

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
MUMBAI

OA No.226/1994

Mumbai this the 25th day of June, 2001

HON'BLE SHRI KULDIP SINGH, MEMBER (J)
HON'BLE SMT. SHANTA SHASTRY, MEMBER (A)

1. Mr. E.N. Nikam, President,
Welfare Association of the Officers
of Scheduled Castes/Tribes in
Central Excise Collectorate, Bombay,
having their office at 6, Kumar Building
L.B.S. Marg, Kurla (West),
Bombay 400 070.
2. R.D. Ziradkar
working as S.G. Inspector, in
Central Excise Collectorate,
Bombai-III Collectorate, Parel,
Lal Baug, Bombay 400 012.
3. S.D. Walke, working as S.G. Inspector, in
Central Excise Collectorate,
Bombai-III Collectorate, Parel,
Lal Baug, Bombay 400 012.
4. R.H. Surve working as Inspector, in
Central Excise Collectorate,
Bombai-III Collectorate, Parel,
Lal Baug, Bombay 400 012.
5. N.K. Barman, working as S.G. Inspector, in
Central Excise Collectorate,
Bombai-III Collectorate, Parel,
Lal Baug, Bombay 400 012.
6. B.M. Bansode, Inspector,
Central Excise
Bombay-III Collectorate, Dadar,
New Prabhat Chambers,
Bombay 400 028.
7. V.S. Pawar, Inspector,
Central Excise
Bombay-III Collectorate, Dadar,
New Prabhat Chambers,
Bombay 400 028.
8. P.N. Masram, Inspector,
Central Excise
Bombay-III Collectorate, Dadar,
New Prabhat Chambers,
Bombay 400 028.
9. Gopiram Meena, Inspector,
Central Excise
Bombay-III Collectorate, Dadar,
New Prabhat Chambers,
Bombay 400 028.

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10. J.M. Worlikar, S.G. Inspector,
Central Excise
Bombay-III Collectorate, Dadar,
Prabhat Chambers, Parel,
Lalbaug, Bombay 400 012.

...Applicants

(By Advocate : Shri G.K. Masand)

V E R S U S

1. Union of India, through the
Secretary, Ministry of Finance,
North Block, New Delhi.
2. Principal Collector of Central
Excise having his office at Bombay
M.K. Road, Bombay Churchgate,
Bombay - 400 020.
3. Collector of Central Excise
Bombay-I, having his office at
M.K. Road, Bombay Churchgate,
Bombay - 400 020.
4. Additional Collector of Central
Excise, Bombay-I,
M.K. Road, Bombay Churchgate,
Bombay - 400 020.

(By Advocate: Shri V.D. Vadharker and Shri M.J. Sethna)

O R D E R

Hon'ble Mr. Kuldip Singh, Member (J)

This OA has been filed under Section 19 of the Administrative Tribunal's Act, 1985 whereby the applicant No.1 in the capacity of President of Welfare Association of the Officers of SC/ST in Central Excise Collectorate, Bombay along with certain Inspectors of Excise, who are applicant No.2 to 10, have filed this OA on 18.1.1994. They have filed this OA to challenge the orders of June, 1993 vide which a DPC was held for promotion to the post of Superintendent of Central Excise Group 'B' but in the relief clause the applicants have sought a declaration that the DPC meetings held on 16/17-2-1990, 25.3.1991, 11/11-10-1991 and 12.3.1993 for preparing a select list

for appointment of Superintendents of Central Excise Group 'B' on split basis is bad in law and null and void as it is stated to be violative of guide-lines issued by the Union of India and the respondents have not even taken into consideration the case of SC/ST with year as a unit for considering candidates from the zone of consideration.

2. They have further prayed, in particular, that the order No.172/93 under which the meeting of the DPC was held on June, 1993 for the year 1993-94 be also declared as null and void and that the respondents be directed to hold fresh/review DPC.

3. Facts, as alleged in brief are, that the applicants are working as Inspectors (Senior Grade) and (Ordinary Grade) (hereinafter called as SG/OG). They all belong to reserved category either SC or ST and are working in various Collectorates of Central Excise, Pune, Bombay, Aurangabad, Goa etc. They further state that vide a letter dated 23.4.68/27.9.72 respondent No.1 had issued certain directions for the purpose of fixing of seniority and eligibility for promotion to the grade of Superintendent of Central Excise Group 'B'. According to these guide-lines, the Inspectors of SG are to be placed en bloc senior to Inspectors of OG and the total number of officers to be included for the purpose of consideration should be in the field of choice, as determined by the Departmental Promotion Committee.

