

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. NO.2095/2004
M.A. NO.1776/2004

This the 31st day of January, 2005.

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)
HON'BLE SHRI SHANKER RAJU, MEMBER (J)

1. Bharat Bhushan S/O Shyam Lal,
R/O MP-16, Pitampura, Delhi.
2. Vijay Kumar Kathuria S/O G.D.Kathuria,
R/O D-7/60, Sector-15, Rohini, Delhi-85.

(Both employed as Inspector of Customs
and Central Excise under the charge of Chief
Commissioner, Central Excise, Delhi, CR Building,
I.P.Estate, New Delhi).

... Applicants

(None present)

versus

1. Union of India through
Secretary, Ministry of Finance,
Department of Revenue,
North Block, New Delhi.
2. Chairman,
Central Board of Excise & Customs,
North Block, New Delhi.
3. Chief Commissioner,
Central Excise, Delhi,
CR Building, I.P.Estate,
New Delhi.

... Respondents

(By Shri Madhav Panikar, Advocate)

ORDER (ORAL)

Hon'ble Shri V.K.Majotra, Vice-Chairman (A) :

None has appeared on behalf of applicants. Applicants remained
unrepresented even on the previous date of hearing, i.e., 27.1.2005. Respondents

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10

have not filed counter reply despite several opportunities having been granted to them to do so. Last opportunity to file reply affidavit within two weeks was granted to them on 22.12.2004. Respondents have chosen not to avail of even the last opportunity of filing reply. Thus, we have proceeded to dispose of the present OA on hearing the arguments of the learned counsel of respondents as also perusing the material on record.

2. MA No.1776/2004 for joining together of the applicants herein is allowed.

3. Applicants have sought the following reliefs:

- “(i) To allow this O.A. with cost on respondents and in favour of the applicant.
- (ii) To direct the Respondents to extend the benefit of judgement given by the Hyderabad Bench of the Tribunal in O.A. No.251/2003 vide its order dated 31.7.2003 to the applicants herein being similarly situated to the applicants in that O.A.
- (iii) To direct the Respondents to hold review DPC where the SC/ST category candidates, who have availed the benefit of reservation, relaxation, concession in the initial career of the service and to adjust them against the reserved vacancies and make available the unreserved slots to the general category like the applicants for promotion in terms of the Recruitment Rules for the post.
- (iv) Any other order, which the Hon'ble Tribunal may deem fit just and proper in the facts and circumstances of the case to meet ends of the justice.”

3. Applicants herein are employed as Inspectors of Central Excise under the charge of respondent No.3, i.e., the Chief Commissioner, Central Excise, Delhi. The cadre of Inspectors is a feeder cadre for promotion to the post of Superintendent Grade 'B'. As per the recruitment rules for the post of Superintendent Grade 'B', an Inspector with eight years' service on regular basis is eligible for consideration for promotion to the next grade of Superintendent

42

Grade 'B', which is a selection post. As such, the selection is to be made on the basis of relative performance of the Inspectors in the feeder cadre and their seniority in that cadre. Government of India instructions provide for reservation of SC/ST categories for promotion to the post of Superintendent also to the extent of 15% and 7.5% respectively. The aforesaid policy of reservation is implemented by the post-based roster system introduced vide DOP&T OM No.36012/2/96-Estt.(Res.) dated 2.7.1997 read with OM No.36028/17/2001 dated 11.7.2002. Respondent No.2 has interpreted DOP&T OM of 11.7.2002 vide his letter No. A-60011/23/2002-Ad.II(B)(Pt.) dated 18.3.2003 to the following effect:

"It is clear that there are a total of 282 vacancies of which 39 and 24 are reserved for SCs and STs. Remaining 219 vacancies are un-reserved. If a select list is prepared for 282 candidates taking into account the merit of the candidates, first 219 candidates of the select list would be candidates selected by their own merit. If some SC/ST candidates are included in these first 219 candidates, they are evidently selected on their own merit and would be adjusted against unreserved slots. SC/ST candidate appearing at S.No.220 onwards whether out of the normal or the extended zone of consideration will be taken to have been selected by reservation."

4. In pursuance of letter dated 18.3.2003 of respondent No.3, respondents have issued Annexure A-3 order regarding promotion of Inspectors to the grade of Superintendent Grade 'B'. Applicants are aggrieved by these orders. It is contended that by incorporating the aforesaid circulars on reservation, respondents by Annexure A-3 have caused prejudice to the interest of applicants who are general category Inspectors, seeking promotion to the post of Superintendent Grade 'B'. It is claimed that respondents have wrongly interpreted the instructions. The net result is that SC/ST candidates who had availed of the benefit of reservation and got accelerated promotion by way of reservation, have been adjusted against un-reserved slots to the prejudice of the general candidates and reserved slots are included as backlog of vacancies in violation of the instructions as also Articles 14 and 16 of the Constitution. In this

12

manner, applicants, i.e., the general category Inspectors, have been deprived of their rights of consideration for promotion even against un-reserved slots by adjusting the SC/ST candidates by treating them to have come up in their own merit notwithstanding the benefits of reservation availed of by them in the feeder cadre. It is stated that applicants' representation Annexure A-4 dated 2.4.2004 has not been paid any heed by respondents. Applicants have relied upon Annexure A-1, i.e., CAT Hyderabad Bench order dated 31.7.2003 in OA No.251/2003 – ***B.C.K.Ralu v Chief Commissioner of Central Excise, A.P. Zone & Another***.

5. The learned counsel of respondents stated that respondents have interpreted the circulars on reservation in the right spirit. He further stated that applicants have not clearly stated as to which post they are holding and to which they are seeking promotion.

6. We have considered the rival contentions.

7. A perusal of the OA makes it amply clear that applicants are Inspectors of Central Excise and seek promotion to the post of Superintendent Grade 'B'. They have sought benefit of the Tribunal's order dated 31.7.2003 in the case of ***B.C.K.Ralu*** (supra). The learned counsel for respondents further stated that the Tribunal's orders relied upon by applicants relate to promotion from a lower post to the post of Inspector and as such, the issue involved in the present case is not identical to that of the case of ***B.C.K.Ralu***. This contention of respondents is not acceptable. True that applicants before us are Inspectors while applicants in the case of ***B.C.K.Ralu*** belonged to the feeder category for promotion to the post of Inspectors. In the present case, applicants are Inspectors and seek promotion to the next higher post of Superintendent Grade 'B'. This distinction is immaterial as the principle decided in the case of ***B.C.K.Ralu*** is applicable to the present case as well.

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13

8. Having regard to the discussion made above, we dispose of the present OA with a direction to the respondents to apply the principles evolved by the Court in the case of **B.C.K.Ralu** (supra) and decide, by passing a detailed and speaking order, applicants' representation Annexure A-4 dated 2.4.2004 within a period of two months from the date of communication of these orders. Ordered accordingly.



(Shanker Raju)
Member (J)

/as/



(V. K. Majotra)
Vice-Chairman (A)

31.1.05