

CENTRAL ADMINISTRATIVE TRIBUNALMUMBAI BENCH, MUMBAI.ORIGINAL APPLICATION NO. 247/2020DATE OF DECISION:-29.07.2020

CORAM:- R. VIJAYKUMAR, Member (A)
RAVINDER KAUR, MEMBER (J)

1. Chandrika Pillai Wife of Neelkantan Date of birth: 27.12.1962, age: 57 years 07 months, working as: Appraiser (Group "B" post) in the office of Vigilance Section Commissioner (General), Air Cargo Complex, Sahar, Andheri (East), Mumbai.
2. Vandana Sunder Malkani Wife of Sunder Malkani Date of birth: 29.03.1963, age: 57 years 04 months, working as: Appraiser (Group "B" post) in the office of Commissioner of Customs (General), Air Cargo Complex, Sahar, Andheri (East), Mumbai.
3. Desai Kalpesh Natverlal Son of Natverlal Desai Date of birth: 11.02.1968, age: 52 years 05 months, working as: Appraiser (Group "B" post) in the office of Commissioner of Customs (I), Air Cargo Complex, Sahar, Andheri (East), Mumbai.
4. Karhadkar Santosh Laxman Son of Karhadkar Laxman Gajanan Date of birth: 24.12.1968, age: 51 years 07 months, working as: Appraiser (Group "B" post) in the office of Commissioner of Customs, Air Cargo Complex, Sahar, Andheri (East), Mumbai.
5. Sangeeta Bhupendra Patel Wife of Bhupendra K. Patel, Date of birth: 12.08.1970, age: 49 years 11 months, working as: Appraiser (Group "B" post) in the office of Commissioner of Customs (Export), Air Cargo Complex, Sahar, Andheri (East), Mumbai.
6. Chitra N., Wife of Nagarajan, Date of birth: 20.06.1970, age: 50 years 01 month, working as: Appraiser (Group "B" post) in the office of Commissioner of Customs (General), Air Cargo Complex, Sahar, Andheri (East), Mumbai.

7. Geeta Sunil Nair Wife of Sunil Nair Date of birth: 21.01.1970, Age: 50 years 06 months, working as: Appraising Officer (Group "B" post) in the office of Commissioner of Customs (General), JNCH NHAVA-SHEVA.

8. Neelam M., Vazirani Wife of Manoj Assandas Vazirani Date of birth: 20.11.1973, age: 56 years 08 months, working as: Appraiser (Group "B" post) in the office of Commissioner of Customs, Jawaharlal Nehru Custom House, Nhava Sheva, District Raigad, Uran.

9. Anita Somanathan Wife of Somanathan Date of birth: 07.12.1966, age: 53 years 07 months, working as: Appraiser (Group "B" post) in the office of Commissioner of Customs, Jawaharlal Nehru Custom House, Nhava Sheva, District Raigad, Uran.

10. Vijay Kumar Son of Vishwanath Sahu Date of birth: 12.12.1976, age: 43 years 07 months, working as: Appraiser (Group "B" post) in the office of Commissioner of Customs (Export), Air Cargo Complex, Sahar, Andheri, Mumbai.

11. Sanjay R. Mhatre Son of Ravikant N. Mhatre Date of birth: 27.04.1970, age: 50 years 03 months, working as: Appraiser (Group "B" post) in the office of Commissioner of Customs (NS-V), INCH, Nhava Sheva

12. Sanju Ramchand Mankani Son of Ramchand K. Mankani Date of birth: 22.04.1971, age: 49 years 03 months, working as: Appraising Officer (Group "B" post) in the office of Commissioner of Customs -APSC, Courier Cell, Andheri, Mumbai.

....Applicants

(By Advocate Shri R. G. Walia)

Versus

- 1) Union of India Through: Revenue Secretary, Central Board of Indirect Taxes & Customs, North Block, New Delhi-110001
- 2) The Chairman, Central Board of Indirect Taxes and Customs (CBIC) Ministry of Finance, Department of Revenue, North Block, New Delhi-110001.

3) Member (Personnel & Vigilance) Central Board of Indirect Taxes & Customs, North Block, New Delhi-110001

4) Principal Chief Commissioner of Customs, Mumbai Customs Zone-I, 2nd Floor, Old Building, New Customs House, Ballard Estate, Mumbai - 400001.

