

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. NO. 247/2001

Date of Decision: 12-7-2002

1. Harveer Singh Meena son of Shri Shyodan Singh, aged 34 years, resident of D-13, Custom Colony, Section-7, Vidhyadhar Nagar, Jaipur.
2. Ram Krishan Meena son of Shri Jai Bala Meena, aged 32 years, resident of plot No. 10, Gomati Colony, Jagatpura, Jaipur.

.....APPLICANTS

V E R S U S

1. Union of India, through Secretary, Department of Revenue Ministry of Finance of Revenue, North Block, New Delhi.
2. The Chairman, Central Board of Excise and Customs, North Block, New Delhi.
3. Chief Commissioner, Central Excise & Customs, (Jaipur Zone), NCR Building, Statue Circle, C-Scheme, Jaipur.
4. Commissioner, Central Excise, Commissionerate, Jaipur-1, NCR Building, Statue Circle, Jaipur.
5. Joint Commissioner (P&V), Central Excise, Commissionerate Jaipur-1, NCR Building, Statue Circle, C-Scheme, Jaipur.
6. Yad Ram (Yadav), Inspector, Central Excise Division, Bhiwadi, Distt. Alwar.

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6. Yad Ram (Yadav), Inspector, Central Excise Division, Bhiwadi, Distt. Alwar.

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7. Mathew P.J. Inspector, PA to Commissioner-1, Central Excise Commissionerate, Jaipur-1, NCR Building, Statue Circle, Jaipur.

...RESPONDENTS

Mr. N.K. Bhatt, counsel for the applicants.

Mr. P.C. Sharma, proxy counsel for

Mr. Sanjay Pareek, counsel for respondent no.1 to 5.

CORAM:

HON'BLE MR. A.P. NAGRATH, ADMINISTRATIVE MEMBER

HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER

: O R D E R :

(per Hon'ble Mr. J.K. Kaushik, Judicial Member)

Harveer Singh Meena and Ram Krishan Meena have filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, praying therein for quashing the consideration list dated 12.06.2001 (Annexure A/1) and for a direction to the respondents to prepare the list afresh by placing the applicant no. 1 at Sl. No. 14 and the applicant No. 2 at Sl. No. 16 and also to consider them for promotion to the post of Inspector on the principle of seniority-cum-fitness.

2. The brief facts of the case as narrated in the Original Application by the applicants are that the applicants were appointed to the post of U.D.C. on 16.07.1993 and 24.09.1993 in Indore and Surat Commissionerate, respectively, they were confirmed w.e.f. 09.12.1996 and 13.04.1998, respectively. Both of them was allowed own request transfer to Jaipur

Commissionerate on 20.09.1994 and 08.02.1995, respectively. They enjoyed their promotion to the post of Tax Assistant vide order dated 28.09.1998.

3. That as per panel of promotion, the next promotion was to the post of Inspector, Central Excise and Customs. A selection was being organised for filling up 16 posts of Inspectors by promotion for which 36 candidates were in the zone of consideration as per the formula, "number of vacant posts x 2 + 4," vide order dated 12.06.2001 (Annexure A/1).

4. It has been further averred that as per the aforesaid order and seniority list, the applicants were placed at Sl. No. 19 and 22, respectively, and the placement has been given on the basis of date on which they joined under Jaipur Commissionerate after transfer. This is not correct and the applicants were put in disadvantageous position by ignoring their past services. A copy of seniority list is also annexed as as Annexure A/2 for Tax Assistant and as Annexure A/3 for Stenographer Grade-II. A clarification was also issued that combined consideration list for all eligible cadres will be based on the date of their completion of qualifying service which is 5 years in the Feeder cadre; the Feeder cadre being Tax Assistant, Stenographer Grade-III, U.D.C. and Stenographer Grade-III. A memorandum dated 01.09.1998 has also been placed on record as Annexure A/5). A reference has been made to the Supreme Court judgement in case of Renu Malik v. UOI wherein it is said to have been held that while considering the candidature for promotion, the past services cannot be ignored despite placement in the bottom of the seniority after transfer from one place to another. Had they followed the principles of law laid down by Apex Court, the name of the applicants ought to have been placed at Sl. No. 14 and 16 in Annexure A/1, respectively. The representations were submitted in the matter but the same have not been considered.

5. The Original Application has been filed on number of grounds e.g. the past services of the applicants have not been considered while preparing the list, the applicants have been given incorrect placement in the list, consideration for promotion according to the correct seniority is a legal right and the action of the respondents also amounts to malice in law as the process of promotion is being hushed up, the representations made by the applicants are still pending without any response.

