

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR,
JABALPUR

Original Application No. 272 of 2003
Original Application No. 335 of 2003

Jabalpur, this the 29th day of March, 2005

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

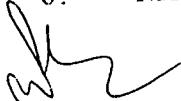
1. Original Application No. 272 of 2003 :

M.S. Gill, S/o. late Shri Karam Singh,
Aged about 47 years, Inspector (Audit Branch),
Central Excise Head Qrs.,
Raipur (Chhattisgarh). Applicant

(By Advocate – Shri M. Sharma)

V e r s u s

1. Union of India, through Secretary, Ministry of Finance, Department of Revenue, Central Board of Excise and Customs, North Block, New Delhi – 110 001.
2. The Secretary, Department of Personnel & Training, Ministry of Personnel Public Grievances and Pensions, North Block, New Delhi.
3. The Chief Commissioner, Central Excise, Zonal Unit, Bhopal (MP).
4. The Commissioner, Central Excise, Indore Commissionerate, Manik Bagh Palace, Indore.
5. The Commissioner, Central Excise, Raipur Commissionerate, Tikrapara, Raipur (Chhattisgarh).
6. Miss Shri Damodaran, Superintendent,



Central Excise, O/o. Commissioner (Central
Excise), Opposite Maida Mill, Hoshangabad
Road, Bhopal (MP). Respondents

(By Advocate – Shri S.P. Singh)

2. Original Application No. 335 of 2003 :

Rajendra Prasad Pandey, S/o. Shri B.P. Pandey,
Date of birth 19.8.1959, R/o. Plot No. 7,
Maheshwari Parisar, Old Borsi, In front of
HIG-II/5, Old Borsi, Durg (CG). Applicant

(By Advocate – Shri S. Paul)

V e r s u s

1. Union of India, through Chairman,
Central Board of Excise & Customs,
New Delhi.
2. Chief Commissioner (MP & CG),
Customs & Central Excise,
Bhopal.
3. Commissioner, Customs & Central Excise,
Indore.
4. Commissioner, Customs & Central Excise,
Central Excise Building, Tikarapara,
Raipur.
5. Shri Narendra Kumar Guha, C/o. O/o. Chief
Commissioner (MP & CG), Customs & Central
Excise, Bhopal. Respondents
6. Shri Anil Kumar Jain, C/o. O/o. Chief
Commissioner (MP & CG), Customs & Central
Excise, Bhopal. Respondents

(By Advocate – Shri S.A. Dharmadhikari)



O R D E R (Common)

By M.P. Singh, Vice Chairman -

As the issue involved in the aforementioned cases is common and the facts and grounds raised are identical, for the sake of convenience these Original Applications are being disposed of by this Common order.

2. By filing these Original Applications the applicants have claimed the following main reliefs :

OA No. 272/2003 :

- “(i) call for the entire material record pertaining to the issuance of the impugned orders (Annexure A-1 to A-4),
- ii) quash and set aside the impugned orders to the extent referable, relatable and required for the purpose of the instant list,
- iii) Hold and declare the prospectivity clause of the OM dated 3.10.2000 ultra vires Articles 14 & 16 and 335 of the Constitution of the India,
- iv) direct the respondents to promote the petitioner with effect from 8.3.2001 with all consequential benefits of pay, perks and status and arrears thereof and consequential seniority over respondent No. 5 and other similarly situate juniors in the cadre of Superintendent, Central Excise and Customs.”

OA No. 335/2003 :

“(a) summon the entire relevant record including the DPC record pursuant to which the promotion order dated 23.9.2002 and 26.12.2002 were passed. If necessary, summon the ACR dossiers of the applicant and private respondents herein, from the respondents for its kind perusal,

(b) upon holding that the super-session/non-promotion of the applicant on the post of Superintendent is bad in law, command the official respondents to consider and promote the applicant on the post of Superintendent from the date his juniors have been promoted with all consequential benefits. If necessary, set aside the



order dated 23.9.2002 Annexure A-1 and 26.12.2002 Annexure A-2. Also set aside the rejection order dated 1.4.2003 Annexure A-3."

