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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. NO. 1756/2004

New Delhi this the 11th day of February, 2005

**Hon'ble Shri V.K. Majotra, Vice Chairman (A).
Hon'ble Mrs. Meera Chhibber, Member (J).**

1. Yashpal S/o Shri sjurendra Dev,
R/o 20, Kaveri, Vaishali, Ghaziabad.
2. Komal Prasad S/o Shri Revati Ram,
R/o 1/566A, Vaishali, Ghaziabad.
3. Ram Sakal S/o Shri Nathi Ram,
1888, Type-III, NH-4, Faridabad.
4. Ashok Kumar Chauhan,
S/o Shri Raj Singh,
1011/31, Phase-II, Laxman Vihar,
Gurgaon.
5. L.R. Ranga S/o Shri Sultan Singh,
404/46, Bhimgarh Kheri, Phase-III,
Near Railway Station, Gurgaon (Haryana)

All are employed as Superintendent Grade-II
In the office of the Commissioner of Central Excise
Delhi-1.

.... Applicants.

(By Advocate Shri D.R. Gupta)

Versus

1. Union of India, through Secretary,
Ministry of Finance,
Deptt. Of Revenue, North Block,
New Delhi.
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2. Chairman, Central Board of Excise & Customs,
Deptt. Of Revenue, Ministry of Finance,
North Block,
New Delhi.
3. Commissioner of Central Excise,
Delhi-1, C.R. Building, I.P. Estate,
New Delhi-110002.

...Respondents.

(By Advocate Shri Madhav Panikar)

ORDER (ORAL)

Hon'ble Mrs. Meera Chhibber, Member (J).

By this O.A., applicants, number in five, have challenged the order dated 19.07.2004 (page 9) passed by the respondents whereby the applicants are sought to be reverted from the posts of Superintendent Group 'B' to the posts of Inspector and to treat their regular promotion from 23.09.2002 as ad hoc. They have further sought a direction to the respondents to treat them as regular promotee to the posts of Superintendent as if no reversion is made.

2. The brief facts, as stated by the applicants, are that pursuant to the directions given by this Tribunal in the case of Ghasi Ram Meena & Ors. Vs. Union of India (OA 2475/2002), a review DPC was convened for considering such of the Inspectors, who fulfilled the criteria of 8 years regular service as Inspector for promotion to the posts of Superintendent Group 'B' and vide order dated 12.02.2004, applicants were promoted in the posts of Superintendent Group 'B' in the pay scale of Rs.6500-10500 on notional basis w.e.f. 23.09.2002



and their seniority was also fixed below Shri Ram Kanwar, who was promoted to the grade of Superintendent Group 'B' vide order dated 23.09.2002 (page 10). However, by a subsequent order passed after over two years i.e. on 19.07.2004, respondents sought to revert the applicants to the posts of Inspector and also treated the promotion as ad hoc without giving any show cause notice to the applicants and without giving them any opportunity to put forth their case. They have thus submitted that this reversion order is liable to be quashed and set aside. Perusal of the order sheet shows that vide order dated 22.07.2004, the order dated 19.7.2004 was stayed as a result of which applicants have continued to work as Superintendent Group 'B'

3. Respondents have opposed this O.A. by submitting that DPC met in July, 2002 but applicants could not be considered for promotion to the posts of Superintendent because large number of Inspectors, who were senior to the applicants, were not having the required qualifying service of 8 years in the grade of Inspector. Therefore, number of junior officers, including the applicants were also not considered in the DPC of July, 2002.

4. Subsequently, some persons filed O.A. 2475/2002 in the Tribunal wherein directions were given as follows:

- "(a) that the claim of the applicants should be considered for promotion to Superintendent Group 'B' irrespective of the fact that their seniors had not fulfilled minimum qualification of 8 years of service.



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- (b) that the claim of the applicants can be considered only if they also fulfil the said qualifications as per the recruitment rules on a specific date for a particular year; and
 - © necessarily their claim has to be considered in accordance with the rules and instructions regarding which no further opinion need be expressed. They should be within the zone of consideration besides being eligible".

Therefore, following the directions given by this Tribunal, review DPC was convened in February, 2004 wherein such of the persons, who were having requisite qualifying service of 8 years were considered and those who were found suitable were promoted to the posts of Superintendent by passing the ineligible senior Inspectors.

5. Vide File dated 18.06.2004, Board issued instructions for filling up entire group of Ministerial and non-Ministerial posts, which were created as a result of cadre restructuring of Customs and Central Excise Department and remained unfilled due to non-availability of eligible candidates with prescribed qualifying service by relaxing the qualifying service prescribed under the Recruitment Rules by one year. In view of the relaxation as mentioned above, the consideration list was prepared seniority wise, including the names of those Inspectors, who had completed 7 years of service as on 01.01.2002 for consideration by reviewing the DPC of July, 2002. As a result of this relaxation, number of Inspectors, who were otherwise senior to the applicant became eligible. Therefore, they were also considered in the review DPC. The vacancies were consumed by the

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senior Inspectors and no vacancies were left for applicants, who were junior in the feeder cadre. Therefore, applicants had to be reverted to their substantive posts of Inspector. They have thus submitted that since senior candidates had to be promoted first and applicants did not come within the number of available vacancies, thus they were rightly reverted back to the grade of Inspector. They have thus prayed that the O.A. may be dismissed.

