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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 42 of 1997
connected with
Original Application No. 395 of 1997
connected with
Original Application No. 632 of 1997

Allahabad this the 6th day of Nov, 1997

Hon'ble Dr. R.K. Saxena, Judicial Member
Hon'ble Mr. D.S. Baweja, Adm. Member

OA. NO. 42 of 1997

1. Naresh Kumar Gupta, S/o Sri R.M. Gupta, SD-96, Shastri Nagar, District Ghaziabad.
2. Om Prakash Singh, S/o Sri Pratap Bahadur Singh, R/o SB-162, Shastri Nagar, District Ghaziabad.
3. Anil Kumar Srivastava S/o Sri B.K. Srivastava, R/o CM-68/1, Deen Dayal Nagar, District Moradabad.
4. Ranvir Singh Yadav, S/o Sri Bhura Singh Yadav, R/o SB-155, Shastri Nagar, District Ghaziabad.
5. Tara Dutta Joshi, S/o Sri Shiv Dutta Joshi, R/o 9-D B. Block D.D.A. SFs Flats, East of Kailash, New Delhi.
6. Ved Prakash Sharma, S/o Sri R.S. Sharma, 457- Kamla Nehru Nagar, District Ghaziabad.
7. Diwakar Monocha, S/o Late Shri I.R. Monocha, R/o SB-244, Shastri Nagar, District Ghaziabad.
8. Tushar Kant Banerjee, S/o Sri P.N. Banerjee, R/o III-6-59, Nehru Nagar, District Ghaziabad.
9. Chander Pal Yadav, S/o Sri T.R. Yadav, R/o R-20, Model Town, Delhi-9.
10. Devendra Singh Dagar, S/o Sri K.S. Dagar, R/o 447-Kamla Nehru Nagar, District Ghaziabad.
11. Vijai Prakash Singh Yadav, S/o Sri Ram Chandra Singh Yadav, R/o 11-Baghambhari Housing Scheme, Shiv Nagar, Allahabad.
12. Ram Mahendra Pratap Singh, S/o Sri (late) R.N. Singh, R/o 11 B.H.S. Shiv Nagar, District Allahabad.

Applicants

By Advocates Dr. R.G. Padia,
Sri A.K. Dave

Versus

1. The Union of India through the Secretary, Ministry of Finance, Government of India, New Delhi.

- (18)
2. The Chairman, Central Board of Excise and Customs, North Block, New Delhi.
 3. The Commissioner, Central Excise Commissionerate, Allahabad.
 4. Naresh Kumar a/a 41 years S/o Sri L. Narayan, R/o 100/83 Mahaviran Lane, Allahabad. presently posted as Inspector(Tech) Central Excise, Head Quarter, Allahabad.
 5. Rajiv Kumar Pradhan, A/a 39 years S/o Sri M.S. Pradhan, R/o E/50 Kareli Scheme, Allahabad. posted as Inspector (A-II) Central Excise, Headquarter, Allahabad.
 6. Rakesh Chaturvedi, A/a 39 years S/o Sri S.C. Chaturvedi, R/o C-39/-4 Dilshad Garden near CTB Hospital New Delhi, posted as Inspector, Central Excise Div. II Noida.
 7. Sudhir Jauhari A/a 40 years S/o Sri R.P. Jauhari R/o 286/7 Thaparnagar Meerut, posted as Inspector(Audit), Central Excise Headquarter Meerut.
 8. R.C. Shukla A/a 40 years S/o Sri R.P. Shukla R/o 90-A/4 Baghambari Allahabad posted as Inspector(legal) Central Excise, Headquarter, Allahabad.

Respondents

By Advocates Sri B.D. Mandhyan
Sri Sudhir Agrawal

O.A. No. 395 of 1997

1. Dhananjay Singh S/o Shri Saudagar Singh, R/o S-A-2-43-EI, Gayatri Nagar, Pandeypur, Varanasi.
2. Rajendra Kumar Singh, S/o Shri Sharda Prasad Singh, R/o C/o Mahant Roy, Dowdpur, Gorakhpur.
3. Pramod Kumar S/o Late S.N. Srivastava R/o Vindhya-vashni Nagar, Bank Road, Gorakhpur.
4. Vinod Kumar Singh, S/o Sri Bishun Chandra Singh, R/o South Belia Hata, Near Shiv Puri New Colony, Post Office, Gorakhpur.

