

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
BANGALORE - 560 033.

Dated: **13 JUN 1995**

APPLICATION NO. 2 of 1994

APPLICANTS: S.B.Shingenavar and another.

v/s.

RESPONDENTS: Union of India represented by its Secretary,
Ministry of Finance, Deptt. of Revenue,
New Delhi and 3 Others.

To

1. Shri RaviVarma Kumar, Advocate.
No.11, Jeevan Building,
Kumara Park East,
Bangalore - 560 001.
2. Shri M.Vasudeva Rao, Addl.C.G.S.C.,
High Court Building, Bangalore - 1.
- . Collector of Central Excise,
Central Revenue Buildings,
Queen's Road,
Bangalore-560 001.

Subject:- Forwarding copies of the Orders passed by the
Central Administrative Tribunal, Bangalore-38.

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Please find enclosed herewith a copy of the Order/
~~Order/Intimation Order~~, passed by this Tribunal in the above
mentioned application(s) on 12.06.1995

Issued on
13/06/95

[Signature]

[Signature]
for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

ORIGINAL APPLICATION NO. 2/1994

DATED THIS THE TWELFTH DAY OF JUNE, 1995

Mr. Justice P.K. Shyamsundar, Vice Chairman

Mr. T.V. Ramanan, Member (A)

1. Mr. S.B. Shingenavar
C/o. Bheemappa
Working as Inspector of
Customs and Central Excise
(Audit Section Headquarters)
Office of the Central Excise
and Customs, Central Revenue
Building, Bangalore-560 001.
2. Mr. M. Suresh
C/o. C. Munikirshna
Working as Inspector of
Customs and Central Excise
Narcotic Section (Headquarters)
Office of the Central Excise
and Customs, Central Revenue
Building, Queen's Road,
Bangalore-560 001.

... Applicants

(By Advocate Mr. Ravivarma Kumar)

1. Union of India represented by
its Secretary, Department of
Revenue, Ministry of Finance
New Delhi.
2. Central Board of Excise and
Customs, Represented by its
Chairman, Ministry of Finance
Department of Revenue
North Block, New Delhi.
3. Principal Collector of Customs
and Central Excise
Balbahadur Stadium
Basir Bagh
Hyderabad - 500 029.
4. Collector of Central Excise
Central Revenue Buildings
Queen's Road
Bangalore-560 001.

... Respondents

(By Mr. M.V. Rao, A.C.G.S.C.)



O R D E R

Mr. T.V. Ramanan, Member (A):

The first applicant belonging to a Scheduled Caste (SC for short) and the second belonging to a Scheduled Tribe (ST for short) have filed this application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:-

- (a) Issue an order/direction directing the Respondents to make available a total number of 10 (ten) vacancies for Scheduled Caste candidates and 17 (Seventeen) vacancies for Scheduled Tribe candidates in respect of the promotions effected through review DPC held on 6.1.1993 (Sixth January One Thousand Nine Hundred and Ninety Three) for the posts of Superintendents;
- (b) Issue an order/direction in the nature of Mandamus directing the Respondents to consider the cases of the applicants for promotion to the cadre of Superintendents retrospectively from the date they became so entitled and to promote them accordingly and give them all consequential benefits flowing from the same.

2. In brief, the applicants' case is that having joined as Inspectors of Central Excise they had completed the prescribed 8 years of service as

Inspectors and became eligible for promotion to the posts of Superintendent of Central Excise in January, 1990. According to them, the department has been denying the legitimate rights of the SC and ST candidates for promotion to the posts of Superintendents of Central Excise between 1987 and 1992-93 by filling up the posts reserved for SC and ST by appointment of general candidates and by not carrying forward those vacancies for SC/ST as per Government instructions on the subject, by underestimating the vacancies placed before the Departmental Promotion Committees (DPC for short) which met during the aforesaid period and by holding supplementary DPCs during the various recruitment years during the said period thereby eliminating the increase in the zone of consideration and the extended zone of consideration resulting in non-consideration and non-promotion of SC and ST candidates eligible for promotion to the posts of Superintendent of Central Excise in general and the applicants in particular. According to them, during the period referred to supra there were 10 reserved vacancies of SCs and 17 reserved vacancies of ~~the~~ STs which should have been carried forward and reckoned by the review DPC held by the department on 6th January, 1993 for the posts of Superintendent of Central Excise. According to the applicant, at the review DPC held on 6.1.1993 a total



no. or 58 vacancies were sought to be filled up and so the zone of consideration extended upto sl.no.290 of the seniority list of Inspectors. The first applicant was at sl.no.283 and the second applicant at sl.no.270. Despite this the applicants were not promoted. It is, therefore, that they seek directions from the Tribunal for reckoning of the aforesaid 17 reserved vacancies by review of the review DPC held on 6.1.1993, for considering the applicants for the posts of Superintendent or Excise from the date they became so entitled, for promoting them accordingly and for giving them all consequential benefits arising out of such promotions.

3. The contention of the respondents is that there was no carry forward of reservations if reserved vacancies had been filled up by general candidates due to non-availability of reserved candidates. It was only after receipt of Deptt. of Personnel and Training O.M. No.89011/7/90-Estt(B) dated 8.2.1991 that where reserved candidates were not available an option was available to the Department for keeping the reserved vacancies unfilled or to de-reserve the same and fill them by general candidates. They have also averred that the applicants came within the extended zone of consideration only at the DPC held on 22.6.1992 which was subsequently reviewed on 6.1.1993. In all, 58 vacancies had to be filled up at the review DPC out of which 11 vacancies were

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reserved for SC candidates and 6 for ST candidates. However, despite their being in the extended zone of consideration the applicants could not be recommended by the said DPC for promotion as 11 SC and 6 ST candidates above them in the zone of consideration were recommended by the DPC for promotion and all the 17 reserved vacancies were filled by appointment of those SC/ST candidates. There is thus no merit in this application.

4. We have heard the learned counsel for the applicants and the learned Addl. Central Government Standing Counsel (ACGSC for short) appearing for the respondents.

5. The points that arise for determination are as follows:

- A. Whether for promotions by selection from Group 'C' posts or Inspector, Central Excise to Group 'B' posts or Superintendent of Central Excise carry forward of reserved vacancies from year to year was permissible in the event of an adequate number of SC/ST candidates not being available in any particular year?
- B. Whether the de-reservation orders obtained were not in conformity with the Department of Personnel and A.R. O.M. No.36011/25/79-Estt(SCT) dated 16.11.1979?
- C.(i) Whether promotions given to general candidates in reserved vacancies without obtaining prior approval of de-reservation by the competent authority stand vitiated?



(ii) Whether promotions given to general candidates in reserved vacancies on certain occasions without obtaining approval for de-reservation by the competent authority stand vitiated?

D. Whether supplementary DPCs were held during a particular year only to deprive the SC/ST candidates of the chances of being considered for promotion?

E. Whether non-carry forward of reserved vacancies during the same year, when one or more supplementary DPCs were held, amounted to depriving the SC/ST candidates of the chances of being considered for promotion?

6.1 As regard point A, it was urged on behalf of the applicants that the Department had failed to carry forward, since 1987, the reserved vacancies which could not be filled up by promotion of SC/ST candidates due to their non-availability even in the extended zone of consideration but which were filled by appointment of general candidates. Referring to Department of Personnel & A.R. letter No.36011/1579-Estt(SCT) dated 6.1.1981 it was contended that appointment of general candidates in vacancies reserved for SC/ST should not mean loss of those vacancies to SC/ST. Learned counsel for the respondents argued that for promotion from Group 'C' to Group 'B' (from Inspector to Superintendent) there is, no doubt,

reservation in promotion by selection in accordance with the instructions contained in the Department of Personnel and Administrative Reforms O.M. No.10/41/73-Estt(SCT dated 20th July, 1974 but the same O.M. rules out carry forward of reservations from year to year in the event of an adequate number of SC/ST candidates not being available in any particular year. Therefore, whenever adequate number of SC/ST candidates were not available even within the extended zone of consideration, the reserved vacancies were filled up according to necessity, by appointment of general candidates. The question of carry forward of reservations would not, therefore, arise due to the specific prohibition on carry forward of reservations from year to year. In view of this position, he contended, the contention of the counsel for the applicants that carry forward was not resorted to from 1987 onwards or the reserved vacancies in which SCs/STs could not be fitted in by the various DPCs is not tenable.

6.2 We find from the Government instructions cited above that there is no carry forward of reservations for promotions from the posts of Inspectors to those of Superintendents, Central Excise. O.M. No.10/41/73-Estt(SCT) dated 20.7.1974 relevant to promotions by selection made from the posts of Inspector to those of Superintendent Group 'B' reads as follows:



Subject: Reservations for Scheduled Castes and Scheduled Tribes in post filled by promotion - Promotions by selection to Class II, within Class II and to the lowest rung of Class I.

The question whether the scheme of reservations for candidates belonging to Scheduled Castes and Scheduled Tribes in promotions by selection should be extended to posts in Class II services and beyond, and if so to what extent, has been under the consideration of Government. It has now been decided, in supersession of the orders contained in paragraph 2B(a) of the Ministry of Home Affairs O.M. No.1/12/67-Estt.(C) dated the 11th July, 1968 that there will be reservations of 15 and 7½% of the vacancies for Scheduled Castes and Scheduled Tribes respectively in promotions made by selection from Class III to Class II, within Class II and from Class II to the lowest rung or category in Class I, in grades or service in which the element of direct recruitment, if any, does not exceed 50 per cent.

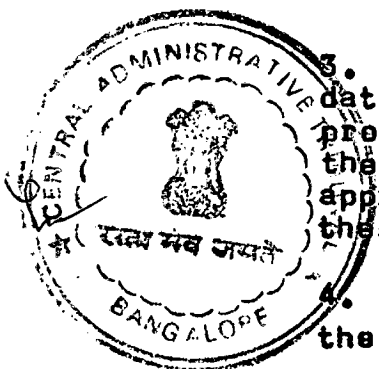
2. The following instructions will apply to the filling up of vacancies reserved for Scheduled Castes and Scheduled Tribes in terms of the instructions contained in this Office Memorandum:-

- (i) Selection against vacancies reserved for Scheduled Castes and Scheduled Tribes will be made only from among those Scheduled Castes/Scheduled Tribes Officers who are within the normal zone of consideration.
- (ii) If candidates from Scheduled Castes and Scheduled Tribes obtain the basis of merit with due regard to seniority, on the same basis than others, less number of vacancies than that reserved for them, the difference should be made up by selecting candidates of these communities who are in the zone of consideration irrespective of merit but who are considered fit for promotion.
- (iii) A Select List should then be prepared in which the names of all selected officers, general as well as those belonging to Scheduled Caste and Scheduled Tribes are arranged in the order of merit and seniority according to the general principles for promotion to selection posts laid down in the Ministry of Home Affairs O.M. No.1/4/55-RPS, dated 16th May, 1957, i.e., by placing the names in the three categories viz., 'Outstanding', 'Very Good' and 'Good' in that order, without disturbing the seniority inter-se within each category. This Select List should, thereafter, be followed for making promotions in vacancies as and when they arise during the year.

- (iv) For determining the number of vacancies to be reserved for Scheduled Castes and Scheduled Tribes in a Select List, a separate roster on the lines of the roster prescribed in Annexure I to Office Memorandum No.1/11/69-Estt.(SCT) dated the 22nd April, 1970 (in which points 1,8,14,22,28 and 36 are reserved for Scheduled Castes and points 4,17 and 31 for Scheduled Tribes) should be followed. If owing to non-availability or suitable candidates belong to Scheduled Castes or Scheduled Tribes, as the case may be, it becomes necessary to de-reserve a reserved vacancy, a reference for de-reservation should be made to this Department indicating whether claims of Scheduled Castes/Scheduled Tribes candidates eligible for promotion in reserved vacancies have been considered in the manner indicated in this O.M.
- (v) There will, however, be no carry forward of reservations from year to year in the event of an adequate number of Scheduled Caste/Scheduled Tribe candidates not being available in any particular year.
- (vi) While vacancies reserved for Scheduled Castes and Scheduled Tribes will continue to be reserved for the respective community only, a Scheduled Caste officer may also be considered for appointment against a vacancy reserved for Scheduled Tribes, or vice versa, in the same year itself in which the reservation is made, where the appropriate reserved vacancy could not be filled by a Scheduled Tribe or a Scheduled Caste candidate, as the case may be.
- (vii) Where promotions in the above manner are first made on a long-term officiating basis, confirmation should be made according to the general rule, viz., that an officer who has secured earlier officiating promotion on the basis of his place in the select list should also be confirmed earlier and thus enable to retain the advantage gained by him, provided that he maintains an appropriate standard vide para (iii) or Ministry of Home Affairs Office Memorandum No. F/1/1/55-RPS dated the 17th February, 1955. But the principle of reservations would not apply again at the time of confirmation of promotees.

3. The above instructions take effect from the date of issue of these orders where a Select List for promotion by selection has already been prepared by the Departmental Promotion Committee and approved by the appropriate authorities before the date of issue of these orders.

4. Ministry of Finance etc. are requested to bring the above decisions to the notice of all concerned.



5. In so far as persons serving in the Indian Audit and Accounts Department concerned, these orders issue in consultation with the Comptroller and Auditor General.

