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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

(1) Regn.No.OA 2577/91 Date of decision: 16/8/93
Sh.Purshottam Das ... Petitioner
vs.
Union of India through
Secretary,
Ministry of Finance
New Delhi & ors. ... Respondents

(2) Regn.No.OA 1418/91
Sh.Lachhman Singh Chandalia & anr ..Petitioners
vs.
Union of India through
Secretary,
Ministry of Finance
North Block,
New Delhi & ors. ... Respondents
For the Petitioners .. Sh.Jagjit Singh, Counsel.
For the Respondents .. S/Shri P.H Ramchandani, SR.
Counsel and M.L. Verma, Counsel

CORAM:

THE HON'BLE MR. JUSTICE S.K. DHAON, VICE CHAIRMAN
THE HON'BLE MR. B.N. DHOUNDIYAL, MEMBER (A)

JUDGEMENT

(By Hon'ble Mr. Justice S.K.
Dhaon, Vice Chairman)

The petitioners are Scheduled Castes. On or before 26.6.1991 and 7.10.1991, they were employed as Inspectors in the Customs & Central Excise in the Delhi charge. On the said dates, the Departmental Promotion Committee(D.P.C.) made selection of candidates to the post of Superintendent, the criteria being merit-cum-seniority. The petitioners were not considered at all as, according to the respondents, they did not fall within the zone of consideration. The placement of Sh.Purshottam Das in the Seniority List is at Sl.No.191 whereas those of S/sh.Lachhman Singh Chandaliya & Vijay Singh Harit is at Sl.Nos.181 & 184 respectively. In fact, no Scheduled Caste candidate was found

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fit on both the occasions. The petitioners feel aggrieved. Two OAs have been heard together and, therefore, they are being disposed of by a common judgement.

2. Three-pronged attack has been made by the petitioners. The first is that the proceedings of the D.P.C. held on 26.6.1991 were illegal as the respondents failed to place in the said meeting all the existing and anticipated vacancies. The second is that the proceedings of the D.P.C. are illegal as instead of a supplementary D.P.C. a Review D.P.C. should have taken place. The last is that the respondents deliberately held the meeting on 26.6.1991 when they could have waited till the end of the financial year as by that time, the vacancies which had been sanctioned should have been allocated so that a larger number of vacancies could be placed at the disposal of the D.P.C. The thrust of the submissions is that had a larger number of vacancies been reported to the D.P.C., the field of the eligibility of the Scheduled Caste candidates would have widened. ~~case~~ no candidate belonging to that class was found fit. The basis of the contention is that ~~only~~ in a situation where no Scheduled Caste candidate is available, the field of eligibility of the Scheduled Caste candidates ~~is~~ is extended to five times the number of vacancies existing or anticipated.

3. The prayer is that the proceedings of the D.P.Cs held on 26.6.1991 and 7.10.1991 may be quashed and the respondents may be directed

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to hold a fresh D.P.C. after taking into consideration all the vacancies existing or anticipated.

4. Counter-affidavits have been filed in both the OAs. In OA No.2577/91, ^a counter-affidavit has been filed by Smt. Praveen Mahajan, Additional Collector(P&V) in the Customs and Central Excise Collectorate, New Delhi. The contents of both the counter-affidavits are somewhat similar. The material averments/ are these. The post of Superintendent(Group 'B' gazetted) is required to be filled by promotion from amongst Inspectors with 8 years' regular service in the grade. In accordance with CBEC's letter dated 26.6.1990 (copy annexed as Annexure R.I), the D.P.C. for promotion to the grade of Superintendent Group 'B' is required to be held in the month of June every year. For the purpose of holding the D.P.C, the vacancies have to be calculated as they stand at the end of the financial year. In other words, vacancies arising between 1st April to 31st March of the current year have to be considered by the D.P.C. which meets during the month of June each year. The officers in the feeder grade i.e. Inspectors are to be considered for promotion to the grade of Superintendent Group 'B' in accordance with the procedure laid down in Para C-II of the Department of P&T OM No.22011/1/90 Estt. 'D' dated 12.10.1990 which, *inter-alia*, prescribes the zone of consideration for promotion. The normal zone of consideration can be extended to five times the number of vacancies if sufficient number of candidates belonging to Scheduled Caste and Scheduled Tribe are not

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available for appointment against reserved vacancies. As per instructions contained in the Brochure, 40 Point Roster is being followed in the case of promotion of Inspectors to the grade of Superintendent.