Applicants.

By Advocate Sri A.K. Dave

Versus

1. Union of India through the Secretary, Ministry of Finance, Government of India, New Delhi.
2. The Chairman, Central Board of Excise, & Customs, North Block, New Delhi.
3. The Commissioner, Central Excise Commissionerate, Allahabad.
4. Naresh Kumar a/a 41 years S/o Sri L. Narayan R/o 100/83 Mahaviran Lane, Allahabad. presently posted as Inspector(Tech), Central Excise, Head Quarter, Allahabad.
5. Rajiv Kumar Pradhan A/a 39 years S/o Sri M.S. Pradhan, R/o E/50, Kareli Scheme, Allahabad. posted as Inspector (A-II) Central Excise, Headquarter, Allahabad.

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6. Rakesh Chaturvedi, A/a 39 years S/o Shri S.C. Chaturvedi, R/o C-39/4, Dilshad Garden near CTB Hospital, New Delhi posted as Inspector, Central Excise, Div. I.E, Noida.
7. Sudhir Jauhari, A/a 40 years S/o Shri R.P. Jauhari, R/o 286/7 Thaparnagar Meerut posted as Inspector (audit) Central Excise, Headquarter Meerut.
8. R.C. Shukla, A/a 40 years S/o Shri R.P. Shukla, R/o 90-A/4 Baghambari, Allahabad, posted as Inspector (Legal) Central Excise, Headquarter, Allahabad.

Respondents.

Sri B.D. Mandhyan
By Advocates Sri Sudhir Agrawal
Sri

OA. No. 632 of 1997

Ram Prakash Shukla S/o Sri D.S. Shukla, R/o 633-C, Block Shyam Nagar, District Kanpur.

Applicant

By Advocate Sri A.K. Dave

Verus

1. The Union of India through the Secretary, Ministry of Finance, Government of India, New Delhi.
2. The Chairman, Central Board of Excise and Customs, North Block, New Delhi.
3. The Commissioner, Central Excise Commissionerate, Kanpur.
4. The Commissioner, Central Excise, Commissionerate, Bombay-II.
5. The Commissioner, Central Excise Commissionerate, Allahabad.
6. Iqbal Ahmad Naqvi, Superintendent, Central Excise, Range-Gola, District Lakhimpur Khuri,
7. Saligram Agrawal, Superintendent (Review) Central Excise Commissionerate, Sarvodaya Nagar, Distt. Kanpur.
8. K.D. Sharma, Superintendent, Central Excise Range XI, C/o HVOC Fazalganj, District Kanpur.

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9. Raghubans Lal Sahā, Superintendent, Central Excise Range, Gursahaiganj, Gursahaiganj, District Farrukhabad.
10. Arvind Kumar Pandey, Superintendent, Central Excise, Range VIKI, Mirala Nagar, District Kanpur.
11. Ravindra Kumar Joshi, Superintendent, Central Excise, District Ghaziabad.
12. Lal Mani, Superintendent, Central Excise, District Allahabad.
13. N.R. Gupta, Superintendent, Central Excise, Range I C/o The Elgin Mills Co. Ltd. No.1. Civil Lines, Kanpur.
14. Anil Kumar Srivastava, Inspector, Customs Airport, Varanasi.
15. Km. Nighat Khan Lodhi, Inspector, Central Excise-A, Ashok Marg, District Lucknow.
16. Sri Brij Nandan Saran, Inspector (Audit), Central Excise, District Bareilly.

