

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 22 MAR 1989

APPLICATION NO (S) 687 to 690 C/D 691 to 694 / 88(f)

W.P. NO (S)

Applicant (s)

Respondent (s)

Shri H.S. Ananthapadmanabha & 7 Ors V/s The Secretary, M/o Finance, Dept of Revenue,
To New Delhi & 2 Ors

1. Shri H.S. Ananthapadmanabha
2. Smt B.R. Vinutha
3. Shri R. Durgaprasad
4. Shri B.R. Sridhara
5. Shri A.S. Venkataramesiah
6. Shri P.K. Janardhanarao
7. Shri Dodderangappa
8. Shri E. Nagaraju

(Sl Nos. 1 to 8 -

Deputy Office Superintendents (Level II)
Office of the Collector of Central Excise
Central Revenue Building
Queen's Road
Bangalore - 560 001)

9. Dr M.S. Nagaraja
Advocate
35 (Above Hotel Swagath)
1st Main, Gandhinagar
Bangalore - 560 009
10. Shri G. Sampath
Advocate
104/C, 30th Cross, 7th Block
Jayanagar, Bangalore - 560 082

11. The Secretary
Ministry of Finance
Department of Revenue
North Block
New Delhi - 110 001
12. The Chairman
Central Board of Excise & Customs
(AD II-A)
New Delhi
13. The Collector
Central Excise
Central Revenue Building
Queen's Road
Bangalore - 560 001
14. Shri M.S. Padmarajiah
Central Govt. Sng Counsel
High Court Building
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith a copy of ORDER/~~STAY~~/~~INTERIM ORDER~~
passed by this Tribunal in the above said application(s) on 17-3-89.

Ravi Venkatesh
DEPUTY REGISTRAR
(JUDICIAL)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

DATED THE 17th DAY OF MARCH, 1989.

Present

THE HON'BLE MR. JUSTICE K.S.PUTTASWAMY .. VICE CHAIRMAN
THE HON'BLE MR. L.H.A. REGO .. MEMBER(A)

APPLICATIONS NOS.687 TO 690/1988(F)
C/W APPLICATIONS:691 TO 694/1988(F)

APPLICATIONS:687 to 690/88:

1. Sri H.S.Anananthapadmanabha,
42 years, S/o S.Subbareo,
Dy.Office Superintendent L-II,
Central Excise,Bangalore.
Smt.
2. B.M.Vinutha, 40 years
W/o S.Ravindranatha,
Dy.Office Superintendent L-II
Central Excise,Bangalore
3. Sri R.Durgeprasad
45 years S/o Late Sri R.Sambasivereo
Dy.Office Superintendent-L II,
Central Excise,Bangalore.
4. Sri B.R.Sridhara, 35 years,
S/o B.Ramachandra Sastry,
Dy.Office Superintendent L-II,
Central Excise,Bangalore. .. APPLICANTS

(By Dr.M.S.Nagaraja, Advocate for Applicants)

-vs.-

1. Union of India
represented by Secretary
(Ministry of Finance)
Deptt.of Revenue,North Block,
New Delhi.
2. Chairman
Central Board of Excise & Customs
(AD.II-A),New Delhi.
Collector,
Central Excise, Queen's Road,
Bangalore. .. RESPONDENTS.

(Shri M.S.Pedmarajaiah, Senior Standing Counsel for
Central Government, for respondents)



APPLICATIONS NOS.691 TO 694/88(F):

1. Sri A.S.Venkataramaiah
S/o A.Subbaramaiah
Deputy Office Superintendent
(Level II) Central Excise,
Bangalore.
2. Sri P.K.Janardhanarao
S/o Sri P.Krishnarao
Deputy Office Superintendent
(Level II) Central Excise,
Bangalore.
3. Sri Dodderangappa S/o Muddanna,
Deputy Office Superintendent
(Level II), Central Excise, Bangalore.
4. E.Nageraju S/o Eranna
Deputy Office Superintendent (Level II)
Central Excise, Bangalore. .. APPLICANTS.

(By Shri G.Sampath & Sri Ramesh Ananthan,
Advocates for the applicants)

-vs.-

1. Union of India
represented by Secretary
(Ministry of Finance)
Deptt. of Revenue, North Block,
New Delhi.
 2. Chairman, Central Board of
Excise and Customs (Ad.II A)
New Delhi.
 3. Collector of Central Excise,
Queen's Road, Bangalore-1. .. RESPONDENTS
- (By Shri M.S.Padmarajaiah, Sr.Standing Counsel
for Central Govt. for respondents).

These applications coming on for hearing
this day, HON'BLE MR. L.H.A.REGO, MEMBER(A), made
the following:

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O r d e r

O R D E R

These are in all eight applications in two sets, namely, Applications Nos.687 to 690 and Applications Nos.691 to 694, all of 1988(F) [which for ease of reference, we shall designate as Sets I and II respectively], wherein, the main prayer is, for a direction to the respondents(R), to merge the cadres of Deputy Office Superintendents, Level-I ('DOS-I') and Deputy Office Superintendents, Level-II ('DOS-II') into a unified cadre and to assign the pay scale of Rs.1640-2900 to this cadre, on par with the Inspectors of Central Excise and Customs ('Inspectors') with effect from 1-1-1986 with consequential benefit.

2. As all these applications are alike on law and facts, we propose to dispose them of, by a common order. Unless otherwise stated, the various Annexures cited herein, bear reference to Set I, of the applications, for the sake of convenience and uniformity.

3. Besides, the applications proper(viz., the Ist and the IInd sets, both bound in yellow cover), the applicants have presented, two bound compendia, consisting of relevant charts, Government/Departmental/Circulars/communications/instructions etc.,

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one



one bound in green cover and the other in grey, to facilitate reference, to which, we shall refer, as the 'Green' and the 'Grey book', respectively.

4. The following is a portrait of the case, as is relevant to the questions urged in these applications. The applicants are at present working as DOS II, in Group-C ministerial cadre, in the office of the Collector of Central Excise, Bangalore, as distinguished from the field or executive cadre, to which the Inspectors belong.

5. The following organisational chart (see: Chart I in the Grey Book) depicts the position of DOSs, vis-a-vis Inspectors, in the Customs and the Central Excise Department, which is material to the questions to be resolved, in these applications. Chart II ibid, portrays in comparison, the position of DOSs, vis-a-vis Inspectors, in the Central Excise Department and of Preventive Officers, vis-a-vis Examiners, in the Department of Central Excise and Customs respectively. The concentric Chart III ibid, denotes the relative position of DOSs and Inspectors, with their superiors, as well as their


subordinate

subordinate staff, Section and Divisionwise.

Union Ministry of Finance
(Department of Revenue)

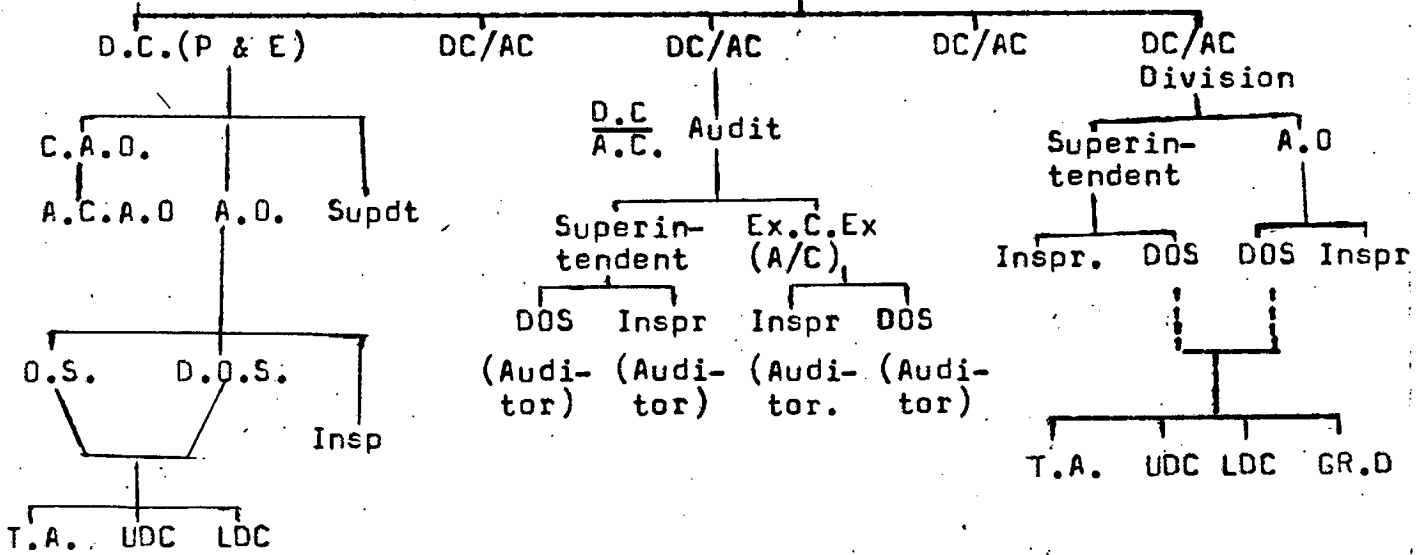


Central Board of Excise & Customs
Chairman



Collectorate
Customs/Central Excise/Combined

Collector



<u>Abbr:</u>	AO	..	Administrative Officer
	AC	..	Assistant Collector - Customs/Central Excise
	ACAO	..	Assistant Chief Accounts Officer
	CAO	..	Chief Accounts Officer
	DC	..	Deputy Collector, Customs/Central Excise.
	DOS	..	Deputy Office Superintendent
	C.Ex(A/c)	..	Examiner of Central Excise(Accounts)
	Inspr.	..	Inspector.
	L.D.C.	..	Lower Division Clerk
	OS	..	Office Superintendent
	Supdt.	..	Superintendent
	T.A.	..	Technical Assistant
	U.D.C.	..	Upper Division Clerk.



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6. Prior to the recommendations of the IVth Central Pay Commission ('IV CPC'), the pay scales that were prevalent, for the posts of DOS I and II and Inspectors, in the Ordinary Grade (OG) and the Selection Grade (SG), were as under:

S.No.	Post	Pay scale (Rs.)
(1)	(2)	(3)
(i)	DOS - II	.. 425-15-500-EB-15-560-20-700
(ii)	DOS - I	.. 550-20-650-25-750
(iii)	* Inspector(OG)	425-15-500-EB-15-560-20-700-EB-25-800.
(iv)	Inspector(SG)	500-20-750-EB-30-900.

NB: *The pay scale for this post, is said to have been later revised, to Rs.500-20-700-EB-25-900, for the period from 31-12-1985 to 1-1-1980, on par with the Inspectors of Income Tax, pursuant to the Order of the Jodhpur Bench of the Central Administrative Tribunal, pronounced on 13-4-1987 in Application No.609 of 1986(T) [corresponding to Writ Petition No.608 of 1984, in the High Court of Judicature, Rajasthan, Jaipur Bench] - vide Annexure A-1, pages 51 to 58 of the Green Book.

