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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD

Registration no. 296 of 1986.

Sri Ka.K.Saxena and others Applicants.

Versus

Union of India (Ministry of Finance)
and others.

..... Opp. parties.

Hon'ble D.S.Misra-Member (A)

Hon'ble G.S.Sharma-Member (J)

(By Hon'ble D.S.Misra-Member)

In this application under section 19 of the Administrative Tribunals Act 13 of 1985 the applicants have challenged the holding of a Review Departmental Promotion Committee (in short D.P.C.) on 14th July, 1986 by the respondents for selection to 17 posts of Inspectors Central Excise and customs under 25% promotion quota for the year 1986.

The brief facts of the case are that the Annual D.P.C. of 1986 of combined Kanpur-Allahabad and Meerut, Excise Collectorates for Promotion of Ministerial staff and lady searcher to the grade of inspectors was held on 19.5.1986. For this purpose Collector Central Excise Kanpur is the cadre controlling authority. The recommendations of the D.P.C. were put up to the Cadre Controlling authority for approval before releasing the names of the selected candidates for promotion to the grade of Inspectors in the respective collectorates. The collector Central Excise Kanpur in his capacity as the cadre controlling

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authority did not approve the panel for promotion to the post of Inspectors prepared by the D.P.C. on 19.5.1986 and made reference to the Central Board of Excise and Customs (hereinafter referred to as Board) which gave certain directions by which a review D.P.C. meeting was held on 14.7.1986. The 8 applicants working on different posts under Collector central Excise, Allahabad have challenged the validity of the directions of the board in this petition and have alleged that the holding of the review D.P.C. is illegal, malafide, without jurisdiction, void and accentuated by ulterior motives. The applicants have further alleged that the panel prepared for two other posts by the same D.P.C. on 19th May, 1986 had been acted upon but the results of the D.P.C. for promotion to the post of Inspectors have not been declared. It is also alleged that the appointing authority in respect of Inspectors is Deputy Collector (Personnel and Establishment) Central Excise Allahabad and as such the collector central Excise Kanpur and the Board have no jurisdiction or authority to interfere with the panel prepared by the D.P.C. held on 19.5.86.

The respondents have contested the petition and in their reply they have confirmed the holding of a D.P.C. on 19.5.1986 for promotion to 17 posts of Inspectors under the three Collectorates of Allahabad/Kanpur and Meerut. It has been contended that the D.P.C. is a recommendatory body and the recommendations made by it are subject to the approval of the Cadre Controlling Authority. In the instant case the Cadre Controlling Authority did not

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agree with the findings of the D.P.C. and felt it necessary to seek the advice and guidance of Central Board of Excise and Customs New Delhi. This action was taken in accordance with the procedure prescribed in para IX of the Department of Personnel and Administrative Reforms O.M. dated 30th December, 1976 (copy filed as Annexure C.A.D).

It is contended that the reasons given for holding a Review D.P.C. have been clearly explained in the letter dated 13.6.1986 of the Collector of Central Excise Kanpur addressed to the Secretary Central Board of Excise and Customs New Delhi, a copy of which has been placed as Annexure CA(A). A copy of the Board's reply dated 18th June, 1986 permitting the holding of Review D.P.C. has been filed as Annexure CA(B). The respondents have denied the allegations contained in para 6(a) of the application that any writtendirection recommending some relatives of the high-ups had been received from the Board. The respondents have denied the contents of para 6(j) of the application and have stated that they are based on false, baseless and mischievous allegations published in a news paper on 26.6.1986. It is also contended that the review D.P.C. proposed to be held on 14.7.1986 consists of members as laid down in the Notification dated 13.1.1984, copy filed as Annexure C.A.(C). It is asserted that the D.P.C. convened for 14.7.1986 was convened to hold the selection and was authorised to decide its own method and procedure for objective assessment of the suitability of the candidates. The respondents have contended that the Government of India Department of Personnel and Administrative Reforms OM dt.

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30.12.1976 (annexure CA(D)) prescribes the conditions under which the review D.P.C. may be convened. Amongst other things, the review D.P.C. may be convened to rectify certain unintentional mistakes e.t.c.,. The allegations contained in para 6 (o) (p) (q) (r) (s) (t) (u) (v) and (w) of the application have also been seen.

It is also contended that the application has been filed only on the basis of hypothetication and since no final orders have been passed, the application is pre-mature, not maintainable and liable to be dismissed with costs.

