

I
21

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

**ORIGINAL APPLICATION NO. 154/2004
JODHPUR THIS DAY 5th February, 2010**

CORAM:

**HON'BLE MR. JUSTICE SYED MD. MAHFOOZ ALAM, JUDICIAL MEMBER
HON'BLE MR. V.K. KAPOOR, ADMINISTRATIVE MEMBER.**

M.B. Mathur S/o Late Shri J.P. Mathur, aged about 56 years, r/o Q. No.2, Customs Colony, Jodhpur, presently working on post of Supdt. in the office of Central Excise & Customs Division, Jodhpur.

.... Applicant

For Applicant : Mr. S.K. Malik, Advocate.

VERSUS

1. Union of India through its Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi.

2. Chairman, Central Board of Excise and Customs, Department of Revenue, Government of India, North Block, New Delhi.

3. Secretary, Department of Personnel and Training, New Delhi.

.... Respondents.

**For Respondents 1 to 3 : Mr. K.D. S. Charan, proxy counsel for
Mr. Kuldeep Mathur, Advocate.**

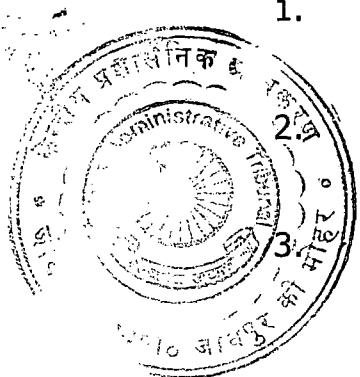
(Per Mr. V.K. Kapoor, Administrative Member)

Shri M.B. Mathur s/o late Shri J.P. Mathur, aged 56 years, r/o Q. No.2, Customs Colony, Jodhpur has moved this OA against impugned orders of the respondents dated 10.12.2002, 01.02.2003 (Ann. A/1, A/2). The reliefs claimed by the applicant are as follows:-

"(i) by an appropriate order or direction, the entire relevant record of the respondents, pertaining to the case, may be summoned.

(ii) by appropriate order or direction, the promotion orders dated 10.12.2002 and 01.02.2003 may kindly be revised to the extent that it grants promotion to more Superintendent Central Excise to maintain 6:1:2 ratio among SCE, SC and CA as decided by the Hon'ble Supreme Court in order dated 22.11.1996.

(iii) by appropriate direction and order, the promotion orders dated 10.12.2002 and 01.02.2003 may kindly be quashed and set aside to the extent that it granted



V.K. Kapoor

- 2 -

promotion to the candidates belonging to SC category exceeding quota of 15% reservation provided for the said category and junior to applicant.

(iv) by an appropriate order or direction the respondent may kindly further be directed to grant promotion to applicant to the post of Assistant Commissioner of Central Excise w.e.f. the date when the S.C. candidates junior to applicant have been granted such promotions with all consequential benefits to him.

Cost of the O.A. may be awarded to the applicant. Any other appropriate order or relief which this Hon'ble Tribunal deems fit and proper may kindly be granted in favour of the humble applicant."

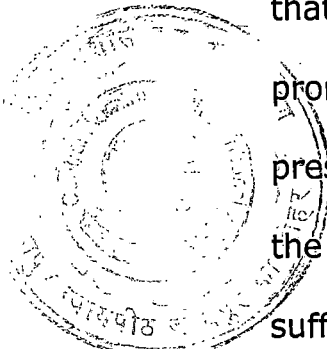
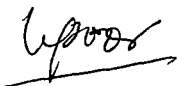
2. The brief facts of case are that applicant is presently working as Superintendent in the office of Central Excise & Customs Division, Jodhpur. Applicants' version is that some Superintendents in deptt. were promoted vide orders dated 10.12.2002 (Ann.A/1) and 01.02.2003 (Ann.A/2), but applicant's name was not included in the promoted list. It is averred that he was assessed as 'fit' by the DPC, but due to lack of vacancy, his name could not be included in the list of promotion order. Furthermore SC/ST candidates junior to the applicant got promoted to grade of Asstt. Commissioner but no general junior candidates were promoted. The seniority list of persons to be promoted on Asstt. Commissioner, Central Excise is prepared on 28.8.1996 on All India basis (Ann.A/4). Out of available vacancies, 50% are filled by promotion; ratio of promotion is 6:1:2 for Superintendent Central Excise (SCE), Supdt Customs (SC) and Customs Appraisers (CAs) respectively. It is averred that Customs Appraisers (CAs) were excessively promoted and Supdt of Customs (SCs) had suffered loss of vacancies. There are circulars relating to reservation of vacant promotional posts dated 02.7.1997, 01.7.1998, 11.7.2002 (Ann.A/6 to A/8). This was wrongly interpreted, general posts of Asstt. Commissioner was filled by reservation quota. The respts considered first 43 SC and 08 ST candidates for unreserved vacancies in order dated 10.12.2002; though these candidates have




