

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## NEW DELHI

O.A. No. 586/1988  
T.A. No.

199

DATE OF DECISION 1.7.1991

<u>CUSTOMS &amp; CENTRAL EXCISE MINISTER</u>	Petitioner
<u>OFFICERS' ASSOCN. &amp; ANOTHER</u>	Advocate for the Petitioner(s)
<u>SHRI S.C. LUTHRA</u>	Versus
<u>UNION OF INDIA &amp; OTHERS</u>	Respondent
<u>SHRI P.P. KHURANA</u>	Advocate for the Respondent(s)

### CORAM

The Hon'ble Mr. JUSTICE AMITAV BANERJI, CHAIRMAN

The Hon'ble Mr. I.K. RASGOTRA, MEMBER (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? —
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? —
4. Whether it needs to be circulated to other Benches of the Tribunal? —

*Am*  
1.7.91  
(AMITAV BANERJI)  
CHAIRMAN

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

OA NO.586/1988

DATE OF DECISION: 1st July, 1991

CUSTOMS & CENTRAL EXCISE  
MINISTERIAL OFFICERS' ASSOCIATION  
& ANOTHER

...APPLICANTS

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS

CORAM:

THE HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANTS SHRI S.C. LUTHRA, COUNSEL

FOR THE RESPONDENTS SHRI P.P. KHURANA, COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE

MR. I.K. RASGOTRA, MEMBER (A) )

Customs and Central Excise Ministerial Officers' Association, Chandigarh and Shri Ranjit Singh, U.D.C. in the office of Deputy Collector, Customs and Central Excise, Customs Division, Amritsar have jointly filed this application under Section 19 of the Administrative Tribunals Act, 1985, challenging the order of the Deputy Collector (P&E), Chandigarh dated 21/25.1.1988 (Annexure A-1) advising Shri R.S. Chhabra, General Secretary of the said association that:

"the representation dated 7.8.1987 of the Association has been examined by the Board in consultation with the Department of Personnel and Training and it has been observed that as long as the recommendations of the DPC held in March, 1987 have not been accepted by the appointing authority and acted upon, the review undertaken in July, 1987 cannot be treated as a 'Review D.P.C.' and, as such, the guidelines prescribed for the Review DPC as contained in Department's O.M. dated 26.3.1980

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are not applicable in this case." 17

2. The facts of the case in brief are that the recruitment to the posts of Inspector, Central Excise and Customs is made 75% by direct recruitment and 25% by promotion in accordance with the Recruitment Rules. The feeder cadre for filling the posts of Inspector by promotion are Upper Division Clerks (UDCs), Stenographers, Women Searchers and Draftsmen. The pre-revised grade of the post is Rs.425-800 and is to be filled by selection. A Departmental Promotion Committee (DPC) was convened for preparing a panel for the posts of Inspector in promotion quota on 27.3.1987. A select list of 18 officers was prepared by the DPC on the basis of the interview and assessment of records. There were 12 clear cut vacancies and 6 resultant vacancies. After the recommendations of the DPC were received, the Deputy Collector, Personnel and Establishment called 12 officers for physical fitness test on 2.4.1987, in the order of ranking given by the DPC. The applicants further submit that among others the Deputy Collector (P&E) who is the appointing authority, as per notification dated 7.5.1983 (Annexure A-5) for the Inspectors was also a member of the DPC. The applicants submit that in accordance with Department of Personnel and Training's instructions a DPC is forbidden from holding interviews for determining suitability of the candidates unless it has been specifically provided for in the Recruitment Rules for the post/service. The respondents, however, have been holding interviews, ignoring the fact that there was no provision for holding interviews in the Recruitment Rules. It is further averred that some of the candidates who were not selected approached the Collector of Central Excise and Customs, Chandigarh who in order "to favour, accommodate and oblige these candidates with vested interests referred the case to the Central Board of Excise and Customs on 20.4.1987." Thereafter the Collector, Central