We are of the view that in the light of clause (V) of para-2 of the aforesaid O.M., the principle of carry forward, which is applicable for promotions elsewhere, does not apply to the promotions referred to in the instant case. The only exception made is in respect of cases where a vacancy falling on a reserved point in the roster is treated as unreserved due to the fact that there is only one vacancy in the year of promotion as provided in the Deptt. of Personnel & A.R. O.M. No.10/37/74-Estt(SCT) dated 3.2.1975, reproduced below:

Subject: Reservations for Scheduled Castes and Scheduled Tribes in posts filled by promotion by selection to Class II, within Class II and from Class II to the lowest rung of Class-I - carry forward of reservations:

The undersigned is directed to refer to this Deptt.'s O.M. No.10/41/73-Estt.(SCT), dated 20th July, 1974 providing for reservations at 15% for Scheduled Castes and 7½% for Scheduled Tribes in promotions made by selection from Class III to Class II, within Class II and from Class II to the lowest rung or category in Class I in grades of service in which the element of direct recruitment if any, does not exceed 50%. According to para 2 (v) of the said O.M. in such promotions there is no carry forward of reservations from year to year in the vent of an adequate number of Scheduled Castes/Scheduled Tribe candidates not being available in any particular year. The question as to whether any exception should be made in this regard in respect of cases where a vacancy falling on reserved point in the roster is treated as unreserved due to the fact that there is only one vacancy in the year of promotion, has been raised and has been examined. It has now been decided that in partial modification of para 2(v) of the O.M. dated 20th July, 1974, in the case of promotions to which the orders in the said O.M. dated 20th July,

1974 apply, when a vacancy falling on a reserved point in the roster is treated as unreserved due to its being the only vacancy during the year of promotion, the reservation so due against the reserved point should be carried forward to subsequent three recruitment years.

2. The instructions in para 2 (vi) of the aforesaid O.M. dated 20th July, 1974 relating to exchange of vacancy reserved for Scheduled Tribes in favour of Scheduled Castes and vice-versa in the same year, itself. In which reservation is made, would remain unaffected. In other words, when in the circumstances mentioned in para 1 above, a reservation is carried forward and vacancy in a subsequent year is actually treated as reserved against a "Carry Forward" reservation, the provision relating to exchange of reservation for Scheduled Tribes in favour of Scheduled Castes and vice-versa would apply to such reservation. "

6.3 It is also clear that the reserved vacancies which remained unfilled due to non-availability of SC and ST candidates, as is the case here, from 1987 onwards could be filled by appointment of general candidates after de-reservation in accordance with the relevant instructions issued by the Central Government. Thus, the contention of the counsel for the applicants that carry forward of reservations should have been resorted to is not tenable at all. We are supported in this view by an order of This Tribunal dated 6.6.1990 in Application No.1897/88(F) (M. Krishna Naik V. Collector of Central Excise). We refer with advantage to the following excerpts ^{from} of that order:-



" 16. The principal thrust of Smt. Shobha, was that according to the Standing instructions of the Government of India, 15 percent and 7½ percent, of the posts in the grade of Superintendent, which fell in Group 'B', were earmarked respectively, for promotion, to the candidates belonging to SC/ST. Even though assuming for the sake of argument, without however, conceding, that her client did

not come within the "zone of consideration". for promotion to the grade of Superintendent, Smt. Shobha sedulously contended, that if no candidate belonging to SC/ST was available, to be considered for promotion to that grade, in the posts earmarked for them, during the year 1989-1990, those posts could not have been filled in by the respondents, from the 'general category' of candidates, but had to be 'carried forward', for the period specified under the relevant instructions of the Government of India, until suitable SC/ST candidates were available. This however was not done, she alleged. However, she could not pinpoint, the relevant instructions of the Government of India, in support and pleaded for some time to trace them out and place before us.

17. Sri Padmarajaiah asserted, that there were no instructions from the Government of India, to support the case of the applicant, as made out by Smt. Shobha, as in the present case, promotion was involved to the grade of Superintendent, which fell in Group 'B', and according to prevalent instructions of the Government of India reservations could not be 'carried forward' from year to year, in respect of the posts in Group 'B' in the event of adequate number of SC/ST candidates, not forthcoming in any particular year, he explained. This was expressly stated by the DPC, in the proceedings of its meeting held on 3.2.1990, he averred.

18. We have taken due note of the averments of both sides in regard to the above question of 'carry forward' of reservations from year to year. Neither the applicant nor his counsel, has been able to place before us, any authority, to show, that such reservation can be 'carried forward' in Group 'B' posts, as contended by them. Apparently, this contention has no basis. This apart, it does not appear to have been advanced by the applicant in his written pleadings, wherein the emphasis is on the "zone of consideration". The present contention therefore, on the question of 'carry forward' of reservations is beyond the written pleadings of the applicant and normally we should not have taken cognisance of it, according to the law of pleadings. However, without taking an unduly technical view of the matter, we shall examine this contention in the cause of substantial justice.

19. In order to ascertain the facts, we have carefully gone into: "The Brochure on Reservation for Scheduled Castes and Scheduled Tribes in Service" (7th Edition, 1987) brought out by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, New Delhi. We notice, that para 9.2(b)(v) under the subcaption: "Promotions by Selection to Group 'B' within Group 'B' and from Group 'B' to the lowest rung in Group 'A' (to Class II and from Class II to the lowest rung in Class II)" in Chapter 9 thereof, under the main caption:

RRxo

"Promotions-Reservations and Concessions", clearly states, that there will be no 'carry forward' of reservations from year to year, in the event of an adequate number of SC/ST candidates not being available in any particular year. The post of Superintendent, falls in Group 'B' and according to the relevant Cadre and Recruitment Rules, promotion to it, is by selection. In the absence of any authority to the contrary, the instructions of the Government of India in para 9.2(b)(v) ibid prevail and squarely govern this case.

20. It is clear from the foregoing, that the applicant has no case, in that he did not fall within even the enlarged "zone of consideration" and he cannot on any authority claim the benefit of 'carry forward' of reservation from year to year, for the reasons aforementioned. "

6.4 The reference made by the learned counsel for the applicants to the Department of Personnel & Administrative Reforms letter No.36011/1579-Estt(SCT) dated 6th January, 1981, available at page 181 of the Brochure on Reservation for Scheduled Caste and Scheduled Tribes (7th Edition) published by the Government of India, Deptt. of Personnel & Training is not relevant at all to the instant case. The said letter reads as follows:

" Subject: Decisions taken by individual Ministries/Departments not to de-reserve a reserved vacancy and fill up by general community candidate- keep the reserved vacancies unfilled till a person belonging to the reserved categories is available.

Sir,

Reference UPSC's letter No.16/12(5)/78-R (C&P) dated 29.1.1979 on the above subject. I am directed to say that the decision taken by some Ministries/Departments seems to be based on the misapprehension that if the reserved vacancy goes to a general category caidate, consequent on the non-availability of the reserved community candidates, the vacancy is lost to the SC/ST. This, however, is, not so because of the mechanism of the carry-forward of reservations to three subsequent recruitment years. De-reservation is the mechanism before filling up a reserved vacancy by a non-reserved candidate and carry



forward is the modality for safeguarding the SC/ST interests. In facts, efforts have to be made to find out SC/ST candidates for a total period of four recruitment years, taking into consideration the original recruitment year and the three years of carry forward. Four recruitment years should be considered to be a sufficiently long and reasonable period to look for a reserved category candidate. Thus the mechanism of de-reservation has three functions, firstly, to keep the reservation alive for four years during which efforts could be made to find out SC/ST candidates, secondly, Administration does not suffer because the vacancy need not be kept vacant till the search for a SC/ST candidate has produced result and can be filled up by a general category candidate and thirdly, general community candidate can also get appointed against a reserved vacancy which is only in public interest but without causing any long term harm to SC/ST candidates when they are not available.

2. The decision to keep a vacancy unfilled for more than one year in anticipation of SC/ST candidate has serious implications on the maintenance and operation of the reservation roster. According to the present rules, no gaps could be left in the roster and if the reserved vacancies are kept unfilled for a number of years, it will give rise to many gaps in the roster. If any Ministry/Department decides to keep a reserved vacancy unfilled in a particular year, that Ministry or Department will have to stop making recruitment in any subsequent year till they fill up the reserved vacancy in the previous year and complete the points in the roster. So the Ministries and Departments will have to take this decision at the risk of no further recruitments in the subsequent years till the reserved vacancies of the earlier years have been filled up by SC/ST candidates.

3. The point now remains as to whether in the face of clear instructions of this Department in this regard, Ministries/Departments are empowered to take any different decision which does not conform to the orders of this Department. According to the Government of India (Allocation of Business) Rules, 1961, as amended from time to time, Department of Personnel is the nodal agency empowered to issue policy directive regarding reservations for SC/ST. The Law Ministry, who have also been consulted in this matter, has opined that Department of Personnel is competent to lay down the policies relating to reservation for SC/ST under the said Allocation of Business Rules, and other Ministries/Depts. are bound to follow them.

If other Departments intend to depart from the said policies laid down by the Department of Personnel it is mandatory for them to consult the Department of Personnel in terms of sub-rule 4 or rule 4 of the Transaction of Business Rules; otherwise, the policies laid down by the Department of Personnel are binding on them.

4. Another fallacy in the decision of the Ministries etc., is that the Departments concerned would seem to be under the impression that if a reserved community candidate is not available, the vacancy itself need not be filled - which connects as administrative need for recruitment against a post, already decided on public interest with the communal character of the candidate or even his availability, whereas, in reality, the need for filling up the vacancy has to be determined independently and once determined, further action should be initiated. To say that the 'administration' would not have any necessity for the filling up of a post, which falls on a reserved point just because a suitable candidate from the scheduled communities is not available will amount to reconstructing facts and reversal of logic besides taking a limited view, of the concept of 'public interest'.

5. Thus, it may be seen that the decision in question taken by the individual Ministries/Departments in keeping the reserved vacancies unfilled till the SC/ST candidates are available, do neither help much the SC/ST whose interests are well protected by the present rules nor do they sub-served the interests of administration which would have to go without persons to discharge the duties of the posts for which recruitment exercise was in fact initiated. On the other hand, they give rise to situations which if pressed to their logical conclusions would complicate matters needlessly, without commensurate unadvantage.

6. The above position is being brought to the notice of the concerned Ministries/Departments who have taken separate decisions in this regard.

It may be seen from para 1 of the aforesaid O.M. that what

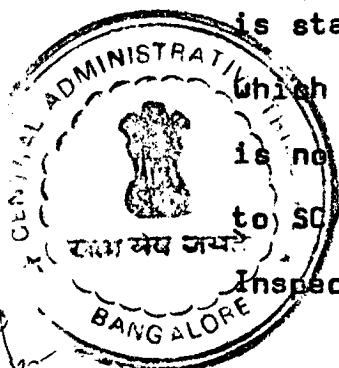
is stated therein related to recruitments to posts for

which carry forward of reservations is provided. As there

is no carry forward of reservations for candidates belonging

to SC/ST in promotions by selection from the posts of

Inspector to those of Superintendent of Central Excise,



the contents of para-1 referred to supra regarding reserved vacancies filled by general candidates being not lost to the SC/ST do not govern the case. We, therefore, answer point 'A' in the negative.

7.1 Regarding point B, learned counsel for the applicants contended that where de-reservation orders had been obtained by the respondent-Department those should have been in accordance with the Department of Personnel and Administrative Reforms O.M. No.36011/25/79-Estt.(SCT), dated 16.11.1979 available at page 177 of the Brochure (7th edition) referred to supra, which is reproduced below:

" Subject: Simplification of the procedure of de-reservation of vacancies reserved for SCs/STs - delegation of powers for de-reservation to Ministries/ Department of the Government of India in certain specified cases.

The undersigned is directed to say that as clarified in this Department's O.M. No.28/14/74-Estt(SCT) dated 12-7-76, the approval of this Department has to be obtained in all cases before a reserved vacancy can be treated as de-reserved and utilised for the appointment of a general category candidate except in the following cases:

- (1) Reserved vacancies in purely temporary posts which has no likelihood of becoming permanent or continuing indefinitely;
- (2) Reserved vacancies in scientific and technical posts.

2. Of late, it has been felt that the provisions regarding seeking prior approval to de-reservation from this Department has been resulting in considerable delays in giving effect to the promotion of the approved candidates (including SC and ST candidates in some cases) on the Select List, apart from casting a heavy burden of work upon this Department. It has, therefore, been considered necessary that in certain selected cases the possibility of authorising the Ministries/Departments of the Government of India themselves to de-reserve the vacancies subject to certain safeguards, should be

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explored. It has accordingly been decided that hereafter the Ministries/Departments of Government of India may themselves accord approval to the de-reservation of reserved vacancies only recruitment made by promotions subject to following conditions:

- (1) There is neither a SC nor a ST candidate available or eligible for promotion in the feeder cadre(s) in the relevant service/recruitment rules/orders;
- (2) A copy of the proposal for de-reservation in the appropriate prescribed proforma is sent for information immediately to (i) The Commissioner for SCs and STs and (ii) to this Department.
- (3) The proposal for de-reservation has been seen and concurred in by the Liaison Officer of the Ministry/Department.
- (4) The proposal for de-reservation is agreed to at a level not lower than that of Joint Secretary to the Government of India in the administrative Ministry/Department (Proper concerned).
- (5) In the event of a disagreement between the appointing authority and the Liaison Officer the advice of this Department has been appointed.