5) Commissioner of Customs (General) Mumbai Customs Zone-I, 2nd Floor, Old Building, New Customs House, Ballard Estate, Mumbai - 400001.

.... Official Respondents

(By Advocates: Shri Anil Singh, Addl Solicitor General instructed by Shri AM Sethna)

6) Satyandra Kumar Working as Appraiser under Cadre Control of Mumbai Customs Zone-1 and residing at: 804, Excellence Tower, Plot 17, Sector 17, Road Pali, Katamboli, Navi Mumbai 410218.

7) Rakesh Ranjan Kumar Working as Appraiser under Cadre Control of Mumbai Customs Zone-1 and residing at: 101/17D, Customs Quarters, MHADA Powai, Mumbai 400076.

8) Ranjit Kumar Working as Appraise under Cadre Control of Mumbai Customs Zone-1 and residing at: B-1505, Simran Saffire Plot No.3, Sector 34C, Kharghar Navi Mumbai 410210.

9) Ram Milan working as Appraiser under Cadre Control of Mumbai Customs Zone-1 and residing at: 104-B, Lloyds Estate, Near VIT College, Wadala (East), Mumbai - 400037.

10) Mahesh Rathi working as Appraiser under Cadre Control of Mumbai Customs Zone-1 and residing at: Flat No502, Mila Heights CHS, Plat No.51/B, Sector 20, Kharghar, Navi Mumbai 410 210.

11) Abhishek Bhushan working as Appraiser under Cadre Control of Mumbai Customs Zone-1 CAT Cell, 3 Floor, Old Building, New Customs House, Ballard Estate, Mumbai 400001.

12) Manish Raj working as Appraiser under Cadre Control of Mumbai Customs Zone-1 through Personnel and Establishment Department, 2nd Floor, Old Building, New Customs House, Ballard Estate, Mumbai 400001.

.... Private Respondents

(By Advocate Shri S. V. Marne)

ORDER (ORAL)

PER: R. VIJAYKUMAR, MEMBER (A)

Present:

Shri R. G. Walia, learned counsel for the applicants.

Shri Anil Singh, ASG, advised by Shri A. M. Sethna and Shri Aditya Thakkar, learned counsel for the official respondents.

Shri S. V. Marne, learned counsel for the private respondents.

2. This OA has been filed on 10/7/2020 under section 19 of the Administrative Tribunals Act, 1985 requesting urgent hearing by videoconference and seeking the following reliefs:

“a) This Hon’ble Tribunal will be pleased to call for the records and proceedings of the case which led to the passing of the impugned order dated 6.7.2020 i.e. Annx. “A1” and after going through its propriety, legality and constitutional validity be pleased to quash and set aside the same.

b) This Hon’ble Tribunal may be pleased to hold and declare that the impugned order dated 6.7.2020 was an absolutely arbitrary and illegal act/order and the erring officials be

proceeded with under the relevant Disciplinary and Appeal Rules.

c) The Hon'ble Tribunal may be pleased to hold and declare that even if there would not have been any Feasibility Committee Report the Respondents could not have ignored the Resultant Vacancies which arose due to rectification of a mistake i.e. UNDER REPORTING of the Vacancies in the cadre of Appraisers i.e. increase from 274 to 409 and consequential retrospective promotions in the cadre of Appraisers and accordingly Order and direct the Respondents to give consequential effect by giving retrospective promotions in the Cadre of Examiner w.e.f. 25/26.11.2002 or 6.12.2002 with all consequential benefits of seniority, arrears of pay, fixation of pay etc.

d) Any other and further orders as this Hon'ble Tribunal may deem fit, proper and necessary in the facts and circumstances of the case.

e) Costs of this Original Application may be provided for."

3. The applicants have also sought interim reliefs as under:

"(a) Pending hearing and final disposal of this Original Applications the Hon'ble Tribunal will be pleased to STAY the effect and operation of the impugned order dated 06.07.2020.

(b) Ex-Parte Ad-interim and interim orders in terms of prayer 9(a) above may please be granted."

4. This matter was first listed and heard on 20/7/2020 during which the official respondents No. 1 to 5 were represented by their learned counsel Shri AM Sethna and who requested a short adjournment to enable the learned ASG who had been nominated for arguing this case, to enter appearance and present the response of the official respondents. All parties have consented to videoconference

including for the adjourned sitting.