7. The cadre of DOS, came to be split into Levels I and II, according to Letter dated 24-6-1975 of R-1 (Ann.C, pages 81 and 82 of the Green Book). Further, the grade of Head Clerk - the revised pay scale of which was identical with that of DOS II, - came to be merged with the latter. The relevant paragraphs of the aforesaid Letter dated 24-6-1975, are extracted below, to facilitate correct appreciation of the background:

"I am directed to say that the Third Pay Commission in Chapter 10 of their report have, inter-alia, recommended that a portion of the posts on the existing scale of Rs.335-425 ranging from one-third to one-half should be placed on the revised

scale

scale of Rs.425-700 and the remaining posts placed on the revised scale of Rs.550-750. This recommendation of the Commission has been accepted by the Government. It has accordingly been decided that the posts of Deputy Office Superintendents in the various Central Excise Collectorates on the existing scale of Rs.335-425 should be distributed into two Levels of Deputy Office Superintendent on the revised scales of Rs.425-700 and Rs.550-750 as notified in the Gazette of India Extraordinary No.239 dated 26-9-1974. Those on the scale of Rs.550-750 will be designated as Deputy Office Superintendent Level-I and those on the scale of Rs.425-700 as Deputy Office Superintendent Level-II.

xxx	xxx	xxx
xxx	xxx	xxx

5. In consideration of the fact that the revised scale of pay for the post of Deputy Office Superintendent, Level-II is identical with that of Head Clerks, it has been decided that the grade of Head Clerk should be merged with the grade of Deputy Office Superintendent, Level-II and, accordingly, there will be no grade called "Head Clerk" hereafter. However, all the existing Deputy Office Superintendents who are placed as Deputy Office Superintendent Level-II in the scale of Rs.425-700 should be assigned seniority in the grade of Deputy Office Superintendent Level-II en bloc above the Head Clerks who are re-designated as Deputy Office Superintendent Level-II."

8. The following revised pay scales for the posts of DOS I and DOS II and Inspectors, came to be accepted by R-1, on the recommendations of the

IV



IV CPC:

S.No.	Post	Pay Scale (Rs.)
(1)	(2)	(3)
(i)	DOS II ..	1400-40-1800-EB-50-2300
(ii)	DOS I ..	1600-50-2300-EB-60-2660
(iii)	**Inspector :1640-60-2600-EB-75-2900	

NB: **The Selection Grade in this post, which existed earlier, came to be abolished, consequent to revision of pay scale, as above.

9. The applicants allege, that certain anomalies, in regard to splitting and equation of ministerial cadres of DOS and assignment of unequal pay scales, as compared to the cadre of Inspectors, had crept in, in the recommendations of the IV CPC, in Part-I of its Report, presented to R-1, in June 1986 and accepted by the latter on 13-9-1986. In order to remedy the same, the applicants had approached this Tribunal, through Applications Nos. 1991 to 1993 and 2039 to 2043 of 1986(F), with a prayer, for unification of the two ministerial cadres viz., DOS I and DOS II, into one and assignment of the aforesaid pay scale of Rs. 1640-2900, to this unified cadre, on par with that of Inspectors, on the ground, that the nature of duties performed by them and the responsibilities shouldered, were substantially alike, to those of

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the Inspectors. These applications were disposed of, by this Tribunal, on 27-8-1987, with the following order (Ann.A-1):

- "1. We permit the applicants to file their written representations on their claim before Government, within a period of one month from this day.
2. We direct Government of India in the Ministry of Finance to examine and dispose of written representation if any to be filed by the applicants within a period of six months from the date such representations are filed before it.
3. All questions are left open."

10. Pursuant to the above order, the applicants are said to have addressed, a detailed representation to R-1, on 17-9-1987(Ann.2), with relevant data in support of their claim, for unification of the two cadres viz., those of DOS I and DOS II and assignment of the pay scale of Rs.1640-2900, to this unified cadre, on par with the Inspectors.

11. The applicants allege, that R-1 did not consider their representation objectively and in depth, but rejected their claim, by a terse, cryptic and unreasoned order, by its Letter dated 4-12-1987, a copy of which, was sent to them by R-3, through his Letter dated 10-12-1987(Ann.A-3).

12. Aggrieved, the applicants have come before us, for redress, through their present applications.




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13. The respondents have filed their reply, to Set I of the applications, resisting them and proposed to adopt the same for Set II, too.

14. Before we go into the merits of this case, it would be helpful to familiarise, with the historical background of the Department of Central Excise, its structural reorganisation in respect of its three main wings viz., (i) Executive (ii) Ministerial and (iii) Intelligence and Preventive; the manner in which this tried functions, in concert and/or independently in the implementation of the provisions of The Central Excise and Salt Act, 1944 ('1944 Act', for short) and of the Rules thereunder viz., The Central Excise Rules, 1944 ('1944 Rules', for short). We have culled this material, mainly from the 1963 Report of the Central Excise Reorganisation Committee ('1963 Report' for short) and the 1974 Report of the Central Excise (Self Removal Procedure) Review Committee, Vol. II - Organisation ('1974 Report', for short).

15. Until 1938, central excise duty was administered largely by the Provincial Governments. The Central Excise Department ('CED' for short), came into existence, as an adjunct of the erstwhile Salt Department, in 1938, when the administration of both Central Excise and Salt, was entrusted to the then Central Excise and Salt Revenue Department, which operated, through three


administrative

administrative units, one of which was, Northern India placed under a Commissioner and the rest two, were each, at Bombay and Madras, headed by Collectors.

16. After India attained independence, the nature of work and responsibility, relating to administration of central excise duty, changed radically, both as regards quantum and complexity and this resulted in commensurate increase, in the number of Collectorates in the country and restructuring of the organisation at the respective levels. The scope of operation of the 1944 Act and Rules, extended from a few items of production, to raw tobacco and coffee and later, with the advancement of science and technology, to a progressively, increasing number of manufactured products, which now virtually encompass the entire spectrum of industry and consequently, a large number of items, ~~which~~ are now liable to assessment, at rates ad valorem. Central excise duty, is now levied, on as many as nearly 140 commodities and on a vast range of industrial products, categorised into as many as 68 items, in the First Schedule to the 1944 Rules. These cover all other goods not specified elsewhere in the tariff. The tariff is consequently, said to have become increasingly complex.

17. The basic units in the field, in concentric order, are the Collectorate and (within it) the Division and the Range. The last mentioned unit, is the primary

revenue



revenue unit and is placed in charge of an Inspector. The factors which primarily govern the optimum size of the various field units are: geography; the number of units producing excisable goods, the character and composition of these units, their concentration and dispersal; the potential for increase in the existing revenue as also in the number of producing units; scope for evasion of central excise duty; and the strategy of control, sought to be exercised in this respect.

18. Prior to 1968, recovery of central excise duty, was ensured, under what is known as "The Physical Control Procedure" ('PCP' for short). However, on the recommendations of the Central Excise Reorganisation Committee, the 1944 Rules were amended, by incorporating Rule 173-A. Under Chapter VII A of these Rules, whereby, PCP was replaced in 1969, by what is known as the "Self Removal Procedure" ('SRP' for short). This Rule permitted an assessee, to remove excisable goods, without any physical supervision. Under this new procedure, the assessee is required to determine the duty payable himself and clear the goods under a gate pass. He is required to file, monthly returns of the goods cleared, to the concerned excise officer. The chief difference between PCP and SRP is, that while under the former, payment of central excise duty by


cash

cash or debit, in the PLA, follows the assessment of that duty by the "proper officer", in the case of the latter, the payment of duty by debit in the PLA, follows self-determination of duty due on the goods, by the assessee. In both procedures, payment of duty is a condition precedent, to removal of goods, from the place of manufacture or storage.

19. The Government of India appointed in 1974, another Committee known as the Central Excise (SRP) Review Committee, for an overall review of the SRP. This Committee (vide 1974 Report) recommended a selective type of control (without however affecting the essence of the SRP) which was given effect to in 1978, which inter alia envisaged, what is known as the (i) Record Based Control (RBC) and (ii) Production Based Control (PBC).

20. Under this selective system of control, the Inspectors are required to familiarise themselves fully, with the processing techniques of various industrial products (on which customs excise duty is levied), right from the stage of raw material, to that of the finished product, as also with the details of accounting of production thereof.

21. The Collector is the chief authority of the Collectorate. He is also within his territorial jurisdiction, the highest administrative authority, under the



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1944 Act and the rules framed thereunder. Under the SRP, he has been specially empowered in rank, power to nominate an officer, to determine than that of an Assistant Commissioner and to assess the normal production of a factory and to assess the shortfall in production, on the basis of his judgment.

22. With the implementation of the SRP, classification and valuation of excisable goods and products, are said to have assumed considerable importance, on which depends the correct determination of the central excise duty. The Inspectors being in charge of the primary revenue unit, namely, the Range, are responsible for initiation of this process. Their chief functions are, to ensure strict compliance of the provisions of the excise rules, regulations and procedure and to scrutinise meticulously, the accounts relating to production and delivery of excisable goods, throughout their jurisdiction. They are for the purpose, required to tour intensively, within their jurisdiction and are primarily responsible, for accuracy in assessment and classification of goods, on which excise duty is leviable.

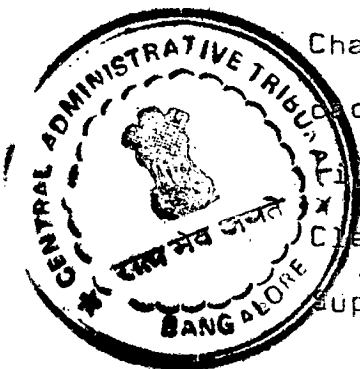
23. The minimum educational qualification for direct recruitment to the grade of Inspector, was originally a University Degree, which however was

relaxed

relaxed in 1961, to Intermediate or its equivalent. The 1974 Report mentions (para 17, Chapter 5) that having regard to the nature of functions required to be performed in the Department, particularly in the wake of newer techniques of production, ^{the} necessitating ~~more~~ intricate accounting procedure and increasingly complex, Central Excise tariff, it was urged, that the educational qualification prescribed and the mode of recruitment were both inadequate in the case of Inspectors. The III CPC, while recommending parity of pay scales for Inspectors of Income Tax, Customs and Central Excise Departments, had observed, that the qualification for direct recruitment to these grades, be raised to a University degree and recruitment channelised, through the UPSC or the Subordinate Services Board. The educational qualification for the Inspectors of Central Excise, has since been enhanced to a University degree accordingly, under the Central Excise and Land Customs Group 'C' Posts Recruitment Rules 1979 ('1979 Rules' for short) for direct recruitment, which is made through the Staff Selection Commission.