6. We have heard both the counsel and perused the pleadings as well. It is admitted position that in July, 2002, when DPC met for the first time to consider the names of Inspectors for promotion to the posts of Superintendent, applicants were eligible as they did have 8 years of qualifying service, yet they were not considered simply on the ground that their seniors did not have qualifying service of 8 years as Inspector. The law is well settled that when the Recruitment Rules specify the procedure how promotions are to be made, DPC has to be convened in accordance with those Rules. In the process if certain seniors are to be left out because they did not have qualifying service, juniors cannot be ignored simply on the ground of seniors not fulfilling the criteria even though they fulfilled the criteria. It is also not disputed by the respondents that applicants were indeed eligible to be considered for promotion in July, 2002 itself. Therefore, when some other persons, who were also eligible and were not considered by the DPC, filed O.A. before this Tribunal. This Tribunal gave directions as mentioned in para 4 above after considering the judgments given by Hon'ble

Supreme Court in the case of R. Prabha Devi and Ors. Vs. Government of India, through Secretary, Ministry of Personnel and Training, Administrative Reforms (JT 1988 (1) SC 488) and Scientific Advisor to Raksha Mantri and Anr. Vs. V.M. Jospeh (1998 (5) SCC 305) wherein it was held that when certain length of service in a particular cadre is prescribed then unless a person possesses that qualification, he cannot be considered eligible for promotion. If a junior is eligible, then a senior automatically will not become eligible because seniority cannot be substituted for eligibility. It was thus directed by the Tribunal to consider the applicants for promotion to the posts of Superintendent Group 'B' irrespective of the fact that their seniors have not fulfilled the minimum qualification of 8 years of service. This judgment was given on 11.11.2003 and it was pursuant to this direction, that respondents considered the claim of applicants also while conducting review DPC because they were similarly situated as the applicants in OA 2475/2002. After holding the review DPC, applicants were promoted vide order dated 12.02.2004 and their seniority was also fixed by the said order (page 10). Now once they were promoted after following due process of law, that too pursuant to the directions given by the Tribunal, naturally a right accrued in favour of the applicants before us to continue in the posts of Superintendent Group 'B' uninterruptedly. They could be reverted only for valid reasons that too after following due process of law. In the instant case, admittedly before reverting the applicants, no show cause



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notice was given to them. Therefore, reversion order is liable to be quashed on this very ground. It goes without saying that the order of reversion would have civil consequences and would definitely affect the rights of applicants. Therefore, the same could not have been issued without giving show cause notice to the applicants.

7. Even though the order is liable to be quashed on this very ground, but even otherwise we find the way respondents have proceeded in this matter is absolutely unknown to the settled principles of law. As we have stated above, the judgment in O.A. 2475/2002 dated 11.11.2003 had already been complied with in February, 2004 itself. Now once the vacancies had already been filled from amongst the eligible candidates who fulfilled the eligibility criteria as on the cut off date, naturally their rights could not have been affected by a subsequent letter dated 18.06.2004, on the ground that relaxation is being given to the senior Inspectors from a retrospective date. Even otherwise, so long the eligible candidates were available in the Department as per the Recruitment Rules, there was no justification to relax the eligibility condition only to accommodate the senior Inspectors as that would be contrary to the judgments given by the Hon'ble Supreme Court. In any case, since applicants were already promoted, if at all respondents wanted to consider the senior Inspectors also by giving them relaxation to make them eligible, they could have considered them for the left over vacancies in case there were any left over vacancies. This also gets

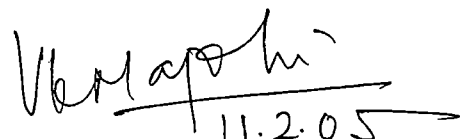


support from respondents' counter where in page 2 they have stated that the Board issued directions for filling up of entire Group 'B' Ministerial and non-Ministerial posts, which were created as a result of cadre restructuring of Central Excise Department and remained unfilled due to non-availability of eligible candidates with prescribed qualifying service by relaxing the qualifying service by one year. This sentence makes it clear that only unfilled vacancies were to be filled from amongst those seniors who were to be given the benefit of relaxation of one year for making them eligible for consideration for the posts of Superintendent Group 'B'.

8. In view of the above discussion, we find the impugned order is not sustainable in law. The same is accordingly quashed and set aside. Respondents are directed to continue the applicants as Superintendents Group 'B' as if they were never reverted. No order as to costs.



(MRS. MEERA CHHIBBER)
MEMBER (J)



(V.K. MAJOTRA)
VICE CHAIRMAN (A)

'SRD'