Accordingly, hearing was simpliciter adjourned to 29/7/2020. However attention of learned counsels of parties was invited to the fact that the issue raised in this OA related to a set of recommendations informally/colloquially called the Feasibility Committee report and challenged the withdrawal of the report itself in the impugned order dated 6/7/2020, cited as Annexure A-1. Whether this report or its withdrawal could be challenged at all in terms of the existence of a cause of action, for this OA to be maintainable, would be the immediate question to be answered by parties before other issues could be considered and would be heard at the outset at the next hearing and this has accordingly been done in today's adjourned session by hearing through videoconference, the learned counsel for applicants, official respondents no. 1 to 5 and private respondents no. 6 to 12 at length with reference to their brief replies opposing grant of interim relief and the rejoinder of the applicants.

5. The context of the said feasibility report needs to be set out at the outset. Respondent department, the Customs and Central Excise Department of the Department of Revenue, Ministry of Finance issued an order in F.No.11019/72/99.AD.IV dated 19/7/2001 conveying that they had obtained approval of the Cabinet for the restructuring of the Department by changing the number and nomenclature of various grades and posts as listed in Annexure I of those orders and which are relevant for the cases of the applicants. The order also included details of 'Other Posts' that had been included as an Annexure II and those other Cadres/Posts that had not been included in the restructuring as in Annexure III, although not enclosed with this OA. This order also stated that no direct recruitment was to be made to various grades for the year 2001-2002 without approval of the Ministry/Department as the Cabinet had approved a one-time relaxation for filling of all vacancies by promotion in all Cadres. A later instruction was issued in F. No.A-

11015/4/2002.Ad.II.A dated 15/11/2002 (in Annexure A-11 colly) which notes the report of certain Zonal Commissioners of the three Zones, Bombay, Kolkata, Chennai, that after implementing the cadre restructuring, there are excess staff against the said allocation of posts in various grades and the staff were finding difficulty in drawing their salaries. Instructions were therefore given to cadre controlling authorities to review and intimate the relevant details of excess officers against the revised allocation and the number of posts in each grade lying vacant in the direct recruit quota. Zones are also instructed that all the vacancies in the DR quota in the grade may not be filled up till further instructions are issued by the Ministry. These last instructions were evidently in keeping with the directions of the Cabinet aforesaid. Following these instructions, a clarification was issued by the Department of Revenue in F.No.A-12034/1/2003-Ad.III-B dated 10/28th April, 2003 as follows:

"

Most Immediate

F.No.A-12034/1/2003-Ad.III-B
Government of India
Ministry of Finance and Company Affairs
Department of Revenue

New Delhi, the 10/28th April, 2003

To,

All Chief Commissioners of Central Excise
All Chief Commissioners of Customs
All Director Generals
All Commissioners of Central Excise/Customs/ Directors under CBEC

Subject: Restructuring of Customs and Central Excise – clarification
regarding filling up of the vacancies – regarding

Sir,

I am directed to say that clarifications have been sought by field formations regarding filling up of vacancies. The matter has been discussed in the Board's meetings and it has been decided that "vacancies" which are to be filled by promotion would be the sum of carry-forward of all backlog vacancies(both direct and promotee quota) and all the vacancies which have occurred between 01.04.2001 to 31.12.2002 whether due to cadre restructuring or otherwise. The cabinet's one time relaxation for filling all vacancies by promotion for the year 2001-2002 which was extended to 31-12-2002 by the Finance Minister would be treated as a relaxation in the relevant clause of the Recruitment Rules which requires vacancies to be filled by DRs and promotees in the ratio of 2:1.

Yours faithfully

-sd-

(Y. P. VASHISHAT)
UNDER SECRETARY TO THE GOVERNMENT OF INDIA"