24. Both the Divisional and Collectorate offices, have a complement of ministerial staff (see: Charts I to III in the Grey Book). The non-gazetted cadre comprises, grades (in ascending order) such as (i) Lower Division Clerks (LDCs), (ii) Upper Division Clerks (UDCs), (iii) DOS II, (iv) DOS I and (v) Office Superintendents (OS) in addition to the cadre of

Stenographers



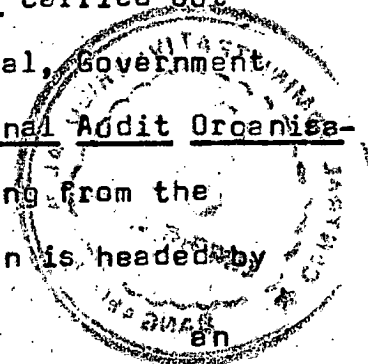
Stenographers, and other ministerial staff,
such as: Typists, Draftsmen etc. .

25. The higher gazetted echelon of ministerial staff, consists of grades such as: (in ascending order) (i) Examiners of Accounts (Examiners), (ii) Administrative Officers (AOs), (iii) Assistant Chief Accounts Officers (ACAOs) and (iv) the Chief Accounts Officer (CAO), (see: Chart I ibid, as also the Linear Chart in para 5 above).

26. The CAO acts as a Financial Adviser to the Collector and performs all functions, relating to preparation of classified revenue accounts and their reconciliation, with figures booked by the Treasuries and the Accountant General. He prepares estimates for revenue receipts and expenditure, pertaining to the Collectorate, undertakes audit of refund claims, issues cheques for refunds sanctioned in certain cases, scrutinises Personal Ledger Accounts (PLAs), maintained by the assesseees and is responsible for receipt and accounting of cheques, tendered towards payment of duty.

27. Apart from statutory audit carried out by the Comptroller and Auditor General, Government of India, there also exists an Internal Audit Organisation (IAO), of the Department, operating from the Collectorate level. This organisation is headed by

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an Assistant Collector(Audit), who has a number of audit parties working under him. Each such party consists of auditors, drawn both from the executive cadre of Inspectors and the ministerial cadre of UDCs, with an officer of the status of a Superintendent of Central Excise(Executive) or an Examiner of Accounts(Ministerial), being placed in charge of each such party. The main functions of these audit parties are as follows:

- "(i) Auditing the accounts maintained by factories, warehouses and ranges operating under the system of physical control.
- (ii) Dealing with major defects, arising out of the reports of Inspection Groups, as are brought to the notice of the Collector by the Assistant Collector concerned. If after going through the reports received by him, the Collector is satisfied, that the working of a particular unit requires a further probe, he may direct that the unit concerned, be subjected to full audit.
- (iii) Test auditing the accounts of units, yielding substantial revenue or having a complicated excise tariff. This again is carried out, in respect of units specifically indicated by the Collector.
- (iv) Looking into the reports of statutory audit, carried out by the audit parties of the Accountant General concerned."



28. The Preventive Organisation of the Department, operates both from the Divisional as well as the Collectorate levels. The Divisional Preventive

Unit

Unit, consists of a number of Inspectors, headed by a Superintendent of Central Excise (Executive), while the organisation functioning from the Collectorate headquarters, comprises a number of Inspectors, with one or more Superintendents, placed under an Assistant Collector. In Collectorates, where there are a number of Divisions, located at the Collectorate headquarters itself, the Divisional Preventive Organisation, does not function as a separate unit. The entire preventive work in such cases, is centralised in the Collectorate.

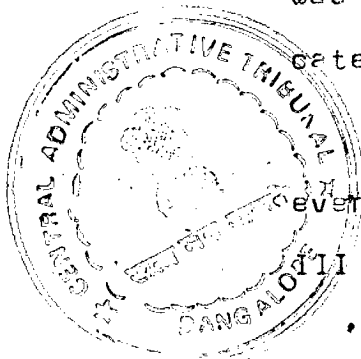
29. Dr.M.S.Nagaraja, learned Counsel for the applicants in Set I, directed his attack first, on the distinction of the cadre of DOS, into Levels I and II. He alleged, that even though this Tribunal, had earlier directed R-1 (para 9 above), in Applications Nos. 1991 to 1993 and 2039 to 2043 of 1986(F), to examine and dispose of the written representation of the applicants referred to therein, within the period stipulated, it had not at all applied its mind, to the various points urged in the said representation, and had rejected the same arbitrarily, without collecting relevant data ^{and} examining objectively, the various aspects involved. He further alleged, that the IV CPC too, while determining the revised pay scales, for the Central Government employees as a whole, in the various Departments, did not examine in depth, the case of the cadre of DOS, to which the

applicants

applicants belonged. He submitted, that in Chapter 7, relating to determination of pay, the IVCPC, neither discussed nor recommended specifically, the question of revised pay scale, for the cadre of DOS and that his clients, were not even aware, as to whether the representation addressed by their Federation, was considered and recommended at all, to the IV CPC, by the Central Board of Excise and Customs.

30. He then sought to highlight the various aspects, to show, as to how in reality, the existing two cadres of DOS I and II, were one and the same and as to how, they were distinguished merely on fiction without identifying separately, the nature of duties and responsibilities, in respect of each of these two cadres. He submitted, that these two cadres were interchangeable, to substantiate which, he referred to Annexures A-17 to A-19 relating to postings of DOS I and II. The III CPC he said, in para 41 of Chapter III of their Report (the reference seems to be incorrect) observed, that as the nature of duties and responsibilities of DOS (Ministerial) and Head Clerks, were identical and they were in supervisory charge of sections, the distinction of these cadres was not justified and therefore recommended a common category of DOS, to be in charge of sections.

31. Dr. Nagaraja, alleged, that strange enough, even though R-1 accepted these recommendations of III CPC, it did not implement the same faithfully, but



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on the contrary, perpetrated the invidious distinction between the two cadres viz., DOS I and DCS II, even though there was no difference whatsoever, in the nature of duties and responsibilities involved. This crucial aspect, was not taken into account, either by R-1 or the IV CPC, he complained.

32. In this connection, he referred to para-9, page 43 of Chapter 5, of the 1974 Report, which reads as under:

"9. For sometime past the Administration has been acting on the policy that the grade of Head Clerk should be gradually abolished and posts of Head Clerks upgraded to that of Deputy Office Superintendent. In recommending revised scales of pay for Head Clerks and Deputy Office Superintendents the Third Pay Commission have, however, observed that "a proportion of posts on these two scales, ranging from one third to one half should be placed on the lower pay scale that we have suggested for Head Clerks viz., Rs.425-700."

33. In particular, he invited our attention to Annexure-G (page 48) of the Grey Book, where the Deputy Collector (P & E), Collectorate of Customs and Central Excise, Madurai, had promoted one Smt. S. Seroja, DOS II, Internal Audit Branch, Headquarters Office, Madurai, as DOS I, in the scale of pay of Rs. 550-20-650-25-750 and posted her to the same Section, where she was working as DOS II, until further orders. This was a classic example of perfect equivalence, of

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the posts of DOS I and DOS II in point of nature of duties and responsibilities, he contended.

34. Except that, service of a period of 5 years was arbitrarily fixed for an incumbent (see: 1979 Rules, page 163 of the Green Book), to move from DOS I grade to that of DOS II, there was no other discernible difference, in the nature of duty and responsibility, between these two grades, he argued. Besides, he pointed out, DOS II was not subordinate to DOS I and was neither placed under him nor was his ACR written by the latter. The unequal scales of pay, between these two grades (para 8 above) he said, were arbitrary, unjust and irrational and were violative of Articles 14 and 16 of the Constitution, as equals were being treated as unequals, and this was therefore patently a case of "distinction without difference". No posts of DOS and that too, distinguished as Levels I and II, existed in other Departments of the Government of India and the flagrant anomaly, was unique and peculiar, only to the respondent Department, he alleged. The application of the benefit of Fundamental Rule (FR) 22, for posting an incumbent, from the post of DOS II, to that of DOS I, on completion of 5 years of satisfactory service, was anomalous he said, as the nature of duties and responsibility in either posts were the same.

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35. In para 15 of their reply, the respondents had admitted, Dr. Nagaraja pointed out, that the posts of DOS I and DOS II belonged to a common category (emphasis added by him), of similar posts in all Departments of the Government of India, and that accordingly, the IV CPC had recommended, identical scales of pay, for all these posts and the same was accepted by Government.

36. Dr. Nagaraja stated, that under the 1979 Rules, (page 163 of the Green Book), a Stenographer (Senior Grade) according to the number of years stipulated therein, was eligible to be promoted as DOS I. Relying on the dicta of the Supreme Court in AIR 1987 SC 2049 = 1983 SCC (L&S) 24, [&] he argued, [BHAGWAN DASS & ORS. v. STATE OF HARYANA & ORS.] 7, that once the nature of functions and the work, are not shown to be dissimilar, the fact that the recruitment was made in one way or the other, would hardly be relevant, from the point of view of, "equal pay for equal work" doctrine. The onus of proving the dissimilarity, between the grades DOS I and DOS II, lay on the respondents he asserted, according to the dicta of the Supreme Court, in the above case.

37. He next referred to page 162 of the Green Book, in regard to recruitment to the post of Office Superintendent, under the 1979 Rules and pinpointed the pay scale of Rs. 700-50-760-35-900, prescribed for this post, in Group 'C', non-gazetted. This post, he said,

was

was higher than that of DOS and a similar hierarchy did not exist, in other Departments of the Government of India. The III CPC, did not refer to the pay scale of Rs.700-900, while proposing merger of the grade of Head Clerk with that of DOS. The natural inference was, he said, that the III CPC referred to the post of Head Clerk, when it spoke of the pay scale of Rs.425-700. The IV CPC, he submitted, was not oblivious of the recommendations of the III CPC in this regard ^{at one} and of its prime aims and objects was, to minimise the plethora of pay scales, with due regard to administrative efficiency and economy. It could not have therefore departing therefrom. avoidably recommend, a multiplicity of pay scales, specially in the present context of the cadre of DOS, as Levels I and II, he argued.

38. Referring to Letter dated 24-6-1975 of R-1, the relevant portion of which, is extracted at para-7 above, he sedulously contended, that the creation of grades viz., DOS I and DOS II, even after merger of the grade of Head Clerk, was at variance with the recommendations of the III CPC.

39. Dr. Nagaraja next called in aid, the decision of the Supreme Court, in 1988 SCC(L&S) 785=(1988)3 SCC 354 JAIPAL & ORS.-vs.- STATE OF HARYANA & ORS.,7, in the context of "equal pay for equal work", to bring out,

that



that it was not necessary, that there should be complete identity in this respect, between the posts sought to be compared.

40. To substantiate this aspect, further, he relied on the decision of the Supreme Court in AIR 1987 S.C.1281 (M/s. MACKINNON MACHENZIE & CO., LTD., -vs.- AUDREY D'COSTA), to show, that the authority was required to take a broad view, in deciding whether a particular work was similar in nature, as compared to another and that the very concept of similar work implied differences in details, but this should not defeat a claim for equality on trivial grounds. In this case, the Supreme Court held on facts, that the Stenographers of either sex, were performing same work or work of a similar nature and that the fact, that the difference in pay scales, was due to the settlement that has been reached between the Union and the Company, had no relevance.