3. The Ministry of Finance etc. are requested kindly to bring the above instructions to the notice of all the appointing authorities under their administrative control. May be specifically made clear to them that except in the case of De-reservation of reserved vacancies in promotional posts satisfying all the above conditions, all other cases of de-reservation of vacancies will be as hitherto force, continue to be referred to this Department for prior approval. "

Drawing our attention to condition(1) of para-2 of the O.M., counsel contended that de-reservation sought and obtained wherever it was necessary the approval was per se invalid in view of condition (1) of para-2 remaining unsatisfied because of availability of eligible SC and ST candidates for promotion in the feeder cadre of

Inspectors on all the occasions when de-reservation was sought and obtained. Reiterating his submission that de-reservation should not have been agreed to for the reason that there were SC/ST candidates available and eligible for promotion in the feeder cadre of Inspectors, learned counsel proceeded to contend that filling up of



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reserved vacancies by general candidates after availing such de-reservation was wrong and that all those reserved vacancies should be taken as frozen during the relevant years although there was no carry forward of reservations, an aspect which he admitted during the course of arguments, but even so he argued there would be a technical carry forward of reservations and those vacancies treated as having been carried forward from year to year until they were filled up by SC/ST candidates. This argument was rebutted by the learned ACGSC who described it as fallacious.

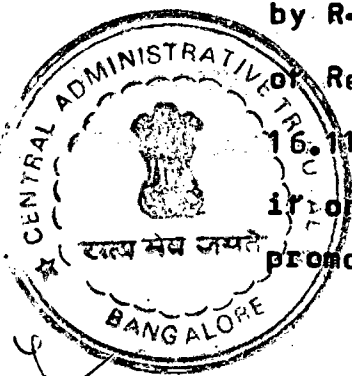
7.2 We are unable to agree with the aforesaid submission of the learned counsel for the applicant for the reason that O.M. No.36011/25/79-Estt(SCT) dated 16.11.1979 speaks only of delegation of powers for de-reservation to various Ministries and Department subject to fulfilment of the condition listed from (1) to (5) of para-2. In para-3 of the O.M., it is clearly stated that cases for de-reservation not satisfying all the 5 conditions referred to in para-2 would continue to be referred to the Department of Personnel and Administrative Reforms for prior approval of proposals for de-reservation. It may be relevant at this stage to refer to the O.M. issued by the Deptt. of Personnel & A.R. subsequently in 1989. The said O.M. No.36011/5/81/Estt(SCT) dated 7.4.1981 available at page-182 of the Brochure (7th edition) reads as follows:-

"Subject: Simplification of the procedure of dereservation of vacancies reserved for SC/ST - Delegation of powers of de-reservation - clarification regarding.

The undersigned is directed to draw attention to Department of Personnel's O.M. No.36011/25/79-Estt(SCT) dated 16.11.1979 regarding delegated powers or de-reservation to Ministries/Departments in cases of promotion and to say that the copy of the proposal in the prescribed proforma should be sent to the Department of Personnel and the Commissioner of Scheduled Caste/Scheduled Tribe by the administrative Ministry/Department concerned, and not by any attached and subordinate offices. It is further stated that the Ministry/Department concerned should wait for a period of at least two weeks after sending the proforma to the Department of Personnel and the Commissioner for SC/ST, for the comments, if any, before the reserved vacancies are de-reserved by them, under the delegated authority.

2. Ministry of Finance etc., are requested to bring the above clarifications to the notice of all appointing authorities under their control. "

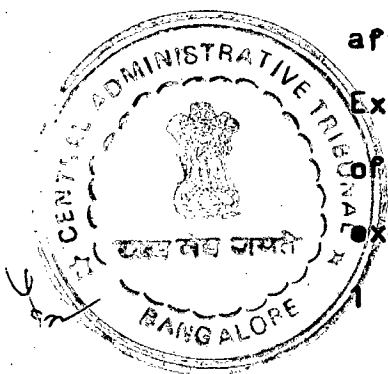
This O.M. provides that all proposals for de-reservation in case of promotion should also be endorsed to the Department of Personnel and Administrative Reforms and the Commissioner for SCs and STs by the administrative Ministry/Department concerned who should wait for a period of atleast 2 weeks for their comments, if any, before the reserved vacancies are de-reserved by them under the delegated authority. Learned ACGSC submitted that the procedure laid down in the 2 O.Ms referred to supra have been fully complied with and approval for de-reservation secured from time to time. He produced a copy of the communication in this regard sent to R-4 by R-2, the Central Board of Excise and Customs, Deptt. of Revenue, New Delhi. We notice that the O.M. dated 16.11.1979 does not per se prohibit de-reservation even if one SC or ST candidate was available or eligible for promotion in the reader cadre. The O.M. merely defined



the ambit of the powers delegated to the Ministry/ Department to deal with a proposal for de-reservation in a situation where there is even 1 SC or ST candidate available or eligible for promotion in the feeder cadre, i.e., the delegated powers cannot be exercised by the Ministry or Department concerned, if even one SC or ST was available or eligible for promotion in the feeder cadre, which in this case is, the feeder cadre of Inspectors. However, in view of the unchallenged assertion made by the ACGSC that instructions laid down in the O.M. dated 16.11.1979 the O.M. dtd. and/7.4.1981 were followed before the administrative Ministry conveyed approval for de-reservations, we accept the same. Apparently, no objections were raised either by the Department of Personnel and Administrative Reforms or by the Commissioner for SCs and STs within the time limit prescribed in the O.M. of 7.4.1981 after receipt of copies of the proposals for de-reservation sent by the administrative Ministry. It is thus clear that the aforesaid two authorities did not insist on the fulfilment of condition(1) of para-2 of the O.M. dated 16.11.1979. ^{therefore} We hold that no irregularity has been committed in the matter of approvals given for such de-reservations. Accordingly, we answer point B in the negative.

8.1 Regarding point C(1), learned counsel for the applicants argued that promotion of general candidates in reserved vacancies before securing prior approval for de-reservation of those vacancies was not tenable because vis-a-vis certain DPCs such approval was secured ex-post facto. We are told that in respect of the DPC held on 15.3.1991 to consider promotions to

25 posts of Superintendent, 3 posts for SC and 2 posts for ST were reserved. Due to non-availability of sufficient number of eligible SC and ST candidates even within the extended zone of consideration, only 2 SC candidates could secure promotion and against the remaining 1 vacancy reserved for SC and 2 vacancies reserved for ST candidates, 3 general candidates as recommended by the DPC were promoted even before the Collector of Central Excise, Bangalore, moved the Ministry of Finance, Deptt. of Revenue on 26.3.1991 seeking confirmation of the de-reservation made by him as also of the promotion of the general candidates recommended by the DPC against the 3 vacancies referred to supra. The Ministry of Finance, Deptt. of Revenue by its letter dated 7.5.1991 advised the Collector of Central Excise, Bangalore not to fill up the reserved points for SC/ST pending approval of de-reservation by the Ministry. The Collector was also advised that a de-reservation proposal, if necessary, be forwarded to the Ministry for consideration. In reply, the Collector sent a communication on 13.6.1991 stating that he had already filled up the three vacancies (1 SC and 2 ST) and sought ex-post facto approval for de-reservation of 1 SC and 2 ST vacancies. After considerable delay and apparently after a reminder from the Collector of Central Excise, Bangalore, the Ministry of Finance, Deptt. of Revenue, conveyed by its letter dated 14.3.1995 ex-post facto approval for de-reservation of the 1 SC and 2 ST points. While we agree that prior



approval for such de-reservation was required as per extant instructions, there seems to have been some confusion in the mind of the Collector, Central Excise, Bangalore, in March, 1991 soon after issue of the Deptt. of Personnel & Training as stated by learned ACGSC, O.M. dated 8.2.1991/that he was competent to make de-reservations himself and then make promotions of general candidates against such "de-reserved" vacancies which did not appear to be warranted by a perusal of the contents of the said O.M. which reads as follows:

" Subject:- Dereservation of vacancies when eligible SC/ST officers are not available for promotion even in the extended zone of consideration.

According to existing instructions there is reservation for SCs/STs while making promotion on the basis of selection up to the lowest rung in Group 'A' and in promotion by non-selection at all levels. Instructions have also been issued for de-reservation of a reserved vacancy to be filled by promotion in the event of non-availability of suitable candidates belonging to SC or ST community, as the case may be (even within the extended zone when the promotion is made by selection).

2. Under the procedure currently followed by the DPC in the matter of promotions, in cases where no suitable candidate belonging to SCs/STs is available even within the extended zone for promotions against the reserved vacancy or the SC/ST candidates available within the zone are not found suitable by the DPC, a general candidate is recommended on the condition that his promotion will be subject to de-reservation of the vacancy in accordance with the prescribed procedure.

3. The matter has further been examined in consultation with the UPSC. Normally, the DPC is expected to recommend a 'reserved' candidate against a reserved vacancy. If no suitable 'reserved' candidate is available, it is open to the appointing authority either to keep the post vacant or to de-reserve the reserved vacancy and fill up the same

by appointing a general candidate. Thus, the question of appointment of a general candidate against a reserved vacancy arise only after the appointing authority takes conscious decision to de-reserve the vacancy. Keeping this position in view, it has been decided that henceforth the following procedure will be followed:-

(i) If there is no 'reserved' candidate even within the extended zone, it should be clearly indicated by the Ministry/Department while forwarding the DPC proposals whether the competent authority has approved de-reservation of the reserved vacancy and only in that event a general candidate will be recommended against that vacancy. When there is a 'reserved' candidate in the zone or the extended zone and the said candidate is found unsuitable for promotion by DPC, the DPC will not recommend a general candidate in lieu. In such cases, if the Ministry/Department wants to fill up the vacancy by a general candidate, they may initiate action for getting it de-reserved. Thereafter, a fresh DPC may be held for filling up that vacancy by a general candidate. An exception to this general rule will be made by UPSC only in very urgent case.

(ii) The instructions contained in this Department's O.M. No. AB-14017/30/89-Estt. (RR) dated 10th July, 1990 relating to the filling up of vacancies reserved for Scheduled Castes and Scheduled Tribes falling in the promotion quota should be kept in view before DPC proposals are sent to the UPSC in the circumstances mentioned in (i) above.

4. Ministries/Departments may follow this procedure also while submitting proposals to DPCs not chaired by Chairman/Members, UPSC.

Be that as it may, after receiving a suitable clarification, the Collector made a proposal as advised by the Ministry of Finance and has since secured ex-post facto approval from the said Ministry. We are, therefore, of the view that since the ex-post facto approval for de-reservation has been secured, the promotions given to the three general candidates in 1991 by the authority concerned, in the circumstances stated earlier, may at



best be an irregularity and not an illegality and the promotions made are not vitiated. Accordingly, we answer point C(i) in the negative.

9.1 Regarding point C(ii), learned counsel for the applicants contended that no approval for de-reservation was secured at all in respect of certain DPCs held in 1988 and 1989 but ^{instead} general candidates were promoted against the reserved vacancies which could not be filled. ^{It is hence urged that} As no such approval was secured all promotions made became vitiated and should be taken to be non-est. We are told that in respect of the DPCs held on 10.2.1988, 14.10.1988 (supplementary) and 22.4.1989 no approval for de-reservation was obtained by the Department.

9.2 The contention of the ACGSC is that while approval for de-reservation was not specifically sought for and obtained in respect of these DPCs, the minutes containing the recommendations made by the DPC for filling up the reserved vacancies by general candidates had been endorsed to the administrative Ministry. Although technically no approval in ^{writing} ~~black and white~~ was secured, the fact that particular general candidates were going to be appointed in the reserved vacancies as recommended by the DPCs concerned was certainly brought to the notice of the Ministry. The Ministry did not raise any objections to the promotions so made. ^{It is urged} Further ^{the} applicants cannot agitate all these points after passage of many years.

9.3 We have carefully considered this issue. We are of the view that there being no carry forward of vacancies in promotion from the posts of Inspector to the posts of Superintendent of Central Excise, agitating this point can be of no help to the applicants since the

vacancies filled by appointment of general candidates without specific approvals for de-reservation might at best be a technical flaw. Whilst de-reservation is the mechanism ^{employed} before filling up a reserved vacancy by a non-reserved candidate, carry forward exercise, where there is a requirement for carry forward of reservations, is the modality for safeguarding the SC/ST interests. In any case, filling up of reserved vacancies by general candidates without securing clear-cut approval for de-reservation of reserved vacancies cannot confer any benefits ~~to~~ ^{on} the applicant, because carry forward of vacancies was actually forbidden. We also consider that non-obtaining of de-reservation orders vis-a-vis the DPCs referred to do not amount to any illegality in the circumstances of the case as urged by the respondents. We think at the highest it may tantamount to an irregularity curable by obtaining ex-post facto approval by the competent authority. We answer point C(ii) in the negative.

10.1 Regarding point D, learned counsel for the applicants argued that the Department was in the habit of holding piece-meal DPCs for every recruitment year. Apart from holding a regular DPC every year, the practice of holding supplementary DPCs during ~~the~~ ^{same} ~~every~~ year was the rule rather than the exception. This, he said, deprived the SC/ST candidates of promotion as Superintendents of Central Excise. If the total posts had been reckoned and a single annual DPC had been held, then due to a larger zone of consideration and a larger extended zone of consideration



the possibility of SC/ST candidates being promoted as Superintendents of Central Excise would have been brighter. Continuing his arguments he contended that there was no need to hold a DPC on 22.4.1989 for 3 vacancies only, having held on the previous day, i.e. on 21.4.1989 a DPC for 41 vacancies. The three vacancies reckoned for the DPC held on 22.4.1989, having arisen only after 19.1.1990 but during 1989-90, they could have been added to the vacancies for which a supplementary DPC was held during the same year on 3.2.1990 for 26 vacancies. By not doing so, the zone of consideration and the extended zone of consideration stood reduced thereby depriving the SC/ST candidates of promotions at the DPC held on 3.2.1990. Alternatively, he contended that instead of holding the DPC for 3 vacancies on 22.4.1989 the DPC should have been held for 30 vacancies including 27 vacancies in the upgraded posts of Superintendent of Central Excise.

