hon'ble Shri S.P. Biswas, Member (A)

1. Shri I.C. Joshi
Son of Shri G.D. Joshi
Resident of J-45 Laxmi Nagar,
Delhi-110 092/
2. Shri N.K. Gupta
Son of Shri B.D. Gupta,
Resident of A-562,
Sector-19, NOIDA.
3. Shri Virender Singh
Son of late Shri Devi Sahay,
Resident of 80 Krishna Kunj Colony,
Laxmi Nagar, Delhi.
4. Shri Lilamber Pant
Son of Shri Purna Nand Pant,
Resident of 9/759
Lodi Colony, New Delhi-110 003.
5. Shri Rakesh Ballab
Son of late Shri Krishna Ballabh,
Resident of B-3, Saurabh-I, Apptt.
Shalimar Garden Extn. II, Sahibabad,
Distt. Ghaziabad (UP).
6. Shri R.K. Sharma,
Son of late Shri B.L. Sharma
Resident of 991/66, Tri Nagar,
Delhi-110 035.
7. Shri S.K. Gupta,
Son of Shri K.K. Gupta,
Resident of 11 Gyan K.K. Gupta,
P.O. Krishna Nagar,
Delhi-110 051.
8. Shri N.K. Sharma,
Son of Shri O.P. Sharma,
Resident of C-5-G, 37-A,
Janakpuri, New Delhi.
9. Shri Attar Singh
Son of late Shri Shiv Narayan
Resident of 87A, Sector-9,
R.K. Puram, New Delhi.
10. Shri Yogesh Agnihotri
Son of late Shri Anar Bakshi,
Resident of C-170, Sarvodaya Enclave,
New Delhi.



11. Shri L.D. Rajput
Son of Shri Deep Singh,
Resident of 958 Vikas Kunj,
Vikaspuri, New Delhi-110 018. Petitioners

(By Advocate: Shri G.D. Gupta)

-Versus-

1. Union of India,
through the Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi.
2. The Chairman,
Central Board of Excise & Customs,
North Block, New Delhi.
3. The Commissioner,
Central Excise, C.R. Building,
I.P. Estate, New Delhi.
4. Smt. Santosh Nijhawan
C/o Commissionerate of Customs,
New Custom House,
New Delhi-110 037.
5. Smt. Vandhna Sharma,
C/o Commissionerate of Customs
New Custom House,
New Delhi-110 037.
6. Shri Dinkar Dutt,
C/o Commissioner of Central Excise,
C.R. Building,
I.P. Estate, New Delhi.
7. Shri Gurcharan Singh,
C/o Commissioner of Customs,
New Customs House,
New Delhi-110 037.
8. Shri Yad Ram
C/o Commissioner of Central Excise,
C.R. Building,
I.P. Estate,
New Delhi-110 002.
9. Shri R.S. Meena
C/o Commissioner of Customs,
New Customs House,
New Delhi-110037.
10. Shri R.B. Rawat,
C/o Commissioner of Central Excise,
C.R. Building, I.P. Estate,
New Delhi-110 002.

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11. Shri S.S. Passi,
C/o Commissioner of Customs,
New Custom House,
New Delhi-110037.

Respondents

(By Advocate: Shri R.R. Bharti)

Shri H.K. Saxena, counsel for intervener
Mrs. Meera Chibber, counsel for intervener
Dr. Sumant Bhardwaj, counsel for
intervener for Respondent No. 7)

O R D E R

Hon'ble Dr. Jose P. Verghese, Vice Chairman (J)

The 11 petitioners in this case were initially appointed as Inspectors outside Delhi Zone and thereafter transferred to Delhi on request and are now seeking promotion to the posts of Superintendents on the basis of total length of service in the feeder cadre to be counted from the date of initial appointment to the post of Inspectors. It was an admitted case by the petitioners that since the transfer was on request, an undertaking was given that they are willing to forego their seniority as and when they were duly transferred.

2. Under the recruitment rules of 1986, the post of Superintendents in Central Excise can be filled up from among candidates, having 8 years regular service in the grade vide the Superintendents of Central Excise Rules of 1986. By an order dated 23.7.1996, the Central Board of Excise and Customs proposed upgradation of some of the posts of Inspectors of the department to the post of Superintendent and the same was shown to have been agreed by the Government and with a view to working out the details of the upgradation schemes and also making necessary zonewise allocation of posts, the department requested certain information including the details of the Inspectors.



Inspectors are available in each zone who have more than 14 to 18 years to their credit as Inspectors. It was also stated that the said statement should contain only the names of those officers who were officiating in the grade of Inspectors/preventive officers prior to 1.8.1982.

3. By an order dated 10.9.1996, the department issued an order restructuring the Group B & C posts in the Customs and Central Excise Department and by this letter, sanction of the President was conveyed to upgradation of 716 posts of Inspectors to the level of Superintendents and upgradation of 429 posts of Preventive Officers in the Customs Department to the level of Superintendent Grade B in the pay scale of Rs. 2000-3500. The corresponding number of posts in the Inspectors cadre was abolished simultaneously with the filling up of the upgraded posts of Superintendent. The promotion for filling up the upgraded posts of Superintendents was to be made after following the laid-down procedure, Commissionrate-wise. It was also stated that all the promotions are to be effected on the same date i.e. 30.9.1996.