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Excise and Customs quashed the proceedings of the DPC held on 27.3.1987 and ordered for a fresh holding of DPC vide his order dated July 3, 1987 without assigning any reason. The next DPC was held on 14.7.1987 and the candidates were not given sufficient time to prepare themselves for the interview, as the letter advising the candidates for physical test/interview, scheduled to be held on 13/14.7.1987 was issued only on 10.7.1987 when 11th and 12th July were holidays being Saturday and Sunday. They further submit that the DPC held on 27.3.1987 considered 53 officers whereas the second DPC enlarged the zone of consideration and considered 54 officers. The DPC held in March, 1987 had possibly not considered the requisite 54 officers, as the number of eligible candidate, i.e., with qualifying service of 5 years, as provided in the Recruitment Rules, was not available. The basic contention is that the DPC held in July, 1987 could not have extended the zone of consideration beyond 53, as that was the number of consideration by the DPC held in March, 1987. They, therefore, contend that the proceedings of the DPC held on 14.7.1987 are null and void in the eyes of law, as the review DPC is not competent to enlarge the zone of consideration and is required to function in accordance with the instructions, as reproduced in paragraph 6.11 of the application. It is further submitted that the DPC held on 14.7.1987 empanelled 18 officers out of which 14 were promoted immediately against the clear cut vacancies and the remaining 4 were promoted subsequently against the resultant vacancies. The following persons who figured in the select list, prepared by DPC held in March, 1987, however, did not find place in the DPC held in July, 1987:

S/Shri

- |      |                |                                    |
|------|----------------|------------------------------------|
| i)   | N. Suresh Babu | Ranked as No.3 in the previous DPC |
| ii)  | N.K. Dutta     | " 7 "                              |
| iii) | Ranjit Singh   | " 8 "                              |
| iv)  | R.K. Malhan    | " 11 "                             |

3. The applicants further submit that all the officers on promotion were posted to Land Customs Station, Attari Road which is a sensitive and lucrative posting in the whole of Chandigarh Collectorate. It is thus implied that July, 1987 DPC was held only to favour the persons who did not find place in the DPC held in March, 1987 and the names of such officers have been mentioned in paragraph 6.15 and 6.16 of the OA. While the Chairman in the July, 1987 DPC was a new comer, other members were the same, as in March, 1987 DPC. Another grievance of the applicants is that Collector of Central Excise and Customs is not empowered to quash the proceedings of the DPC as there is a set procedure to be followed. When the appointing authority does not agree with the recommendations of the DPC, it can refer the entire matter for reconsideration of the DPC. If the DPC, however, reiterate its earlier recommendations, it will be then open to the appointing authority either to accept the same and if it does not accept the recommendations it may submit the papers to the next higher authority for a final decision. The applicants affirm that the prescribed procedure was not followed, as the appointing authority did not refer the matter to the DPC for reconsideration, nor did he submit the papers to the next higher authority. The following issues emerge from the above:-

- a) the candidates should not have been interviewed as there is no such provision in the Recruitment Rules;
  - b) the review DPC extended the zone of consideration, thereby exceeding its jurisdiction;
  - c) if the appointing authority did not agree with the recommendations of the DPC, it should have the matter back to DPC for reconsideration. The appointing authority could submit the papers to
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next higher authority only when it found the recommendations of the DPC made after reconsideration unacceptable.

- d) the Collector of Central Excise and Customs had no power to quash the proceedings of the DPC held in March, 1987.

The applicant No.2 made a representation to the Collector, Central Excise and Customs when he was informed that he was found unfit for promotion to the grade of Inspector. It is however alleged that applicant No.2 was not considered for promotion, as he was the General Secretary of the Central Revenue Colony, Amritsar where his neighbour Shri Amarjit Singh another UDC, who was an aspirant for the post of General Secretary had filed a complaint against the applicant No.2. Consequently, a preliminary enquiry was conducted by the Assistant Collector of Customs against the second applicant, which is said to have influenced the July, 1987 DPC in not finding the applicant No.2 as fit for the post of Inspector. The disciplinary authority however fully exonerated the second applicant vide order dated 31.12.1987.

By way of relief the applicants have prayed that the order dated 3.7.1987, passed by respondent No.2 for holding fresh DPC and the proceedings of the DPC held on 14.7.1987 be quashed with a further direction to the respondents to make promotion to the post of Inspectors on the basis of panel prepared by the DPC held on 27.3.1987.

