

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A. 376/98

Mumbai this the 20th day of December, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).
Hon'ble Smt. Shanta Shastry, Member (A).

1. C.K. Chaturvedi,
162, Type III, CGS Quarters,
RAK Road, Wadala (W),
Mumbai-31.
 2. Philip Abraham,
403C, Rajendra Vihar,
Evershine Nagar,
Malad (W), Mumbai-64.
 3. Bipin Singh,
9/193, Sector VII,
CGS Quarters, Antop Hill,
Mumbai-37.
 4. Atul Kumar,
306, Shanti Towers,
Military Road, Marol,
Mumbai-59.
 5. Mahesh Chandra Mathpal,
E/21, Darbhanga House,
ITO Colony, Peddar Road,
Mumbai-26.
 6. Anwar Zaidi,
A5/15, Greenfields, Mahakali,
Andheri (E), Mumbai-93.
 7. Imtiaz Ahmed,
203, Vidyadham, Vidyanagri Marg,
Kalina, Mumbai-98.
 8. R.N. Singh,
D/3, Rose Garden I,
Vakola Pipeline Road,
Santacruz (E), Mumbai-55.
 9. A.K. Sinha,
124, Type III, CGS quarters,
Wadala (W), Mumbai-31.
 10. A.K. Chhabra,
C/102, Nirman Park,
Pump House,
Andheri (E), Mumbai-93.
 11. P.K. Gupta,
2/26, New Customs quarters,
Adenwala Road, Matunga,
Mumbai-19.
- ... Applicants.

(By Advocate Ms. Supriya Daware, learned proxy counsel for
Shri Suresh Kumar)

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Versus

1. Union of India, through
Secretary, Govt. of India,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi-110 011.
2. The Chairman,
Central Board of Excise and Customs,
Government of India,
Department of Revenue,
North Block, New Delhi-110 01.
3. The Commissioner of Customs,
New Customs House, Ballard Estate,
Mumbai-400 001.
4. Assistant Commissioner of Customs,
Personnel & Establishment Department,
New Custom House, Ballard Estate,
Mumbai-400 001. Respondents.

(By Advocate Shri V.D. Vadhavkar, learned proxy counsel
for Shri M.I. Sethna)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).

This application has been filed by eleven applicants, in which they have sought a declaration that the respondents have acted illegally in giving reservations for SC and ST candidates in upgraded posts. According to them, no new posts were created by the respondents and the total strength remained the same after upgradation of the posts from Preventive Officers (POs) to Superintendents (Preventive) (P).

2. According to the applicants, the respondents have upgraded 404 posts of POs to Superintendents in New Customs House, Mumbai in two phases. The first phase of upgradation was for 296 posts as per the orders issued by

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the respondents dated 10.9.1996 and the second phase of upgradation was for 108 posts, which was done by the order dated 29.5.1997. They have stated that the respondents granted promotions against the upgraded posts vide orders passed in September, 1996 to August, 1997, to which they have wrongly applied the principle of reservation which has resulted in ten persons juniors to the applicants being promoted who will also gain undue seniority over them.

3. In the second phase of upgradation, persons belonging to ST category appointed in November, 1987 have been promoted. They have contended that the restructuring of Group 'B' and Group 'C' posts has been done to remove stagnation in the grade of POs and so in the grade of Superintendents (P) 404 posts of POs were upgraded. They have referred to the letter issued by the respondents dated 23.7.1996, in which the respondents had required the relevant materials relating to upgradation of the posts, including a statement of names of those officers who were appointed to the grade of Inspectors/POs prior to 1.8.1982 along with other relevant information of the concerned officers. The applicants submit that the list forwarded by the Department consisted of 446 POs. However, the respondents have wrongly included the names of those POs who were appointed in 1984, on the basis of which the

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upgradation of 404 posts of POs was done. They have contended that the respondents have abolished the posts of POs and promoted others to the grade of Superintendents (P) with no change of duties. The applicants have contended that this is a case of upgradation of posts to the grade of Superintendents (P) and, therefore, there was no question of reservation of any of these posts. They have relied on the judgement of the Tribunal in **Samsudden and Ors. Vs. Union of India & Ors.** (OA 460/91), copy placed at pages 52-56 and the Hon'ble Supreme Court in **Union of India Vs. V.K. Sirothia** (1999 SCC (L&S) 938). They have also submitted that the strength of the cadre consisting of POs and Superintendents (P) remained the same and, therefore, the respondents have wrongly applied the principle of reservation to the posts of Superintendents (P).

4. We have seen the reply filed by the respondents and heard Shri V.D. Vadhavkar, learned proxy counsel. They have submitted that the applicants were promoted from the cadre of POs, (Group 'C' post) to the upgraded posts of Superintendent (P) in two phases under the sanction orders dated 10.9.1996 and 27.8.1997. According to them, the Central Board of Excise and Customs, New Delhi has abolished an equal number of posts of POs. They have also referred to the fact that the representations submitted by the applicants in this regard have been duly considered by the respondents in consultation with the DOP&T, to which they have given the