41. He then referred to the observations of the Supreme Court, in AIR 1989 SC 19 (STATE OF U.P. & ORS.-vs.- J.P. CHAURASIA & ORS.) with reference to paras 3 and 17 thereof, in particular. The III CPC, he said, had examined the matter in depth, in regard to the equivalence of the posts of DOS I and DOS II and found them to be identical and the IV CPC, had not proposed splitting

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of the cadre of DOS into two levels. That being so, there was no warrant for R-1 he said, to split this cadre, as it did by its Letter dated 24-6-1975 (para 7 above)

42. Adverting to para 7.35, Chapter 7 of the Report of the IV CPC on: "Pay Determination", he referred to its observation, that as a first finding it may be quite fair to say, that pay should equal the value of the work done by the employee and that it cannot be gainsaid, that the requirement that pay should be equal to the value of the work, is a truism which should, broadly speaking, hold the field, in which context, it had referred to AIR 1982 SC 879 (RANDHIR SINGH v. UNION OF INDIA) which had considered the scope and meaning of the provision, construing Articles 14 and 16, in the light of the preamble and Article 39(d) of the Constitution. The Supreme Court had observed therein, he said, that the principle of equal pay for equal work, was deducible from them and may be properly applied, to cases of unequal scales of pay, based on no classification or irrational classification, though those drawing the scales of pay, did identical work, under the same employer.

43. He also referred to para 7.57 ibid, wherein the following view was expressed in the "Handbook of Civil Services and Practices":

"A few



"A few grades with clearly defined differences of responsibilities, corresponding to different scales of pay will be acceptable, but posts graded and paid differently yet without discernible differentiation of duties can have an adverse effect on morale A further source of trouble is that, if grades do not relate to recognizable difference in duties, departmental applications for regrading multiply and central control of regrading becomes impossible."

44. Referring to paras 8.38 and 8.45 ibid, he submitted, that the various pay scales indicated therein, may have been common to the various Departments in the Government of India, but there was no specific mention, in regard to the pay scales prevalent, in the Department of Customs and Central Excise.

45. Appearing for the applicants in Set II, Shri G.S.Sampath, learned Counsel, fell in line with the trend and tenor of argument of Dr.Nagaraja, in regard to unifying the cadres of DOS I and DOS II.

46. Shri M.S.Padmarajaiah, learned Counsel for the respondents, at the outset contended, that the cause of action for the applicants, in regard to introducing two levels in the cadre of DOS, actually arose as far back as in 1975, consequent to issue of the Letter dated 24-6-1975(para 7 above) by R-1. He alleged, that the applicants bestirred themselves as late as after nearly a decade and a half, on which

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score

score alone, their applications should be rejected, as hit by the bar of limitation and maintainability.

47. Both Dr. Nagaraja and Shri Sampath countered this preliminary objection, on the premise, that the applicants were actually aggrieved by the action of the respondents on the recommendations of the IV CPC, as they had perpetrated the anomaly, even though the IV CPC had not proposed ⁴splitting the cadre of DOS, into two levels viz., Levels I and II.

48. Prima facie, there appears to be some merit, in the above preliminary objection raised by Shri Padmarajaiah, but ex debito iustitiae, we do not wish to take, too rigid a view in the matter and instead, would draw a charitable inference, that the effective cause for action emanated to the applicants, as a result of the action of the respondents, pursuant to the recommendations of the IV CPC considering specially, the effect of our Order dated 27-8-1987 on their earlier Applications (para 9 above). We therefore overrule this preliminary objection raised by Shri Padmarejaiah, in the course of the hearing of these applications, even though he has not done so, in the written reply to the application filed on 22-9-1988.

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49. Referring



49. Referring to the five categories of non-gazetted ministerial posts, in the Group 'C' cadre, mentioned in paras 5 and 6 of the reply, along with the pay scales before and after revision, Shri Padmarajaiah submitted, that since these categories of posts, were common to the other Departments of the Government of India as well, the IV CPC did not specifically recommend, the pay scales in respect of these posts, pertaining to the Customs and Excise Department, to which, the same scales of pay, as in analogous position in other Departments of the Government of India, were sanctioned.

50. However, he explained, that taking into account, that a segment of the posts of UDCs, in the Customs and Central Excise Departments, performed duties, entailing higher responsibility, in the field, peculiar to these Departments, the IV CPC recommended, upgradation of one-third of the posts of UDC, to that of Tax Assistants, on a slightly higher revised pay scale of Rs.1350-2200.

51. Shri Padmarajaiah stated, that the IV CPC had observed, that the revision of pay scales of the employees in the various cadres, in the different Departments of the Government of India, could not be determined by the rule of thumb, but had necessarily to take into account, essential factors such as, the nature of duty and responsibility involved and other relevant factors, peculiar to a post or cadre, such as the degree of risk or hazard involved, method of

recruitment, the qualifications prescribed therefor, avenues of promotion etc.

52. He clarified, that the representation dated 17-9-1987 from the applicants in the matter was duly examined by the respondent-Department, in connection with the Department of Expenditure and the Department of Personnel and Training, Government of India, but the same was rejected, with cogent reasons. In this connection, he invited attention to Letter dated 4-12-1987 (Accompaniment of Ann.A-3), addressed to R-3.

53. He referred to Ann.R-1, which was the proposal/recommendation, sent by the respondent-Department to the IV CPC, in regard to rationalisation of the ministerial supervisory grades, in the Departments, under the Central Board of Excise and Customs, wherein the posts of DOS I and DOS II, were considered. Though the IV CPC, may not have discussed the same in its Report, it could not be inferred therefrom, that it overlooked the matter, he explained.

54. He denied, that the nature of duties and the responsibilities involved, in the posts of DOS I and DOS II, were the same. He referred to the pay scales of these posts, before and after revision, pursuant to the recommendations of the IV CPC (paras 6 and 8 above) and to the application of the provisions of Rule 22, on promotion of an incumbent, from the post of DOS I to that of DOS II, on the basis of the duties and responsibilities of greater importance shouldered, which in itself, was self-explanatory, he stressed,



to prove, that the post of DOS I, was superior to that of DOS II, in respect of these criteria.

55. Both DOS I and DOS II, had no avenue of promotion, he said, to the post of Inspector. Nevertheless, incumbents in these respective posts of DOS, held independent charge, in supervisory capacity and were not subordinate to each other and their posting was decided, taking duly into account, the experience of the officer in a particular field, and his utility in the concerned Section, with due regard to the circumstances prevailing at the relevant time, such as the concentration of industries, incidence and intensity of production of excisable goods, and sensitive matters, relating to administration of excise duty. This necessitated he said, a certain degree of flexibility, in postings and in that context, a stray case, as that of the posting of Smt. Saroja, cited by Dr. Nagaraja (para 33 above), was only an exception to the rule, he averred, which typified the expression, that "a lone swallow, does not make the summer". In any case, he said, DOS II, was never posted under DOS I.

56. Referring to para 9(vii) of Set I, Shri Padma-
rajaiah alleged, that the excerpt of para 41, in Chapter X
of the Report of the III CPC given therein, was wrenched

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out of context, in support of which, he referred to Ann.R-3. It was evident therefrom, he explained, that the III CPC, had not recommended amalgamation of the scales of the posts of DOSs and Head Clerk. Prior to the Report of the III CPC, he explained, the pay scales prevalent for the posts of Head Clerk (since designated as DOS II) and DOS I, were Rs.210-10-290-15-320-EB-15-380 and Rs.335-15-425 respectively. The III CPC, he said, did not recommend structural changes, consequent to revision of these pay scales. Keeping in view, however, the proportion of ministerial posts, in the supervisory grades in the pay scales viz., Rs.210-425 and Rs.335-425, upgraded to that of Rs.550-750, which was equivalent to the pre-revised scale of Rs.325-475 and Rs.350-475, it had observed, that it would not be appropriate, to include all posts, in the pay scale of Rs.335-425, in the new scale, particularly in those Departments, where all or some of the posts in the pay scale of Rs.210-380, were upgraded to the pay scale of either Rs.210-425 or Rs.335-425, and therefore recommended, that a proportion of posts in these two scales of pay, ranging from one-third to one-half, be placed on the lower pay scale viz., Rs.425-15-500-EB-15-560-200-700, suggested for Head Clerk and the remainder be placed on the next higher scale proposed.



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57. Shri Padmarajaiah clarified, that in accordance with the above recommendations of the III CPC, a proportion of the posts in the grade of DOS, in the pre-revised pay scale of Rs.335-425, was lowered, to the pre-revised pay scale of Rs.210-380, applicable to the posts of Head Clerks. Consequently, such of the DOSs, who were reverted at the time and the Head Clerks, were placed in the revised pay scale of Rs.425-15-500-EB-15-560-200-700 and redesignated as DOS II.

58. He pointed out, that a fairly long period of time elapses, between the Reports of two successive CPCs and in the case of the Reports of the III (1973) and IV (1986) CPCs, as long a period as thirteen years had elapsed and much water had flown below the bridge, during this intervening period, which would naturally tell on the circumstances prevalent, at the relevant time and therefore, ^{he} he said, it would be unrealistic to expect like the applicants, in the changed circumstances, that the recommendations of the previous CPC would remain sacrosanct. If that was the case, there would be little propriety Shri Padmarajaiah argued, for setting up succeeding Central Pay Commissions. In this fact-situation, he remarked, it ill-behoved the applicants, to cast an aspersion, on an august body like the IV CPC, that it did not examine the case of the applicants' cadre objectively and in depth. He

 asserted

asserted, that the IV CPC had given due thought, to the service interests, of the cadre of the applicants and was objective in its recommendations and therefore, the grievance of the applicants, that the splitting of the cadre of DOS, into Levels I and II regardless of identical nature of duties and responsibilities, was violative of Articles 14 and 16 of the Constitution, was ill-founded.

59. Shri Padmarajaiah relied on CHAURASIA's ¹⁴ above), case (para 41/ particularly, on paras 17 and 28 of the judgment of the Supreme Court therein, the relevant excerpts of which are reproduced below:

"17. The first question regarding entitlement to the pay scale admissible to Section Officers should not detain us longer. The answer to the question depends upon either the nature of work or volume of work done by Bench Secretaries. Primarily it requires among others, evaluation of duties and responsibilities of the respective posts. More often functions of two posts may appear to be the same or similar, but there may be difference in degrees in the performance. The quantity of work may be the same, but quality may be different that cannot be determined by relying upon averments in affidavits of interested parties. The equation of posts or equation of pay must be left to the Executive Government. It must be determined by expert bodies like Pay Commission. They would be the best judge to evaluate the nature of duties and responsibilities of posts. If there is any such determination by a Commission or Committee, the Court should normally accept it. The Court should not try

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to tinker with such equivalent unless it is shown that it was made with extra-neous consideration.