10.2 Learned ACGSC ^{rebutted} ~~contested~~ this argument and stated that it was not for depriving the chances of being considered for promotion of SC/ST candidates that such supplementary DPCs were held. In fact, the supplementary DPCs were held strictly in accordance with clause (i) of para-6.4.2 of the O.M. of the Department of Personnel and Training dated 10th April, 1989, which makes a provision for holding such supplementary DPCs. The relevant portion of the O.M. cited above, reads as follows:

" Whether a DPC has already been held in a year further vacancies arise during the same year due to death, resignation, voluntary retirement etc. or because the vacancies were not intimated to the DPC due to error or omission on the part of the Department concerned, the following procedure should be followed:-

- (i) Vacancies due to death, voluntary retirement, new creations, etc., clearly belonging to the category which could not be foreseen at the time of placing facts and material before the DPC. In such cases, another meeting of the DPC should be held for drawing up a panel for these vacancies as these vacancies could not be anticipated at the time of holding the earlier DPC. If, for any reason, the DPC cannot meet for the second time, the procedure of drawing up of year-wise panels may be followed when it meets next for preparing panels in respect of vacancies that arise in subsequent year(s). "

Learned ACGSC ^{pointed out} ~~showed~~ to us by reference to documents that the supplementary DPCs in accordance with clause (i) of the paragraph reproduced above were held only due to non-anticipation of deaths, resignations, voluntary retirements, upgradations, promotions etc. Further, learned ACGSC hotly contested the contention of the learned counsel for the applicants about the vacancies reckoned for the DPCs held on 22.4.1989 and 3.2.1990 and stated that the DPC on 21.4.1989 was held in compliance with the instructions contained in the Ministry of Finance, Department of Revenue, letter No.A 32013/1/189-Ad.II-B dated 29th March, 1989 which is reproduced below:-

" Subject: D.P.C-Holding for promotion of -
Change in the writing of C.C.R
period - Clarification regarding.

Sir,

I am directed to say that Annual Confidential Reports were hitherto being written on a calendar year basis. The system of writing of A.C.Rs was recently reviewed and it was decided vide letter F.No.A.28012/71/87-EC/50(P) dated 28.9.1988 that A.C.Rs may be written on financial year basis w.e.f. 1988-89. The A.C.R for 1988 is accordingly to cover 15 months, i.e., from 1.1.1988 to 31.3.1989.



2. The question of holding of DPCs for promotion to the various grades has also been reviewed in the light of the decision referred to above. It has been decided in consultation with the Department of Personnel and Training that -

- (a) In offices where the DPCs for the calendar year 1988 have not so far been held, the vacancies will be calculated for 15 months i.e., from 1.1.1988 to 31.3.1989 and DPCs held accordingly;
- (b) In offices where DPCs for 1988 have already been held, the vacancies arising during the period 1.1.1989 to 31.3.1989 should be calculated and a supplementary DPC held for these vacancies;
- (c) from 1.4.1988 onwards, the DPCs should be held every year on a financial year basis.

3. These instructions would apply to promotions in all grades.

Receipt of this letter may please be acknowledged.

Yours faithfully,

sd/-

(TARSEM LAL)

UNDER SECRETARY TO THE GOVT. OF INDIA. "

Thus, according to him, the DPC that was held for 41 vacancies on 21.4.1989 was for the period from 1.1.1989 to 31.3.1989 and it included 27 posts of Inspector of Central Excise upgraded to Superintendent Group 'B' of Central Excise in the Central Excise Collectorates of Bangalore and Belgaum as in the sanction order of the Ministry of Finance, Department of Revenue dated 21st March, 1989. Having reckoned these 27 posts which were upgraded in supplementary March 1989 for the aforesaid/DPC held on 21.4.1989 the question of taking into account these very 27 posts once again for the regular DPC or 1989-90 held on 22.4.1989 was not called for. In point of fact, according

to him, though there were 30 vacancies anticipated for the year 1989-90, the 27 posts for which DPC was held on 21.4.1989 were adjusted against the 30 vacancies because the sanction order dated 21st March, 1989 allowed the upgradation for a period of 2 years or till the staff fitted against the upgraded posts were absorbed in regular vacancies, whichever was earlier. The adjustment of 27 posts was done against the vacancies arising between 1.4.1989 and 31.3.1990 and, therefore, after such adjustment the regular DPC for 1989-90 could be held only for 3 vacancies. Further, the supplementary DPC for 1989-90 which was held on 3.2.1990 had to be held because after 22.4.1989, when the regular annual DPC was held for the year 1989-90, 24 Superintendents were promoted on 17.1.1990 as Assistant Collectors/Senior Superintendents Group 'A' which left unanticipated vacancies in posts of Superintendent Grade 'B'.

10.2 We are satisfied with the position explained by the learned ACGSC that the supplementary DPCs were held in accordance with clause (i) of para 6.4.2 of the O.M. dated 10.4.1989 reproduced above. We, therefore, hold that if the department had held supplementary DPCs there were reasons for doing so strictly in accordance with the instructions contained in the O.M. referred to supra. We also fully agree with the submissions made by the ACGSC that having already reckoned the 27 vacancies owing to 27 posts of Inspectors upgraded as Superintendents Group 'B' in

.....30/-



the DPC held on 21.4.1989 for the period 1.1.1989 to 31.3.1989 in accordance with the instructions contained in the Ministry of Finance, Deptt. of Revenue letter dated 29.3.1989 cited supra, the question of consideration of the same as vacancies for the annual DPC of 1989-90 held on 22.4.1989 would not arise. A regular DPC cannot be held for the same vacancies for a second time. As rightly pointed out by the ACGSC, the letter dated 29th March, 1989 referred to supra directed that a supplementary DPC should be held only for the vacancies arising from 1.1.1989 to 31.3.1989. Accordingly, the 27 vacancies owing to upgradation and other vacancies anticipated from 1.1.1989 to 31.3.1989 were taken into account and a supplementary DPC was held on 21.4.1989. In view of the direction given in the sanction order dated 21.3.1989 referred to supra upgrading 27 posts, when the vacancies for the annual DPC 1989-90 for the period 1.4.1989 to 31.3.1990 were computed as 30, the 27 upgraded posts were adjusted against those vacancies leaving behind only 3 vacancies which could be considered by the annual DPC for 1989-90 which was held on 22.4.1989. Therefore, reckoning of 3 vacancies only for the annual DPC as on 22.4.1989 cannot be a folly by any stretch of imagination. Further, a supplementary DPC had to be held on 3.2.1990 owing to promotion of 24 Superintendents as Assistant Collectors/Senior Superintendents on 17.1.1990 and availability of 2 more vacancies after adjustment. These were unanticipated vacancies and so the supplementary DPC was held on 3.2.1990. Adding

the 3 vacancies considered at the annual DPC held on 3.2.1990 would not, therefore, have been correct because the former DPC held on 22.4.1989 taking into account all the anticipated vacancies upto 31.3.1990 was the regular annual DPC for 1989-90 and the latter DPC held on 3.2.1990 was only a supplementary DPC held owing to unforeseen circumstances. We, therefore, reject the aforesaid contentions of the learned counsel for the applicant. We answer point D in the negative.

11.1 Regarding point E, learned counsel for the applicants contended that while carry forward of reservations was not permitted in the case of promotions from the posts of Inspector to those of Superintendent from one recruitment year to another, there was no bar to such carry forward within the same recruitment year, i.e., from one DPC to another held during the same recruitment year. Non-carry forward of reservations in such situations resulted in non-consideration of SC/ST candidates for promotion as Superintendents of Central Excise.

11.2 While the argument seems to be infallible, the fact remains that the first DPC of the year, when it met and made its recommendations for filling reserved vacancies for which no SC/ST candidates were available by appointment of general candidates, could not have foreseen the ^{future need for} ~~circumstances leading to~~ holding of one or more supplementary DPCs during the same year.


The same could be said of the subsequent (supplementary) DPC when one or more supplementary DPCs were to follow during the same year. If, as a result, reserved



vacancies had got filled up by general candidates, there would be no such vacancies available for being carried forward during the same year. The promotions made in the meanwhile on a regular basis cannot also be undone because at the time the promotions were made, it was not known that a supplementary DPC was to follow during the same year. We are satisfied with the arguments of the learned ACGSC who acquainted us with the reasons for holding supplementary DPCs to which there is adumbrance while we dealt with point D supra. We, therefore, reject the arguments of the learned counsel for the applicants in this regard. We answer point E in the negative.

12. No other points were pressed by the learned counsel for the applicants.

13. Before concluding, we would like to ^{that} observe/as submitted by the learned ACGSC, until the issue of Department of Personnel and Training O.M. dated 8.2.1991 referred to supra no carry forward of reservations was permitted. It was only after the O.M. dated 8.2.1991 was issued that the department had an option to either keep a reserved vacancy unfilled owing to non-availability of eligible SC/ST candidates even within the extended zone of consideration or take a conscious decision due to the exigency of the situation to de-reserve the vacancy and appoint a general candidate in such vacancy. We notice from the material made available by the respondents that they promoted SC/ST candidates against all the nine vacancies reserved for them in

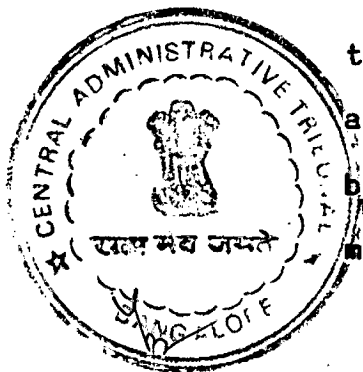


the annual DPC 1991-92 held on 24.6.1991. However, in the supplementary DPCs which took place during that year due to non-availability of SC/ST candidates, they had kept the vacancies unfilled and carried over the same for being filled by SC/ST candidates in the annual DPC (Review) held on 6.1.1993. Even in the supplementary DPC held on 26.3.1993 during 1992-93, while the three reserved vacancies for SC were filled by promotion from the category of SC, the one vacancy reserved for ST which could not be filled up owing to non-availability of ST candidates, was kept unfilled. [The learned ACGSC mentioned to us that as against the total percentage of reservation of 22.5 for SC/ST as on 1.1.1995, the representation of SC/ST in the cadre of Superintendents was about 25% i.e., against the total strength of 232 those belonging to SC and ST were of the order of 59.

This position augurs well and it cannot be said that there has been any discrimination against the SCs and STs.]

14. We also find that by their own admission the applicants, having become eligible for promotion to the grade of Superintendents Group 'B' in January, 1990, failed to challenge the alleged lapses that had occurred prior to 1990 soon thereafter but stirred up to take up the matter with the Department only in 1993. Therefore, this application, made after considerable lapse of time before us in order to upset the promotions already made, cannot be ^{Countenanced} upheld.

Deleted. Vide
Order of the
Punjab R.A. 5/95
dt. 20.11.95
R.M.
(N.R.M.)
DRP
24.10.95



15. In view of the foregoing, we do not find any justification for ^{granting any of} ~~allowing~~ the reliefs sought for by the applicants. In the result, this application fails and it is dismissed. There will be no order as to costs.

Sd/-

(T.V. RAMANAN)
MEMBER (A)

Sd/-

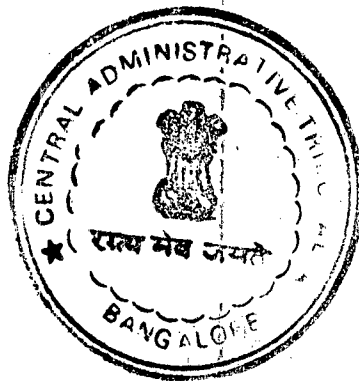
(P.K. SHYAMSUNDAR)
VICE CHAIRMAN

TRUE COPY

[Signature]
13/6/95

Mr.

Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore



CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
BANGALORE - 560 030.

Dated: **29 NOV 1995**

REVIEW APPLICATION NO. 57/1995 in O.A.2/94

APPLICANTS: **Shri S.B. Shingenavar & anr.**

V/S.

RESPONDENTS: **UII represented by its Secy., Deptt. of Revenue,
M/o Finance, New Delhi & 3 Crs.**

To

1. **Shri Ravivarma Kumar, Advocate,
No.11, Jeevan Building,
Kumara park East,
Bangalore - 560 001.**
2. **Shri M. Vasudeva Rao, ACGSC, High Court Building,
Bangalore - 1.**
3. **Collector of Central Excise, Central Revenue Buildings,
Queen's Road, Bangalore - 560 001.**

Subject:- Forwarding copies of the Orders passed by the
Central Administrative Tribunal, Bangalore-38.

---xxx---

Please find enclosed herewith a copy of the Order/
~~Copy of Order / Copy of Order~~, passed by this Tribunal in the above
mentioned application(s) on 20th November, '95. Copy of the order
of the Bench dated 12th June, '95 in O.A.2/94 as corrected in pursuance of the
order of the Bench dt. 20th Nov. '95 in R.A.57/95 *Self*
is also enclosed.

for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

Copy to : ^{gm*} 1. File of O.A.2/94
2. Library
3. Section Folder.

