

CENTRAL ADMINISTRATIVE TRIBUNAL,

CHANDIGARH BENCH

R.A.NO.060/00048/2015 IN
IN O.A.NO.060/01043/2014

Orders pronounced on: 30.10.2015
(Orders reserved on: 29.09.2015)

CORAM: **HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MR. UDAY KUMAR VARMA, MEMBER (A)**

1. Krishan Dutt son of Durga Dass Sharma, age 54 years, Superintendent, Hqrs. (Review), CE Commissionerate, Chandigarh-I Commissionerate, Chandigarh.
2. Rajinder Prasad Sharma son of Shiv Kumar Sharma, age 54 years, Superintendent, Central Excise Division, Range III, Baddi, Himachal Pradesh.
3. I.S. Sidhu son of J.S. Sidhu, aged 50 years, Superintendent, Service Tax Division Range-I, Chandigarh.
4. Prem Kumar son of Sarwan Dass, age 57 years, Superintendent, Hqrs. (Audit), Central Excise Commissionerate Chandigarh-II.
5. Sanjeev Thapar son of Tarsem Lal Thapar, aged 56 years, Superintendent, Hqrs. (Audit), Central Excise Commissionerate, Chandigarh-II.
6. T.M.S. Sidhu son of Ranjit Singh Sidhu, aged 56 years, Superintendent, Hqrs. (Audit), Central Excise Division, Ludhiana.
7. Sanjeev Singh son of Surat Singh, aged 48 years, Superintendent, Division (Tech.), Central Excise Division Derabassi.
8. Anuj Sharma son of Raminder Kumar Sharma, aged 49 years, Superintendent, Central Excise Commissionerate, Range-III, Division-I, Ludhiana.
9. Anil Khanna son of Jawahar Khanna, aged 46 years, Superintendent, T.FC Salamabad (J&K).

10. Sanjeev Aggarwal son of Late Sh. Desh Prem Azad, aged 47 years, Superintendent, Division (Tech.), Central Excise Division, Derabassi.

APPLICANTS

BY ADVOCATE : Sh. V.K. Sharma.

VERSUS

1. Union of India through the Revenue Secretary to Government of India, Ministry of Finance, Department of Revenue, New Delhi.
2. The Secretary, Government of India, Ministry of Personnel, Public Grievances and Pension, DOP&T, North Block, New Delhi.
3. Union Public Service Commission through its Secretary, Dholpur House, New Delhi.
4. The Chairman, Central Board of Excise and Customs, Ministry of Finance, North Block, New Delhi.
5. Chief Commissioner of Customs and Central Excise, Chandigarh-II, Chandigarh.
6. Om Parkash Negi, Assistant Commissioner, Office of Directorate General of Central Excise Intelligence, West Block-VIII, Wing No.VI, R.K. Puram, New Delhi-110066.
7. Sonam Angdui, Assistant Commissioner, Office of Chief Commissionerate, Audit-I, Ahmedabad.
8. R.K. Negi, Assistant Commissioner, IGI Airport, New Delhi-11037.
9. Ravinder Singh, Assistant Commissioner, Service Tax Commissionerate Delhi-III, Delhi.

RESPONDENTS

BY ADVOCATE: Ms. Nidhi Garg, counsel for Respondents No. 1 to 5.
Sh. D.R. Sharma, counsel for respondent nos. 6 to 9.

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ORDER
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. In the Original Application the applicants had prayed for quashing the order No. 192/2014 dated 22.10.2014 to extent that the official respondents had granted promotion to the private respondents nos. 6 to 9, belonging to reserved category and were juniors to them, to the grade of Assistant Commissioner of Customs & Central Excise, by granting reservation in promotion in violation of law laid down in various decisions of the Hon'ble Supreme Court including in **Suraj Bhan Meena & Another Vs. State of Rajasthan & Others**. The applicants had also sought issuance of a direction to the respondents to revise the seniority list of the Superintendents in all zones, on the basis of the mandate given by the Courts with regard to 'no reservation in promotion' to the post of Assistant Commissioner of Customs and Central Excise and quash the order dated 07.01.2014 (Annexure A-1/1) issued by respondent no. 2-DoPT advising the departments to continue with the reservation in promotion. It is further prayed to direct the respondents to reconvene the DPC meeting to consider and promote the applicants and other similar situated persons, who are eligible,
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as Assistant Commissioner of Customs and Central Excise by ignoring the rule of reservation in promotion from the date when vacancies become available with all the consequential benefits.

2. The O.A. was disposed of on 26.5.2015 with the following observations :-

"Therefore, the law laid down in case of M. Nagraj (supra) holds the field and any deviation from the same amounts to violation of settled mandate by the Constitutional Bench. Now considering the letter dated 07.01.2014 issued by the Nodal Ministry- DoPT which is advisory in nature also, cannot stand. Suffice to record herein that till date the Government of India has not carried that any exercise showing that there is inadequacy in representation of the State SC & ST category in terms of the mandate in case of M. Nagraj (Supra). The amendment of Article 16(4) of the Constitution of India has been approved by the law maker, therefore, this letter dated 07.01.2014 cannot be applied which is also considered by the Allahabad Bench of this Tribunal by holding that same cannot be enforced until there is amendment in Article 16 (A) of the Constitution of India and said judgment has been upheld by the Jurisdictional High Court as informed by the applicants.

12. Since in this case, the respondents have themselves came forward to say that they will rectify their mistake by issuing the revised seniority list on the basis of the above settled law, therefore, we are not recording any findings in this case as they agree that further promotions will be made as per the revised seniority list.

13. In view of the above background, the present O.A is disposed of in the terms that the respondents will issue the revised seniority list and based there upon, they will convene a review DPC and will consider the eligible person for further promotion as per merit in the list without the element of reservation in promotion, expeditiously".

3. Now the applicants have filed this Review Application on the plea that the impugned promotion of private respondents was also required to be quashed as that is an impediment for the respondents in proceeding ahead in the matter.
4. The facts were not in dispute and keeping in view the law pronounced by apex court of the country and undertaking given by the respondents the O.A. was disposed of. However, inadvertently the quashing of the relevant order was not announced. During the course of the arguments learned counsel for the respondents could not dispute about the factual scenario.

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5. In that view of the matter this Review Application is allowed. In para 13 of the order, the words "Considering the law on the subject, the impugned order dated 22.10.2014 qua private respondents No. 6 to 9 would also stand quashed and set aside to facilitate the authorities to take further action in the matter". This order be read and treated as part and parcel of the order dated 26.5.2015.
6. R.A. stands disposed of accordingly.



(SANJEEV KAUSHIK)
MEMBER (J)



(UDAY KUMAR VARMA)
MEMBER (A)

Place: Chandigarh
Dated: 30.10.2015

HC*