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28.It is against this background that the principle of "equal pay for equal work" has to be construed in the first place. Second, this principle has no mechanical application in every case of similar work. It has to be read into Art.14 of the Constitution. Article 14 permits reasonable classification founded on different basis. It is now well established that the classification can be based on some qualities or characteristic of persons grouped together and not in others who are left out. Those qualities or characteristics must, of course, have a reasonable relation to the object sought to be achieved. In service matters, merit or experience could be the proper basis for classification to promote efficiency in administration. He or she learns also by experience as much as by other means. It cannot be denied that the quality of work performed by persons of longer experience is superior than the work of new-comers. Even in Randhir-Singh's case (AIR 1982 SC 879), this principle has been recognised. O.Chinnappa Reddy, J. observed that the classification of officers into two grades with different scales of pay based either on academic qualification or experience on length of service is sustainable.

.....
The classification based on experience is of reasonable classification. It has a rational nexus with the object thereof. To hold otherwise, it would be detrimental to the interest of the service itself."

60. In the light of the dicta of the Supreme Court in the above case, it was clear he said, that merit or experience (emphasis added), could be the proper basis, for classification to promote administrative

efficiency

efficiency. This squarely governed the case before us he averred, in respect of differentiating two levels in DOS viz., Levels I and II, with correspondingly higher pay scales as shown in para 8 above. The functions of two posts, may appear to be the same or similar but the degree in performance may vary. The Government, he said, was in the circumstances, the best judge to decide, the equation of pay scales and posts, as observed by the Supreme Court, Shri Padmarajaiah stressed. In the end, Shri Padmarajaiah urged, that there was no merit whatsoever in the contention of the applicants, for unification of the cadre of DOS I and II into one and therefore, the same be rejected.

61. We have bestowed the utmost thought, on the rival pleadings on this aspect and have heard this matter in extenso, for five days, from 6-3-1989 to 10-3-1989. We have on purpose, dwelt on the historical background of this Department at length, to bring out as to how it has evolved over the years and as to how with the advance of science, technology and in the wake of newer techniques of production, vastly increased number of excisable goods and products, have come within the fold of the 1944 Act and the Rules, and as to how with the increasingly complex Central Excise Tariff, accounting procedure in regard to administration

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of the central excise duty, has correspondingly become more intricate. All this calls for personnel of proved merit, acumen and experience, both in the ministerial as well as the executive cadres, in the Department, to enable it ^{to} function, with the desired speed and efficiency.

62. With the introduction of SRP, as the strategy of control since 1969, in the administration of central excise duty, the Department is called upon to gear itself, to added responsibility both in the field, as well as in the office.

63. The main plank of the contention of the applicants is, that the distinction of two levels viz., Level I and II in the cadre of DOS, regardless of identical nature of duty and responsibility, is irrational and arbitrary and therefore, attracts the frown of Articles 14 and 16 of the Constitution.

64. Shri Padmarajaiah has in para ⁶⁴ 60 above, explained the special circumstances, under which, sometimes postings are required to be made in respect of DOS I and DOS II and the imperative need for flexibility in the matter, if the Department is to be administered with the desired efficiency.

65. The case cited in regard to the posting of Smt. Seroja on promotion as DOS I, in the very place, she was earlier working as DOS II, in Madurai Collectorate (para 33 above) ^{le} ^{le} was an isolated ~~and rare~~ one and

therefore

therefore, can be regarded only as an exception in the peculiar circumstances (which may sometimes be unforeseen in emergent cases) as explained by Shri Padma-rajaiah.

66. The dicta of the Supreme Court, in the case of CHAURASIA (paras 41 and 59 above) in our view, has a direct bearing on this point. It has pointedly observed, in para 17 of its judgment, that "more often, functions of two posts may appear to be the same or similar, but there may be difference in the degree of performance." Again in para 28 ibid, it has stated inter alia, that "in service matters merit or experience (emphasis added), could be the proper basis for classification, to promote efficiency in administration". In the context of "experience", the classification would be justified in accordance with the legal maxims - "Trust one, who has tried or had experience" - experto crede or "The law presumes, that a worker becomes an expert, by a long continued exercise of his particular vocation - fit fabricando faber".

67. In 1988 SCC(L&S) 673: (1988)3 SCC 9/FEDERATION OF ALL INDIA CUSTOMS AND CENTRAL EXCISE STENOGRAPHERS & ORS. -vs.- UNION OF INDIA & ORS. 7, in the context of the posts of Personal Assistants and Stenographers, in the very respondent-department before us, the Supreme Court observed as under:



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"Equal pay must depend upon the nature of the work done; it cannot be judged by the mere volume of work; there may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. The same cannot of physical work may entail different quality of work, some more sensitive, some requiring more tact, some less - it varies from nature and culture of employment. In the case of Stenographers and Personal Assistants, there is an element of faith, reliability and responsibility. The differentiation has been sought to be justified in view of the nature and the types of the work done i.e., on intelligible basis.

There is an element of value-judgment by those who are charged with the administration in fixing the scales of pay and other conditions of service. Differentiation in implementing the award or the recommendations of the Pay Commission without rational basis may amount to discrimination. But, so long as such value-judgment is made bona fide, reasonably on an intelligible criterion which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination."

68. In our view, the above ruling of the Supreme Court, is apposite to the cases before us.

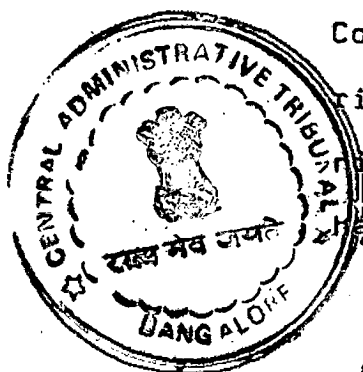
69. Reasonable classification, is not shut out by Articles 14 to 16 of the Constitution, and mere indication of inequality, in individual cases, is not adequate to imply constitutional inhibition, as every classification in some degree or other, can result in inequality, as precise mathematical accuracy in this regard, can scarcely be achieved and is only delusive. The State is legitimately empowered to frame rules of classification, for securing the requisite standard

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of efficiency in service, and the classification need not be scientifically perfect or logically complete. A doctrinaire approach, should be avoided and the matter considered in a practical way/vide (1970)1 SCC 377(para 2): AIR 1970 SC 2178 - GANGA RAM -vs.- UNION OF INDIA⁷. Classification is primarily the function of the legislature or of the rule-making authority and if looked at from the standpoint of the authority making it, the classification if found to rest on a reasonable basis, is to be upheld. The machinery of Government, would not work if it were not allowed a little play in its joints/vide (1974)1 SCC 19: 1974 SCC (L&S)49 - STATE OF JAMMU & KASHMIR -vs.- T.N.KHOSA⁷.

70. Article 14 of the Constitution, is said to be the genus and Articles 15 and 16 its species and consequently, principles governing Article 14, equally govern the other above two Articles of our Constitution. The true scope and ambit of Article 14 has been explained by the Supreme Court in myriads of cases. Perhaps on no other Article of our Constitution, there ^{has} ~~has~~ been so much of in-depth debate, discussion and crystallisation of law, by the Supreme Court as on these Articles, guaranteeing fundamental right of equality before law and equality of opportunity, in matters of public employment. As a result, we have a cornucopia of case law on the subject.



71. In AIR 1958 SC 538 [RAM KRISHNA DALMIA & ORS. v. JUSTICE S.R.TENDULKAR & ORS.] and AIR 1979 SC 478 [RE:SPECIAL COURTS BILLS CASE], the Supreme Court reviewing all the earlier cases, has comprehensively re-stated the scope and ambit of Article 14 of the Constitution. We have extensively quoted the dicta in the latter case, in 1989(1) SLJ (CAT) 1 [G.K. SHENAVA & ORS. -vs.- UNION OF INDIA & ORS.].

72. We are not persuaded by the argument of Counsel for the applicants, that R-1 split the cadre of DOS into Levels I and II, contrary to the recommendation of the III CPC. Reading Ann.R-3 in its entirety, we are convinced, that the III CPC did not recommend, that once the cadre of Head Clerks was merged with that of DOS, the entire cadre of DOS thereafter should remain as an undivided entity. On the contrary, as a result of various pay scales, within a reasonable spectrum, having been merged into one, the III CPC gave the liberty to R-1, to split the integrated scale into two halves, within the proportion of one-third to half, after merging the grade of Head Clerk into the lower scale and this is precisely what R-1 ^{has done,} has by his Letter dated 24-6-1975 (Ann.C, page 81 of the Green Book) as cogently explained by Shri Padmarajaiah (paras ^{44 and 57} 56/above). We therefore, find no illegality or impropriety, as alleged by the applicants in this respect.

73. Besides,

73. Besides, we cannot be oblivious of the fact, that the applicants virtually acquiesced in this fait accompli, for nearly a decade and a half, as observed by us earlier in para 49. We need not remind the applicants of the legal maxim, that "the law assists the wakeful and not the sleeping" - lex vigilantibus, non dormientibus subveniunt".

74. This apart, distinction of the cadre of DOS into Levels I and II, has¹² stood the test of a fairly long spell of time, of nearly a decade and a half, in view of which, this highly belated endeavour of the applicants, to seek unification of the two cadres of DOS I and DOS II at this stage, can only be characterised, as desperate and misconceived.

75. In the light of the above discussion, the contentions such as; the IV CPC not having examined the case of the cadres of DOS I and DOS II objectively; the distinction between these two cadres being without a difference; lack of demarcation of duties between these two cadres and of identification of these posts and all other contentions urged by both Counsel for the applicants fail and the various rulings relied upon by them, in support thereof, are of little avail.

76. We, therefore, reject as meritless, the first prayer of the applicants, for unification of the two cadres of DOS I and DOS II, as one.



77. On

77. On this score itself, the other prayer too, to assign the pay scale of Rs.1640-2900 to this unified cadre, on parity with that of the Inspectors should fail, ipso facto. Nevertheless, we shall examine the same on merits, with due deference to the pains taken by both Counsel, for the applicants, to argue the case before us with verve and vigour.

78. Dr. Nagaraja at the outset, traced the genesis of the evolution of pay scales of the posts of Inspectors (OG) and (SG), vis-a-vis DOS I and DOS II, right from the stage of the I CPC to that of the IV CPC, to show, as to how in the case of the DOS I and DOS II, it was an anti-climax, as initially they were on a higher plane than the Inspectors, in regard to pay scales, but were later downgraded, despite increase in complexity and volume in the nature of their duties and the responsibility required to be shouldered by them. In this regard, he invited our attention to the Table, furnishing the relevant details, on page 9 of Set I of the applications. These are collated below succinctly, to facilitate reference at a glance.