4. One of the grievances of the applicants is that they belong to SC/ST community and inspite of having worked as Inspectors SG, were not considered as being

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eligible on the basis of seniority by virtue of their working in the SG but were placed below the Inspectors working in the OG and thus they have been denied promotion to the post of Superintendent Central Excise Group 'B'.

5. The second grievance of the applicants is that the procedure, as laid down by the Union of India with regard to the holding of DPC, has not been followed by the department. According to the applicants when promotions are to be made by selection method then the consideration zone is normally 3 times of the number of the reported vacancies but in case if the adequate number of SC/ST candidates are not available within the normal field of choice then the consideration zone can be extended to 5 times the number of vacancies and the SC/ST candidates coming within the extended zone are also entitled to be considered against the vacancies reserved for them.

6. Besides that it is also pleaded that the guide-lines also state that the DPC is always held on yearwise basis and if for reasons beyond control, could not be held for any year(s) even though the vacancies arose in those year/years, the first DPC that meets should determine the actual number of regular vacancies arising in each of the previous year(s) immediately preceding and the actual number of vacancies proposed to be filled in the current year. Thus it was emphasised that year is the unit for holding the DPC meeting and preparation of the select list for promotion in the next higher grade.

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7. The applicants further allege that vide GSR No.11111, the Union of India had made the rules titled as Superintendent of Central Excise Recruitment Rules, 1986 annexed as Annexure-B and as per rules, promotion to the grade of Superintendent is to be made from Inspectors of Central Excise with 8 years regular service in the grade including the service rendered in the grade of Inspector SG and though these rules lay only the method of recruitment to the post of Superintendent but do not lay down any rules for preparation of seniority/eligibility list but as per instructions/guide-lines dated 23.4.68/27.9.72 Inspector SG are to be placed en bloc above the Inspector OG which is still being maintained and followed by the department.

8. The applicants further allege that under the DPC rules and guide-lines issued by the Union of India the vacancies existing, anticipated during the ensuing years should be assessed and calculated and DPC should consider as per the rules persons falling within the zone of consideration which may be extended 3 times of the number of vacancies subject to availability of the SC/ST candidates and if not available, it may be extended 5 times instead of 3 times but the applicants allege that in order to avoid the appointment and deny the promotional avenues belonging to SC/ST, the office of respondent No.1 had been following a policy of holding two DPC meetings in a year and if in the first DPC meeting the person belonging to SC/ST are not found available then the vacancies were de-reserved as they could not be carried forward under the relevant rules and candidates belonging to the general category were appointed. But in the same

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year when another DPC is constituted and even if more than the number of reserved candidates were available in the field of consideration, they were not taken into consideration for the reasons because they could not account to fill in the de-reserved vacancies in the earlier years. This anomaly has arisen because of the splitting of year of consideration of vacancies by the DPC, which is contrary to the guide-lines/instructions issued by the Union of India and in this process candidates belonging to SC/ST are being deprived of their opportunities for advancement in their career and inspite of many representations having been made the respondent No.2 is continuing with this practice without remedying the defects in any way.

9. It is further stated that Ministry of Finance vide their letter dated 28.1.1990 had created additional posts of Group 'B' which are to be filled in a phased manner during the course of a period of 3 years. On 6.3.91 the Government had released 46 new posts in the first phase and 51 new posts in the 2nd phase on 21.8.91 and 16 posts were further released on 16.2.1993 in the third phase.

10. To illustrate how the splitting of DPC had caused harm to the SC candidates the applicants have stated that 46 new vacancies released on 6.3.91 should be filled in the year 1991-92 but the respondents have not done so and in the year 1991 two DPCs had met by splitting the number of vacancies of 1992. In the first phase the department had considered 110 vacancies and then a separate DPC meeting was held to consider promotion of 31

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posts and had the splitting of DPC been avoided, then the total number of posts would have been 141 and the field of consideration of choice should have been 705 as at that point the required number of SC/ST candidates were available but by splitting the DPC, 5 posts which could have gone to SC/ST, had to be dereserved which had deprived the reserved category candidates and the posts had gone to the general category candidates and similarly for subsequent years i.e., 1991-92 and 1992-93 if the combined number of vacancies had been considered by the first DPC then the field of choice would have gone to much larger number. In 1991-92 it would have been 890 candidates and 1992-93 it would have gone to 720 candidates whereas it has been restricted only with a view to deprive the reserved category candidates.