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reply by memo dated 17.9.1997. In this, it has been clarified that the upgradation of posts in the present case was not personal upgradation for individual officers but in effect, the upgradation amounts to creation of posts in the higher cadre and appointments to the higher posts were done by way of promotion as per Rules. Therefore, according to the respondents, reservation policy has been correctly applied in the present case. The respondents have stated that 404 posts of Superintendents (P) were upgraded. These posts were to be filled by promotion following the laid down procedure and all promotions were effected on the same date, i.e. 30.9.1996. They have stated that they were required to forward a list of POs who were promoted/appointed prior to 1.8.1982 and those who have rendered more than 14,15,16,17 and 18 years of service as on 1.8.1996. Learned proxy counsel has submitted that as per the Recruitment Rules, the post of Superintendent (P) is to be filled 100% by promotion from POs and the upgradation amounted to creation of posts in the higher cadre. They have also submitted that the upgradation and promotion to the posts of Superintendent (P) not only involved higher responsibility but higher pay scale as on promotion under the relevant Rules. This required the assessment of the suitability of the incumbents and, therefore, the principle of reservation had to be applied. They have relied on the judgement of the Hon'ble Supreme Court in K. Manickraj Vs. Union of India (AIR 1997 SC 2419). We have also heard Shri G.K. Masand, learned counsel for the

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private respondents, who has adopted the submissions of the learned counsel for the official respondents. No rejoinder has been filed by the applicants.

5. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

6. From the letter dated 10.9.1996, it is seen that the President had given sanction for upgradation of 716 posts of Inspectors to the level of Superintendents (P) in the Central Excise and upgradation of 429 posts of POs in the Customs Department to the level of Superintendents (P) in various Commissionerates in the first phase of restructuring of Group 'B' and Group 'C' posts. It has also been stated in this letter that corresponding number of posts of Inspectors will be abolished simultaneously with the filling up of upgraded posts of Superintendents (P). Para 2 of this letter states that the promotion for filling up the upgraded posts of Superintendents, Central Excise/Superintendents (P), Customs will be made as per the laid down procedure and all promotions will be effected on the same date, i.e. 30.09.1996. Para 3 provides that the upgradation exercise has been undertaken as a watershed measure which envisages radical restructuring of the role, functions and duties at Superintendent and Inspector levels and redistribution/deployment of the upgraded posts within the jurisdiction of the cadre controlling authority. It is further noticed

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from the letter dated 30.9.1996 issued by the respondents that 295 POs were promoted to the cadre of Superintendents of Customs (P) from the dates they assumed charge of the higher posts on or after 30.09.1996 vice the post of Superintendents of Customs (P) sanctioned on "upgradation" of the posts of POs vide their earlier letter dated 10.9.1996. It is further mentioned in this letter that consequent upon these promotions of POs, 255 number of posts of POs of Mumbai Customs and 40 number of posts of POs of Goa Customs have been abolished from the dates the promoted officers assume charge of the posts of Superintendent of Customs (P). The applicants themselves have stated in the O.A. that the respondents had forwarded 446 names of POs but their grievance is that some of the names included as POs were appointed in 1984 on the basis of which 404 posts were upgraded. In the letter dated 23.7.1996 relied upon by the applicants, the Department was required to provide the number of Inspectors who have completed 14,15,16,17 years service as on 1.8.1996 and those who have exceeded 18 years of service, according to which they had forwarded the list. By the subsequent order dated 29.8.1997, 108 POs were promoted to the cadre of Superintendents (P) against the sanctioned upgraded posts and consequently an equal number of posts of POs stood abolished. It is also noticed that by two separate orders dated 3.10.1996, two POs belonging to ST category were promoted to the level of Superintendents (P) and one of these posts stood abolished from the date of promotion of Shri P.H. Manoharan, ST/Private Respondent No. 6.

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7. In **V.K. Sirothia's** case (supra) relied upon by the applicants, the Hon'ble Supreme Court has held that the finding of the Tribunal that "the so-called promotion as a result of redistribution of posts is not promotion attracting reservation" on the facts of the case, appears to be based on good reasoning. On facts, it is seen that it was a case of upgradation on account of restructuring of the cadres and, therefore, the question of reservation will not arise. Similarly, on the facts of **Samsudden's** case (supra) decided by the Tribunal (Jodhpur Bench), it was held that the reservation of SC/ST orders do not apply in the case of partial upgradation as well as in upgradation which is not the same as promotion. In that case, it was observed that there is no dispute between the parties that the rule of reservation for SC/ST communities is inapplicable in all cases where there is an "en-masse" upgradation of the posts after restructuring of the cadre.

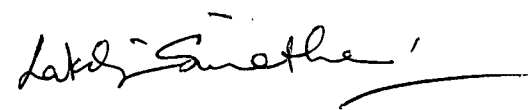
8. The judgement of the Hon'ble Supreme Court in **Manickaraj's** case (supra) is applicable to the facts of the case. In this case, it was held that while computing the number of posts available for the reserved category, there is no justification to exclude the upgraded posts which had continued from 1988 till date. In the facts and circumstances of the present case, the order dated 10.9.1996 shows that there is restructuring of Group "B" and "C" posts in Customs and Central Excise Departments, including upgradation of 429 posts of POs to the level of Superintendents (Group "B") with corresponding abolishment

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of the posts at the lower level. The method of promotion for filling up the upgraded posts of Suprintendents (P) was according to the procedure laid down in the Recruitment Rules. Therefore, there is no illegality in the procedure adopted by the respondents to fill up the upgraded posts of Superintendents (P) wherein the upgradation involved promotion to a higher post and higher pay scale. In the circumstances of the case, the action taken by the respondents in adopting the reservation rules i.e. 15% for SC and 7.5% for ST candidates while considering filling up the upgraded posts of Superintendents from the lower cadres of POs in accordance with the promotion Rules cannot be faulted.

9. In the result, for the reasons given above, we find no justification to interfere in the matter. The O.A. accordingly fails and is dismissed. No order as to costs.


(Smt. Shanta Shastri)
Member (A)


(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

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