6. We are not presently entering into an examination of whether the extension of the Cabinet order by the Finance Minister was duly notified in accordance with the Business Rules of the Government of India or whether this particular instruction could be construed as a clarification or a further direction and extension of the Cabinet approvals. Our focus, as invited in this OA, is on the later developments that have occasioned the formation

of the said Feasibility Committee, its report, and the impugned order withdrawing the said report. Following letters sent by the Chief Commissioner of Customs, Mumbai from October 2013 to February 2014, a meeting was held by the Member (P&V) at Mumbai where she had called for a brief note for considering review DPCs for promotion of eligible feeder grade cadre officers to the grade of Appraiser. Accordingly, a proposal was sent by the Chief Commissioner, Mumbai to the Member in F.No. S/5-327/2013/P&E dated 12/3/2014 pointing out that the Cabinet approval as communicated in the order dated 19/7/2001 barred direct recruitment to various grades for the year 2001-2002 without approval of Ministry/Department. Further, that on 5/6/2002, the Board had instructed not to fill up vacancies arising from restructuring pending further orders and further, the 809 posts of Appraiser was split between three Zones, allotting 409 posts to Mumbai only in orders dated 15/9/2003. However, the Board had additionally instructed all Zones, in orders

dated 6/9/2013, that approval could be granted for promotion w.e.f. 25/11/2002 to only those officers who were working either on regular or on ad hoc basis on 25/11/2002. In these circumstances by which the Mumbai Customs were unable to fill up 135 more posts on 25/11/2002 during the extension period ordered by the Hon'ble Finance Minister (until 31/12/2002), the Chief Commissioner urged that the condition imposed in letter dated 6/9/2013 restricting promotion w.e.f. 25/11/2002 to only those officers who were working either around regular or ad hoc basis on 25/11/2002 should be waived. These proposals were considered in a meeting conducted by Member (P&V), CBEC on 07.03.2014 and the proposals of the Chief Commissioner, Mumbai were accepted and minutes communicated under a letter dated 26/9/2014. No formal orders appear to have been issued or at least, none asserted by parties. This communication served as the authority to conduct a review DPC by the Mumbai zone and promotions were accordingly ordered for 195 officers (including 135) in the feeder cadre as Appraiser, from

which level all-India seniority lists are maintained, in orders issued on 18.12.2014 after which another order has also issued on 23.1.2015 for the later years to 2014. Various officials then working after promotion in the three categories of Dy Office Superintendent, Preventive Officer, and Examiner then commenced making representations from December 2014, arguing that with the retrospective promotion, albeit on notional basis, granted to officials as Appraisers, consequential vacancies also arose in July to December, 2002 in the grade of Examiner to which they should have been considered if the vacancies had been ordered to be filled at that time and in the present juncture, they should be considered for promotion as Examiner in the 135 vacancies that had consequently arisen from the notional promotion granted for officials in the Appraiser cadre.

7. Upon receipt of these representations from promotee candidates for the post of Examiner, a note was proposed on 24.2.2016 in the local office of respondents 4&5, referring

to directions of the Principal Chief Commissioner (Respondent 4), hereinafter called PrlCC, and setting out the demands raised by the promotee officers and seeking approval of the PrlCC (Respondent 4) on 25.2.2016, for forming a Committee of eight officials to re-examine the issue and to submit their report with recommendations while postponing the DPC to March. This Committee, as approved by the PrlCC, and which included two officials of the rank of Additional Commissioner of Customs, considered the various issues involved with regard to the feasibility of conducting Review DPC of Examiners from 2002 to 2014 and recommended on 15.3.2016, conduct of Review DPC to grant cascading benefits in vacancies created due to 'deemed' promotion of Examiners to Appraisers in the year 2002. This report was circulated to the Principal/Commissioner, Respondent 5, in a note on 16.3.2016 whereupon he directed the office to make the preparations and inform date & members of DPC in notes dated 21.3.2016. It is not demonstrated or proven anywhere, of this report or fact of DPC being

placed before the Pr. CC, Respondent 4, but on 18.3.2016, an office note (Annexure A-18) issued by the Additional Commissioner records the directions of the PrlCC to form a Special Cell headed by the Commissioner (General) and a slightly different team with specific purposes and composition as below and includes officials as junior as Senior Tax Assistants and Examiners to the level of Commissioner of Customs (General) as below:

“NOTE

As per the Orders of the Principal Chief Commissioner a Special Cell has been formed for the purpose of:

(i) Review & fixation of Seniority list of Direct Recruit Tax Assistants in terms of DOPT OM No.20011/1/2012-Est.(D) dated 04.03.2014.

(ii) Review of previous DPC in the grade of Examiner & STA thereon.

(ii) DPC in the grade of Examiner/PO/Supdt.

The names of the officers who are nominated in the Special cell are as under.