Ve
SECTION OFFICER (J.II).

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

REVIEW APPLICATION NO. 57/1995
IN O.A. NO. 2/1994

DATED THIS THE TWENTIETH DAY OF NOVEMBER, 1995

MR. JUSTICE P.K. SHYAMSUNDAR, VICE CHAIRMAN

MR. T.V. RAMANAN, MEMBER(A)

1. Mr. S.B. Shingenavar
C/o. Bheegappa
working as Inspector of Customs and
Central Excise (Audit
Section Head Quarters)
Office of the Central Excise
and Customs, Central Revenue
Building, Bangalore-560 001.
 2. Mr. M. Suresh
C/o. C. Munikrishna
Working as Inspector Narcotic Section
(Headquarters)
Office of the Central Excise
and Customs, Central Revenue
Building, Queen's Road
Bangalore-560 001.
- .. Applicants

(By Advocate Mr. Ravivarma Kumar)

Vs.

1. Union of India represented
by its Secretary
Department of Revenue
Ministry of Finance
New Delhi.
 2. Central Board of Excise and
Customs, represented by
its Chairman, Ministry of
Finance, Department of
Revenue, North Block
New Delhi.
 3. Principal Collector of
Customs & Central Excise
Balbahadur Stadium
Basir Bagh, Hyderabad-500 029
 4. Collector of Central Excise
Central Revenue Buildings
Queen's Road, Bangalore-560 001.
- ... Respondents

(By Mr. M.V. Rao, A.C.G.S.C.)

O R D E R

MR. JUSTICE P.K. SHYAMSUNDAR, VICE CHAIRMAN:

All said and done, it is a very little boon the applicants ask for in this Review Application. They only want the observation made by us in paragraph - 13 to be deleted from the order made by us while disposing of O.A. No.2/1994. The observation reads:-

" The learned ACGSC mentioned to us that as against the total percentage of reservation of 22.5 for SC/ST as on 1.1.1995, the representation of SC/ST in the cadre of Superintendents was about 25% i.e., against the total strength of 232 those belonging to SC and ST were of the order of 59. This position augurs well and it cannot be said that there has been any discrimination against the SCs and STs."

2. We do not know why exception is taken by the applicants to this paragraph which surely is not a dicta of the Court. Now that the applicants have prayed for the deletion of the said observation, we direct deletion of this particular portion from the order which will otherwise remain in tact.

3. The review petition is disposed of as above. Correction to be made in the original order and in all copies as well.

No costs.

Sd-
(T.V. RAMANAN)
MEMBER(A)

Sd-
(P.K. SHYAMSUNDAR)
VICE CHAIRMAN

True Copy
[Signature]
28/11/98

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE**

ORIGINAL APPLICATION NO. 2/1994

DATED THIS THE TWELFTH DAY OF JUNE, 1995

Mr. Justice P.K. Shyamsundar, Vice Chairman

Mr. T.V. Ramanan, Member(A)

1. **Mr. S.B. Shingnavar**
C/o. Bheemappa
Working as Inspector of
Customs and Central Excise
(Audit Section Headquarters)
Office of the Central Excise
and Customs, Central Revenue
Building, Bangalore-560 001.
2. **Mr. M. Suresh**
C/o. C. Munikirahna
Working as Inspector of
Customs and Central Excise
Narcotic Section (Headquarters)
Office of the Central Excise
and Customs, Central Revenue
Building, Queen's Road,
Bangalore-560 001.

... Applicants

(By Advocate Mr. Ravivarma Kumar)

1. **Union of India represented by**
its Secretary, Department of
Revenue, Ministry of Finance
New Delhi.
2. **Central Board of Excise and**
Customs, Represented by its
Chairman, Ministry of Finance
Department of Revenue
North Block, New Delhi.
3. **Principal Collector of Customs**
and Central Excise
Balbahadur Stadium
Basir Bagh
Hyderabad - 500 029.
4. **Collector of Central Excise**
Central Revenue Buildings
Queen's Road
Bangalore-560 001.

... Respondents

(By Mr. M.V. Rao, A.C.G.S.C.)



O R D E R

Mr. T.V. Ramanan, Member(A):

The first applicant belonging to a Scheduled Caste (SC for short) and the second belonging to a Scheduled Tribe (ST for short) have filed this application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:-

- (a) Issue an order/direction directing the Respondents to make available a total number of 10 (ten) vacancies for Scheduled Caste candidates and 17 (Seventeen) vacancies for Scheduled Tribe candidates in respect of the promotions effected through review DPC held on 6.1.1993 (Sixth January One Thousand Nine Hundred and Ninety Three) for the posts of Superintendents;
- (b) Issue an order/direction in the nature of Mandamus directing the Respondents to consider the cases of the applicants for promotion to the cadre of Superintendents retrospectively from the date they became so entitled and to promote them accordingly and give them all consequential benefits flowing from the same.

2. In brief, the applicants' case is that having joined as Inspectors of Central Excise they had completed the prescribed 8 years of service as

Inspectors and became eligible for promotion to the posts of Superintendent of Central Excise in January, 1990. According to them, the department has been denying the legitimate rights of the SC and ST candidates for promotion to the posts of Superintendents of Central Excise between 1987 and 1992-93 by filling up the posts reserved for SC and ST by appointment of general candidates and by not carrying forward those vacancies for SC/ST as per Government instructions on the subject, by underestimating the vacancies placed before the Departmental Promotion Committees (DPC for short) which met during the aforesaid period and by holding supplementary DPCs during the various recruitment years during the said period thereby eliminating the increase in the zone of consideration and the extended zone of consideration resulting in non-consideration and non-promotion of SC and ST candidates eligible for promotion to the posts of Superintendent of Central Excise in general and the applicants in particular. According to them, during the period referred to supra there were 10 reserved vacancies of SCs and 17 reserved vacancies of ~~the~~ STs which should have been carried forward and reckoned by the review DPC held by the department on 6th January, 1993 for the posts of Superintendent of Central Excise. According to the applicant, at the review DPC held on 6.1.1993 a total



no. or 58 vacancies were sought to be filled up and so the zone of consideration extended upto sl.no.290 of the seniority list of Inspectors. The first applicant was at sl.no.283 and the second applicant at sl.no.270. Despite this the applicants were not promoted. It is, therefore, that they seek directions from the Tribunal for reckoning of the aforesaid 17 reserved vacancies by review of the review DPC held on 6.1.1993, for considering the applicants for the posts of Superintendent of Excise from the date they became so entitled, for promoting them accordingly and for giving them all consequential benefits arising out of such promotions.

3. The contention of the respondents is that there was no carry forward of reservations if reserved vacancies had been filled up by general candidates due to non-availability of reserved candidates. It was only after receipt of Deptt. of Personnel and Training O.M. No.89011/7/90-Estt(8) dated 8.2.1991 that where reserved candidates were not available an option was available to the Department for keeping the reserved vacancies unfilled or to de-reserve the same and fill them by general candidates. They have also averred that the applicants came within the extended zone of consideration only at the DPC held on 22.6.1992 which was subsequently reviewed on 6.1.1993. In all, 58 vacancies had to be filled up at the review DPC out of which 11 vacancies were

reserved for SC candidates and 6 for ST candidates. However, despite their being in the extended zone of consideration the applicants could not be recommended by the said DPC for promotion as 11 SC and 6 ST candidates above them in the zone of consideration were recommended by the DPC for promotion and all the 17 reserved vacancies were filled by appointment of those SC/ST candidates. There is thus no merit in this application.

4. We have heard the learned counsel for the applicants and the learned Addl. Central Government Standing Counsel (ACGSC for short) appearing for the respondents.

5. The points that arise for determination are as follows:

A. Whether for promotions by selection from Group 'C' posts of Inspector, Central Excise to Group 'B' posts of Superintendent of Central Excise carry forward of reserved vacancies from year to year was permissible in the event of an adequate number of SC/ST candidates not being available in any particular year?

B. Whether the de-reservation orders obtained were not in conformity with the Department of Personnel and A.R. O.M. No.36011/25/79-Estt(SCT) dated 16.11.1979?

C. (i) Whether promotions given to general candidates in reserved vacancies without obtaining prior approval of de-reservation by the competent authority stand vitiated?



(ii) Whether promotions given to general candidates in reserved vacancies on certain occasions without obtaining approval for de-reservation by the competent authority stand vitiated?

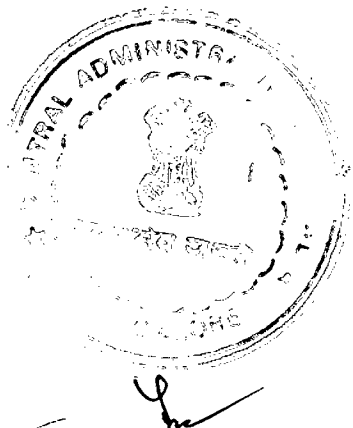
D. Whether supplementary DPCs were held during a particular year only to deprive the SC/ST candidates of the chances of being considered for promotion?

E. Whether non-carry forward of reserved vacancies during the same year, when one or more supplementary DPCs were held, amounted to depriving the SC/ST candidates of the chances of being considered for promotion?

6.1 As regard point A, it was urged on behalf of the applicants that the Department had failed to carry forward, since 1987, the reserved vacancies which could not be filled up by promotion of SC/ST candidates due to their non-availability even in the extended zone of consideration but which were filled by appointment of general candidates. Referring to Department of Personnel & A.R. letter No.36011/1579-Estt(SCT) dated 6.1.1981 it was contended that appointment of general candidates in vacancies reserved for SC/ST should not mean loss of those vacancies to SC/ST. Learned counsel for the respondents argued that for promotion from Group 'C' to Group 'B' (from Inspector to Superintendent) there is, no doubt,

reservation in promotion by selection in accordance with the instructions contained in the Department of Personnel and Administrative Reforms O.M. No.10/41/73-Estt(SCT dated 20th July, 1974 but the same O.M. rules out carry forward of reservations from year to year in the event of an adequate number of SC/ST candidates not being available in any particular year. Therefore, whenever adequate number of SC/ST candidates were not available even within the extended zone of consideration, the reserved vacancies were filled up according to necessity, by appointment of general candidates. The question of carry forward of reservations would not, therefore, arise due to the specific prohibition on carry forward of reservations from year to year. In view of this position, he contended, the contention of the counsel for the applicants that carry forward was not resorted to from 1987 onwards or the reserved vacancies in which SCs/STs could not be fitted in by the various DPCs is not tenable.

6.2 We find from the Government instructions cited above that there is no carry forward of reservations for promotions from the posts of Inspectors to those of Superintendents, Central Excise. O.M. No.10/41/73-Estt(SCT) dated 20.7.1974 relevant to promotions by selection made from the posts of Inspector to those of Superintendent Group 'B' reads as follows:



Subject: Reservations for Scheduled Castes and Scheduled Tribes in post filled by promotion - Promotions by selection to Class II, within Class II and to the lowest rung of Class I.

The question whether the scheme of reservations for candidates belonging to Scheduled Castes and Scheduled Tribes in promotions by selection should be extended to posts in Class II services and beyond, and if so to what extent, has been under the consideration of Government. It has now been decided, in supersession of the orders contained in paragraph 2B(a) of the Ministry of Home Affairs O.M. No.1/12/67-Estt.(C) dated the 11th July, 1968 that there will be reservations of 15 and 7½% of the vacancies for Scheduled Castes and Scheduled Tribes respectively in promotions made by selection from Class III to Class II, within Class II and from Class II to the lowest rung or category in Class I, in grades or service in which the element of direct recruitment, if any, does not exceed 50 per cent.

2. The following instructions will apply to the filling up of vacancies reserved for Scheduled Castes and Scheduled Tribes in terms of the instructions contained in this Office Memorandum:-

- (i) Selection against vacancies reserved for Scheduled Castes and Scheduled Tribes will be made only from among those Scheduled Castes/Scheduled Tribes Officers who are within the normal zone of consideration.
- (ii) If candidates from Scheduled Castes and Scheduled Tribes obtain the basis of merit with due regard to seniority, on the same basis than others, less number of vacancies than that reserved for them, the difference should be made up by selecting candidates of these communities who are in the zone of consideration irrespective of merit but who are considered fit for promotion.
- (iii) A Select List should then be prepared in which the names of all selected officers, general as well as those belonging to Scheduled Caste and Scheduled Tribes are arranged in the order of merit and seniority according to the general principles for promotion to selection posts laid down in the Ministry of Home Affairs O.M. No.1/4/55-RPS, dated 16th May, 1957, i.e., by placing the names in the three categories viz., 'Outstanding', 'Very Good' and 'Good' in that order, without disturbing the seniority inter-se within each category. This Select List should, thereafter, be followed for making promotions in vacancies as and when they arise during the year.