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O R D E R

By Hon'ble Dr. R.K. Saxena, Member (J)

These are three cases involving the same question of facts and law. They are, therefore, taken up together and are being disposed of by one common judgement. The O.A.No. 42/97 has been filed by 12 persons; the O.A.No. 395/97 has been filed by 4 applicants; and O.A.No. 632/97 has been filed by one applicant. All these applicants are working as Inspectors in Central Excise and Customs under the respondents. They were initially appointed on different dates and different commissionerates. The chart below will indicate the date and initial posting of them and will also indicate the date of transfer from the commissionerates where they were initially appointed and transferred to the different commissionerates;

Sl. No.	Name of the applicant	Date of initial posting & place	Date of transfer and place
<u>/ O.A. No. 42 of 1997 /</u>			
1.	Naresh Kr. Gupta	30.11.78 Pune	03.02.84 Meerut
2.	Om Prakash Singh	12.12.78 Bombay	Sept.83 Meerut
3.	Anil Kr.Srivastava	15.03.79 Shillong	19.10.83 Meerut
4.	Harvir Singh Yadav	12.12.78 Bombay	02.11.82 Meerut
5.	Tara Dutta Joshi	02.05.89 Shillong	19.10.83 Meerut
6.	Ved Prakash Sharma	30.11.78 Pune	20.12.80 Meerut
7.	Diwakar Monocha	12.12.78 Bombay	17.12.82 Meerut
8.	Tushar Kant Banerjee	16.12.78 Pune	03.12.84 Meerut
9.	Chander Pal Yadav	10.11.78 Indore	Sept.82 Meerut
10.	D. Singh Dagar	30.11.78 Pune	06.08.82 Meerut
11.	V.P. Singh Yadav	02.12.78 Pune	06.03.84 Allahabad
12.	R.M. Pratap Singh	31.03.79 Calcutta	03.09.84 Allahabad

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/ O.A. 395 of 1997 /

1.	Dhananjay Singh	30.03.81	Shillong	14.08.84	Allahabad
2.	R.K. Singh	13.04.81	*	06.08.83	*
3.	Pramod Kumar	01.04.81	*	05.09.85	*
4.	Vinod Kumar Sinha	03.05.82	Bombay	03.12.84	*

/ O.A. 632 of 1997 /

1.	Ram Prakash Shukla	08.12.78	Bombay	04.11.81	Kanpur
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2. The case of the applicants is that they were initially posted at different places as are shown in the above chart; and were subsequently, on their own request, they were transferred to the commissionerates as are shown against their names. It is stated that another commissionerates' transfers could be made on the compassionate grounds with the approval of Board but subject to certain conditions which were laid down in the circular dated 20.5.1980 of Central Board of Excise and Customs. Some of the salient conditions which were required to be fulfilled for getting oneself transferred from one commissionerate to another, were as follows;

1. the concerned collectorates (now commissionerates) should agree to the transfer;
2. The transferee would not be entitled to count the service rendered by him in the former collectorate for the purpose of seniority in the new charge (emphasise supplied). In other words, he would be treated
3. as a new entrant in the collectorate to which he is transferred and would be placed at the bottom of the list of the temporary employees of the concerned cadre in the new charge;
3. On transfer, he would not be considered for promotion/confirmation in the old office;

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4. if he is a permanent employee, he would retain his lien in the old charge till he is confirmed in the new charge;
5. A written undertaking ²abide by the requisite terms and conditions was also required to be obtained from the employees seeking transfers before the transfers were actually effected.

3. All the applicants in the three cases had given the undertaking to accept the terms and conditions of the circular dated 20.5.1980 and, thus, their transfers had taken place to the commissionerates of their choice. They had been working since then as Inspectors in the new commissionerate where they were placed at the bottom in the seniority list. The problem arose in view of the letter dated 10.9.96 with respect to restructuring of group 'B' and 'C' posts in Central Excise and Customs departments, was undertaken. According to this letter dated 10.9.96, 716 posts of Inspectors were upgraded to the level of Superintendent in the Central Excise, and 429 posts of Preventive Officers in the Custom department were upgraded to the level of Superintendent (Grade B) in the pay scale of Rs.2000-3500 in various commissionerates. It appears that 29 posts of Inspectors in Allahabad, Kanpur and Meerut Commissionerates were upgraded to the level of Superintendents. We have deliberately avoided the figures of other commissionerates because in these cases, we are concerned only with Allahabad, Kanpur and Meerut Commissionerates. According to the scheme of restructuring, it was mentioned in the said letter dated 10.9.97 that the promotion for filling up the posts of Superintendents of Central Excise/Superintendent(Preventive) Customs should be made after following the laid down procedure by the Commissionerates/Customs Houses.