The applicants filed a rejoinder affidavit in which they have denied the claim of the Respondents that Collector Kanpur was ^{the Cadre} /Controlling authority in respect of Inspectors. In support of this contention, copy of Notification dated 7th May 1986 of the Government of India Ministry of Finance Department of Revenue has been filed as Annexure RA- (1) . It is contended that the proceedings of the D.P.C. should have been produced before the Deputy Collector (Personnel and Establishment) who is the appointing authority and not before the Collector Central excise Kanpur. They have challenged the action of Collector Central excise Kanpur ⁱⁿ /referring the matter to the Secretary Central Board of excise and Customs, who have illegally interfered with the matter and was instrumental for holding the review D.P.C.. It is contended that since the power to make appointment vested in the Deputy Collector central Excise, the action of the Collector Central Excise Kanpur and the Board was illegal. A copy of the relevant extract of Departmental circular dated 30th December, 1976

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has been filed as Annexure R.A.-3. They have also alleged that the reasons given in the letter dt. 13.6.1986 of Collector Kanpur to the Secretary Central Board of Excise and Customs are wholly irrelevant for the purpose of convening the Review D.P.C.. It has been contended that the contents of para 2(1) of the said letter are wholly false as the post in question is a selection post and merit alone can be the criteria for selection and not the criteria of seniority cum fitness. They have also contended that the observations of the Collector Kanpur in para 2(iii) of his letter against the outstanding entries of stenographers were wholly prejudicial and should be rejected. They have also challenged the constitution of the new D.P.C. and have stated that the constitution of the previous D.P.C. was fully valid in terms of circular dated 30.12.1976 referred to earlier. They have also contended that the review D.P.C. cannot go into the merits of the assessment made by the previous D.P.C. as laid down in letter dt. 30.10.1974 of the Board, copy filed as Annexure R.A.'iv) .

At the time of arguments, learned counsel for the applicants laid emphasis on the following points:

1. Collector Central Excise Kanpur had no jurisdiction or authority to ignore the recommendations of the D.P.C. held on 19.5.86 and to make a reference to the Central Board of Excise and Customs.
2. As the Deputy Collector (Personnel and Establishment) Central Excise Allahabad is the appointing authority in respect of the post of Inspectors under the Excise Collectorate of Allahabad, Collector Kanpur Central Excise and Central Board of Direct Taxes had no authority to interfere or take away the statutory powers given to the Dy. Collector Central

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Excise (Personnel and establishments)
Allahabad.

3. The direction for holding review D.P.C. was illegal, void and mala fide.
4. The constitution of the review D.P.C. was illegal and therefore its recommendation should be declared illegal and void.

In support of points 1 and 2 learned counsel for the applicants has relied on the following cases:

a) A.I.R. 1958, S.C. page 667 (Mahadaya Premchandra vs. Commercial Tax Officer of Calcutta and another). In this case the assessment order was to be passed by the Commercial Tax Officer, but the Assistant Commissioner, higher authority, issued certain directions to the Commercial Tax Officer and the Hon'ble Supreme Court set aside the assessment order on the ground that the Commercial Tax Officer did not exercise his own judgment in the matter.

b) A.I.R. 1970, S.C. page 1896 (Purtapur and Co. Ltd. vs. Cane Commissioner of Bihar). In this case the power of reservation of Cane area was given to the Cane Commissioner and on some directions being given by the Chief Minister of the State, the Hon'ble Supreme Court held ^{that} the Chief Minister had no concern and the orders should have been passed by the Cane Commissioner, itself.

c) A.I.R. 1970, S.C. page 1498 (Orient Paper Mills Ltd. vs. Union of India) In this case the assessment was made by the Deputy Superintendent under the central Excise and salt Act on the instructions of Collector and the Hon'ble ^{Supreme} Court held the assessment proceedings illegal and void

on that ground.

d) A.I.R. 1961, S.C., 1506 (A.V. Venkateswaran Collector of Customs Bombay Vs. Ramchand Sobhraj Wadhvani and another) in which it was held that a writ petition can be filed, even if an alternative remedy is available, whereof the impugned order is passed by an authority without jurisdiction and against the principles of natural justice.