6. The respondents have filed a counter reply to the Original Application and have taken a preliminary objection for non-joinder of the party i.e. the affected persons placed at Sl. No. 14 to 18 in the Annexure A/1. Thus the order dated 12.06.2001 is a list only those persons who are eligible and also in the zone of consideration and it is settled law that an employee has legal ^{right} ~~not~~ for consideration for promotion and ~~can~~ ^{not} claim for ~~an~~ appointment or promotion as a matter of right. Further, it has been submitted that vide order dated 15.06.2001 and 21.06.2001, persons have already been promoted to the post of Inspector (Annexure R/1 and R/2, respectively). The applicants have failed to challenge the promotion order in the present O.A. and until and unless the promotion orders are quashed. The O.A. cannot be maintained.

7. The applicants have not deliberately placed the copies of the orders of the transfer to Jaipur Commissionerate. Order dated 29.06.1994 and 12.01.1995 (Annexure R/3 and R/4, respectively) wherein it was clearly mentioned that they will be treated just like as a new entrants in the new Commissionerate i.e. Jaipur Commissionerate. They have accepted the terms and conditions of the transfer. In this way they have not approached the Tribunal with clean hands, hence, the present O.A. is liable to be dismissed. The judgement in Renu Malik's case, AIR, 1994 SC, 1152, does not support

the case of the applicants and it is in regard to the experience laying down that the experience cannot be ignored in case of transfer from one unit to another on his own request. It cannot be counted towards the seniority, the other facts narrated by the applicants are not indispute. Since the persons above the applicants in the eligibility list, are senior to the applicants with qualifying service in Jaipur Commissionerate, they were placed above them correctly in terms of Ministry's instruction dated 27.06.2000. The DPC has been held as per the rules in force and the case of applicants was also considered as per their seniority, they have stopped from challenging the selection and they could not have grievance once their candidature has been considered. They have deliberately withheld the orders of their transfer to Jaipur Commissionerate, therefore, the O.A. deserves to be dismissed with costs.

8. During the pendency of the case, Mr. Yad Ram Yadav and Mr. Mathew P.J., Inspector were impleaded as Respondents No. 6 & 7 and amended cause title was filed. Notices were issued to them and the service of the notices have been presumed but they have not chosen to put their presence.

9. We have heard the learned counsel for the parties and have carefully perused the records of the case. No rejoinder has been filed on behalf of the applicants.

10. The learned counsel for the respondents has vehemently submitted that the applicants have concealed the material facts in the matter inasmuch as they did not mention and also not placed on record, the copies of their transfer order (Annexure R/3 & R/4) wherein it has been specifically mentioned that they would be treated as new entrants in the new Commissionerate and will not have no claim for carrying their seniority acquired by them in the previous Commissionerate. They have concealed

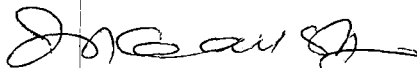
the material facts and have misled this Tribunal. Had the applicants been fair enough they would have controverted the factual aspect put forward by the respondents through their reply but the applicant did not choose to file any rejoinder and the same remains uncontroverted. It has also been submitted that eligibility list for preparing the panel for promotion to the post of Inspector of Central Excise and Customs (Annexure A/1), has been prepared strictly as per the rules inforce. And there is no infirmity or illegality in the same. It has also been submitted that the decision of the Supreme Court which is being relied upon in Renu Malik's case (Supra), does not favour the applicant and the eligibility list has been issued according to the rules inforce.

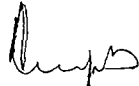
11. On the other hand, the learned counsel for the applicants was not in a position to counter the argument of the learned counsel for the respondents. He only placed reliance on Supreme Court judgement in Renu Malik's case and has submitted that as per the verdict of the Hon'ble Supreme Court in the said case the applicant ought to have been assigned seniority above the private respondents and placed above them in the eligibility list (Annexure A/1). After going through the decision of the Apex Court in Renu Malik's case (Supra), we find that the applicant is not entitled to count the service rendered by him in the formal collectorate for the purpose of seniority on the new post and he is to be treated as new entrants in Jaipur Collectorate for the purpose of seniority. However, his past service cannot be ignored for the purpose of determining his eligibility. In the present case, the respondents have taken into count the rules inforce and the applicant has been considered eligible.

and was considered eligible for promotion to the post of Inspector as per the said rule and his interest has also been considered accordingly. None of his junior i.e. respondent no. 6 & 7 have been placed on panel. He has not impleaded any other person as party respondent in this case. Therefore the action of the respondents cannot be faulted with and the Original Application is not sustainable in law.

12. We are of considered opinion that the applicants have not been able to make out any case for interference in their favour and there is no illegality in the action of the respondents. It would also be pertinent to mention here that after filing of the Original Application, the selection has been finalised and even the promotions have been given to the select candidates. But neither the selection panel nor the promotion orders have been challenged in this Original Application, thus, the Original Application as such is not maintainable and deserves to be dismissed on this ground also.

13. In view of the foregoing discussions, we do not find any merit in the Original Application, the same is hereby dismissed. No order as to costs.


(J.K. KAUSHIK)
Judl. Member


(A.P. NAGRATH)
Adm. Member