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**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No.826 of 2004

Thursday, this the 1st day of February, 2007

**Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Smt. Neena Ranjan, Member (A)**

Moti Ram & others

... Applicants.

(By Advocates: Shri Rakesh K. Khanna, Senior Advocate and
Ms. Shailja Sinha and Mr. Rajeev Singh, Advocates
along with him)

Versus

Union of India through Secretary,
Department of Revenue & others

..Respondents

(By Advocates: Shri RV Sinha for Shri RN Singh)

1. To be referred to the Reporters or not? *yes*
2. To be circulated to other Benches of the Tribunal or not? *yes.*

S. Raju
(Shanker Raju)
Member (J)



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**Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Smt. Neena Ranjan, Member (A)**

1. Moti Ram,
Stenographer Grade-II,
Directorate General of Vigilance,
Customs & Central Excise,
Hotel Samrat, Chanakyapuri,
New Delhi.
 2. Hari Singh,
Stenographer Grade-II,
Directorate General of Vigilance,
Customs & Central Excise,
Hotel Samrat, Chanakyapuri,
New Delhi.
 3. Madhu Ahuja,
Stenographer Grade-III,
Directorate General of Vigilance,
Customs & Central Excise,
Hotel Samrat, Chanakyapuri,
New Delhi.
 4. Vijaya Kumar,
Stenographer Grade-III,
Directorate General of Vigilance,
Customs & Central Excise,
Hotel Samrat, Chanakyapuri,
New Delhi.
 5. Ramkrishna Dutta,
Stenographer Grade-III,
Directorate of Organisation and Personnel
Management, Customs & Central Excise,
409/8, Deepshikha Building,
Rajendra Place,
New Delhi-110008.
 6. Jaishree Srivastava,
Stenographer Grade-II,
Office of the Chief Departmental Representative,
Customs, Excise and Service Tax Appellate Tribunal,
West Block No.2, R.K.Puram,
New Delhi.
- ... Applicants

(By Advocates: Shri Rakesh K. Khanna, Senior Advocate and
Ms. Shailja Sinha and Mr. Rajeev Singh, Advocates
along with him)

Versus

1. Union of India through
Secretary, Department of Revenue,
Ministry of Finance,
North Block, New Delhi-110001.
2. Chairman,
Central Board of Excise & Customs,
Department of Revenue,
Ministry of Finance, North Block,
New Delhi-110001.
3. Director General,
Directorate General of Inspection,
Customs & Central Excise,
D-Block, I.P.Estate,
New Delhi-11002.

...Respondents

(By Advocates: Shri RV Sinha for Shri RN Singh)

ORDER (ORAL)**Hon'ble Shri Shanker Raju, Member (J):**

Heard the learned counsel for the parties.

2. It is trite that a right to be considered on fair and equal basis without discrimination in the matter of promotion is a fundamental right of the Government servant, as ruled by the Apex Court in **Dwarka Prasad & others v. Union of India & others**, 2004 (1) ATJ SC 591.
3. It is equally settled that in the matter of a differential treatment meted out to a class, the condition precedent is in the light of Article 14 of the Constitution of India, which forbids unreasonable classification. It should be reasonable with an intelligible differentia and having an object sought to be achieved, as ruled by the Constitution Bench of the Apex Court in **D.S. Nakara v. Union of India**, 1983 SCC (L&S) 145.
4. In the light of above, Stenographers Grades II and III working in the Directorate of Inspection have assailed an inaction on part of the

respondents, whereby being excluded as a feeder category to the post of Inspector after having qualified the pre-requisite examination, they are not being considered for promotion.

5. A history of the OA suggests that OA was allowed and when the matter went before the High Court of Delhi, on remand, review was allowed and the matter has been reconsidered in the light of respondents' Memorandum dated 15.2.2005.

6. Applicants, who are Stenographer Grades II and III are governed by the Directorate General of Inspection (Customs & Central Excise) Group 'C' and Group 'D' posts) Recruitment Rules, 1988 wherein the channel of promotion of Stenographer is in the hierarchy of Grade III to Grade I and further onwards. As a feeder category to the post of Inspector, only the post of UDC has been included in the recruitment rules whereas in the Central Excise and in Land Customs Department Inspector (Group 'C' posts) Recruitment Rules, 2002 and also in the newly promulgated rules issued vide Notification of 29.11.2002 by Central Excise and Customs Department, Stenographer Grades II and III are inducted as a feeder category for the post of Inspector, who have qualified the examination conducted by the National Academy of Customs, Excise and Narcotics.

7. In the above backdrop, learned senior counsel for applicants by relying upon the notifications and circulars issued by the Directorate General of Inspection recently on 27.12.2005 where the aspirants for promotion of Ministerial officers in the grade of Senior TA and Inspector, would contend that applications have been invited for participation in the departmental examination.