4. The official respondents in their written statement have taken the preliminary objection that Shri R.S. Chhbara the second applicant has not been authorised by the association in the meeting held on 29.2.1988 to file the application in the Central Administrative Tribunal, as no such resolution was passed to that effect in the said meeting. A copy of the resolution passed on 29.2.1988 said to have been attached with the written statement, however, is not on the
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judicial file. A copy of the resolution filed by the applicants at Annexure A-13, however, supports the contention of the applicants that applicant No.2 is authorised to pursue the matter before the Tribunal. The respondents submit that the DPC held on 27.3.1987 and 30.3.1987 had recommended a select list of 20 candidates (and not eighteen) against the 18 vacancies and that 12 candidates from the select list were called for the physical test on 2.4.1987. Regarding the holding of the interview the respondents rely on Central Board of Excise and Customs (CBEC for short), New Delhi's letter dated 18.8.1975 (Annexure R-1) which stipulates that the ministerial officers are to be interviewed for considering them for promotion to the executive grades. These instructions provide the rationale for holding the interview for the ministerial officers in the following manner:-

"3. The whole question has been examined in detail by the Board. It has been observed that promotion of ministerial officers to the executive grades is not in their direct line of promotion. The nature of duties performed by the executive officers is also entirely different from that being performed by the ministerial officers. It is, therefore, necessary to ensure that only those among the ministerial officers are selected for promotion who have the flair for executive type of work. An assessment in regard to the characteristics required for making a good executive officer can be made only by interviewing the candidates concerned. In view of the above considerations, the request of the Federation for doing away with the interview system has been rejected by the Board.

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4. According to the existing procedure the interview Committee consists of Collector/ Additional Collector, Deputy Collector and an officer of the Income Tax Department of the rank of Commissioner of Income-Tax/Assistant Commissioner of Income-Tax. The usual practice adopted by the Committee is to peruse simultaneously the C.C.Rs. of the officers at the time of the interview. It is possible that this procedure may not give due weight to the C.C.R. In order to exclude this possibility, it has been decided that the C.C.Rs. of the officers should not be seen by the members of the Committee before or alongwith the interview and they should record their assessment on the candidate (i.e. whether they are fit or unfit) without the benefit of having seen the C.C.R. The Committee should see the service records only of those officers whom they consider suitable for appointment as Inspector/Preventive Officer Gr.I/Examiner or Preventive Inspector in the Narcotics Department after the interview proceedings are over and grade them as 'outstanding', 'very good' and 'good' on the basis of their overall record of service as in the case of their promotion to 'selection' posts on the ministerial side.

5. The revised procedure should be followed with effect from the D.P.C. to be held after the date of the issue of this letter and selections already made on the basis of the findings of the D.P.C. should not be disturbed."

5. The respondents submit that the ministerial officers association, Chandigarh had made a representation dated 3.4.1987 against the select list prepared by the DPC held on 27.3.1987 and 30.3.1987. The representation was duly

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considered by the Collector and a reference made to the CBEC vide letter dated 20.4.1987 (Annexure R-2). The clarification received from the CBEC is at Annexure R-3. Keeping in view the reply received from the CBEC the proceedings of the first DPC held on 27.3.1987 and 30.3.1987 were quashed by the Collector on the following grounds:-

- a) There had been substantially irregular procedure in that the 1. Physical test 2. Interview should have been held first.
- b) Interview as held was not designed to determine whether the persons had flair for executive work, since all the 51 candidates who appeared for interview were found to be fit.
- c) The gradation done by the DPC was faulty.
- d) The DPC prepared a select panel of 20 candidates against 18 vacancies.

The DPC held in July, 1987 was not a review DPC but a fresh DPC. It is admitted that the officers eventually promoted were posted at Land Customs Station, Attari in the normal course and no special favour was shown to them. The respondents maintain that the Collector had valid reasons to interfere with the proceedings of the DPC and deny any malafide on his part. They further submit that the representation dated 7.8.1987 made by the Central Excise Ministerial Officers' Association, Chandigarh against the proceedings of the DPC held on 24.7.1987 forwarded to the CBEC, New Delhi. The association contended that the DPC held on 24.7.1987 was a review DPC and, therefore, the guidelines prescribed for the review DPC should have been followed. The CBEC, however, after considering the matter in consultation with the Department of Personnel and Training advised that:

"as long as the recommendations of the DPC held in March, 1987 were not accepted by the appointing

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authority and acted upon the review undertaken in July, 1987 cannot be treated as a review DPC." 2M

The association was accordingly informed on 21.1.1988. It is also averred that Shri Ranjit Singh Chhabra was declared unfit for promotion by the DPC held on 14.7.1987 and he was so advised by the Deputy Collector, Central Excise & Customs, Amritsar on 20.8.1987. The respondents deny that the DPC was influenced by the disciplinary case contemplated against the applicant No.2. The applicant No.2 had failed in the interview prescribed for promotion of ministerial officers to the grade of Inspectors of Central Excise and Customs and hence was not included in the select list.