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It further appears from the letter dated 23.7.96 that the upgradation^{of}/posts was undertaken into two phases. In the first phase, ⁶ those Inspectors who had put in 17 years or more of service were taken into consideration; and in the second phase, the cases of the remaining Inspectors who were in the zone of consideration were to be taken up. The contention of the applicants is that they come in the second phase of upgradation but their cases are not being taken up by the respondents. They have averred that the procedure which is required to be adopted for promotion to the post of Superintendent, is laid down in the Rules called Superintendent of Central Excise Recruitment Rules, 1986 (herein-after referred as Rules). Rule 3 of the Rules prescribes the method of recruitment, age limit and other qualifications. It is also stated that the column 12 of the Schedule attached to the Rules speaks of the requirement of Inspector of Central Excise for the promotion to the post of Superintendent. It is pleaded that initially there were two categories, of Inspectors of Central Excise. One category was of ordinary grade and the other was of senior grade. These two categories have been merged into one w.e.f. 01.1.1986 and now the only requirement for promotion to the post of Superintendent is that a Inspector should have 8 years of regular service in the grade. The contention of the applicants is that they have put in more than 8 years of service and, therefore, their names should have been considered for the post of Superintendent but the respondents are denying the promotional benefit to the applicants treating them to be the new entrants in the Commissionerates where they were transferred, and the entire service starting from the initial posting is

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not being taken into consideration. It is also contended that the undertaking was forcibly obtained by the respondents before they were transferred to the new commissionerates and, thus, no legality should be attached to the undertaking. They have also pleaded that the dispute of seniority which has now been assigned to them, would separately be fought by them but at present they want that their cases for promotion under the scheme of upgradation, should be considered and be appointed as Superintendents on the basis of their total length of service in the department. It is also asserted that because the respondents have denied the benefit to the applicants of their entire service and thereby promotion to the post of Superintendent, they have approached ^{to} this Tribunal to seek direction, to the respondents to consider the question of upgradation of the applicants to the post of Superintendent on the basis of their total length of service in the department disregarding the seniority list prepared by the department. In O.A.No. 632/97, besides the reliefs as mentioned hereinbefore, also sought the relief that the present seniority list dated 02.12.1996 be modified and the seniority be determined from the date of initial regular appointment. Another relief sought is that the circular dated 20.5.80 issued by the respondents, be set aside.

4. In these two cases namely O.A. 42/97 and O.A. 395/97, the applications for impleadment were moved by the respondents no.4 to 8 which were allowed and they were impleaded as respondents. Thus, the counter-affidavits have been filed by the respondents no.4 to 8 and also on behalf of the official respondents. It may be pointed out that the official respondents filed the counter-affidavit

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in O.A.No. 395/97 through Sri S.L. Verma whereas the private respondents filed the counter-affidavit in O.A. 42/97. The plea taken by the respondents, both official and private, is that the applicants were transferred to new commissionerates on their own request, and after giving an undertaking for being placed at the bottom of the seniority list, they could not claim the benefit of the entire service starting from their initial appointment. They have further come with the averment that because the applicants have been placed at the bottom of the seniority list, they do not come within the zone of consideration and, thus, their claim should be rejected. It may be mentioned that in these cases, stay order was granted on 20.1.1997, 16.4.97 and 26.6.97 respectively. The respondents, therefore, also came with the prayer that the interim orders whereby the respondents were directed to consider the case of the applicants but were stopped from declaring the result, should be vacated. Since the pleadings were completed in the cases and they were fixed for final hearing, the prayer for vacation of the interim order was not pressed by the respondents.

5. The applicants filed rejoinder and supplementary rejoinders, reiterating the facts which were mentioned in the O.A. It was, however, pointed out that they did not challenge the promotions which were taken up in the first phase because that was limited to those Inspectors who had completed 17 years of service on 01.8.1996. The second phase is taken up subsequently and thus, Inspectors who had been appointed on or before 01.1.1982, are being taken up for consideration. Because the cases of the applicants was not taken up for consideration, the necessity for filing

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the O.A., ~~is~~ arose. It is also averred that the scheme of upgradation made the seniority list based on individual commissionerates, redundant because a cut-off date was fixed for promotion. The applicants have also pleaded that there is difference in concept of upgradation and promotion and, thus, what was valid for promotion, could not be taken into consideration for upgradation.