8. Learned senior counsel would further contend that in this notification despite existence of the rules of 1988, there has been a reference to the notification, i.e., the recruitment rules for Group 'C' promulgated on 29.11.2002 wherein the Stenographer Grade II with two years' service and Grade III with twelve years' service had been included as feeder category for the post of Inspector and having conferred a right to be considered for promotion, a discrimination has been meted out, vis-à-vis, applicants and their counterparts working in other Directorates without any reasonable nexus with the object sought to be achieved, which, inter alia, violates the mandate of Article 14 of the Constitution.

9. Learned counsel would further contend that insofar as Senior TAs are concerned, though under the 1988 Rules, Senior TAs are included as a feeder category for the post of Inspector, yet after qualifying their examination, Senior TAs have been promoted as Inspector in Directorate of Inspection, which clearly establishes that a deviation has been made by the respondents in the Directorate to include Senior TA as a feeder category even without amending the rules. As such in the case of Stenographers, such a treatment not being meted out to them is a hostile discrimination without any reasonable basis, which would not even pass by any logic or rationale the twin test of reasonableness laid down under Article 14 of the Constitution.

10. Learned counsel for applicant would rely upon a decision of the Apex Court in **Dr. Mr. O.Z. Hussain v. Union of India**, 1990 (Supp) SCC 688 wherein it has been ruled that promotion being a normal incidence of service and if there is no justification for denying the

14. Learned counsel cited the case of one Shri Dewan, who had been working as Stenographer Grade III and was transferred in October 1996 to Bolpur Commissionerate under the cadre control of Calcutta-I Commissionerate and there he was considered in the wake of rules of 29.11.2002 as a feeder category to the post of Inspector and was ultimately promoted. In such view of the matter, it is stated that by virtue of transfer of a person on inter Commissionerate basis, right for promotion and consideration thereof, if created, would amount to a hostile discrimination to those who could not be transferred from the Directorate and their rights ultimately are affected in the matter of consideration for promotion.

15. On the other hand, respondents' learned counsel Shri RV Sinha vehemently opposed the contentions and at the outset, referred to a decision of the Apex Court in **P.U. Joshi & others v. Accountant General, Ahmedabad & others**, AIR 2003 SC 2156 to contend that in the matter of cadre restructuring and alteration of service, one has to establish a right to the claim only then there would be any interference by way of judicial review by the Court.

16. It is also argued that loss of right, which has already been accrued or a right earned in the past and also its forfeiture subsequently by virtue of amendment or alteration by the Government on administrative side unless proved mala fide or unconstitutional would not be interfered.

17. Learned counsel has also cited the decision of the Apex Court in **Ashutosh Gupta v. State of Rajasthan & others**, 2002 (2) SLJ SC 497 to contend that in the matter of equality before law, as a burden, one



promotion and this right is being withheld to the petitioners, finding violation of the principles of equality, an avenue of promotion has been directed to be created for such employees.

11. Learned senior counsel also relies upon a decision of the Apex Court in **State of Mysore v. M.H. Krishna Murthy & others**, (1973) 3 SCC 559 to contend that inequality in the opportunity in the matter of promotion though unconstitutional *per se* but when such a distinction is to be made, it has to be established before hand that there is a rationale, which has some nexus with the object sought to be achieved. Any unequal treatment meted out to equals would also offend the principles of equality enshrined under Articles 14 & 16 of the Constitution.

12. Learned counsel would further contend that having allowed the applicants to compete in the examination, the respondents are now estopped from taking a summersault and a different view in the matter by not promoting them to the post of Inspector. In such view of the matter, the rules, which have been impediment for consideration, would have to give way and reconsideration as an avenue for the applicants as a feeder category to the post of Inspector at par with their counterparts in other Directorates.

13. Learned counsel also stated that when a feeder category in the Directorate is promoted as an Inspector and he is transferred on inter-Commissionerate basis, clearly signifies that after being promoted as an Inspector, there is no distinction in the matter of service condition whether one moves to other Directorates or not.

has to establish right to assail the constitutionality committed by the Government. It is also stated that even if there has been a distinction in the matter of governing of service conditions of the employee in different Directorates, if there is an object sought to be achieved, then the action of the Government would not be interfered in any manner in judicial review.

18. Lastly the decision of the Apex Court in **Ekta Shakti Foundation v. Govt. of NCT of Delhi**, AIR 2006 SC 2609 has been relied upon to contend that the equal class in Article 14 of the Constitution cannot be applied to legitimize an illegal action.

20. While referring to the averments made in the counter reply, learned counsel for respondents stated that the Directorate General of Inspection, Customs & Central Excise is the cadre controlling authority of Groups 'C' & 'D' officers working in the Directorate with number of cadre units and the Rules of 1988 have been uniformly applied to all the cadre units keeping in kind the total cadre strength and the nature of working in various Directorates.