4. In pursuance to the said order, the Delhi Zone was allocated 9 posts in the first phase and thereafter 138 posts in the second phase. It is stated that the respondents have already completed the first phase and issued promotion orders to Respondents 4 to 11 in the present O.A. It was contended by the Counsel for the petitioners that when the respondents took up the second phase of promotion to 138 posts of Superintendents, the

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respondents excluded the petitioners from consideration, eventhough the petitioners had about 17 years of service in the grade and according to the recruitment rules they have become eligible with more than 8 years of service in the grade. It was also alleged that since the petitioners had foregone their seniority when they had sought transfer on voluntary basis to Delhi and the respondents, in accordance with the relevant instructions of the DOP&T for holding DPC, excluded the petitioners from the consideration zone, since the petitioners were placed almost at the bottom of the seniority list. The contention of the petitioners is that eventhough they had voluntarily abandoned the seniority, at the time when they were being considered for the post of Superintendent which is a selection post, the petitioners could not be excluded on the ground that they are not senior enough to be included in the zone of consideration. It was stated that the posts to which the petitioners are to be considered are not a "seniority" post rather the recruitment to the posts of Superintendent under the Rules of 1986, is to be done by the method of "selection" and seniority has nothing to do with such selections.

5. The petitioners also brought to our notice a decision of the Hon'ble Supreme Court in the matter of Ms. Ranu Mallik Vs. Union of India and another vide AIR 1994 SC 1152 in which the question of loss of seniority on account of voluntary transfer was considered by a Division Bench of the Hon'ble Supreme Court. It was held in the said case that even though

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the transferees are to be treated as new entrants in the Collectorate, to which they are transferred for the purpose of seniority, it can only mean that when the question of consideration for promotion as per their turn in the seniority list comes up, only then the loss of seniority will have some effect. On the other hand, when those transferees are considered for promotion on the basis of the past regular service in the grade, their past service in the previous Collectorate cannot be ignored for the purpose of determining their eligibility to the post in accordance with the rules. It may be true that the seniority in the previous Collectorate may have to be ignored for the purpose of giving their seniority in the newly transferred Collectorate but that has no relevance for judging their eligibility for promotion under the statutory rules. This is because the eligibility for promotion is to be determined with reference to the statutory rules alone which prescribes the criteria for eligibility and once they have become eligible, those transferees could not be excluded from being considered, only on the basis of any administrative instructions.

6. In our opinion this is an almost identical situation in the present case. The petitioners have a right to be considered as they have become eligible to be considered under the statutory rules and this right to consideration for promotion, cannot be taken away by enforcing an administrative instruction which will have an effect of excluding the petitioners from consideration for promotion to the post of Superintendent. Therefore, the contention of the

respondents that the petitioners are excluded from consideration on the basis of their application of administrative instructions pertaining holding of the DPC, has no legs to stand. The administrative instructions in such circumstances can only fill up the yawning gaps of the statutory rules but it cannot take away the right to consideration for promotion if it has already accrued to the petitioners on the basis of the eligibility from the statutory rules. These administrative instructions could not be allowed to override the statutory rules. Relying on a large number of cases from the Hon'ble Supreme Court on the subject as settled law at the instance of the petitioners, we are of the opinion that the administrative instructions pertaining to holding of DPC issued by the DOP&T, cannot exclude the petitioners' right to be considered in accordance with the relevant statutory Rules, stating that they did not fall within the zone of consideration. If the petitioners have become eligible and had already obtained a right for consideration for promotion to the post of Superintendent under the statutory rules that cannot be taken away by any Administrative Instructions.

7. In the circumstances we hold that the exclusion of the petitioners from the consideration zone on the basis of the administrative instructions as stated above, is illegal and wrong, and the petitioners shall also be considered alongwith other eligible candidates while the respondents decide to fill up the upgraded posts in accordance with the statutory rules of 1986.

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8. Total length of service from the initial entry has always been held to be out of the best criteria to decide the zone of consideration for making a selection to any post which are to be recruited on the basis of the methods of selection. In this case, since the petitioners are stated to have completed 16/17 years of regular service in the grade, on the principle of length of service, the petitioners will have to be considered for promotion to the posts of Superintendent in the Directorate.


9. We make it clear that since the posts of Superintendents are to be filled up in accordance with the statutory rules of 1986, and the recruitment rules states that the method of recruitment is selection, seniority in this regard will have no consequence. The respondents should proceed to make selection in accordance with the length of service and applying the principle of selection in such matters. We are told that the 138 posts now allocated to the Delhi Zone was done on the basis of the information supplied by the respondents to the Ministry and that has a correlation to the number of persons already stagnating in the department with 16/17 years of service in the regular grade; and now at the time of recruitment, to exclude these petitioners who are with 16/17 years of service in the regular grade, is nothing but injustice and in the circumstances we would not hesitate to hold that in this particular case, the length of service shall be the principle to be applied for short-listing the candidates on the basis of zone of consideration.



10. The following directions are issued:

- (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.
- (3) This O.A. is allowed to the extent mentioned above; no order as to costs.


(S.P. Biswas)
Member (A)


(Dr. Jose P. Verghese)
Vice Chairman (J)

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