6. We have heard Dr. R.G. Padia, Sri A.K. Dave counsel for the applicants, Sri B.D. Mandhyan, counsel for the official respondents and Sri Sudhir Agrawal, counsel for the private respondents. We have also gone through the the record and the case law filed by the rival parties in their support.

7. So far as the dates and places of initial posting of the applicants and thereafter their transfers to different commissionerates are concerned, there is no dispute between the parties. It is also not in dispute that the applicants had tendered undertakings for being placed at the bottom of the concerned commissionerate where they were transferred and accordingly they were transferred and were placed at the bottom of the seniority list. This position which continued from the year 1980 and onwards till date, was never challenged or disputed. In a way, the applicants had accepted the seniority which was assigned to them on their transfer to the new commissionerates. The applicants of O.A.No. 42/97 and O.A. 395/97 are still coming with the averments that they are not challenging the seniority at present and would be filing a separate original application seeking the quashment thereof. Thus, there is no dispute so far as the facts of the cases are concerned.

8. The main question of dispute arises whether the applicants should be permitted to be considered for promotion to the post of Superintendent after taking the entire service rendered by them in the department into consideration. As is clear from the averments of the two sides, the applicants are making prayer for computing entire service starting from the initial appointment for consideration whereas the respondents have come with the plea that the seniority given to the applicants on their transfer to the new commissionerate, cannot be ignored. We have already mentioned while describing the facts, various conditions which were required to be fulfilled before an Inspector could seek transfer to another commissionerate even on compassionate ground. One of the conditions in the said circular dated 20.5.80 was that, that on transfer to the new commissionerate, he would be placed at the bottom of the seniority list. It is also mentioned that such a transferred Inspector would not be entitled to claim promotion in the commissionerate from where he was transferred. The learned counsel for the applicants are challenging now the said circular dated 20.5.1980 on the ground that such conditions could not be imposed; and the applicants could not be denied the promotion on the forceable undertaking obtained from them. We did not find any material which may indicate that the forceable undertaking was obtained from the applicants. Thus, the argument cannot be accepted.

9. It may be pointed out that this circular is not under challenge in O.A.s no. 42/97 and 395/97. Undoubtedly, it was challenged in O.A. 632/97. The applicants of the earlier two O.A.s no. 42/97 and 395/97 had moved misc.application for amendment of the O.A.s to seek the quashment of the said circular dated 20.5.1980 but,

subsequently the same were not pressed on the ground that such a relief was sought in the third O.A. which is being heard together. Anyway, the question arises whether the plea of quashment of circular dated 20.5.80 is entertainable, and if so, whether the said circular can be quashed. The learned counsel for the applicants only pointed out that the conditions which were imposed in the said circular, go counter to the requirement for promotion which has been laid down under the rules. The reliance has been placed on the decision dated 26.8.1997 of the Principal Bench given in O.A.No. 651/97 I.C. Joshi and Others Vs. Union of India and Others. In this case, it was held that the right for consideration of the petitioners who had become eligible to be considered under the statutory rules, could not be taken away by enforcing and administrative instructions. The Bench, therefore, declined to enforce the said circular. Anyway, it was nowhere mentioned that the circular was ultra-vires. Such a point had ofcourse arisen in the case of 'K.A. Balasubramanian Vs. Union of India and Others (1987) 4 A.I.C. 805', in which the Full Bench of the Tribunal while deciding such condition, came to the conclusion that under the Rules, regular service in the grade of Lower Division Clerk rendered in another unit, [&] would count for reckoning the qualifying service for purpose of promotion to the cadre of U.D.Cs. in the new unit to which an L.D.C. was transferred even on compassionate grounds. It was also observed that any general principle of administration, could not override the specific rules governing the promotions to the cadre of U.D.Cs. Even in this case, Full Bench, though disagreed with the conditions laid down in the circular, did not hold such circular as unconstitutional. The similar situation had arisen in the case of Smt. Renu Mullick

Vs. Union of India and Others 1993(6) S.C. 527" . In which the petitioner - Smt. Renu Mullick was Upper Division Clerk in the Central Excise and Customs, New Delhi. She was transferred on her own request to Allahabad and faced the same situation. The respondents in the said case took the same plea that the seniority of Smt. Renu Mullick was lowered because of the executive instructions dated May 20th, 1980. This aspect was considered by their Lordships of Supreme Court and it was observed that in accordance with the said executive instructions, the appellant (Smt. Renu Mullick) would come up for consideration for promotion as per her turn in the seniority list in the transferee unit. It goes to show that their Lordships had considered the conditions laid down in the said circular dated 20.5.80 and did not find them unconstitutional otherwise an observation to that effect would have been made. Thus, we are of the view that the challenge of circular dated 20.5.1980 even if allowed, cannot be held unconstitutional.