-3-

availed of reservation benefit. In view of these anomalies, applicant has requested that promotion orders dated 10.12.2002, 1.2.2003, 2.7.1997 and 11.7.2002 being illegal, be quashed.

3. (a) The respondents have filed reply through their counsel in which it is stated that non-inclusion of applicant's name in promotion list to the grade of Assistant Commissioner on 10.12.2002. Applicant was found fit by the DPC, but he could not find place in the promotion list because of lack of vacancy. It is averred that the SC/ST candidates junior to him are promoted in the grade of Assistant Commissioner in the deptt. Respondents have pleaded that present OA is barred by limitation as per Section 21 of AT Act. The respondents submitted that no officer junior to the applicant belonging to general caste was promoted. The reason for promoting SC/ST candidates more than prescribed quota assigned as 6:1:2 is that earlier from 1980 to 1997, the Customs Appraisers and Superintendent of Customs (prev) had suffered loss of vacancies. It was decided with Board's approval to remove imbalance by earmarking vacancies of Astt. Commissioners in each batch of subsequent promotions. The promotion orders were issued on 10.12.2002 promoting 594 officers in the grade of Assistant Commissioners that included Superintendent Central Excise (330), Appraisers (171), Superintendents of Customs (preventive) and Customs Appraisers was also made good. Applicant has not been ignored for promotion; all directions of DoPT vide 11.7.2002 and Supreme Court dated 22.11.1996 are followed. The general category officers junior to applicant were not promoted; SC/ST candidates within normal zone of consideration cannot be denied promotion on

the plea that post was not reserved. The SCE have not been discriminated against CAs, SCs (preventive). Presently, there are 10 vacancies in the department in grade of Asstt. Commissioner; applicant's name cannot be covered in promotion zone as there are many senior officers above him in A1 seniority of Superintends grade.

(b) The applicant in rejoinder stated that vacancies were available with respondents SC (27), ST (7) were promoted in excess in respect of SCE. There was no backlog in the promotion quota for Supdts of Customs, Central Excise. The Apex Court in judgment V.K.Sirothia Vs. UOI & Ors, has held that reservation is not applicable in up-gradation of posts as a result of cadre restructuring.

4. Heard arguments of the counsels from both sides. They have almost repeated the narration submitted as per record. Applicant has placed his reliance upon Supreme Court judgment AIR 1996 SCC 1189 Ajit Singh Juneja case and Government of India circular dated 01.7.1998 which does not allow filling of unreserved slots by the reserved candidates who have availed benefit of reservation. Applicant has also quoted 1996 (67) ECR 685 (SC) All India Federation of Central Excise vs. UOI & Ors. The respondents have also argued to non-availability of vacancies for promotion of general class officers of SEC/SC/CAs etc, but earlier from 1980 to 1997, these very officers suffered loss of vacancies. It is further averred by the respondents that nowhere applicant is ignored for promotion; nor promotion to junior officers in general category was given; furthermore, SC/ST candidates cannot be denied promotion on the plea that post is not reserved. The respondents have clarified that firstly eligible persons

lyvor

-5-

senior to applicant would be promoted on Asstt. Commissioner's post in general category; applicant's case would follow subsequently.

5. The present case pertains to Customs & Central Excise Deptt.; applicant was working as Supdts. in Customs & Central Excise Division, Jodhpur. Applicant's contention is that some Supdts. in department were promoted vide orders dated 10.12.2002 & 01.02.2003 (Ann.A/1,A/2), but his name was left out in the promotion list. The respondents have also agreed to the fact that applicant's name was considered in the DPC held on 26,27,28 Nov., 2002, he was assessed as 'fit', but he could not find place in this list due to lack of vacancy. Applicant's name could not be included in this promotion order due to non-availability of vacancies. Applicant has clarified that out of available vacancies, 50% are to be filled by promotion in the ratio of 6:1:2 for Supdts of Central Excise (SCE), Supdts of Customs (SCs) and Customs Appraisers (CAs) respectively. It is vehemently contended by the applicant times again that CAs were promoted excessively, but Superintendents of Customs (SCs) had suffered loss of vacancies.