While computing the zone of consideration for promotion of

Superintendent, clear cut vacancies existing as on the date of D.P.C. as also the vacancies anticipated upto 31st March of the following year, on account of retirement on superannuation, etc. are taken into account and panel is prepared for the exact number of vacancies. Instructions on the subject are being strictly adhered to by the respondents for preparing select list for promotion to the grade of Superintendent. The meeting of the D.P.C. was held on 26.6.1991 to prepare a panel of 24 Inspectors for promotion to the grade of Superintendent against 6 existing and 18 anticipated vacancies during 1991-92. 10 additional posts of Superintendent were sanctioned by the Ministry of Finance, Department of Revenue letter dated 21.8.1991. The meeting of the D.P.C. was convened on 7.10.1991 to prepare a panel against newly sanctioned posts. The petitioners did not figure in the consideration zone and, therefore, were not entitled to be considered for promotion. The D.P.C. held on 26.6.1991 took into account 24 vacancies for the year 1991-92 i.e. all the vacancies anticipated upto 31.3.1992. 10 posts sanctioned during August 1991 could not have been anticipated when the annual general D.P.C. was held on 26.6.1991.

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5. We may now consider the communication dated 26.6.1990 issued by the Under Secretary to the Government of India in the Ministry of Finance. It is addressed to all the heads of departments under C.B.E.C.. The subject is:- "Uniformity in holding D.P.C. meetings for promotion to the grade of Superintendent Group 'B' and other Group 'B' posts regarding." In this communication, a reference has been made to the Ministry's circular dated 21.3.1990 wherein it has been emphasised that the meeting of the D.P.C. should be held on the third Monday of June of each year and the orders of promotion issued within two days of completion of the D.P.C. meeting. It is also recited in that communication that in partial modification, it has been decided by the Board that the D.P.C. meetings for promotion to Group 'B' posts may be held in the month of June each year and the orders of promotion issued on the last working day of June each year. It is also clarified that for the purpose of holding the D.P.C., the vacancies have to be calculated as they stand at the end of the financial year, i.e. between 1st April to 31st March. It is thus evident that in view of the said communication dated 26.6.1990, the respondents had to hold a meeting of the D.P.C. in the month of June 1991. Therefore, it cannot be said that the meeting was deliberately held on 26.6.91.

6. On 28.1.1991, the Under Secretary to the Government of India in the Ministry of Finance, Department of Revenue, sent a communication to all Principal Collectors/

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Collector of Customs/ Collector of Central
 Collector of Customs/ Collector of Central
 subject
 Excise & ors. The /of the communication is:-
 " Creation of Group 'B', 'C' & 'D' posts ". It
 is recited in the communication that the question
 of creation of Group 'B', 'C' & 'D' posts for
 handling increased work-load has been under consideration
 of the Government for some time past. Government
 have since approved the creation of the following
 additional posts in different grades as indicated
 in Col.3 of the Table in a phased manner over
 a period of 3 years in the Collectorates of
 Central Excise and Customs. Sl.No.1 in this
 communication is relevant. It relates to Supdt.
 of Central Excise, Group 'B'. It has shown the
 number of additional posts sanctioned as 851.
 The total number of additional posts sanctioned
 for different grades was 6981 .
 In para 2, it is recited that the sanctions
 covering the first phase of creation and
 Collectoratewise allocation thereof would follow.

7. On 6.3.1991, the Under Secretary to
 the Government of India in the Ministry of
 Finance, Department of Revenue, sent a
 communication to all Principal Collectors/
 Collectors of Customs and ors. It is recited
 therein that in continuation of the aforesaid
 communication dated 28.1.1991 conveying
 Government's approval for creation of 6981
 additional posts in different grades of Group
 'B', 'C' & 'D' cadres over a period of 3 years, he
 also conveyed the sanction for creation and
 Collectoratewise allocation of 2792 posts in
 the 1st phase during 1990-91. In the 1st phase
 10 posts of Superintendent had been allocated

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to the Delhi Collectorate. 2 posts of Superintendent were created in the Principal Collector office's staff, 1 in the Collector (Appeal)'s Staff and 3 in Deputy Collector's Staff and Audit Party Staff. It appears that ^{other} for Delhi Collectorate 6/posts of Superintendent were also created. It is not petitioners' case that the posts as allocated on 6.3.1991 were not taken into account by the D.P.C. which met on 26.6.1991.