11. The applicants have also challenged the seniority/eligibility list of Inspector of SG and OG grade which had been issued on 26.5.93 by the Central Excise, Bombay as in the said seniority/eligibility list of Inspectors belonging to SC/ST categories who had been promoted as SG Inspector had to be placed above Inspector OG but that has not been done, which is stated to be contrary to the departments own instructions and is also stated to be one of the reasons which had deprived the SC candidates to be considered for promotion to the post of Superintendent Group 'B'. So in this view of the facts, the applicants have assailed the impugned orders and have asked for the reliefs as claimed in para 8 of the OA.

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12. The respondents are contesting the OA. The issue of seniority list for the purpose of consideration to the post of Superintendent Group 'B' and the Inspectors OG below Inspector SG are concerned, the respondents have pleaded that the earlier instructions issued in the year 1968 dated 23.4.1968 and 27.9.72 stand superseded by letter dated 26.10.73 and the department had taken a decision that for the purpose of promotion to Superintendent Group 'B' of Central Excise Class-II w.e.f. 1.1.1974 the promotions will be made from amongst the Inspectors of Central Excise (including those who are enjoying the courtesy title of Deputy Superintendent of Central Excise) irrespective of the fact whether they are OG Inspector or SG Inspector and their names be arranged for this purpose according to their seniority as Ordinary Grade Inspectors (emphasis supplied).

13. The respondents submit that the seniority list for the purposes of promotion to the Group 'B' post of Superintendent, Central Excise has been prepared in accordance with the instructions and the guide-lines issued on 26.10.1973 and according to these instructions, since the inter-se seniority amongst the Inspectors whether he was SG Inspector or he had worked as Deputy Superintendent of Central Excise, their seniority is to be taken and arranged in accordance with their seniority position as OG Inspectors and this list has been issued accordingly and since these instructions are of 1973 and are being followed consistently, so the applicants cannot challenge it now. *for*

14. The respondents have further stated that the seniority of Inspectors had been arranged in accordance with these instructions whether they are SC or general category candidates. The respondents have even pleaded that this preparation of seniority-cum-eligibility list is even in consonance with the Recruitment Rules.

15. The respondents have also tried to justify that at one stage since there was stagnation in the cadre due to non-availability of adequate number of posts so as one of the measures the respondents decided to introduce higher scale grade in the cadre of Inspectors which is to be designated as selection grade but these selection grade Inspectors (SG) continue to belong to the Inspector grade and all such employees, who belong to Inspectors cadre, were in their appropriate turn eligible for promotion to the cadre of Superintendents being the next higher post and though in the year 1968 a communication was issued by which the inter-se seniority of Inspectors would be changed once when an Inspector OG is found fit to be selected as Inspector SG. Hence it was found that in view of an independent zone of consideration of SC/ST candidates, the result of which was that candidates belonging to SC/ST though junior to the unreserved personnel would find place by virtue of such reservation in the appointment of selection grade Inspectors. Such junior SC/ST would thus supersede their unreserved colleagues and is thus found to be not proper and this communication dated 23.4.68 which resulted in upsetting of the normal seniority in the Inspector Grade, as such Board had issued a subsequent communication dated 26.10.73 superseding the earlier communication dated 23.4.68 which

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follows the principle of continuous officiation of Inspector OG irrespective of the date of selection as Inspector SG.

16. As far as splitting of DPCs are concerned, the respondents admit that in normal circumstances one DPC is held in one financial year. However, due to unforeseen circumstances when more vacancies arise which were not anticipated by the 1st DPC then the second DPC can be held for those unforeseen vacancies in terms of para 5.4.2(i) of Government of India, Ministry of Personnel, Public Grievances and Pensions instructions dated 10.4.1989. The respondents further say that since the applicants have restricted their challenge to the DPC held in June, 1993 so the applicants are not entitled to make any grievance in respect of DPC of the year 1992 but still it is submitted that in the year 1992 no general category candidate was promoted against the vacancies reserved for SC/ST.