21. Learned counsel also contended that having joined the service in Directorate of Inspection after promulgation of Rules of 1988, applicants were knowing full well about their career progression and as such their challenge to the rules after such lapse of time would be a waiver of right and also they acquiesced to the situation. As such, the challenge cannot be maintained in law.

22. Learned counsel further contended that the applicants have promotional avenues as Private Secretary and Stenographer Grade III,

which put them in an advantageous position in terms of promotional avenues of Tax Assistant and Senior Tax Assistant.

23. Learned counsel has also stated that to bring uniformity in all the Directorates, there has been a proposal made to the Government to amend the existing rules to oust Stenographer Grades II and III as a feeder category to the post of Inspector and as such till the amendment is carried out, as per law, they are bound to follow the erstwhile recruitment rules in vogue and accordingly, the promotion now being conferred upon the others is in line of the aforesaid, failing which there would be an illegality committed by them.

24. While responding to respondents' order dated 15.2.2005, it is stated that the same would not apply to Stenographer Grades II and III of the Directorate of Inspection where there is no provision for the Stenographers to be a feeder category for the post of Inspector. As such, consideration would not arise by any logic. Accordingly, learned counsel for respondents prays for dismissal of the OA.

25. We have carefully considered the rival contentions of the parties and perused the material placed on record.

26. To act fairly in consonance with the Constitution of India and to prevent any offence to Article 14 is an obligation cast upon the Government as a welfare State in this country. Employees whether working in Commissionerate or Directorate of Inspector have to be meted out a similar treatment when service conditions are to be given effect to. As per the decision of the Apex Court (supra) and trite law that right to be considered fairly for promotion is a fundamental right

guaranteed under the Constitution of India. In such view of the matter, any decision of the Government whether taken on administrative side or may be under the proviso to Article 309 of Constitution if is not in conformity with the Constitution inasmuch as it makes distinction and meet out a differential treatment to the identically situated, it can be interfered in a judicial review for which the Tribunal is competent to act.

26. The decision of Apex Court in **Dr. Mr. O.Z. Hussain's** case (supra) clearly ruled that in order to sustain a differential treatment, it has to be before hand established that it is not only reasonably intelligible but also has a reasonable nexus with an object sought to be achieved. If the object sought to be achieved in the present case is to deprive Stenographer Grades II and III working in the Directorate of Inspection to be eligible to compete in their career progression for the post of Inspector, then the same logic would have to be extended to all the other Directorates where Stenographer Grades II and III have been performing the identical duties. They all are discharging the same duties and are akin. As there is no distinction then a differential treatment now meted out to the Directorate of Inspection only on the ground that it is as per the cadre strength and all the State Units of Directorate, a uniform application of the Rules of 1988 deprives the Stenographers from competing for the post of Inspector is an irrational and illegal decision, which would not even pass the test of a common reasonable prudent man what to talk of the constitutional mandate of Article 14 of the Constitution, which has a condition precedent within its ambit. A reasonable action is that action which every common reasonable prudent man would think to be apt not in law but would imply in common parlance as well. If the Stenographers in all the



Directorates have been functioning at par in all service conditions, methods of recruitment, discharge of duties and discharging the same responsibilities, which is not the case of the respondents that in Directorate of Inspection, Stenographer Grades II and III have been functioning at variance with the other counterparts, then meeting out such a treatment under the guise of 1998 Rules is not a justified and valid explanation. Such piece of legislation, i.e., 1988 Rules would impede the right of consideration in fair manner for promotion being a fundamental right.

27. We do not find any rationale in the action of the respondents or any valid justification to meet out differential treatment or a hostile discrimination to the applicants, vis-à-vis, their counterparts in other Directorates.

28. Learned counsel for respondents at one point of time during his arguments, relying upon the decision of the Apex Court in **Ekta Shakti Foundation's** case (supra) contended that assuming for the sake of presumption that even if it is a mistake by allowing the Stenographers to take part in the examination, it would not confer a valid right upon the applicants to claim promotion, which would be in consistent with the recruitment Rules of 1988.

29. It is trite that negative equality has no place in our Constitution. It is also equally settled that mistake of one would not confer a valid right on others but once it comes to fundamental duty of State under Article 51 of the Constitution then any action has to be viewed on the point of view whether the mistake has been deliberate, i.e., mala fide or it is bonafide. When the notifications of 2003 and 2005, which



are in the form of circulars issued by the Government whereby the Stenographers, who have no avenues for promotion to the post of Inspector to compete in the examination, claiming their right for promotion to the post of Inspector, their attachments as per the rules of 29.11.2002, which were promulgated in other Directorates would logically imply that there has been a decision to extend to the applicants the same promotional avenues as available to their counterparts now. We fortify our conclusion on the basis of Annexure-9 letter dated 7.1.2003, which has been addressed by the Director General (Vig.) to the Member (P&V), CB&EC wherein representations from Stenographer Grades II and III working in the Directorate General of Vigilance for their promotional avenues as Inspector being included as a feeder category, has been forwarded with a comment that the request is not only reasonable but requires merit sympathetic consideration. If such consideration would entail into the notification of 2005, in such view of the matter, the respondents being magnanimous and benevolent as a welfare State whereby not considering the applicants for promotion in the Directorate of Inspection, they are not only causing prejudice but creating an anomaly in the cadre of Stenographer Grades II and III whereas their counterparts would be progressed in the matter of their promotion to the higher post and the applicants would remain as junior.