CPC & Year.	Head Clerk (now DOS II) Rs	Inspector (OG) Rs	Inspector DOS (now DOS I) Rs	Inspector (SG) Rs	Remarks
(1)	(2)	(3)	(4)	(5)	(6)
I-1931	160-280	100-(Probn) 120-200	250-325	200-300	-
II-1959	210-380	210-380	335-425	200-300	-
III-1973	425-700	425-800	550-750	550-900	-
IV-1986	1400-2300	*1640-2900	1600-2600	*1640-2900	Inspector (OG)&(SG) merged into one cadre.

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79. Analysing the above data, Dr. Nagaraja submitted, that at the time of submission of the I CPC Report, DOS II and DOS I, had a distinctly higher scale of pay than Inspector(OG) and Inspector(SG), respectively. This position continued, he said, in respect of DOS I, at the time of submission of the Report of the II CPC, but DOS II was brought on par with Inspector(OG). The situation worsened, he said, when both DOS II and DOS I, were assigned a lower pay scale by the III CPC, than Inspectors(OG) and Inspector (SG) respectively, and this was further aggravated, he pointed out, in the Report of the IV CPC when the two grades of Inspectors(OG) and (SG), were merged and assigned a distinctly higher pay scale than DOS I and DOS II. This was paradoxical, he asserted, in the context of substantial diminution, both in regard to quantum of work and responsibility, in respect of the Inspectors, consequent to introduction of the SRP, as the system of control in the administration of the central excise duty, with effect from 1969, as pointedly observed, in para-2 page 25 of Chapter 4 of the 1974 Report and para 9, page 163 of Chapter 16 ibid.

80. At this stage, Shri Padmarajaiah sought to correct the discrepancy, in the pay scales of Inspectors (OG) and (SG), shown as Rs.210-380 and Rs.320-485 respectively, against II CPC, in the Table on page 9 of Set I of the applications. Referring to S.Nos.6 and 3

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in Table XXIV, on page 118, in regard to Department of Customs and Central Excise, under Chapter 27, Ministry of Finance, in the Report of the III CPC, he pointed out, that the correct pay scales in respect of these posts then, were as under:

(i) Inspector (OG): Rs.210-10-290-15-320-
EB-15-425.

(ii) Inspector (SG): Rs.320-15-500-25-575.

81. Shri Padmarajaiah, therefore asserted, that at the stage of the Report of the II CPC itself, the Inspectors both (OG) and (SG), were on a higher plane than the DOS I and DOS II, respectively, in regard to their pay scales and the position indicated by both Counsel for the applicants in this respect, was not factual and thus misleading.

82. Dr. Nagaraja explained, that the terminal stage of the pay scales of Inspectors (OG) and (SG), was later enhanced by the Department, only with a view to alleviate stagnation in these cadres and therefore, did not reflect the true picture, in regard to the pay scales originally recommended by the II CPC.

83. In order to ascertain the factual position, we scrutinised the service book of one of the Inspectors, in regard to the fixation of pay both in the OG as well as in the SG, at the relevant time. As a test check, we examined the Service book of one Shri G.S. Narahari, Inspector. We noticed, that his pay was fixed

as under:

Grade	Date	Pay per mensem (Rs.)
(1)	(2)	(3)
Inspector (OG)	10-6-1970	380/-
	7-4-1971	395/-
Inspector (SG)	14-8-1971	395/-
	7-4-1972	410/-
	19-8-1972	410/-
	19-5-1973	425/-

It is thus apparent from the foregoing, that the position indicated by Sri Padmarajaiah, in regard to the pay scales of the posts of Inspectors (OG) and (SG), recommended by the II CPC (para 80 above) is correct and to that extent, minimises the degree of anti-climax in pay scales, of the concerned posts, sought to be highlighted, by both Counsel for the applicants.

84. Dr. Nagaraja, then referred to Ann.A-4, to show, that the nature of duties performed and the responsibilities shouldered, by DOS II and DOS I, were substantially similar, as compared to the Inspectors. Quite often, he said, the DOSs were posted to discharge the duties of Inspectors and work between them was apportioned equally. In this respect, he cited reference to Ann.A-5, relating to an extensive list of files in respect of Audit in Lalbagh Division, Bangalore,

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handed over by an Inspector (SG) to DOS II. In order to further substantiate the affinity between these two cadres, he invited our attention to Ann.A6 to A-16 and A-18 to show, allocation of internal audit work, among Inspectors and DOSs, their posting in regard to this work, the composition of internal audit parties, their joint tour programme, in the course of internal audit etc. The posts of DOSs and Inspectors were inter-changeable he said, in respect of internal audit work. There was thus functional similarity and co-equal responsibility, in regard to internal audit work, he averred. While inter-disparity was removed, intra-disparity he said, persisted, in regard to percentage of direct recruitment, and stipulation of qualifications, in regard to the respective cadres.

85. Referring to para 10.202 under Chapter 10, "Ministries and Departments" - 'Department of Revenue' of the Report of the IV CPC, he pointed out, that a common revised pay scale of Rs.1640-2900, was recommended for the posts of Inspectors of Income Tax, Inspectors of Central Excise, Preventive Officers and Examiners. Citing reference to para 10.204 ibid, he submitted, that a cadre of Tax Assistants in the pay scale of Rs.380-640 was created in 1978, to provide more experienced and competent ministerial staff, to deal with important matters, particularly, in Company and Investigation Circles, as recommended by the Direct Taxes Enquiry Committee. Initially, 4200 posts of

UDCs

UDCs, out of 6000 posts, were placed in the cadre of Tax Assistants, which was later enhanced to 4700.

Only those UDCs, who had rendered a minimum service of 3 years, in that grade and secured at least 40% of the marks in the Income Tax Inspectors' Departmental Examination, were held eligible for promotion to the post of Tax Assistant. The work of Tax Assistant he said, was supervised by DOS II and DOS I, who in turn, assisted the Office Superintendents, in work, relating to assessment of central excise duty.

86. Consequent to the introduction of the innovative system of control viz., SRP, for administration of central excise duty, from 1969 onwards, the responsibility of the Inspectors in this regard, had diminished considerably as observed in the 1974 Report, and consequently, the nature of duty performed thereafter, by the Inspectors, had predominantly acquired a ministerial character, as would be evident from the following statistical data (All India), in regard to their pattern of work, in the Central Excise and Customs Collectorate, Dr. Nagaraja submitted:

Cadre	Strength	Working in the	
		Field	Office.
(1)	(2)	(3)	(4)
Inspectors	12778	6778 (56%)	6000 (44%)
DOS II and AI	1206	615 (51%)	591 (49%)



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87. He pointed out, that the percentage of Inspectors and DOS II, posted as Statistical Investigators, in the Directorate of Statistics and Intelligence, was 50% each and that these posts, were feeder channels, to the posts of Statistical Investigators. The Statistical Investigators he said, were invested with powers, under the 1944 Act and the Rules thereunder, like the Inspectors.

88. The Inspectors he said, were not directly concerned with assessment of central excise duty, but only with pre and post-assessment work, such as classification and valuation.

89. He classified the duties of Inspectors and DOSs I and II as under, to bring out various disparities as well as similarities between them:

S.No. (1)	Inspectors (2)	DOSs I & II (3)
(i)	They are only primary workers with no executive staff below them.	Mostly supervisory with cadres viz., IDCs UDCs and Tax Assistants, below them.
(ii)	Assist in post-assessment of Central excise duty mainly in the Range.	Assist the Officers in formations above the Range level, to help solve complex assessment problems.
(iii)	Process classification & evaluation mainly at Range level.	Further processing done by UDCs or Tax Assistants, supervised by DOS I & II.
		(iv)

(1)	(2)	(3)
(iv) No adjudication and/or refund, at Range level.		This is at Divisional or Hqrs. level, where UDCs and Tax Assistants assist.
(v) Help in internal audit.		They help likewise.
(vi) Help in administering tax laws only.		In addition, they assist in administering laws relating to personnel and establishment.
(vii) They ^{are} required to be conversant with Revenue Accounts.		They actually maintain both Revenue and Expenditure Accounts.
(viii) They always serve under Group 'B' Officers.		They sometimes work directly, under Group 'A' Officers.
(ix) Have to put in 8 years of qualifying service, to be promoted as Group 'B' Officers.		Same as in the case of Inspectors.

90. Though the Inspectors in the Department of Customs and Excise, were equated with the Inspectors of Income Tax, in regard to pay scale, the latter he said, differed from them, in not being required to be in uniform, and to conform to rigid physical standards, inspite of the fact, they had to perform statutory duties. Direct recruitment, in their case, was also not high, as 75%, as in the case of the former, he said. The Examiners who were equivalent in rank, to the Inspectors, were also not required to be in uniform and to satisfy any physical standards, he pointed out.

91. The Government of India he stated, had set up an Anomalies Committee, to set right the

disparities



disparities arising from the implementation of the recommendations of the IV CPC and this was a fit case, he submitted, where the various anomalies pointed out earlier, needed to be rectified.

92. Shri G.N.Sampath, learned Counsel for the applicants in Set II of the applications, then addressed his arguments. He submitted that he fully endorsed the points urged by Dr.Nagaraja, but said he would only dwell on the other aspects not touched by him.

93. While the nature of duties and responsibilities of the DOS I and II, had vastly increased, those of Inspectors he asserted, had markedly diminished, consequent to the introduction of the SRP system of control, as was evident from the 1974 Report (page 163), he said, and their work was largely ministerial in character, except of those in the Preventive Section, where actual field duty was involved but the number of Inspectors working therein, was far too limited, he stated. DOSs I and II he explained, had an edge over the Inspectors, in regard to the nature of their duty and responsibility, in that, in addition to the technical aspect of their work, they had no little responsibility, to discharge, in a supervisory capacity, unlike the Inspectors, in regard to administrative, establishment and budgetary matters. Besides, as compared to the Inspectors, who

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were

were not required to discharge their specific field duty continuously but only intermittently, as and when the situation demanded, the DOSs on the other hand, he said, had to perform their basic duty, including the technical aspects of the 1944 Act and Rules and the underlying procedure, uniformly throughout.

94. None of the Inspectors he said, were imparted regular training in arms and their use, he pointed ^{de} out, except for some superficial training of a short duration, in the Army Schools. The DOSs on the other hand, he averred, underwent substantial training, in their regular discipline.

95. As regards exercise of powers of entry search, seizure and investigation, under Rules 197 to 202 of the 1944 Rules, Shri Sampath submitted, that the Collector, Central Excise, could authorise any officer, in this respect and there was no bar on him, to empower the DOSs and even any ministerial staff in this respect, if exigency so warranted. He went to the extent of pleading, that for that matter, even the lowest menial like a Peon, could be authorised for the purpose, by the Collector.

96. In order to elaborate this argument, he dwelt on Section 2(b) "Definitions", of the 1944 Act, and Rule 2(viii) 'Definitions' and Rule 197 of the Rules, thereunder. For ready reference, these are

extracted



extracted below:

"Sec2(b) "Central Excise Officer" means any officer of the Central Excise Department, or any person (including an officer of the State Government) invested by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act (54 of 1963) with any of the powers of a Central Excise Officer under this Act;

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Rule 2(viii): "Officer" means, a Central Excise Officer.