- (iv) For determining the number of vacancies to be reserved for Scheduled Castes and Scheduled Tribes in a Select List, a separate roster on the lines of the roster prescribed in Annexure I to Office Memorandum No.1/11/69-Eatt.(SCT) dated the 22nd April, 1970 (in which points 1,8,14,22,28 and 36 are reserved for Scheduled Castes and points 4,17 and 31 for Scheduled Tribes) should be followed. If owing to non-availability of suitable candidates belong to Scheduled Castes or Scheduled Tribes, as the case may be, it becomes necessary to de-reserve a reserved vacancy, a reference for de-reservation should be made to this Department indicating whether claims of Scheduled Castes/Scheduled Tribes candidates eligible for promotion in reserved vacancies have been considered in the manner indicated in this O.M.
- (v) There will, however, be no carry forward of reservations from year to year in the event of an adequate number of Scheduled Caste/Scheduled Tribe candidates not being available in any particular year.
- (vi) While vacancies reserved for Scheduled Castes and Scheduled Tribes will continue to be reserved for the respective community only, a Scheduled Caste officer may also be considered for appointment against a vacancy reserved for Scheduled Tribes, or vice versa, in the same year itself in which the reservation is made, where the appropriate reserved vacancy could not be filled by a Scheduled Tribes or a Scheduled Caste candidate, as the case may be.
- (vii) Where promotions in the above manner are first made on a long-term officiating basis, confirmation should be made according to the general rule, viz., that an officer who has secured earlier officiating promotion on the basis of his place in the select list should also be confirmed earlier and thus enable to retain the advantage gained by him, provided that he maintains an appropriate standard vide para (iii) or Ministry of Home Affairs Office Memorandum No. F/1/1/55-RPS dated the 17th February, 1955. But the principle of reservations would not apply again at the time of confirmation of promotees.



3. The above instructions take effect from the date of issue of these orders where a Select List for promotion by selection has already been prepared by the Departmental Promotion Committee and approved by the appropriate authorities before the date of issue of these orders.

4. Ministry of Finance etc. are requested to bring the above decisions to the notice of all concerned.

5. In so far as persons serving in the Indian Audit and Accounts Department concerned, these orders issue in consultation with the Comptroller and Auditor General.

We are of the view that in the light of clause (V) of para-2 of the aforesaid O.M., the principle of carry forward, which is applicable for promotions elsewhere, does not apply to the promotions referred to in the instant case. The only exception made is in respect of cases where a vacancy falling on a reserved point in the roster is treated as unreserved due to the fact that there is only one vacancy in the year of promotion as provided in the Deptt. of Personnel & A.R. O.M. No.10/37/74-Estt(SCT) dated 3.2.1975, reproduced below:

Subject: Reservations for Scheduled Castes and Scheduled Tribes in posts filled by promotion by selection to Class II, within Class II and from Class II to the lowest rung of Class-I - carry forward of reservations:

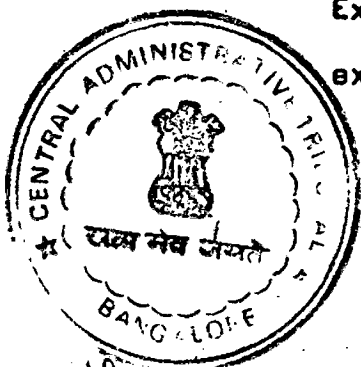
The undersigned is directed to refer to this Deptt.'s O.M. No.10/41/73-Estt.(SCT), dated 20th July, 1974 providing for reservations at 15% for Scheduled Castes and 7½% for Scheduled Tribes in promotions made by selection from Class III to Class II, within Class II and from Class II to the lowest rung or category in Class I in grades of service in which the element of direct recruitment if any, does not exceed 50%. According to para 2 (v) of the said O.M. in such promotions there is no carry forward of reservations from year to year in the vent of an adequate number of Scheduled Castes/Scheduled Tribe candidates not being available in any particular year. The question as to whether any exception should be made in this regard in respect of cases where a vacancy falling on reserved point in the roster is treated as unreserved due to the fact that there is only one vacancy in the year of promotion, has been raised and has been examined. It has now been decided that in partial modification of para 2(v) of the O.M. dated 20th July, 1974, in the case of promotions to which the orders in the said O.M. dated 20th July,

1974 apply, when a vacancy falling on a reserved point in the roster is treated as unreserved due to its being the only vacancy during the year of promotion, the reservation so due against the reserved point should be carried forward to subsequent three recruitment years.

2. The instructions in para 2 (vi) of the aforesaid O.M. dated 20th July, 1974 relating to exchange of vacancy reserved for Scheduled Tribes in favour of Scheduled Castes and vice-versa in the same year, itself. In which reservation is made, would remain unaffected. In other words, when in the circumstances mentioned in para 1 above, a reservation is carried forward and vacancy in a subsequent year is actually treated as reserved against a "Carry Forward" reservation, the provision relating to exchange of reservation for Scheduled Tribes in favour of Scheduled Castes and vice-versa would apply to such reservation. "

6.3 It is also clear that the reserved vacancies which remained unfilled due to non-availability of SC and ST candidates, as is the case here, from 1987 onwards could be filled by appointment of general candidates after de-reservation in accordance with the relevant instructions issued by the Central Government. Thus, the contention of the counsel for the applicants that carry forward of reservations should have been resorted to is not tenable at all. We are supported in this view by an order of this Tribunal dated 5.6.1990 in Application No.1897/88(F) (M. Krishna Naik V. Collector of Central Excise). We refer with advantage to the following excerpts ^{from} of that order:-

- * 16. The principal thrust of Smt. Shobha, was that according to the Standing instructions of the Government of India, 15 percent and 7½ percent, of the posts in the grade of Superintendent, which fell in Group 'B', were earmarked respectively, for promotion, to the candidates belonging to SC/ST. Even though assuming for the sake of argument, without however, conceding, that her client did



not come within the "zone of consideration". for promotion to the grade of Superintendent, Smt. Shobha sedulously contended, that if no candidate belonging to SC/ST was available, to be considered for promotion to that grade, in the posts earmarked for them, during the year 1989-1990, those posts could not have been filled in by the respondents, from the 'general category' of candidates, but had to be 'carried forward', for the period specified under the relevant instructions of the Government of India, until suitable SC/ST candidates were available. This however was not done, she alleged. However, she could not pinpoint, the relevant instructions of the Government of India, in support and pleaded for some time to trace them out and place before us.

17. Sri Padmarajaiah asserted, that there were no instructions from the Government of India, to support the case of the applicant, as made out by Smt. Shobha, as in the present case, promotion was involved to the grade of Superintendent, which fell in Group 'B', and according to prevalent instructions of the Government of India reservations could not be 'carried forward' from year to year, in respect of the posts in Group 'B' in the event of adequate number of SC/ST candidates, not forthcoming in any particular year, he explained. This was expressly stated by the DPC, in the proceedings of its meeting held on 3.2.1990, he averred.

18. We have taken due note of the averments of both sides in regard to the above question of 'carry forward' of reservations from year to year. Neither the applicant nor his counsel, has been able to place before us, any authority, to show, that such reservation can be 'carried forward' in Group 'B' posts, as contended by them. Apparently, this contention has no basis. This apart, it does not appear to have been advanced by the applicant in his written pleadings, wherein the emphasis is on the "zone of consideration". The present contention therefore, on the question of 'carry forward' of reservations is beyond the written pleadings of the applicant and normally we should not have taken cognisance of it, according to the law of pleadings. However, without taking an unduly technical view of the matter, we shall examine this contention in the cause of substantial justice.

19. In order to ascertain the facts, we have carefully gone into: "The Brochure on Reservation for Scheduled Castes and Scheduled Tribes in Service" (7th Edition, 1987) brought out by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, New Delhi. We notice, that para 9.2(b)(v) under the subcaption: "Promotions by Selection to Group 'B' within Group 'B' and from Group 'B' to the lowest rung in Group 'A' (to Class II and from Class II to the lowest rung in Class II)" in Chapter 9 thereof, under the main caption: RRzo

"Promotions-Reservations and Concessions", clearly states, that there will be no 'carry forward' of reservations from year to year, in the event of an adequate number of SC/ST candidates not being available in any particular year. The post of Superintendent, falls in Group 'B' and according to the relevant Cadre and Recruitment Rules, promotion to it, is by selection. In the absence of any authority to the contrary, the instructions of the Government of India in para 9.2(b)(v) ibid prevail and squarely govern this case.

20. It is clear from the foregoing, that the applicant has no case, in that he did not fall within even the enlarged "zone of consideration" and he cannot on any authority claim the benefit of 'carry forward' of reservation from year to year, for the reasons aforementioned.

6.4 The reference made by the learned counsel for the applicants to the Department of Personnel & Administrative Reforms letter No.36011/1579-Estt(SCT) dated 6th January, 1981, available at page 181 of the Brochure on Reservation for Scheduled Caste and Scheduled Tribes (7th Edition) published by the Government of India, Deptt. of Personnel & Training is not relevant at all to the instant case. The said letter reads as follows:

- * Subject: Decisions taken by individual Ministries/Departments not to de-reserve a reserved vacancy and fill up by general community candidate-keep the reserved vacancies unfilled till a person belonging to the reserved categories is available.
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Sir,

Reference UPSC's letter No.16/12(5)/78-R (C&P) dated 29.1.1979 on the above subject. I am directed to say that the decision taken by some Ministries/Departments seems to be based on the misapprehension that if the reserved vacancy goes to a general category candidate, consequent on the non-availability of the reserved community candidates, the vacancy is lost to the SC/ST. This, however, is, not so because of the mechanism of the carry-forward of reservations to three subsequent recruitment years. De-reservation is the mechanism before filling up a reserved vacancy by a non-reserved candidate and carry



forward is the modality for safeguarding the SC/ST interests. In facts, efforts have to be made to find out SC/ST candidates for a total period of four recruitment years, taking into consideration the original recruitment year and the three years of carry forward. Four recruitment years should be considered to be a sufficiently long and reasonable period to look for a reserved category candidate. Thus the mechanism of de-reservation has three functions, firstly, to keep the reservation alive for four years during which efforts could be made to find out SC/ST candidates, secondly, Administration does not suffer because the vacancy need not be kept vacant till the search for a SC/ST candidate has produced result and can be filled up by a general category candidate and thirdly, general community candidate can also get appointed against a reserved vacancy which is only in public interest but without causing any long term harm to SC/ST candidates when they are not available.

2. The decision to keep a vacancy unfilled for more than one year in anticipation of SC/ST candidate has serious implications on the maintenance and operation of the reservation roster. According to the present rules, no gaps could be left in the roster and if the reserved vacancies are kept unfilled for a number of years, it will give rise to many gaps in the roster. If any Ministry/Department decides to keep a reserved vacancy unfilled in a particular year, that Ministry or Department will have to stop making recruitment in any subsequent year till they fill up the reserved vacancy in the previous year and complete the points in the roster. So the Ministries and Departments will have to take this decision at the risk of no further recruitments in the subsequent years till the reserved vacancies of the earlier years have been fixed up by SC/ST candidates.

3. The point now remains as to whether in the face of clear instructions of this Department in this regard, Ministries/Departments are empowered to take any different decision which does not conform to the orders of this Department. According to the Government of India (Allocation of Business) Rules, 1961, as amended from time to time, Department of Personnel is the nodal agency empowered to issue policy directive regarding reservations for SC/ST. The Law Ministry, who have also been consulted in this matter, has opined that Department of Personnel is competent to lay down the policies relating to reservation for SC/ST under the said Allocation of Business Rules, and other Ministries/Depts. are bound to follow them.

If other Departments intend to depart from the said policies laid down by the Department of Personnel it is mandatory for them to consult the Department of Personnel in terms of sub-rule 4 of rule 4 of the Transaction of Business Rules; otherwise, the policies laid down by the Department of Personnel are binding on them.

4. Another fallacy in the decision of the Ministries etc., is that the Departments concerned would seem to be under the impression that if a reserved community candidate is not available, the vacancy itself need not be filled - which connects as administrative need for recruitment against a post, already decided on public interest with the communal character of the candidate or even his availability, whereas, in reality, the need for filling up the vacancy has to be determined independently and once determined, further action should be initiated. To say that the 'administration' would not have any necessity for the filling up of a post, which falls on a reserved point just because a suitable candidate from the scheduled communities is not available will amount to reconstructing facts and reserval of logic besides taking a limited view, of the concept of 'public interest'.

5. Thus, it may be seen that the decision in question taken by the individual Ministries/ Departments in keeping the reserved vacancies unfilled till the SC/ST candidates are available, do neither help much the SC/ST whose interests are well protected by the present rules nor do they sub-served the interests of administration which would have to go without persons to discharge the duties of the posts for which recruitment exercise was in fact initiated. On the other hand, they give rise to situations which if pressed to their logical conclusions would complicate matters needlessly, without commensurate unadvantage.

6. The above position is being brought to the notice of the concerned Ministries/Departments who have taken separate decisions in this regard.

It may be seen from para 1 of the aforesaid O.M. that what is stated therein related to recruitments to posts for which carry forward of reservations is provided. As there is no carry forward of reservations for candidates belonging to SC/ST in promotions by selection from the posts of Inspector to those of Superintendent of Central Excise,



the contents of para-1 referred to supra regarding reserved vacancies filled by general candidates being not lost to the SC/ST do not govern the case. We, therefore, answer point 'A' in the negative.

7.1 Regarding point B, learned counsel for the applicants contended that where de-reservation orders had been obtained by the respondent-Department those should have been in accordance with the Department of Personnel and Administrative Reforms O.M. No.36011/25/79-Estt.(SCT), dated 16.11.1979 available at page 177 of the Brochure (7th edition) referred to supra, which is reproduced below:

" Subject: Simplification of the procedure of de-reservation of vacancies reserved for SCs/STs - delegation of powers for de-reservation to Ministries/ Department of the Government of India in certain specified cases.

The undersigned is directed to say that as clarified in this Department's O.M. No.28/14/74-Estt(SCT) dated 12-7-76, the approval of this Department has to be obtained in all cases before a reserved vacancy can be treated as de-reserved and utilised for the appointment of a general category candidate except in the following cases:

- (1) Reserved vacancies in purely temporary posts which has no likelihood of becoming permanent or continuing indefinitely;
- (2) Reserved vacancies in scientific and technical posts.