6. The applicants have filed a rejoinder in which they have admitted that the panel prepared by the DPC held in March, 1987 contained 20 names i.e. two in excess of the existing and anticipated vacancies. They have further reiterated that there is no provision in the Recruitment Rules for the interview and administrative instructions can neither amend nor supersede the statutory provisions. No other new ground has been traversed in the rejoinder.

and Shri P.P. Khurana,  
7. We have heard Shri S.C. Luthra, /the learned counsel for the applicants and respondents respectively and gone through the record very carefully. We have also perused the order of the Collector of Central Excise and Customs passed on July 3, 1987. Admittedly, the DPC held in March, 1987 had overstepped by preparing a select list of 20 candidates for 18 existing and anticipated vacancies. This is said to have been done to provide for the casualties which might have arisen consequent to the holding of the interview and the physical test. It has been clarified by the CBEC in their letter dated 15th June, 1987 (Annexure R-3) that the interviews and the physical test have to precede the proceedings of the DPC in conformity with the instructions contained in CBEC's letter F.No.A-32011/48/74-Ad.III-A dated 23.10.74. It

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has been further stressed that the promotion of the ministerial officers to the executive grade is not in their direct line of promotion. It is, therefore, necessary to ensure that only those among the ministerial officers are selected for promotion who have a flair for executive type of work. For this purpose it is necessary to interview the candidates concerned to make an assessment whether they possess characteristics required for making a good executive officer. Further, interview has been in vogue for selection of Inspectors from the ministerial cadres since the issue of CBEC's letter dated 18th August, 1975 (Annexure R-1). These instructions had not been challenged before any court, nor have they been challenged in the O.A. before us. The CBEC's letter F.No.B-12014/1/75-AD-IIIA dated 18.8.1975 prescribes the interview for determining if the candidates have the flair for executive type of work, has not been challenged in the present OA, as it would be barred by Limitation under Sections 20 & 21 of the Administrative Tribunals Act, 1985. It is too late to question the provisions of holding an interview at this point of time. We, therefore, do not find any justifiable reason to interfere with the holding of an interview preceding the proceedings of the DPC. The DPC held in March, 1987 admittedly had several irregularities. The proceedings of the DPC had not been accepted by the appointing authority, nor had they been acted upon. Calling of 12 candidates for physical test cannot be construed to mean that the DPC proceedings had either been accepted or they had been acted upon as such. From the letter addressed to the CBEC by the Collector of Central Excise and Customs, it is seen that the proceedings of the DPC had not been discussed by the Collector of Central Excise and Customs with the appointing authority before making a reference to the CBEC vide his D.O.

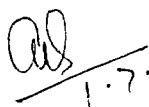
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letter dated April 20, 1987 (Annexure R-2). It is, therefore, apparent that the matter had been submitted to the higher authority by the appointing authority. It is, however, not clear if the recommendations were remitted to the original DPC for reconsideration before the appointing authority submitted the papers to the higher authority. We are, however, of the view that since the DPC had ab-initio proceeded on the wrong premise inasmuch as that the interview and the physical test of the eligible candidates had not been held before the DPC considered the candidates, any reconsideration by the DPC of its recommendations would have been an exercise in futility in the facts of the case, as the reconsideration by the DPC would not have yielded any useful result. We, therefore, do not find any justification for interfering with the action of the respondents. Any interference by the Tribunal will not be in the interest of justice. The DPC held in July, 1987 was not a review DPC, as is obvious from the facts of the case; even the order of the higher authority was for convening of a fresh DPC and not a review DPC. There is also no merit also in the argument that the higher authority has no power to quash the proceedings of the DPC. It has been admitted even by the applicants that in certain circumstances the authority higher than the appointing authority is empowered to cancel/ quash the DPC proceedings.

In the facts and circumstances of the case, we do not find adequate grounds to interfere with the recommendations of the DPC held in July, 1987 and acted upon by the respondents. Accordingly, the reliefs prayed for by the applicants cannot be granted.

In the circumstances of the case, the OA is dismissed, with no order as to costs.

  
(I.K. RASGOTRA)  
MEMBER (A)

  
1.7.91  
(AMITAV BANERJI)  
CHAIRMAN