- 1) Shri B. Bhattacharya, Commissioner (G), Chairperson
- 2) Shri B. Timothy, Addl. Commissioner (P&E), member
- 3) Smt Geeta Rajan, CAO, member
- 4) Shri Alex Dsouza, Appraiser
- 5) Shri Sathir Sharma, Supt
- 6) Shri Sikkil Ambastha, Examiner
- 7) Shri Pradeep Sharma, Examiner
- 8) Shri Sumangali S. Kumar, P.O.
- 9) Shri Sheo Shankar Ram, STA
- 10) Shri Ashish Srivastava, STA
- 11) Shri Ashutosh Shukla, STA

This issues with the approval of the Principal Chief Commissioner of Customs, Mumbai.

This is for information of all nominated members,

Sd/- 18/3
 (B. TIMOTHY)
 Addl. Commissioner of Customs, P&E
 New Customs House”

8. Following these orders, the nominated officials were directed to be relieved by their supervising officers in Office Order 80/2016 dated 6/4/2016. Following this, several challenges were raised and in one OA, this Tribunal directed that if Review DPC was conducted, the decisions should be kept in sealed cover until the relevant OAs were decided. It is with this background, that the impugned order has been passed withdrawing the report of the Committee that inquired into feasibility of conduct of Review DPC. The impugned letter reads as follows:

"F.NO.S/5.47/2011 Estt.P&E

Office of The Principal Commissioner of Customs (General),
New Custom House, Ballard Estate, Mumbai - 400001.

F.No.S/5.47/2011 Estt.. P&E

Date: 06.07.2020

To,
The Assistant Commissioner,
CAT Cell, NCH,
Mumbai.

Sir,

Sub: The Feasibility Committee Report dated 15.03.2016 - reg.

Please refer to the Feasibility Committee Report dated 15.03.2016 which is the subject matter of following cases-

- (i) OA No.401/2016 (Satyendra Kumar & Ors)
- (ii) OA No.290/2018 (Chandraprabha K & Ors)
- (iii) OA No.157/2019 (Balwant R Singh)

2. Further, the said report is also a relied upon document in another pending matter in the OA No.193/215 (Kishori Thoraskar & Ors.)

3. In this regard, it is to inform that the said Feasibility Committee Report dated 15.03.2016 has been withdrawn by the department with approval of Principal Chief Commissioner of Customs, Zone-I.

4. Accordingly, it is requested to take appropriate steps in all these cases and inform the Hon'ble CAT about the same with a copy marked to this section.

5. This issues with the approval of Pr. Commissioner of Customs(General), Mumbai, Zone - 1

Yours faithfully,

sd/-

6/7/2020

(Deputy Commissioner)

P&E, NCH, Mumbai"

9. The main arguments relevant to this primary aspect of maintainability as set out by the applicant in the OA are that the withdrawal orders are arbitrary and whimsical and are contrary to the previous acceptance by an officer of the same level (PrlCC) of the recommendations of the Committee that examined feasibility of conduct of Review DPC. They argue that they have become eligible for consideration because consequential vacancies have arisen when several incumbents in the latter half of 2002 were promoted with deemed/notional effect from that period. Therefore, the availability of such vacancies on that date compels the conduct of a Review DPC in order for them to secure promotion as Examiner on that date, notwithstanding their subsequent choices, and to gain further

promotions as they would become entitled by virtue of such back-dated promotions. They argue that the respondents erred in assessing the vacancies of Appraisers until December 2002 as 274 and it was only in 2014 that this was corrected to 409 and the result of this error also affected them because the consequential vacancies arising from notional promotion would then have been available to them albeit also on notional basis. They further argue that in the case of Direct Recruits, retrospective promotions have been given but not so to the present applicants and others who are promotees to be considered for the post of Examiner, which indicates bias. Moreover, they contend that the purpose of this impugned letter is only to frustrate the proceedings before this Tribunal in pending OAs numbering 290/2019, 157/2019, 401/2016, and 193/2015 and favour the case of the Direct Recruits. In support of their inference that the then PrlCC had accepted the recommendations of the Committee on Feasibility, they refer to the creation of a Special Cell with eleven officers from

Commissioner to Examiners and Senior Tax Assistants with specific purposes as above and annexed as Annexure A-18 and also the short and detailed replies of respondents filed in OA 401/2016 (here, Annexure A-20) affirmed by one - Shri Khetan, Assistant Commissioner that declares, at different places in the affidavit, that the Special Cell was formed to implement the recommendations of the Committee (pg 316 of OA paperbook) and also to carry out review exercise in the cadre of Inspector (Examiner) for the years 2002 to 2004 (pgs 306, 318 of OA paperbook).