10. Now we come to the main controversy whether the applicants should be allowed to be considered for promotion to the post of Superintendent by taking the entire service rendered by them under the department or their service only of the new commissionerate should be taken into consideration. The learned counsel for the applicants have relied on the decision of the Principal Bench in O.A. 651 of 1997 decided on 26.8.97 in the case of Sri I.C. Joshi and Others Vs. Union of India and Others. Besides, the reliance has also been placed on the decision given by their Lordships in Smt. Renu Mullick Vs. Union of India and Others (supra). Interestingly, the respondents have also placed reliance on the decision of Smt. Renu Mullick

Vs. Union of India and Others. Besides, it has been contended that the ratio of the decision of Smt. Renu Mullick has not been properly appreciated by the Principal Bench in the case of Sri I.C. Joshi Vs. Union of India and Others(supra). Thus, we find that these are the two decisions which should be analysed and found out if the applicants get any benefit out of them. It may not be out of place to mention that Jaipur Bench had also considered this issue in 'V.P. Joshi Vs. Union of India and Others (1996) 32 A.I.C. 17' while deciding the O.A. on 11.7.1995. The Jaipur Bench had taken the view that the entire service period of the Inspector, if he was transferred to new commissionerate, cannot be taken into consideration. The case of K.A. Balasubramanian Vs. Union of India and Others(supra) was cited before the said Bench and, thus, we also went through the said decision of Full Bench though it was not cited by any of the parties. The question before the Full Bench was whether the services rendered in past by the Lower Division Clerk can be taken into consideration after he was transferred to a different place. The similar conditions that on transfer from one place to another, the L.D.C. would be placed at the bottom of the seniority of the new place, was obtainable in ²that case. The Full Bench, however, came to the conclusion that promotion is governed by a particular rule of Service Rules and, thus, the executive instructions whereby the period was curtailed, could not be allowed to supersede the rule. Thus, a very specific and clear view was taken by the Full Bench in the said case. The question, however, arises whether the law laid down by the Full Bench is upheld or superseded by the decision of the Hon'ble Supreme Court in the case of Smt. Renu Mullick. We have already briefly stated the

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facts of the case of Smt. Renu Mullick but at the cost of repetition, we would like to refer those facts again to find out the answer which has been posed above.

Smt. Renu Mullick was appointed as L.D.C on 17.12.1974 in the Directorate of Statistics and Intelligence, Central Excise and Customs, New Delhi. She was promoted to the post of U.D.C. on 10.5.1981 and was transferred to the Allahabad on 30.7.1987 where she joined as U.D.C. on 04.8.1987. Because of the executive instructions dated 20.5.1980 (which is also made applicable in the present case before us), she was placed at the bottom of the seniority and she had also given a written undertaking to abide by the requisite terms and conditions. Smt. Renu Mullick did not make any grievance about the fixation of her seniority in the new charge at Allahabad. In the year 1991, Smt. Renu Mullick alongwith several other U.D.Cs was considered for promotion to the post of Inspector by the Departmental Promotion Committee in accordance with the Rules called the Central Excise and Land Customs Department Group 'C' Posts Recruitment Rules, 1979. Rule 4 of ~~these~~ rules provided about the promotion by selection from U.D.C. with 5 years service or U.D.C. with 13 years of total service as U.D.C. and L.D.C. taken together subject to the condition that they should have put in a minimum of two years of service in the grade of U.D.C. Smt. Renu Mullick was promoted as Inspector on 11.11.1989 and continued in that capacity till 20.2.1992 when Additional Collector (P & V) Central Excise and Customs, Allahabad, passed an order reverting the appellant from the post of Inspector. The plea taken by the department before the Tribunal, was that on transfer from Delhi to Allahabad, the services rendered by Smt. Renu Mullick were wiped off for all purposes including for