2. Of late, it has been felt that the provisions regarding seeking prior approval to de-reservation from this Department has been resulting in considerable delays in giving effect to the promotion of the approved candidates (including SC and ST candidates in some cases) on the Select List, apart from casting a heavy burden of work upon this Department. It has, therefore, been considered necessary that in certain selected cases the possibility of authorising the Ministries/Departments of the Government of India themselves to de-reserve the vacancies subject to certain safeguards, should be

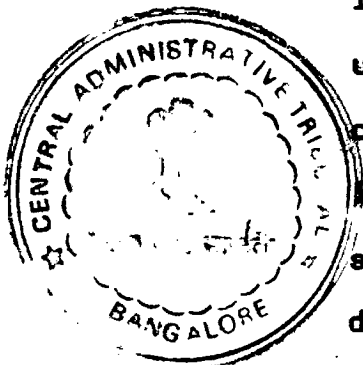
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explored. It has accordingly been decided that hereafter the Ministries/Departments of Government of India may themselves accord approval to the de-reservation of reserved vacancies only recruitment made by promotions subject to following conditions:

- (1) There is neither a SC nor a ST candidate available or eligible for promotion in the feeder cadre(s) in the relevant service/recruitment rules/orders;
- (2) A copy of the proposal for de-reservation in the appropriate prescribed proforma is sent for information immediately to (i) The Commissioner for SCs and STs and (ii) to this Department.
- (3) The proposal for de-reservation has been seen and concurred in by the Liaison Officer of the Ministry/Department.
- (4) The proposal for de-reservation is agreed to at a level not lower than that of Joint Secretary to the Government of India in the administrative Ministry/Department (Proper concerned).
- (5) In the event of a disagreement between the appointing authority and the Liaison Officer the advice of this Department has been appointed.

3. The Ministry of Finance etc. are requested kindly to bring the above instructions to the notice of all the appointing authorities under their administrative control. May be specifically made clear to them that except in the case of De-reservation of reserved vacancies in promotional posts satisfying all the above conditions, all other cases of de-reservation of vacancies will be as hitherto force, continue to be referred to this Department for prior approval. "

Drawing our attention to condition(1) of para-2 of the O.M., counsel contended that de-reservation sought and obtained wherever it was necessary the approval was per se invalid in view of condition (1) of para-2 remaining unsatisfied because of availability of eligible SC and ST candidates for promotion in the feeder cadre of Inspectors on all the occasions when de-reservation was sought and obtained. Reiterating his submission that de-reservation should not have been agreed to for the reason that there were SC/ST candidates available and eligible for promotion in the feeder cadre of Inspectors, learned counsel proceeded to contend that filling up of



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reserved vacancies by general candidates after availing such de-reservation was wrong and that all these reserved vacancies should be taken as frozen during the relevant years although there was no carry forward of reservations, an aspect which he admitted during the course of arguments, but even so he argued there would be a technical carry forward of reservations and those vacancies treated as having been carried forward from year to year until they were filled up by SC/ST candidates. This argument was rebutted by the learned ACGSC who described it as fallacious.

7.2 We are unable to agree with the aforesaid submission of the learned counsel for the applicant for the reason that O.M. No.36011/25/79-Estt(SCT) dated 16.11.1979 speaks only of delegation of powers for de-reservation to various Ministries and Department subject to fulfilment of the condition listed from (1) to (5) of para-2. In para-3 of the O.M., it is clearly stated that cases for de-reservation not satisfying all the 5 conditions referred to in para-2 would continue to be referred to the Department of Personnel and Administrative Reforms for prior approval of proposals for de-reservation. It may be relevant at this stage to refer to the O.M. issued by the Deptt. of Personnel & A.R. subsequently in 1989. The said O.M. No.36011/5/81/Estt(SCT) dated 7.4.1981 available at page-182 of the Brochure (7th edition) reads as follows:-

"Subject: Simplification of the procedure of dereservation of vacancies reserved for SC/ST - Delegation of powers of de-reservation - clarification regarding.

The undersigned is directed to draw attention to Department of Personnel's O.M. No.36011/25/79-Estt(SCT) dated 16.11.1979 regarding delegated powers or de-reservation to Ministries/Departments in cases of promotion and to say that the copy of the proposal in the prescribed proforma should be sent to the Department of Personnel and the Commissioner of Scheduled Caste/Scheduled Tribe by the administrative Ministry/Department concerned, and not by any attached and subordinate offices. It is further stated that the Ministry/Department concerned should wait for a period of at least two weeks after sending the proforma to the Department of Personnel and the Commissioner for SC/ST, for the comments, if any, before the reserved vacancies are de-reserved by them, under the delegated authority.

2. Ministry of Finance etc., are requested to bring the above clarifications to the notice of all appointing authorities under their control. "

This O.M. provides that all proposals for de-reservation in case of promotion should also be endorsed to the Department of Personnel and Administrative Reforms and the Commissioner for SCs and STs by the administrative Ministry/Department concerned who should wait for a period of atleast 2 weeks for their comments, if any, before the reserved vacancies are de-reserved by them under the delegated authority. Learned ACGSC submitted that the procedure laid down in the 2 O.Ms referred to supra have been fully complied with and approval for de-reservation secured from time to time. He produced a copy of the communication in this regard sent to R-4 by R-2, the Central Board of Excise and Customs, Deptt. of Revenue, New Delhi. We notice that the O.M. dated 16.11.1979 does not per se prohibit de-reservation even if one SC or ST candidate was available or eligible for promotion in the feeder cadre. The O.M. merely defined



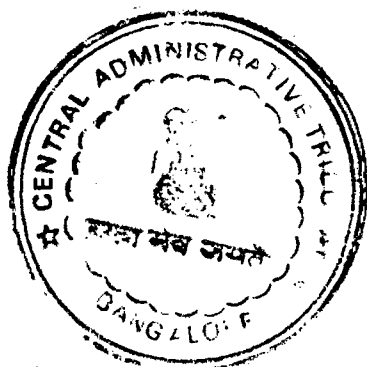
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the ambit of the powers delegated to the Ministry/ Department to deal with a proposal for de-reservation in a situation where there is even 1 SC or ST candidate available or eligible for promotion in the feeder cadre, i.e., the delegated powers cannot be exercised by the Ministry or Department concerned, if even one SC or ST was available or eligible for promotion in the feeder cadre, which in this case is, the feeder cadre of Inspectors. However, in view of the unchallenged assertion made by the ACGSC that instructions laid down in the O.M. dated 16.11.1979 the O.M. dtd. and/7.4.1981 were followed before the administrative Ministry conveyed approval for de-reservations, we accept the same. Apparently, no objections were raised either by the Department of Personnel and Administrative Reforms or by the Commissioner for SCs and STs within the time limit prescribed in the O.M. of 7.4.1981 after receipt of copies of the proposals for de-reservation sent by the administrative Ministry. It is thus clear that the aforesaid two authorities did not insist on the fulfilment of condition(1) of para-2 of the O.M. dated 16.11.1979. ^{therefore} We hold that no irregularity has been committed in the matter of approvals given for such de-reservations. Accordingly, we answer point B in the negative.

8.1 Regarding point C(1), learned counsel for the applicants argued that promotion of general candidates in reserved vacancies before securing prior approval for de-reservation of those vacancies was not tenable because vis-a-vis certain DPCs such approval was secured ex-post facto. We are told that in respect of the DPC held on 15.3.1991 to consider promotions to

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25 posts of Superintendent, 3 posts for SC and 2 posts for ST were reserved. Due to non-availability of sufficient number of eligible SC and ST candidates even within the extended zone of consideration, only 2 SC candidates could secure promotion and against the remaining 1 vacancy reserved for SC and 2 vacancies reserved for ST candidates, 3 general candidates as recommended by the DPC were promoted even before the Collector of Central Excise, Bangalore, moved the Ministry of Finance, Deptt. of Revenue on 26.3.1991 seeking confirmation of the de-reservation made by him as also of the promotion of the general candidates recommended by the DPC against the 3 vacancies referred to supra. The Ministry of Finance, Deptt. of Revenue by its letter dated 7.5.1991 advised the Collector of Central Excise, Bangalore not to fill up the reserved points for SC/ST pending approval of de-reservation by the Ministry. The Collector was also advised that a de-reservation proposal, if necessary, be forwarded to the Ministry for consideration. In reply, the Collector sent a communication on 13.6.1991 stating that he had already filled up the three vacancies (1 SC and 2 ST) and sought ex-post facto approval for de-reservation of 1 SC and 2 ST vacancies. After considerable delay and apparently after a reminder from the Collector of Central Excise, Bangalore, the Ministry of Finance, Deptt. of Revenue, conveyed by its letter dated 14.3.1995 ex-post facto approval for de-reservation of the 1 SC and 2 ST points. While we agree that prior



approval for such de-reservation was required as per extant instructions, there seems to have been some confusion in the mind of the Collector, Central Excise, Bangalore, in March, 1991 soon after issue of the Deptt. of Personnel & Training as stated by learned ACGSC, O.M. dated 8.2.1991/that he was competent to make de-reservations himself and then make promotions of general candidates against such "de-reserved" vacancies which did not appear to be warranted by a perusal of the contents of the said O.M. which reads as follows:

" Subject:- Dereservation of vacancies when eligible SC/ST officers are not available for promotion even in the extended zone of consideration.

According to existing instructions there is reservation for SCs/STs while making promotion on the basis of selection up to the lowest rung in Group 'A' and in promotion by non-selection at all levels. Instructions have also been issued for de-reservation of a reserved vacancy to be filled by promotion in the event of non-availability of suitable candidates belonging to SC or ST community, as the case may be (even within the extended zone when the promotion is made by selection).

2. Under the procedure currently followed by the DPC in the matter of promotions, in cases where no suitable candidate belonging to SCs/STs is available even within the extended zone for promotions against the reserved vacancy or the SC/ST candidates available within the zone are not found suitable by the DPC, a general candidate is recommended on the condition that his promotion will be subject to de-reservation of the vacancy in accordance with the prescribed procedure.

3. The matter has further been examined in consultation with the UPSC. Normally, the DPC is expected to recommend a 'reserved' candidate against a reserved vacancy. If no suitable 'reserved' candidate is available, it is open to the appointing authority either to keep the post vacant or to de-reserve the reserved vacancy and fill up the same

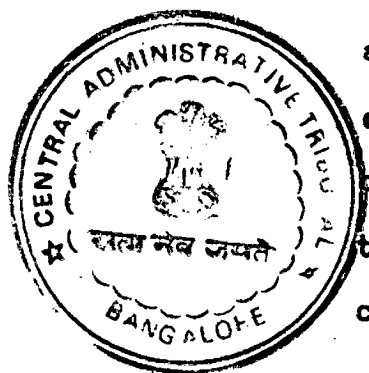
by appointing a general candidate. Thus, the question of appointment of a general candidate against a reserved vacancy arise only after the appointing authority takes conscious decision to de-reserve the vacancy. Keeping this position in view, it has been decided that henceforth the following procedure will be followed:-

(i) If there is no 'reserved' candidate even within the extended zone, it should be clearly indicated by the Ministry/Department while forwarding the DPC proposals whether the competent authority has approved de-reservation of the reserved vacancy and only in that event a general candidate will be recommended against that vacancy. When there is a 'reserved' candidate in the zone or the extended zone and the said candidate is found unsuitable for promotion by DPC, the DPC will not recommend a general candidate in lieu. In such cases, if the Ministry/Department wants to fill up the vacancy by a general candidate, they may initiate action for getting it de-reserved. Thereafter, a fresh DPC may be held for filling up that vacancy by a general candidate. An exception to this general rule will be made by UPSC only in very urgent case.

(ii) The instructions contained in this Department's O.M. No.AB-14017/30/89-E&T. (RR) dated 10th July, 1990 relating to the filling up of vacancies reserved for Scheduled Castes and Scheduled Tribes falling in the promotion quota should be kept in view before DPC proposals are sent to the UPSC in the circumstances mentioned in (i) above.

4. Ministries/Departments may follow this procedure also while submitting proposals to DPCs not chaired by Chairman/Members, UPSC.

Be that as it may, after receiving a suitable clarification the Collector made a proposal as advised by the Ministry of Finance and has since secured ex-post facto approval from the said Ministry. We are, therefore, of the view that since the ex-post facto approval for de-reservation has been secured, the promotions given to the three general candidates in 1991 by the authority concerned, in the circumstances stated earlier, may at



best be an irregularity and not an illegality and the promotions made are not vitiated. Accordingly, we answer point C(1) in the negative.

9.1 Regarding point C(ii), learned counsel for the applicants contended that no approval for de-reservation was secured at all in respect of certain DPCs held in 1988 and 1989 but ^{instead} general candidates were promoted against the reserved vacancies which could not be filled. ^{It is contended that} As no such approval was secured all promotions made became vitiated and should be taken to be non-est. We are told that in respect of the DPCs held on 10.2.1988, 14.10.1988 (supplementary) and 22.4.1989 no approval for de-reservation was obtained by the Department.