10. During arguments, learned counsel for applicants submitted that the Committee to study feasibility had been explicitly formed on the directions of the PrlCC Zone I, as noted in the order forming it at Annexure A-21, the direction of the Principal Commissioner to make arrangements for Review DPC at Annexure A-5 and the formation of a Special Cell on the directions of the PrlCC (Annexure A-18). This is supported by the submissions of official respondents at Annexure A-20. When the report

and its recommendations had been accepted by the then Principal Chief Commissioner, the Cadre Controlling Authority, the later PrlCC, could not have withdrawn the report without issue of show cause notice to the affected parties including the applicants.

11. Official Respondents 1 to 5 have filed short reply opposing the plea for interim relief and alleged that material facts have not been brought out in the OA. They submit that the impugned letter is in the nature of a policy decision and could only have been challenged for mala fides and/or arbitrariness, which is not the case. The applicants have not exhausted the remedies available by way of a representation and the available representations only relate to some other context of the implementation of the decision of this Tribunal in OA No. 38/2011 of **Sumit Kumar & Ors vs UOI & Ors.** The applicants were aware that even the challenge to the report of the Committee was sub-judice in OA Nos. 157/2019 and 290/2019 in which some of these applicants find place and some of the reliefs

are identical. Further, the order of this Tribunal in OA No. 193/2015 only held that if the respondents held a review DPC, the result should be kept in sealed cover until OAs and 193/2015 and 401/2015 were decided. It was not made incumbent on the respondents to conduct such a review DPC. The respondents submit that the report of this Committee on feasibility cannot sustain scrutiny especially in view of the orders of this Tribunal in **Sumit Kumar** (supra), which has attained finality. In particular relation to the preliminary issue raised, they submit that the report of the Committee on feasibility was never acted upon and no benefits were conferred nor did they accrue to the applicants. Therefore, no legal, vested rights were created and nothing was taken away that could have enabled a legitimate expectation. The learned Additional Solicitor General, Shri Anil Singh assisted by the learned counsel Shri AM Sethna, reiterated these views and pointed out that the prayer (c) in this OA was identical to the prayer in OA No. 290/2019. He underscored the duty of the

applicant to disclose their previous prayers and the orders passed including by the Hon'ble High Court. Dwelling on the report of the Committee on feasibility, he agreed that the Committee was constituted on the instructions of the Principal Chief Commissioner and it had furnished recommendations that the Department may conduct a review DPC. However, no right was enabled nor was any right breached that could have supported filing of this OA. The Committee had made only recommendations and suggestions and if they had been accepted, then it could have led to review DPC and based on approval of the recommendations of the review DPC, appointments could have been ordered and thereafter, only after an order was passed, could it have been challenged, which was not the case in the present OA and no right had been created at the present stage for the applicants to challenge the withdrawal of the Committee's report.

12. Learned counsel for private Respondents Nos. 6-12, Shri SV Marne, submitted a short reply emphasising that the OA suffered

from gross suppression of facts in regard to the many OAs filed, even with some of the present applicants and the same cause of action which was well within the knowledge of the present applicants. They were also aware of the challenge raised by direct recruits to the report of the Committee on feasibility as also the fact that this Tribunal had passed orders in the OA No. 193/2015 for keeping the result of the review DPC in sealed cover. The applicants in their averments have stated that the review DPC was kept in abeyance even though there was no stay on the report of the Committee studying feasibility nor was there any order to give effect to the report of the said Committee that was, contrary to the submissions of the applicants, only accepted by the Principal Commissioner and never put up to the Principal Chief Commissioner. The Committee's report had never been acted upon and no benefits had been conferred and now this report had only been withdrawn. Since nothing had been given, there was nothing to take away and in consequence, no stay was possible.

Further, since no right was created for the applicants or any other person by this report of the Committee, the question of issue of show cause notice did not arise. In their view, the withdrawal was caused by the multiplicity of litigation that had arisen in the wake of the Committee report. While reiterating the arguments in the short reply, learned counsel for private respondents submitted that such a set of recommendations that could become the basis for a review DPC would not, ordinarily, yield a cause of action. A picture had been created as if the Appointing Authority had decided on the same lines but this report had evidently not been put up to the Principal Chief Commissioner who is the Cadre Controlling Authority and had now been withdrawn by him. He agreed that the impugned order dated 6/7/2020 buried the Committee report but since it never conferred any benefits, bringing it to life would not create any right.