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determining her eligibility under the rules for the promotion to the post of Inspector. It was in context of these facts that their Lordships considered the legality of the circular dated 20.5.1980 and also the eligibility and zone of consideration of Smt. Renu Mullick with respect to the aforesaid rules. We have already observed that the circular dated May 20th, 1980 was neither held illegal nor unconstitutional. The clear observation of their Lordships was that the transferee was to be treated as a new entrant in the Collectorate to which she was transferred for the purposes of the seniority. It was clarified by their ^{Lordships} ~~same~~ ^{would} that the appellant (Smt. Renu Mullick) ~~come~~ ^{would} up for consideration for promotion as per her turn in the seniority list in the transferee unit and only if she had put in 2 years service in the category of U.D.C. These observations made it ample clear that not only that the legality of circular dated 20.5.80 was maintained but its effect of placing the transferee at the bottom list was also upheld. The consideration of the name of Smt. Renu Mullick was allowed by their Lordships on her turn in the transferee unit only. The condition of eligibility as is pointed out earlier through Rule 4 was that one must have put in 2 years of service in the category of U.D.C. The observation of their Lordships ^{is} ~~she~~ ^{is} also considered, her past service in the previous collectorate could not be ignored for the purpose of determining her eligibility as per Rule 4 aforesaid, is of great importance. The eligibility to a transferee U.D.C. was to be reckoned only when one had completed requisite period of service at the transferee unit. ^{Thus} what emerges from these observations is that the eligibility should be determined taking into consideration once ^{position} ~~place~~

in the transferred unit and for that purpose in transferred commissionerate in this case. No doubt, the promotion rules to the post of Superintendent, Central Excise required 8 years regular services in the grade but it should be taken into consideration in the light of one's posting at the transferee commissionerate.

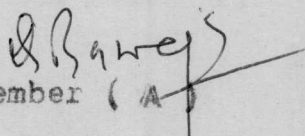
Sri B.D. Mandhyan and Sri Sudhir Agrawal, counsel for the respondents ^{have} ~~are~~ vehemently argued that the completion of 8 years ^{of} regular service in the grade in the department alone would not be sufficient for granting promotion to the applicants to the post of Superintendent. According to their arguments, the applicants are required to fulfil the eligibility as well as the criterion of zone of consideration. According to ~~them~~, the applicants may be eligible because of their having completed 8 years of service but they do not come in the zone of consideration because they were placed at the bottom seniority in the transferee commissionerate. By analysing the facts of Smt. Renu Mullick and considering the ratio laid down by their Lordships of Supreme Court, we find that the submission made by the learned counsel for the respondents is weighty and substantial. The result is that the decision rendered by the Principal Bench in O.A. 651/91 goes counter to the law laid down in Smt. Renu Mullick's case.

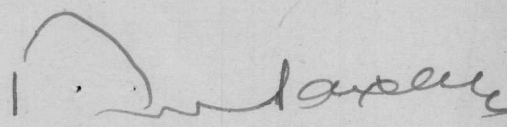
11. As is pointed out earlier, the first decision was of Jaipur Bench in the case of V.P. Joshi and Others Vs Union of India and Others and if the Principal Bench disagreed with the same, the same should have been referred to a Larger Bench. Assuming that the same point is raised with respect to our findings, we categorically state that we are following the first decision of the Tribunal given by the Jaipur Bench. Not only this, the *analysis made above*

of the facts and ratios of the decision in Smt. Renu Mullick's also goes in favour of our conclusion. Thus, we are in respectful disagreement with the decision of principal Bench. Similarly the law laid down by the Full Bench in 'K.A. Balasubramanian (supra)' stands superseded by this decision of the Hon'ble Supreme Court.

12. In view of the discussion made above and the legal position as is pointed out hereinbefore, We come to the conclusion that the applicants cannot be considered for promotion to the post of Superintendent unless they not only qualify 8 years of service but also come within the zone of consideration in their respective new commissionerates. Thus, we conclude that the present O.A.s are devoid of merits and are dismissed. No order as to costs.

13. The stay orders passed in the three cases, stand vacated.


Member (A)


Member (J)

/M.M./