30. Envisaging a situation where after promotion a Stenographer as an Inspector comes to the Directorate of Inspection on inter-directorate transfer in the post of Inspector, there would be a humiliation to the Stenographers when his junior stood promoted as an officer over and above and the applicants are still stagnating in the cadre of Stenographer.

31. Learned counsel for respondents, at this stage, contends that the documents adduced by the learned senior counsel for applicants were not forwarded to them before hand and they have been taken aback. By introduction of these documents at the time of arguments is nothing but a deprivation of a reasonable opportunity to rebut. If a fact is averred before us by the learned counsel, being a senior counsel, we respect the way the documents have been inducted, though it may not have fulfilled all the procedural methodology adopted in the case, yet we are of the view that once we are commenting upon the treatment of hostile discrimination meted out to the applicants and we direct the Government to reconsider their point of view, then this reconsideration would inter alia include verification of such documents and a detailed reasoned order be passed thereupon. In such view of the matter, raising such an objection on adducing the documents is futility at this stage. Accordingly, we overrule the same.

32. Another piece of discrimination, which has now been shown, is with regard to the post of Senior TA. The post of Senior TA, like Stenographer Grades II and III, is a feeder category for the post of Inspector as per 1988 Rules of the Directorate of Inspection, yet the Senior TAs have been allowed to compete in the examination and they have been considered and regularly promoted, as demonstrated by the learned senior counsel for applicant by virtue of the orders passed by the respondents whereby Senior TAs have been promoted when recruitment rules of 1988 have not become an impediment for their consideration for promotion as a feeder category to the post of Inspector without even amending the rules. Such a treatment should *mutatis mutandis* be meted out to the

Stenographers in whose cases relying upon the other rules, respondents have allowed them to participate in the examination but did not process their further promotion under the guise of statutory rules. Once these rules are not applied in case of Senior TA, the Government as a welfare State and on its reasonableness, a similar treatment would have been expected from them and having failed to do so, certainly the action of the respondents cannot be reasonable in all circumstances.

33. The decisions cited by the learned counsel for respondents in **P.U. Joshi's** case (supra), **Ashutosh Gupta's** case (supra) and also in **Ekta Shakti Foundation's** case (supra) may hold good in a case where policy decision of the Government has affected or altered in any manner the existing right, including the right of consideration for promotion of a government servant, yet an exception has been carved out that when such an exception in a policy offends principle of equality under Article 14 of the Constitution, it is open for us to examine the legality and the decision-making process of the administrative authorities while amending and operating the rules to the detriment of the applicants, which ultimately affects the fundamental right of consideration of promotion. Rather we find these cases as an exception to the present case and we have no hesitation to hold that the applicants have a valid claim.

34. In the result, we do not subscribe to the justification tendered by the respondents in meeting out a differential treatment to the applicants. Accordingly, we rule that the applicants are discriminated in the matter of consideration for promotion to the post of Inspector by not including them as a feeder category to the post and this



decision of the respondents makes them a class, as the counterparts have been treated in a manner, which is different from the applicants despite being identically situated. Having not found any intelligible differentia and any nexus with an object sought to be achieved by such treatment, their action is in violation of Article 14 of the Constitution and cannot be countenanced in law.

35. In the result, keeping in light the decision of the Apex Court in **Union of India v. K.S. Okkuta**, (2002) 10 SCC 226 when we find that policy of the respondents is not in accordance with law, we remit this case to the Government, i.e., respondents for reconsideration of the aspect of inclusion of the applicants as feeder category for the post of Inspector in the matter of their promotion at par with their counterparts in Directorate of Inspection. This shall be done in the light of Article 14 of the Constitution of India and also keeping in mind the observations made in the body of this order. Such a consideration would culminate into a speaking order to be passed within a period of three months from the date of receipt of a copy of this order. If it is decided to meet out the same treatment to the applicants, a due regard would have to be given to the examination passed by the applicants and in such view of the matter, the promotion when accrues would entail all consequential benefits to the applicants. No costs.

Neena Ranjan

**(Neena Ranjan)
Member (A)**

S. Raju

**(Shanker Raju)
Member (J)**

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