13. We have heard learned counsels for parties and have carefully perused the

submissions including the annexures and also considered the arguments put forth.

14. As set out to parties, our primary anxiety was with regard to whether there was any cause of action that could be challenged by the applicants in the form of the present OA. The impugned order withdraws the report of the Committee of officials headed by two Additional Commissioners along with sundry staff. In order to understand the context of the Committee, we have to comprehend that the DPC system has been established to consider inter alia, promotions as also review of previous DPC decisions based on inputs from the Department on the number of vacancies in the considered positions, the eligibility criteria, the persons in the zone of consideration, the result of scrutiny of these persons, etc. The DPC itself comprises persons of a rank higher than the promotional posts. How the Department assesses the number of posts is left to the devices available in the Department and could possibly include a Committee of junior officials. The views of this Committee and its recommendations go

through a process of formalisation before a decision is taken that there are indeed vacancies to be filled after which the DPC would be constituted of suitable ranking officers and necessary materials would be collated for its activity. Thereafter, the weighty recommendations of the DPC would be tabled before the Cadre Controlling Authority for consideration and orders. For the present analysis, we are not engaging in a deep study of the contents of the report of the Committee on feasibility but it is not out of place to observe that the factual observation of the Committee on the origin of these vacancies of Appraiser are at variance with the factual communication of the Chief Commissioner in his letter to the Member (P&V) on 6/9/2013 discussed supra which communicated the reason for not filling up the vacancies identified for Bombay zone in 2003 because of the conditions imposed by the Government. The same discordance is also noticed in the reply furnished by respondents (at Annexure A-20) and referred by the applicants in OA No. 401/2016. Be that as

it may, it is also evident as relied on by the applicants, that subsequent action by the Department after the receipt of the report of the Committee was to set up a Special Cell comprising eleven officers and staff that included Commissioner (General) and even junior staff in the rank of Examiner and Senior Tax Assistants. While its purpose as assigned speaks to a DPC and review DPC, as we have discussed above, the DPC could only comprise of senior ranks to the promotional posts and not all and sundry officials. The implication, therefore, is that this Special Cell was charged with further studying the matter and not for conducting a DPC or review DPC. In other terms, the process of analysis and the thought process of the Department was continuing and had not ceased with the creation of a Committee studying feasibility and with the submission of its recommendations. Such a thinking process is inevitably fraught with the possibility of errors and could offer a variety of promises to a casual reader and especially to an interested reader such as the applicants

who were anxiously looking out to seek some benefits from the relaxation of conditions that had led to back-dated promotions to various Examiners. If, in the process of these deliberations, that could be in the form of internal notings by staff in the Personnel Wing or by a Committee that includes a spread of officials from junior staff to senior Group 'A' officers, several ideas, views, and interpretations of facts and orders are thrown up, these cannot be picked up in isolation together and then challenged for interdiction in a court of law such as this Tribunal pleading that these are the final views of the Department or their interpretations of policy and propose grievances in such interpretation with regard to extant policy directives or legal principles. The present report of the Committee studying feasibility was precisely within this category of deliberations and these deliberations have evidently continued in the form of the Special Cell. We are quite in agreement with the argument that the report confers no benefits and no right has been

enabled by the existence and contents of this report. The withdrawal of this report has accordingly caused no loss to the applicants and their cohort and, in consequence, they have no cause of action that can support the filing of this OA.

15. With regard to their underlying grievances of the manner in which the vacancies that they allege were created by the notional back-dated promotions to Examiners who were promoted as Appraisers, there are OAs that have been filed prior to this Committee report and subsequently and these matters are still under consideration of this Tribunal to decide on their respective merits. It would be appropriate, therefore, for the applicants to gainfully pursue those proceedings rather than take up parallel and interconnected matters that throw no further light that can assist a quicker decision by this Tribunal.

16. In view of the above, this OA is dismissed at the preliminary stage as devoid of

a cause of action. However, there shall be no order as to costs.

(Ravinder Kaur)
Member (J)

(R. Vijaykumar)
Member (A)

gm.