In reply, learned counsel for the respondents pointed out that a perusal of the letter dated 13.6.1986 of Collector Central Excise Kanpur and its reply dated 18.6.1986 would show that the central Board of Excise and Customs had carefully examined the proposal of Collector Central Excise Kanpur but had not agreed to the proposal in toto. It agreed to the proposal to convene a Review D.P.C. for promotion to the grade of Inspectors Central Excise but did not agree to assigning of marks to the candidate in the interview. A copy of the central excise and customs Department Group (C) posts recruitments Rules, 1979 was also received with the reply dated 18.6.1986 of the under Secretary Central Board of Excise and Customs. In these rules, the constitution of the D.P.C. for group 'C' posts has been laid down. It is argued that though the constitution of the previous D.P.C. had not been questioned, there is no bar to a review D.P.C., which is permissible under the department of Personnel O.M. dated 30.12.76. The circumstances under which the proceedings of the D.P.C. can be reviewed have been laid down in para XV(6) of the aforesaid O.M. The main reason given in the letter of Collector Central Excise dated 13.6.1986 for holding a Review D.P.C. is that since

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the candidates of all the three Collectorates were involved in the selection, the absence of a member representing his Collectorate might have perhaps been one of the causes for unimpressive performance by the candidates of that Collectorate resulting in their being found unfit which ultimately had a bearing on the final selection. According to the constitution of the D.P.C. as laid down in the recruitment rules of 1979 mentioned earlier, the Addl. Collector Meerut Collectorate was a member of the D.P.C. but he could not attend the meeting. Although the validity of the proceedings of the DPC held on 19.5.1986 can not be challenged merely on this ground but the proceedings of the D.P.C. had resulted in supersession of many candidates leading to dis-satisfaction and complaints which would have demoralising effect on the staff as well. The letter had also pointed out that out of the candidates from sl.no.1 to 17 only one candidate has been put in the panel and the remaining 16 candidates have been superseded. Further, the candidate at serial no. 48 had occupied the top position followed by the candidates at sl.nos. 8 to 20 etc. . In view of this , the observations of Collector Central Excise Kanpur can not be considered biased, or unreasonable ^{In support of this, the} Learned counsel for the respondents has placed reliance on A.I.R.1976S.C., 2426 (Dr . G.Sarana vs. University of Lucknow and others). In this case , the selection made by the selection Committee for the post of Professor of Anthropology in the Faculty of Arts of the University was challenged on the ground of bias and partiality . The Hon'ble Supreme Court

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held that what has to be seen in a case, where there is an allegation of bias in respect of a member of an Administrative Board or Body, is whether there is a reasonable ground for disbelieving that he was likely to have been biased.

for the applicants
learned counsel emphasised that Deputy Collector Central Excise (Personnel Administration) Allahabad was the competent authority to take a decision on the findings of the D.P.C. held on 19.5.1986 as he was the appointing authority in respect of Inspectors to be appointed under the Allahabad Collectorate. It was further argued that the action of the Collector central Excise Kanpur and the board had not allowed the subordinate authority to exercise its powers and therefore this was an improper exercise of power by the higher authority. Learned counsel for the applicant also emphasised that the Tribunal had jurisdiction to entertain the application of the applicant as the applicant had genuine apprehension that the Review D.P.C. was being held illegally and was prejudicial to their interest.

We have considered the arguments of the learned counsel for the parties and perused the material on record. In the present case, Collector Central Excise Kanpur has pointed out bias in favour of some candidates and has felt the need for more objectivity as well as representation by a member of the committee, who could not be present

due to various reasons.
due to various reasons.

The order passed by the Board permitting the holding of Review D.P.C. which would consist of members as defined in the

recruitment rules 1979 can not be considered as

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prejudicial to the interest of the applicants.

We also find that of the 17 candidates selected by the previous D.P.C., only eight applicants have challenged the holding of the Review D.P.C.. We are unable to agree with the argument of the learned counsel for the applicants that the review D.P.C. would be prejudicial to the interest of the applicants. The fear of the applicants in this regard appears to be hypothetical at this stage. The applicants will have ample opportunity to represent against the findings of the Review D.P.C. and may also approach this Tribunal, if it is found by them that the Review D.P.C. has failed to give its finding objectively and impartially. We have also considered the case law cited by the learned counsel for the applicants and feel that none of the cases is applicable in the present case. The argument of the learned counsel that the Deputy Collector Central Excise (Personnel and Establishment) at Allahabad was the competent authority to approve or reject the recommendation of the D.P.C. is also not valid as the recruitment rules 1979 clearly prescribe that where there is a common cadre for two or more collectorates, the senior most Collector Central Excise would function as the cadre controlling authority and his approval would be necessary before the appointing authority would issue the order of appointment.

We are, therefore, of the opinion that the procedure followed in respect of the selection for the joint cadre of three Collectorates of

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Allahabad/Kanpur and Meerut does not suffer from any irregularity or illegality and there is no reason to interfere with it at this stage.

For the reasons mentioned above, the application under section 19 of the Administrative Tribunals Act is premature and has also no merit. It is accordingly dismissed and we direct the parties to bear their own costs.

[Signature]
MEMBER (A) 29/8/86

[Signature]
MEMBER (J) 29/8/86

J.Singh/29.8.1986.