17. It is also admitted that the vacancies arising in a particular financial year have to be considered as a unit but due to circumstances beyond the control of administration the vacancies which could not be anticipated by the first DPC but which had arisen during the financial year, then a supplementary DPC was held for those unforeseen vacancies.

18. It is also agreed that vide letter dated 28.1.1991, Ministry of Finance had created additional posts of Group 'B' which were to be filled up in a phased manner during a period of 3 years. However, the Ministry

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released 51 posts all over India, but did not give any indication that during which year they would be filled but for the financial year 1990-91, the first DPC was held on 29/30-6-1990 which considered 71 vacancies arising till March, 1991. However, after the said DPC upto 31.12.1990, 36 unforeseen vacancies arose due to promotion to Group 'A' on voluntary retirement, death, deputation etc. After the DPC of June, 1990, the earlier panel prepared upto 31.3.91 got exhausted and since the next DPC was to be held only in June, 1991, so the department in public interest could not function with such large vacancies so supplementary DPC was held on 14.12.1990 and in the meantime Ministry vide their telex dated 6.3.1991 released 45 new posts of Superintendent Group 'B', hence a second DPC was held on 25.3.91 for filling up the vacancies.

19. It was further pleaded that since the applicants are challenging the order of June, 1993 so the applicants cannot go back and cannot challenge those DPCs, though all those DPCs were held in accordance with the instructions issued by the Government of India.

20. Rejoinder to this counter-affidavit was filed in which the applicants again insisted about their allegations with regard to splitting of DPCs for all these years and submitted in their prayer that they have asked for quashing of the proceedings of the DPCs of the earlier years.

21. As regards the seniority-cum-eligibility list is concerned, the applicants maintain that as per the instructions dated 23.4.68 the Inspector SG was placed en

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bloc senior to Inspector OG, however, they claim ignorance about the instructions dated 26.10.1973, but at the same time they state that these instructions are illegal and arbitrary and these should not be followed.

22. To this rejoinder, sur-rejoinder was also filed by the department where they claim that the drawing of eligibility list for promotion to the post of Superintendents Group 'B' is based on instructions dated 26.10.1973 which are not arbitrary or illegal but are being followed consistently since 1973.

23. We have heard the learned counsel for the parties and have gone through the records of the case.

24. As regards the question of placing the Inspector SG over the Inspector OG is concerned, the applicants have relied upon instructions dated 23.4.68 which had been reiterated on 27.9.72 as per Exhibit 'A', but we do find that these instructions have been superseded vide letter dated 26.10.73 so the claim of the applicants that they are entitled to be placed en bloc senior in the eligibility list loses its force as the instructions issued on 26.10.1973 have not been challenged in the OA and it was quite strange that even the applicants themselves admit in the rejoinder that they were not aware of those instructions.

25. Besides that, the respondents in their counter-affidavit have explained that how the instructions dated 23.4.68/27.9.72 were found to be not working

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properly and how the department was compelled to supersede the earlier instructions dated 23.4.68/27.9.72 and had to issue fresh guide-lines dated 26.10.1973.

26. The applicants in their rejoinder have simply stated that those instructions dated 26.10.1973 are merely illegal and arbitrary but could not substantiate how these instructions have discriminated against the applicants or have caused any harm to their interests and the applicants also admit that the Recruitment Rules do not specify as to how the eligibility for the purpose of promotion is to be considered as per statutory rules and since they do not specify the same, so for preparation of the eligibility lists the department had to go by the Boards instructions and since Board had after considering the earlier instructions issued on 23.4.68 and 27.9.72, had superseded the same vide their instructions dated 26.10.1973 so now the instructions dated 26.10.1973 are to be followed and the eligibility list is to be prepared accordingly, whereby the continued service in the Inspector ordinary grade is to be taken into consideration which deals with all the Inspectors in a uniform manner. Hence, those instructions are to be followed and on the basis of that though the applicants had worked as Inspector SG but do not have any claim for the purposes of eligibility for being placed en bloc senior to Inspector OG because as per the new instructions continuous 10 years service in the Inspector grade is criteria for eligibility to be considered for the higher post of Superintendent Group "B". The respondents have also explained that the post of Inspector SG was merely non-functional post and in order to redress the grievances with regard to promotional

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avenues the selection grade was introduced in the cadre of Inspectors whereas duties and functions of OG and SG Inspectors had remained the same. So for the purpose of eligibility, they could not be distinguished on the basis of getting higher scale in the selection grade since their functions and duties were the same.