6. The applicant has basically challenged the mode of promotion as general post of Assistant Commissioners were filled by the reservation quota and the respondents have considered firstly 43 SC & 08 ST candidates for general/unreserved vacancies in order dtd. 10.12.2002, though these candidates had availed of reservation benefit. The respondents have submitted that no Supdts junior to the applicant belonging to general category were promoted. The applicant has emphatically contended that Scheduled Caste/Scheduled Tribe candidates (Supdts Central Excise/Customs) were promoted against

Upover

-6-

general vacancies of Assistant Commissioners. Furthermore, the SC/ST candidates (Supdts) who were junior to applicant were promoted to unreserved cadre vacancies. Respondents' contention does not find much force that no general category candidate junior to applicant was promoted; this contention is not logical as the SC/ST candidates junior to applicant were promoted as Asstt. Commissioner on general/unreserved vacancies. This is contended by respondents that earlier while holding DPC in August 1997, the Customs Appraisers & Superintendents of Customs (Preventive) had suffered loss of vacancies, thus imbalance was removed by earmarking the vacancies of Assistant Commissioners in each batch of subsequent promotions with Board's approval. It is clarified by the respondents that promotion orders were issued on 10-12-2002 promoting 594 officers in the grade of Assistant Commissioners. Moreover, the unfilled backlog in the promotion quota of Superintendents of Customs(Prev.) & Customs Appraisers was also said to be made good. Applicant's name in the un-reserved vacancies (289) comes at Sl. No. 2567; whereas officers upto sl. No. 2555 would have fallen in the zone of consideration for promotion to Assistant Commissioner's grade. The Promotions to the Assistant Commissioners posts were made upto Sl. No. 2479 as eligible candidates seniority in all India seniority list of SCEs, while applicant was placed at sl. No. 2567. Respondents' plea is that no junior (general category) candidate below the applicant had been promoted to the grade of Assistant Commissioner of Customs and Central Excise. Respondents' further plea is that there were only 10 vacancies as on date in the grade of Assistant Commissioner, thus applicant's name cannot be covered in the zone of consideration as

Upoor

-7-

there are many senior officers of general category above him. This contention on respondents' part is true to a certain extent; but the interests of general category candidates cannot be overlooked by ignoring their right to promotion on vacant/unreserved posts.

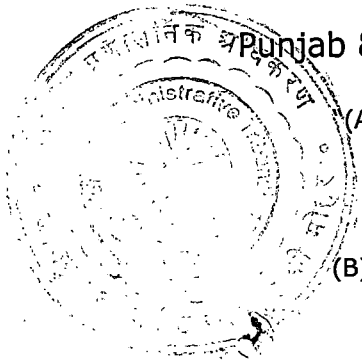
7. As per respondents, total vacancies were calculated as 594 for promotion to Asstt. Commissioner's posts; promotion orders issued on 10-12-02. Respondents' view is that if an unreserved vacancy arises in a cadre; the SC/ST candidates cannot be denied promotion on the plea of post not reserved. The instructions of Department of Personnel and Training OM No. 36028/17/2001-Est. (res) dated 11-7-02, give preferential treatment to the SC/ST candidates. But in normal conditions, with large scale of existing vacancies, the interests of general candidates should not be overlooked. The instructions relating to reservation are to be followed while making promotions, but not at the cost of general category eligible candidates. It is true that no candidate of general category junior to applicant were promoted, but promoting reserve category candidates over & above others would certainly give vent to dissatisfaction amongst these general candidates; thus promotion to the reserve (SC/ST) category candidates is not to be given in an arbitrary manner. Thus, respondents' version cannot be accepted that if an un-reserved vacancy arises in a cadre; SC/ST candidate in the feeder cadre cannot be denied promotion. The general category candidate should not be by-passed on the promotion post, vacancy for unreserved category.