3. The brief facts of the case in OA No. 272 of 2003 are that the applicant is presently working as an Inspector in the Central Excise Customs, Department at Raipur. The applicant joined the respondent Department at Indore in the year 1982. The applicant was due for promotion to the next higher post of Supervisor in the Central Excise and Customs. The applicant was considered by the DPC. However, he was surprised to see that his name does not find place in the list of selected candidates and the persons junior to him have been promoted. The applicant belongs to SC category. According to the applicant a departmental enquiry was contemplated and a charge sheet was issued to him on 21st March, 2001 under rule 14 of the CCS (CCA) Rules, 1965. The meeting of the DPC was held in July, 2000 to consider his case for promotion. The departmental enquiry was completed between the period from 4th July, 2001 and 19th December, 2001. The applicant has submitted his representation on 28th May, 2001. The respondents without considering the representation of the applicant informed the applicant that he was not found fit as he could not make the bench mark 'good' in his ACR. According to the applicant, he was found fit for grant of financial up-gradation under the Assured Career Promotion Scheme (for short ACP scheme) and he was granted the same vide order dated 14th December, 1999. His grievance is that once he has been granted the ACP promotion on the basis of the same criteria/norms required for regular promotion, he should not have been declared unfit for regular promotion to the same pay scale of Rs. 6,500-10,500/- . Hence, he has filed this Original Application.

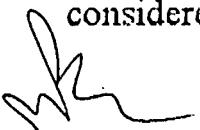
4. The brief facts of the case in OA No. 335/2003 are that the applicant was initially appointed as Inspector in the pay scale of Rs. 425-800/- with effect from 9.11.1984. The applicant was never subjected to

any disciplinary proceedings nor any adverse CRs were ever communicated to him in his entire career. In pursuance to the recommendations of the Vth Central Pay Commission, the Government introduced a scheme known as ACP Scheme. The applicant was considered under the ACP Scheme and was also granted the benefit of the said scheme in the pay scale of Rs. 6,500-10,500/. However, he has not been promoted to the post of Superintendent (Rs. 6500-10500/-), whereas his juniors have been promoted by the impugned order dated 23.9.2002. The applicant contends that since the ACP scheme stipulates that for getting financial benefits an employee has to qualify under the same norms/criteria as required for regular promotion, he should not have been declared unfit for regular promotion to the same pay scale of Rs. 6500-10,500/. The applicant has submitted his representations in this regard and the same has been rejected by the respondents. Hence, this Original Application is filed.

5. The respondents in their reply in OA No. 272/2003 have stated that the applicant was considered for promotion to the grade of Superintendent, Central Excise Grade-B by the DPC held on 5th July, 2000 and was found unfit for the reason that he could not meet the bench mark fixed by the DPC. The DPC has fixed the bench mark that there should not be more than one 'just adequate' report in the qualifying period of 8 years. There were three 'just adequate' reports in the preceding ACRs in the case of the applicant and he was graded as 'not yet fit' by the DPC while his junior-respondent No. 6 who was graded as 'good' or above 'good' in the preceding 8 years was placed on panel and later on promoted as Superintendent. A memo of charge sheet dated 19th December, 2001 was issued to the applicant but it had nothing to do with his consideration for promotion to the grade of Superintendent. It is further stated by the respondents that the applicant was considered for

grant of ACP promotion by departmental screening committee held on 29.11.1999 but when his ACRs for the last 8 years i.e. from 1991-92 to 1998-99 were seen by the DPC it was found that the applicant made the bench mark as fixed by the DPC and hence was granted the ACP benefit vide order dated 14.12.1999. For regular promotion to the grade of Superintendent, also the applicant was considered by the DPC held on 5.7.2000 and when his ACRs for the last 8 years i.e. from 1992-93 to 1999-2000 were considered by the DPC he was found unfit by the DPC. Hence, his being found fit for ACP does not have relevancy with his promotion to the grade of Superintendent. As per the existing instructions 'just adequate' remark in the ACR is not required to be communicated to the Government servant. Further no concession in as much as prescription of lower qualifying marks and lesser standard of evaluation in the matter of promotion were available to SC/ST candidates during the period from 22.7.1997 to 3.10.2000. Therefore, no concession was given to any SC/ST candidates by the DPC held on 5.7.2000. In view of this, there is no merit in the application and the same is liable to be rejected.