27. In these circumstances, we are of the considered opinion that the applicants though having worked as Inspector SG yet do not have any claim to be placed en bloc senior over the Inspectors OG by ignoring their continued length of service in view of new instructions.

28. As regards the splitting of vacancies are concerned, the applicants have raised lot of mala fides and inaction on the part of the respondents by not reporting the full vacancies to the DPCs and pleaded that by splitting of the DPCs the respondents have restricted the consideration zone upto a particular number of vacancies whereby with a mala fide intention they have excluded the Scheduled Caste candidates. In this regard we may mention that the guide-lines of the DOP&T issued on 10.4.89 and in particular paragraph 6.4.2 provides a procedure for filling up of further vacancies arising in the same year. The said paragraph is reproduced hereinbelow for easy reference:-

"6.4.2 Procedure for filling up further vacancies in the same year - Where 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

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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).

(ii) In the second type of cases of non-reporting of vacancies due to error or omits (i.e. though the vacancies were there at the time of holding of DPC meeting they were not reported to it) results in injustice to the officers concerned by artificially restricting the zone of consideration. The wrong done cannot be rectified by holding a second DPC or preparing a year-wise panel. In all such cases, a review DPC should be held keeping in mind the total vacancies of the year (emphasis supplied)."

29. A perusal of paragraph 6.4.2 shows that the vacancies which arise further in the same year have been divided into two categories, i.e., vacancies arising due to death, voluntary retirement, new creations etc. which may be said to belong to vacancies arising because of unforeseen circumstances and the second category of vacancies are those vacancies which were not reported due to error or omission though the vacancies were there at the time of holding of the DPC meeting but the same were not reported to the DPC in the meeting which was scheduled to be held. Thus there are two categories of vacancies - first vacancies arising after DPC due to unforeseen situation and secondly the vacancies which were already there but had not been reported to the DPC. But so far as vacancies which had arisen subsequently because of unforeseen circumstances are clearly covered by the

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guide-lines which say that "another" meeting of the DPC should be held, if for any reason DPC could not meet for the "second" time then the procedure of drawing up of year-wise panel of vacancies is to be followed and in the case of non-reporting or short-reporting of vacancies, then in all those cases as per the guide-lines, a "review" DPC is required to be held. So keeping in view these guidelines we have to see whether on the facts of the present case the vacancies were existing at the time of regular DPC and the same had not been reported or the vacancies had arisen subsequently by way of death, voluntary retirement or even by way of new creations.


30. The respondents have explained in para 10 of their counter-affidavit how 36 vacancies had arisen subsequently on unforeseen basis and 45 vacancies had been released only on 6.3.1991 so this is a situation where the vacancies had arisen because of unforeseen circumstances and by virtue of release new vacancies. By all means these vacancies did not exist at the time when the first DPC was held so it was not a case of non-reporting or under-reporting of vacancies and as per para 6.4.2 these vacancies belong to the first category where "another" DPC could be held and it do not belong to the second category where "review" DPC is required because of non-reporting /under-reporting.


31. The applicants have nowhere in their OA alleged that the existing vacancies were either not-reported or under-reported. They have also pleaded that by virtue of cadre review vacancies were released subsequent to the holding of the DPC. Thus we find that as per the

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guide-lines laid down in para 6.4.2 of the DPC dated 10.4.1989 in all those years subsequent DPCs had been held because all the vacancies have become available subsequent to the holding of the DPC. It is an admitted fact that the regular DPC was held in June and the vacancies were released by the Government subsequent to the month of June, so at the time of holding of the regular DPCs those vacancies were not available so the same could not have been reported to the DPC and when the vacancies became available they were reported so the department was justified to hold ANOTHER DPC instead of REVIEW DPC.

32. Thus, we are of the considered opinion that none of the contentions raised by the applicants in the OA have merits and the same is dismissed. No costs.


(Mrs. Shanta Shastry)
Member (A)


(Kuldip Singh)
Member (J)

Rakesh