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Rule 197.— Authorised Officers to have free access to premises, equipment, stocks and accounts of dealers in excisable goods.— Any officer duly empowered by the Collector in this behalf shall have free access at all reasonable times to any premises licensed under these rules and to any place where excisable goods are grown, processed, stored, sold or manufactured or to any place where composition for match-heads or salt-petre for the manufacture of matches are made, processed or stored, and may, with or without notice to the owner, inspect the building, the plant, the machinery, and the stocks, and the accounts and may at any time require the owner to furnish such information relating to the stocks as he may deem fit and make a physical check of such stocks, and may at any time check the records made of the goods stocked in, or removed from the factory, warehouse or place, or their transfer within a factory, to that part of the premises, if any, in which they are to be used for the manufacture of any other commodity, whether for the purpose of testing the accuracy of any return submitted under these rules, or of informing himself as to any particulars regarding which information is required for the purposes of the Act or these rules."

The words "any officer" appearing in the very beginning of Rule 197 ibid, he said, was significant, as this

did

did not fetter the Collector, Central Excise, from investing the DOSs, with the requisite powers under the 1944 Act.

97. Shri Padmarajaiah, as a counter to what Dr. Nagaraja endeavoured, to bring out the disparities between the cadres of Inspectors and DOS I and II, sought, to pinpoint the following inequalities between them:

S.No.	Inspectors	DOS I & II
(1)	(2)	(3)
(i)	They belonged to Group 'C' non-Gazetted, <u>non-ministerial staff</u> i.e. Executive cadre.	They belonged to Group 'C' non-Gazetted <u>Ministerial Staff</u> .
(ii)	Essential educational qualification for recruitment was a Degree from a recognised University or an equivalent qualification.	Matriculation or equivalent qualification.
(iii)	Method of recruitment- 75% by direct recruitment, 25% by promotion.	By promotion cent per cent from among UDCs or Stenographers, according to the minimum 8 years of service prescribed.
(iv)	Have to be on duty round the clock, on account of the peculiar nature of their field work, entailing exercise of powers of search, seizure, arrest etc. under the 1944 Act and the Rules. They have to participate in raids, searches and surveillance. They have no fixed hours of work.	Largely perform ministerial i.e. desk work.

(v)



(1)	(2)	(3)
(v)	Minimum physical standards prescribed for recruitment.	No such standards prescribed.
(vi)	Have to undergo an Induction Course in the Army Training Schools, for a period of three months, during which, training in arms and weapons is imparted.	Only ministerial training of shorter duration is imparted.
(vii)	Are required to be in uniform and possess Identity Cards while discharging their field duty. Executive Officers upto the rank of Assistant Collectors, Central Excise, have to wear uniforms.	No such stipulation.
(viii)	Have to face risk and hazard, while dealing with anti-social elements in the discharge of their field duty.	No such risk and hazard faced.
(ix)	Have no take part in ceremonial parades.	No such participation is possible.
(x)	Exercise powers concurrently not only under the 1944 Act, but also under the other allied Acts such as Customs Act, Narcotics and Drugs Act, FERA Act etc. and consequently their territorial jurisdiction gets enlarged.	No such responsibility and extension of jurisdiction.

98. The duties of the Inspectors he said, were broadly outlined by the Government of India, in its Letter dated 26-12-1986. They were illustrative but not exhaustive, so as to permit flexibility in the discharge of their duties, he explained.

99. As regards exercise of powers such as search, seizure, arrest etc., Shri Padmarajaiah laid stress, on the definition of the term "Central Excise Officer", under Section 2(b) of the 1944 Act. Unless an official of the Central Excise Department, was invested by the Central Board of Excise and Customs, with the requisite powers, he could not exercise these powers, he asserted. Such powers he said, were invariably conferred, only on the executive officers, upto the level of Inspectors, for proper and effective discharge of their field duty, which entailed search, seizure, arrest etc., not infrequently, under hostile circumstances, for which they had to prove equal, by virtue of their physical fitness and equipment with arms and training in their use. By no stretch of imagination, he argued, could a ministerial official, not subjected to rigid physical standards, unarmed and untrained in the use of arms, be expected to discharge this onerous and hazardous duty and that too, in civilian attire.

100. At this stage, we must first settle this tortuous debate, as to whether DOSs can be authorised to exercise the above powers in the field, under the 1944 Act and the Rules thereunder. Let us first examine, as to whether the applicants fall within the term "Officer", as defined in Rule 2(viii) of the 1944 Rules, specially, in the context of the



1979 Recruitment Rules, wherein, they have been categorised as ministerial (emphasis added), as compared to the Inspectors, who have been designated as non-ministerial (emphasis added).

101. In this regard, it is pertinent to refer to Rule 9(17) of the Fundamental Rules (FR), defining the term, "ministerial servant". It reads thus:

"Ministerial servant means, a Government servant of a subordinate service whose duties are entirely clerical (emphasis added) and any other class of servant, specially defined as such by general or special order of the Central Government."

It is evident from the 1979 Recruitment Rules themselves, that the applicants have been categorised as ministerial.

102. Rule 5 of the 1944 Rules, in regard to "Delegation of powers by the Collector", reads thus:

"Unless the Central Government in any case otherwise directs, the Collector may authorise any officer subordinate to him to exercise throughout his jurisdiction or in any specified area therein, all or any of the powers of a Collector under these Rules."

At page 1077 of the "Guide to Central Excise", by Arvind P. Datar, 1988-89 Edition, we notice, that different Collectorates have issued, Trade Notices, stipulating the "proper officer", who is to exercise powers under various rules. We see from one of such

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Trade notices, reproduced in the aforesaid Guide, that no ministerial official, let alone DOSs (as in the case of the applicants) have been authorised under Rule 5 ibid.

103. The term "Proper Officer", has been defined as below, according to Rule 2(xi) of the 1944 Rules:

"Proper Officer" means, the officer in whose jurisdiction the land or premises of the produce of any excisable goods or of any person engaged in any process of production of, or trade in, such goods or containers thereof, whether as a grower, curer, wholesale dealer, broker or commission agent or manufacturer or intended grower, curer, wholesale dealer, broker, commission agent or manufacturer are situated."

Nowhere do we notice, that the ministerial staff, let alone, the applicants, exercise, such territorial jurisdiction, apart from their ^{is not} being invested with the requisite powers.

104. Reading as a whole, the definitions of the various terms, under the relevant rules reproduced above, in conjunction with Section 2(b) of the 1944 Act, as also with Rules 5 and 197 thereunder, in their proper collocation and context, the contention of both Counsel for the applicants, that the DOSs and in fact, all ministerial ^{is even} and menial staff, regardless of category, rank and status (to cite the extreme case of peons, as contended by Shri Sampath!) and their capability to exercise the requisite powers, in the field,

unarmed



unarmed and without requisite training in the use of arms, fall within the definition of the term, "Central Excise Officer", seems to us, not only far-fetched but a mere figment of their imagination, particularly ^{& in} the context of the definition of the term, "ministerial servant" under FR 9(17) (para 98 above). The contention of Shri Sampath, that even a menial, like a peon, is a "Central Excise Officer", in the above context to say the least, is bizarre and preposterous.

105. Shri K. Suman, learned Counsel arguing on behalf of his Senior Dr. Nagaraja, invited our attention to Rule 4 of the 1944 Rules, which reads thus:

"Rule 4. Appointment of Officers:

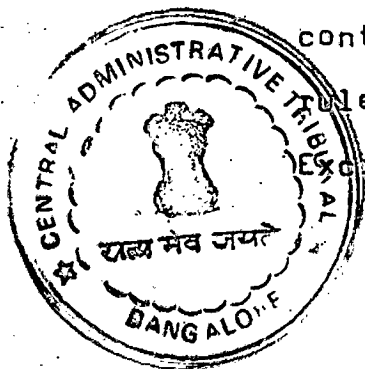
The Central Board of Excise and Customs may appoint such persons as it thinks fit to be the Central Excise Officer or any of the powers conferred by these Rules on such Officers."

He informed, that the DOSs too, could be promoted as Statistical Investigators, like the Inspectors, in 50% of the vacancies, in the Directorate of Statistics and Intelligence (Chart II in the Grey Book) and in this connection, invited our attention to the Government of India Notification dated 28-1-1978, appearing on page 92 of the Central Excise Manual by R.K. Jain, 1987-88 Edition, wherein, among others, the Statistical Investigators (Senior Grade) are seen

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to have been appointed by the Central Board of Excise and Customs, as the "Central Excise Officers" and invested ~~them~~^{de} with requisite powers, under Rules 173-G and 226 of the 1944 Rules, exercisable by an officer of the rank of Inspector. Rule 173-G relates, to the procedure to be followed by an assessee, in regard to maintenance of an account-current with the Collector, separately, for each excisable goods etc., while Rule 226 provides, for the manner in which entry books, stock account and warehouse registers are to be maintained. The endeavour of the Counsel for the applicants seemed to us, to show that they performed similar field duties as the Inspectors, in order to establish, that the nature of duty and the responsibility involved were alike. The provisions of the above rules, have a restrictive scope, in the sense that they essentially pertain to work of a ministerial character. He pleaded, that Rule 4 ibid should not be interpreted with a pedantic and lexicographic approach but in a manner, as to subserve the aim and object of the 1944 Act and the Rules thereunder, as a whole. He therefore urged, that the said Rule read conjointly, in its true context & perspective, along with the other relevant rules, clearly revealed, that the DOSs were "Central Excise Officers", under the said Act and the Rules.

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106. Nowhere, has it been shown to us, that the DOSs, are required to perform the field duties of the Inspectors, in regard to search, seizure, arrest, surveillance etc. We have discussed earlier, the impediments to the DOSs, in not being able to discharge this duty, for want of requisite training in this respect, as in the case of the Inspectors and being unarmed for a task, which entails risk and hazard. In this background, the legal maxim: "the cowl does not make the monk" - cucullus non facit monachum, seems apposite to them.

107. In the light of what we have discussed above, we find no merit, in the contention of the Counsel for the applicants, that DOSs fall within the definition of the term, "Central Excise Officer", under Section 2(b) of the 1944 Act and that they can be invested by the Collector, with the requisite powers, as in the case of Inspectors, under that Act and the Rules framed thereunder.

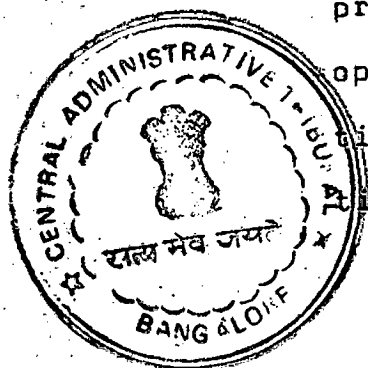
108. Shri Sampath, sought to bring out the anomalies, as a result of the avenue of promotion opened to the UDCs, Stenographers and Draftsmen, to the posts of Inspectors(OG) under the 1979 Rules, as a result of which, though these cadres were lower than that of DOS II, the incumbents thereon he said, eventually stole a march over the latter.