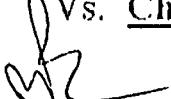
6. In reply to the OA No. 335/2003 the respondents have stated that the applicant was granted ACP benefit in the year 1999 as per the assessment made on the basis of ACRs of preceding eight years of the relevant period i.e. for the year 1991-92 to 1998-99, whereas for the promotion to the grade of Superintendent, the applicant was considered in the year 2002 as per the existing instructions, and his ACRs of five years were looked into i.e. for the years 1997-98 to 2001-2002. Thus, he was considered for ACP benefit and regular promotion to the post of Superintendent in different years and also his ACRs of relevant period on the basis of which he was assessed for ACP benefits and regular promotion were also pertaining to different periods. The applicant was considered for promotion to the post of Superintendent by DPC held on



23rd July, 2002 and 24th December, 2002. But he was found unfit by the DPC as he could not make the bench mark of 'good'. Hence, he was assessed unfit by both the DPCs. In view of this, there is no merit in this OA and the same deserves to be dismissed.

7. Heard both the parties and perused the records and pleadings carefully.

8. The main grievance of the applicants in both the OAs is that they were found fit for grant of financial up-gradation under ACP scheme in the pay scale of Rs. 6500-10500/-, whereas for their regular promotion to the same scale of Rs. 6500-10,500/- attached to the post of Superintendent, they were found unfit because of not having the required bench mark. According to the instructions issued by the Government, the same norms/bench mark/yardstick as required for grant of regular promotion is to be adopted for grant of financial benefits under the ACP scheme. The learned counsel for the applicant Shri Manoj Sharma in OA No. 272/2003 has stated that no adverse CRs have been communicated to the applicant. The confidential report of the applicant has been down-graded as the applicant has been graded as 'just adequate' which amounts to adverse remark, and the persons with this grading cannot make the bench mark for the promotion. The adverse remark should have been communicated to the applicant as this takes the applicant out of the zone of consideration. Moreover the applicant has been found fit for ACP promotion but for regular promotion in the post of Superintendent, he could not have been found fit. To support his case he has relied upon the judgments of the Hon'ble Supreme Court in the case of U.P. Jal Nigam and Others Vs. Prabhat Chandra Jain and others, (1996) 33 ATC 217, Hon'ble Madhya Pradesh High Court in the case of Shiva Nand Prasad Vs. Chief of Army Staff and others, 1993 MPST 344 and of the



Allahabad Bench of the Tribunal in the case of Udai Krishna Vs. Union of India, (1996) 33 ATC 802.

9. Shri S. Paul learned counsel for the applicant in OA No. 335 of 2003 argued more or less the same arguments.

10. We have given careful consideration to the rival contentions made on behalf of the parties and we find that the question for consideration in both the cases is whether the applicants working in Central Excise and Customs who have been granted financial upgradation in the pay scale of Rs. 6500-10500/- could be considered unfit for their regular promotion to the same scale. We find that the post of Superintendent in the Central Excise and Customs is the next promotional post to the Inspector's post which is held by the applicants. We also find that the bench mark for promotion to the post of Superintendent is 'good'. It is a fact that according to the instructions issued by the DOP&T same norms/yardsticks/bench mark should be taken for grant of financial up-gradation under the ACP scheme as is required for the regular promotion. In both the cases the confidential reports of different periods have been considered/assessed for promotion to the post of Superintendent and for financial up-gradation. Therefore, the contention of the applicants that as they have been found fit for grant of financial up-gradation under the ACP scheme, should also be considered fit for regular promotion, is not correct as the assessment of the CRs on both the occasions i.e. for financial up-gradation as well as for regular promotion is for different years. We have gone through the confidential reports of the applicants and also the selection proceedings of both the applicants and we find that the reports of both the applicants are not up to the mark and the selection committee/screening committee has rightly not found them fit for their regular promotions to the post of Superintendent. The judgments of the

Hon'ble Supreme Court, Hon'ble High Court and of the Tribunal, relied upon by the learned counsel for the applicant in OA No. 272/2003 are distinguishable and are not applicable in these cases. Moreover, it is a well settled legal position that the Tribunals or Courts cannot substitute themselves as a selection committee and make selection unless the DPC proceedings/selection committee proceedings are malafide or arbitrary. In this case we are satisfied that there is no arbitrariness on the part of the selection committee for consideration of promotions to the grade of Superintendent. We, therefore, do not find any ground to interfere with the orders passed by the respondents rejecting the claim of the applicants.

11. In view of the discussions made above both the OAs are without any merit and are accordingly, dismissed. No costs.

12. A copy of this order may be kept in the connected file (OA No. 335/2003).

Sd/-

(Madan Mohan)
Judicial Member

Sd/-

(M.P. Singh)
Vice Chairman

“SA”