9.2 The contention of the ACGSC is that while approval for de-reservation was not specifically sought for and obtained in respect of these DPCs, the minutes containing the recommendations made by the DPC for filling up the reserved vacancies by general candidates had been endorsed to the administrative Ministry. Although technically no approval in ~~black and white~~ ^{writing} was secured, the fact that particular general candidates were going to be appointed in the reserved vacancies as recommended by the DPCs concerned was certainly brought to the notice of the Ministry. The Ministry did not raise any objections to the promotions so made. ^{It is urged} Further ^{the} applicants cannot agitate all these points after passage of many years.

9.3 We have carefully considered this issue. We are of the view that there being no carry forward of vacancies in promotion from the posts of Inspector to the posts of Superintendent of Central Excise, agitating this point can be of no help to the applicants since the

vacancies filled by appointment of general candidates without specific approvals for de-reservation might at best be a technical flaw. Whilst de-reservation is the mechanism ^{employed} before filling up a reserved vacancy by a non-reserved candidate, carry forward exercise, where there is a requirement for carry forward of reservations, is the modality for safeguarding the SC/ST interests. In any case, filling up of reserved vacancies by general candidates without securing clear-cut approval for de-reservation of reserved vacancies cannot confer any benefits ^{to} the applicant, because carry forward of vacancies was actually forbidden. We also consider that non-obtaining of de-reservation orders vis-a-vis the DPCs referred to do not amount to any illegality in the circumstances of the case as urged by the respondents. We think at the highest it may tantamount to an irregularity curable by obtaining ex-post facto approval by the competent authority. We answer point C(ii) in the negative.

10.1 Regarding point D, learned counsel for the applicants argued that the Department was in the habit of holding piece-meal DPCs for every recruitment year. Apart from holding a regular DPC every year, the practice of holding supplementary DPCs during ^{the} ~~same~~ ^{every} year was the rule rather than the exception. This, he said, deprived the SC/ST candidates of promotion as Superintendents of Central Excise. If the total posts had been reckoned and a single annual DPC had been held, then due to a larger zone of consideration and a larger extended zone of consideration



the possibility of SC/ST candidates being promoted as Superintendents of Central Excise would have been brighter. Continuing his arguments he contended that there was no need to hold a DPC on 22.4.1989 for 3 vacancies only, having held on the previous day, i.e. on 21.4.1989 a DPC for 41 vacancies. The three vacancies reckoned for the DPC held on 22.4.1989, having arisen only after 19.1.1990 but during 1989-90, they could have been added to the vacancies for which a supplementary DPC was held during the same year on 3.2.1990 for 26 vacancies. By not doing so, the zone of consideration and the extended zone of consideration stood reduced thereby depriving the SC/ST candidates of promotions at the DPC held on 3.2.1990. Alternatively, he contended that instead of holding the DPC for 3 vacancies on 22.4.1989 the DPC should have been held for 30 vacancies including 27 vacancies in the upgraded posts of Superintendent of Central Excise.

10.2 ^{rebutted} Learned ACGSC ~~contested~~ this argument and stated that it was not for depriving the chances of being considered for promotion of SC/ST candidates that such supplementary DPCs were held. In fact, the supplementary DPCs were held strictly in accordance with clause (i) of para-6.4.2 of the O.M. of the Department of Personnel and Training dated 10th April, 1989, which makes a provision for holding such supplementary DPCs. The relevant portion of the O.M. cited above, reads as follows:

" Whether a DPC has already been held in a year further vacancies arise during the same year due to death, resignation, voluntary retirement etc. or because the vacancies were not intimated to the DPC due to error or omission on the part of the Department concerned, the following procedure should be followed:-

- (i) Vacancies due to death, voluntary retirement, new creations, etc., clearly belonging to the category which could not be foreseen at the time of placing facts and material before the DPC. In such cases, another meeting of the DPC should be held for drawing up a panel for these vacancies as these vacancies could not be anticipated at the time of holding the earlier DPC. If, for any reason, the DPC cannot meet for the second time, the procedure of drawing up of year-wise panels may be followed when it meets next for preparing panels in respect of vacancies that arise in subsequent year(s).

Learned ACGSC ^{pointed out} ~~showed~~ to us by reference to documents that the supplementary DPCs in accordance with clause (i) of the paragraph reproduced above were held only due to non-anticipation of deaths, resignations, voluntary retirements, upgradations, promotions etc. Further, learned ACGSC hotly contested the contention of the learned counsel for the applicants about the vacancies reckoned for the DPCs held on 22.4.1989 and 3.2.1990 and stated that the DPC on 21.4.1989 was held in compliance with the instructions contained in the Ministry of Finance, Department of Revenue, letter No.A 32013/1/189-Ad.II-B dated 29th March, 1989 which is reproduced below:-

Subject: D.P.C-Holding for promotion of -
Change in the writing of C.C.R
period - Clarification regarding.

Sir,

I am directed to say that Annual Confidential Reports were hitherto being written on a calendar year basis. The system of writing of A.C.Rs was recently reviewed and it was decided vide letter F.no.A.28012/71/87-EC/SO(P) dated 28.9.1988 that A.C.Rs may be written on financial year basis w.e.f. 1988-89. The A.C.R for 1988 is accordingly to cover 15 months, i.e., from 1.1.1988 to 31.3.1989.



2. The question of holding of DPCs for promotion to the various grades has also been reviewed in the light of the decision referred to above. It has been decided in consultation with the Department of Personnel and Training that -

(a) In offices where the DPCs for the calendar year 1988 have not so far been held, the vacancies will be calculated for 15 months i.e., from 1.1.1988 to 31.3.1989 and DPCs held accordingly;

(b) In offices where DPCs for 1988 have already been held, the vacancies arising during the period 1.1.1989 to 31.3.1989 should be calculated and a supplementary DPC held for these vacancies;

(c) from 1.4.1988 onwards, the DPCs should be held every year on a financial year basis.

3. These instructions would apply to promotions in all grades.

Receipt of this letter may please be acknowledged.

Yours faithfully,

sd/-

(TARSEM LAL)

UNDER SECRETARY TO THE GOVT. OF INDIA. "

Thus, according to him, the DPC that was held for 41 vacancies on 21.4.1989 was for the period from 1.1.1989 to 31.3.1989 and it included 27 posts of Inspector of Central Excise upgraded to Superintendent Group 'B' of Central Excise in the Central Excise Collectorates of Bangalore and Belgaum as in the sanction order of the Ministry of Finance, Department of Revenue dated 21st March, 1989. Having reckoned these 27 posts which were upgraded in supplementary March 1989 for the aforesaid DPC held on 21.4.1989 the question of taking into account these very 27 posts once again for the regular DPC of 1989-90 held on 22.4.1989 was not called for. In point of fact, according

to him, though there were 30 vacancies anticipated for the year 1989-90, the 27 posts for which DPC was held on 21.4.1989 were adjusted against the 30 vacancies because the sanction order dated 21st March, 1989 allowed the upgradation for a period of 2 years or till the staff fitted against the upgraded posts were absorbed in regular vacancies, whichever was earlier. The adjustment of 27 posts was done against the vacancies arising between 1.4.1989 and 31.3.1990 and, therefore, after such adjustment the regular DPC for 1989-90 could be held only for 3 vacancies. Further, the supplementary DPC for 1989-90 which was held on 3.2.1990 had to be held because after 22.4.1989, when the regular annual DPC was held for the year 1989-90, 24 Superintendents were promoted on 17.1.1990 as Assistant Collectors/Senior Superintendents Group 'A' which left unanticipated vacancies in posts of Superintendent Grade 'B'.

10.2 We are satisfied with the position explained by the learned ACGSC that the supplementary DPCs were held in accordance with clause (i) of para 6.4.2 of the O.M. dated 10.4.1989 reproduced above. We, therefore, hold that if the department had held supplementary DPCs there were reasons for doing so strictly in accordance with the instructions contained in the O.M. referred to supra. We also fully agree with the submissions made by the ACGSC that having already reckoned the 27 vacancies owing to 27 posts of Inspectors upgraded as Superintendents Group 'B' in



the DPC held on 21.4.1989 for the period 1.1.1989 to 31.3.1989 in accordance with the instructions contained in the Ministry of Finance, Deptt. of Revenue letter dated 29.3.1989 cited supra, the question of consideration of the same as vacancies for the annual DPC of 1989-90 held on 22.4.1989 would not arise. A regular DPC cannot be held for the same vacancies for a second time. As rightly pointed out by the ACGSC, the letter dated 29th March, 1989 referred to supra directed that a supplementary DPC should be held only for the vacancies arising from 1.1.1989 to 31.3.1989. Accordingly, the 27 vacancies owing to upgradation and other vacancies anticipated from 1.1.1989 to 31.3.1989 were taken into account and a supplementary DPC was held on 21.4.1989. In view of the direction given in the sanction order dated 21.3.1989 referred to supra upgrading 27 posts, when the vacancies for the annual DPC 1989-90 for the period 1.4.1989 to 31.3.1990 were computed as 30, the 27 upgraded posts were adjusted against those vacancies leaving behind only 3 vacancies which could be considered by the annual DPC for 1989-90 which was held on 22.4.1989. Therefore, reckoning of 3 vacancies only for the annual DPC as on 22.4.1989 cannot be a folly by any stretch of imagination. Further, a supplementary DPC had to be held on 3.2.1990 owing to promotion of 24 Superintendents as Assistant Collectors/Senior Superintendents on 17.1.1990 and availability of 2 more vacancies after adjustment. These were unanticipated vacancies and so the supplementary DPC was held on 3.2.1990. Adding

the 3 vacancies considered at the annual DPC held on 3.2.1990 would not, therefore, have been correct because the former DPC held on 22.4.1989 taking into account all the anticipated vacancies upto 31.3.1990 was the regular annual DPC for 1989-90 and the latter DPC held on 3.2.1990 was only a supplementary DPC held owing to unforeseen circumstances. We, therefore, reject the aforesaid contentions of the learned counsel for the applicant. We answer point D in the negative.

11.1 Regarding point E, learned counsel for the applicants contended that while carry forward of reservations was not permitted in the case of promotions from the posts of Inspector to those of Superintendent from one recruitment year to another, there was no bar to such carry forward within the same recruitment year, i.e., from one DPC to another held during the same recruitment year. Non-carry forward of reservations in such situations resulted in non-consideration of SC/ST candidates for promotion as Superintendents or Central Excise.

11.2 While the argument seems to be infallible, the fact remains that the first DPC of the year, when it met and made its recommendations for filling reserved vacancies for which no SC/ST candidates were available by appointment of general candidates, could not have foreseen the ~~circumstances~~ ^{future need for} leading to holding of one or more supplementary DPCs during the same year. The same could be said of the subsequent (supplementary) DPC when one or more supplementary DPCs were to follow during the same year. If, as a result, reserved



vacancies had got filled up by general candidates there would be no such vacancies available for being carried forward during the same year. The promotions made in the meanwhile on a regular basis cannot also be undone because at the time the promotions were made, it was not known that a supplementary DPC was to follow during the same year.

We are satisfied with the arguments of the learned ACGSC who acquainted us with the reasons for holding supplementary DPCs to which there is adumbrance while we dealt with point D supra. We, therefore, reject the arguments of the learned counsel for the applicants in this regard. We answer point E in the negative.

12. No other points were pressed by the learned counsel for the applicants.

13. Before concluding, we would like to ^{that} observe/as submitted by the learned ACGSC, until the issue of Department of Personnel and Training O.M. dated 8.2.1991 referred to supra no carry forward of reservations was permitted. It was only after the O.M. dated 8.2.1991 was issued that the department had an option to either keep a reserved vacancy unfilled owing to non-availability of eligible SC/ST candidates even within the extended zone of consideration or take a conscious decision due to the exigency of the situation to de-reserve the vacancy and appoint a general candidate in such vacancy. We notice from the material made available by the respondents that they promoted SC/ST candidates against all the nine vacancies reserved for them in

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the annual DPC 1991-92 held on 24.6.1991. However, in the supplementary DPCs which took place during that year due to non-availability of SC/ST candidates, they had kept the vacancies unfilled and carried over the same for being filled by SC/ST candidates in the annual DPC (Review) held on 6.1.1993. Even in the supplementary DPC held on 26.3.1993 during 1992-93, while the three reserved vacancies for SC were filled by promotion from the category of SC, the one vacancy reserved for ST which could not be filled up owing to non-availability of ST candidates, was kept unfilled. (The learned ACGSC mentioned to us that as against the total percentage of reservation of 22.5 for SC/ST as on 1.1.1995, the representation of SC/ST in the cadre of Superintendents was about 25% i.e., against the total strength of 232 those belonging to SC and ST were of the order of 59. This position augurs well and it cannot be said that there has been any discrimination against the SCs and STs.)

* Deleted, vide
order of the Bench
in R.A.57/95
dated 20.11.'95.

(N. RAMAMURTHY)
DEPUTY REGISTRAR (J)
29th November '95



14. We also find that by their own admission the applicants, having become eligible for promotion to the grade of Superintendents Group 'B' in January, 1990, failed to challenge the alleged lapses that had occurred prior to 1990 soon thereafter but stirred up to take up the matter with the Department only in 1993. Therefore, this application, made after considerable lapse of time before us in order to upset the promotions already made, cannot be ~~upheld~~ ^{Countenanced}.

15. In view of the foregoing, we do not find any justification for ^{granting any of} ~~allowing~~ the reliefs sought for by the applicants. In the result, this application fails and it is dismissed. There will be no order as to costs.



Sd-

(T.V. RAMANAN)
MEMBER (A)

Sd-

(P.K. SHYAMSUNDAR)
VICE CHAIRMAN

TRUE COPY

[Signature]
29/11/95

Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore

mr.