8. The excessive promotion to the Customs Appraisers (CAs) and other candidates beyond the prescribed quota cannot be accepted in a

Upover

-8-

legal spirit. On the name of adjustments in the backlog, the prescribed norms should not be violated. Furthermore, the junior SC/ST candidates (Supdts) cannot be placed above the rank/seniority of the applicant or likewise general category candidates. Thus respondents' action in not applying post based reservation/roaster for promotion is contrary to DoPT circular dated 02.7.1997 and in violation of Apex Court's judgment in the case of R.K. Sabharwal Vs. State of Punjab & Others 1995 AIR (SC) 1371 and All India Federation of Central Excise Vs. Union of India & Ors. 1996 (67) ECR 685 (SC). The directions of Apex Court in the case of Ajit Singh Januja & Ors. vs. State of Punjab & Ors. 1996 AIR (SC) 1189 have not been followed by the respondents in its letter and spirit as promotion roaster is not suitably adopted. The Apex Court in the case of Ajit Singh Januja and Ors. vs. State of Punjab & Ors. have made the following observations:-



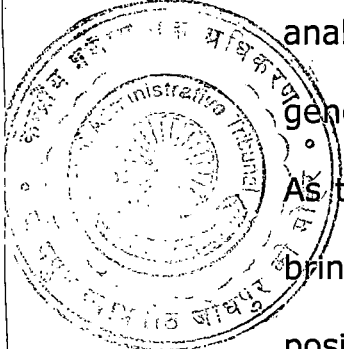
- (A) Constitution of India, Art.16- Reservation-Quota for Scheduled Caste and Backward Class fixed- Roster system applied-Further stipulation that roster is to be implemented in the form of a running account from year to year- Roster does not survive once prescribed percentage of reserved posts are filled.
- (B) Constitution of India, Arts.16(4),335-Promotion-General category post in higher grade-Scheduled Caste or Backward Class candidate appointed/promoted to lower grade post on basis of reservation and system of roster-Cannot claim promotion to higher grade general post on basis of seniority in lower grade achieved because of accelerated promotion/appointment by applying roster."

The aforesaid directions of the Apex Court do not allow filling of unreserved slots by the reserve candidates who have availed the benefit of reservation and roaster at any initial stage. Therefore, these promotion orders dated 10.12.02 and 01.02.03 need proper and careful scrutiny. Proper avenues be created to ensure that the applicant and likewise similarly situated eligible candidates (Superintendents) find right place in the existing scheme of things. The respondents' plea does not find much legal force as the

Upadhyay

imbalance in promotion quota is reflect owing to violation of prescribed norms. The respondents' contention cannot be accepted in toto that there are only 10 vacancies in department in the grade of Assistant Commissioners, the prescribed norms of department and Government of India would be suitably followed. Thus, promotion of applicant and similarly situated persons/officers (Superintendents Customs / Central Excise) be ensured by the respondent department to the post of Assistant Commissioner of Central Excise from the cut off date as per their seniority and eligibility.

9. To reiterate, there is need to rationalize the whole promotion channel; this job could better be done by the respondents by way of analyzing the existing vacancies, thereby ensuring promotion of the general candidates on the vacant posts of Assistant Commissioners. As the general category candidates have been ignored promotion, this brings feeling of discontentment amongst them. Therefore, vacant positions for the promotion posts be worked out as on the cut off date over all vacancies for the posts of Assistant Commissioners should be calculated; and vacancies be filled up in phased manner by adopting the circulars/instructions of DOPT (Govt. of India) and following the roster system properly. It is clarified that as on date 27 officers of SC category and 07 officers of ST category were promoted in excess in respect of Supdt. of Central Excise. These and any other excess promotions can be regularized by working out the total existent vacancies, rationalizing the said setup and working out the vacant positions, thereby channelising the whole setup/system. The respondents are directed to work out details and rationalize the



Upad

—10—

promotions of general category eligible candidates on vacant posts of Assistant Commissioners while following the roster/reservation quota as per prescribed norms and Government of India directives.

10. In the light of observations made above, no interference is called for in the matter at our level. Resultantly, the present O.A fails and the same is hereby dismissed. No order as to costs.




[V.K. Kapoor]
Administrative Member


[Justice S.M.M. Alam]
Judicial Member

/Rss/

RLC

[Signature]

10/21/10

for - kidney machine
ASJ

Rec

[Signature]

S. K. Malle

Adw

15/2/10