8. On 21.8.1991, the Under Secretary to the Government of India in the Ministry of Finance sent a communication to all the Principal Collectors and ors.. The subject is:- "creation of Group 'B', 'C' & 'D' posts Collectoratewise allocation of IIInd Phase - Regarding ". It is recited in the said communication that in continuation of Ministry of Finance's letters of even number dated 28.1.1991 and 6.3.1991, the Under Secretary was directed to convey the sanction of the Government for creation and Collectorate-wise allocation of 2792 posts in the 2nd phase during 1991-92 as per Annexures I to IV. It appears that 10 posts were allocated to the Delhi Collectorate. The contention is that the sanction and creation of the aforesaid 10 posts on 21.8.1991 should have been anticipated on or before 26.6.1991, the date on which the D.P.C.meeting was held. For examining this contention, we will have to revert to the communication dated 28.1.1991. It merely stated that Government had approved the creation of 851 additional posts of Supdt. of Central Excise, Group 'B' in a phased manner over a

period of 3 years in the Collectorates of Central Excise and Customs. In this document there is no whisper as to how many posts should be allocated to the Delhi Collectorate in a particular year. Ministry of Finance reserved to itself, the right to allocate for each year some posts of Superintendent in the Collectorate of Central Excise & Customs. Nobody could even guess on a combined reading of the communications dated 28.1.1991 and 26.6.1990 as to how many posts of Superintendent of Central Excise and Customs would be eventually allocated and sanctioned to the Delhi Collectorate in the second phase. 10 vacancies which came into existence on sanction and allocation on 21.8.1991 could not, therefore, be anticipated under any circumstances. The contention that the proceedings of the D.P.C. held on 26.6.1991 stood vitiated on account of the fact that 10 vacancies sanctioned and allocated on 21.8.1991 had not been taken into account by the D.P.C. has no substance.

9.. Now we are left with the question as to whether on 7.10.1991, a Review D.P.C. should have taken place on account of the coming into existence of 10 additional posts on 21.8.1991.

Reliance is placed on para 242 of circular No. 22011/5/86-Estt(D) dated 10.3.1989 contained in All India Service Manual.

The contents of the said circular may be extracted:-

"2.4.2 Where a DPC has already been held in a year, and further vacancies arise during the same year due to death, resignation, voluntary retirement, etc. or because the vacancies were not intimated to the DPC due to error or omission on the part of the Department concerned, the following procedure should be followed:

(i) Vacancies due to death, voluntary retirement, new creation, etc. clearly

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belong to the category which could not be foreseen at the time of placing facts and material before the DPC. In such cases, another meeting of the DPC should be held for drawing up a panel for these vacancies as these vacancies could not be anticipated at the time of holding the earlier DPC. If, for any reason, the DPC cannot meet for the second time, the procedure of drawing up of year-wise panels may be followed when it meets next for preparing panels in respect of vacancies that rise in subsequent years.

(ii) In the second type of cases of non-reporting of vacancies due to error or omission (i.e., though the vacancies were there at the time of holding of DPC meeting they were not reported to it) it results in injustice to the officers concerned by artificially restricting the zone of consideration. The wrong done cannot be rectified by holding a second DPC or preparing an year-wise panel. In all such cases, a review DPC should be held keeping in mind the total vacancies of the year."

It is emphasised in the circular that if in a particular year, the DPC has already been held and further vacancies arise due to death, resignation, voluntary retirement etc. or because the vacancies were not intimated to the D.P.C. due to error or omission on the part of the department concerned the aforesaid procedure should be followed.

10. The learned counsel for the petitioners conceded that situation as enumerated in (i) para of / 2.4.2 is not attracted to the case of the petitioners. However, emphasise is laid on para item (ii) of / 2.4.2. It provides that a Review D.P.C. should be held when vacancies are not reported due to error or omission. It is clarified that the vacancies should be in existence at the time of holding of meeting of the D.P.C. and they were not reported to it. The guidelines contained in item (ii) of para

2.4.2 are really wholesome one. The question is whether in the instant case on 26.6.1991, 10 additional vacancies which came into being by sanction and allocation on 21.8.1991 were in existence and had not been reported to the D.P.C. We are satisfied that the aforesaid 10 vacancies were not in existence on 26.6.1991 and they in fact came into existence on 21.8.1991.

11. We are informed that during the pendency of these OAs, Shri Lachhman Singh Chandalia one of the petitioners in OA No.1418/91 has been promoted as Superintendent.

12. None of the contentions advanced on behalf of the petitioners is acceptable. The OAs fail and are dismissed. There shall be no order as to costs.

13. A copy of this order be placed on both the case files.

B.N.Dhundiyal
(B.N.DHUNDIYAL)
MEMBER(A)

S.K.Dhaon
(S.K.DHAON)
VICE-CHAIRMAN(J)

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