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to prove, which, he referred to the details furnished in the statement at page 185 of the Green Book.

109. We have perused this tabular statement as well, as the relevant 1979 Recruitment Rules. We notice, that the Recruitment Rules lay down a minimum length of service in the immediate lower grades, satisfaction of the required physical standards and passing of the prescribed written and other tests, for the above cadres, for qualification for promotion, to the post of Inspector(OG). We see no illegality therein, in the light of the dicta of the Supreme Court in AIR 1960 SC 284: (1960)2 SCR 311 ALL INDIA STATION MASTERS' ASSOCIATION v. GENERAL MANAGER and in AIR 1962 SC 36 GENERAL MANAGER v. RANGACHARI that Article 16(1) of the Constitution, does not prohibit laying down of efficiency or other qualifications, for securing the best service for being eligible for promotion, which qualifications may not necessarily be technical. Besides, nothing prevented the applicants, from availing of this opportunity of career advancement, at the right time. We therefore find no merit in this contention of Shri Sampat.



110. Shri

110. Shri Suman submitted, that the duties of the Inspectors, were not well defined in the Letter dated 26-12-1986 (para 98 above), referred to by Shri Padmarajaiah. He more or less reiterated, the other points urged by Shri Sampath and stressed, that this Tribunal could interfere and render justice to his clients, even in the light of the ruling of the Supreme Court in CHAURASIA's case, for which he invited specific reference to paras 17 and 18 of the judgment.

111. Shri Padmarajaiah relied strongly on the dicta of the Supreme Court in AIR 1968 SC 850 UNION OF INDIA v. P.K.ROY & ORS to show, as to how there was no parity between the applicants as DOSs and the Inspectors, in regard to their nature of duties and responsibilities. In particular, he relied on the following factors outlined therein, for determination of equation of posts, at the time of integration of the States in 1956, under the States Reorganisation Act, 1956, which were approved by the Supreme Court:

- (i) The nature and duties of a post;
- (ii) The responsibilities and powers exercised by the officers holding a post; the extent of territorial or other charge held or responsibilities discharged;
- (iii) The minimum qualifications if any prescribed for recruitment to the post; and

(iv)

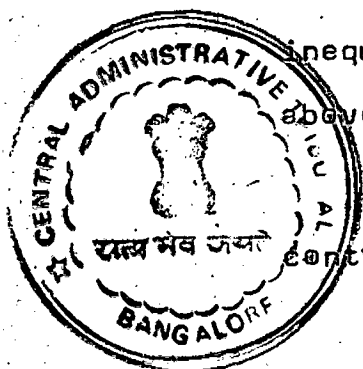
(iv) The salary of the post.

112. Shri Padmarajaiah laid emphasis, on the first two factors, in the context of the disparities brought out by him, between the post of Inspectors and DOS I and II in para 97 above. He asserted, that all the above parameters squarely applied to the case before us, to prove, that the Inspectors were on a higher plane, as compared to the DOS I and II, in regard to the nature of the duties performed and the responsibility shouldered by them and therefore, the latter he said, could not be equated with the former, as prayed by the applicants.

113. He also iterated the dicta of the Supreme Court in CHAURASIA's case (para 59 above) particularly with reference to para 17 of that judgment, to show, that the equation of the posts in question, should be determined by expert bodies like the Pay Commission and that such bodies as also the Executive Government, are the best judge, to evaluate the nature of duties and responsibilities of the posts in question. The IV CPC and the Respondent Department had not deemed it justifiable, he said, to equate the posts of DOSs and Inspectors, taking duly into account, the prevalent inequalities in many respects, as spelt out in para 97 above, he said.

114. We have examined carefully the rival contentions in regard to the above, as also the relevant

record



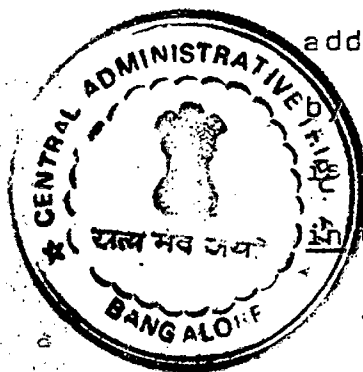
record placed before us. We are persuaded to accept the submission of Shri Padmarajaiah (paras 97 to 99, in particular) that the posts of DOS bear no parity with those of Inspectors. It is generally said, that an executive knows something about everything, while a ministerial servant knows everything about something. The executive functions of the Inspectors specially in the sphere of their preventive duty (which is their primary function) set them as a class apart, as compared to the DOS (which post the applicants hold) in point of their special training (including use of arms), to enable them to discharge the functions of entry, search, seizure, arrest etc. The ministerial staff in the Department, like the applicants, may accompany the field party, while the above functions are performed by the Inspectors and other executive staff, but the character of their role is only peripheral, as compared to that of the latter, which is pivotal (emphasis added). The applicants and the Inspectors, may have some identity in the sphere of internal audit, but yet their roles are distinctive, in that, in the case of the latter, the emphasis is on the technical aspect, while in that of the former, the accent is on the clerical aspect. If the duty of Inspectors was on all fours with that of the DOSs, there was no need for the Government of India to entertain a large complement of Inspectors, more than tenfold that of the DOS (para 83 above) on a higher pay scale, with no little financial strain on the

country's

country's exchequer. It is manifest therefrom, that the Inspectors have a definite role to play, not only in the field (which is their legitimate sphere of duty) but also in assisting the internal audit in technical matters. We have broadly referred to the features of internal audit in para 27 above.

115. While the Inspectors, by virtue of their higher academic qualification, superior and specialised training and experience are versatile, the DOSs like the applicants, have only a restricted role to play, in the ministerial sphere. The fact, that the Inspectors and the DOSs like the applicants collaborate in the sphere of internal audit, does not ipso facto make them equals, as their roles in this audit are distinctive, for the reasons aforementioned, apart from the fact, that the complexion of their field duty and responsibility, set them as a class apart, as field executives, which is relevant in the light of the definition of a "ministerial servant", under FR 9(17) extracted in para 101 above. There is thus, no total reciprocity and/or identity, in so far as the Inspectors and the applicants (in the posts of DOS II) are concerned, in the entire gamut (emphasis added) of their duties and responsibilities, as claimed by the applicants. The legal maxim that "the less, is always included in the greater" (and not vice versa) in eo quod plus sit semper inest et minus is apt, to

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the case of the Inspectors, as compared to that of the applicants, whose duties as stated earlier, are not wholly co-extensive, with those of the Inspectors, but restricted, to ministerial work only. To use a current phrase in this context, their case is only good in parts, like the curate's egg!, for comparison with the Inspectors, in the limited sphere of internal audit, where too, their roles are yet distinctive, as discussed earlier. There is no question of precision of mathematical equality or of equality near to it, as the hiatus is too wide, to permit comparison and therefore, the various rulings cited and discussed by us above, on the principle of equality, in regard to the posts of DOS I and DOS II, equally govern that of Inspectors vis-a-vis DOSs.

116. The dicta of the Supreme Court in the cases of CHAURASIA and P.K.ROY (paras 59 and 111 respectively) in our view, comes to the aid of the respondents, in distinguishing the cadre of Inspectors from that of the DOS, in the light of the principles enunciated therein.

117. As stated earlier, we had heard this matter for five days in succession and the hearing was concluded on 10-3-1989. However, Dr. Nagaraja produced before us on 15-3-1989, a copy of the

Letter

Letter dated 29-11-1988, addressed by R-3 to R-1,
wherein, he has stated inter alia, as under:

- "4. At present three supervisory cadres viz., DOS L-I, DOS L-II and Office Superintendent in the pay scale of Rs.1400-2300, 1600-2600 and Rs.2000-3200 respectively are existing in this Collectorate. No supervisory officer is working in the scale of Rs.1640-2900. Prior to implementation of the Revised Pay Rules, 1986, there were also three supervisory cadres namely DOS L-II/L-I and Office Superintendent in the pay scale of Rs.425-700, 550-750 and 700-900 respectively, but on implementation of revised pay Rules 1986 the pay scale of Rs.1400-2300 has been recommended to DOS L-II and Rs.1600-2600 has been recommended to DOS L-I instead of the pay scale of Rs.1640-2900 for DOS L-II and some other scales for DOS L-I. The duties and responsibilities of these DOSs and Office Superintendents are one and the same. As such, instead of keeping two supervisory cadres with designation as DOS L-II and DOS L-I, I am of the opinion that the cadre of DOS L-II and L-I may be merged as one cadre with the name of Deputy Office Superintendent, with pay scale of Rs.1600-2600 or scale of Rs.1640-2900 as is done in case of Inspectors, then having two grades of OG and SG.
5. The suggestions is made more so keeping in view the fact that there exists one more cadre of Tax Assistants carrying the pay scale of Rs.1350-2200 whose promotion is being considered from amongst Upper Division Clerks with pay scale of Rs.1200-2040.

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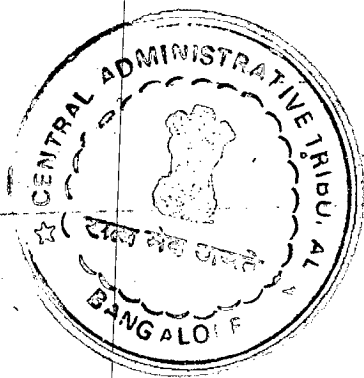
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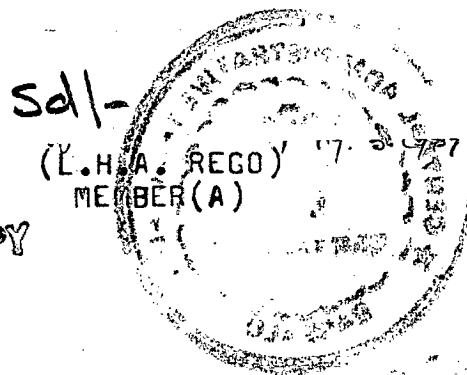
In the event of upgradation of the post of DOS L-II to that of DOS, the post of DOS could directly be filled in from amongst the Tax Assistants."

A copy of the said letter, was furnished by Dr.Nagaraja, to Shri Padmarajaiah. We heard both of them in the matter. At best, the aforesaid letter, is only of the nature of a proposal by R-3 to R-1, but the same however, does not in any way influence the decision, we have arrived at, on the basis of detailed discussion as above, that the post of DOS, does not bear parity with that of the Inspector.

118. In fine, we find that both Sets of applications are bereft of merit and therefore we dismiss the same, with no order however, as to costs.



Sd _____
(K.S.PUTTASWAMY)
VICE CHAIRMAN. 17/3/89.
TRUE COPY



[Signature]
DEPUTY REGISTRAR (JULY 20/89)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE