

**Central Administrative Tribunal
Principal Bench, New Delhi.**

**OA-3055/2014
MA-900/2016
MA-2616/2014
With
OA-3518/2014
MA-3015/2014**

Reserved on : 15.03.2016.

Pronounced on : 29.03.2016.

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. Shekhar Agarwal, Member (A)**

OA-3055/2014, MA-900/2016, MA-2616/2014

1. Manish Kumar Pintu
Aged 37 years
S/o Shri Rabindra Kunwar, I
Inspector (Central Excise)
Kolkata-VII Commissionerate
Kolkata.
2. Sanjay Kumar Sanjeev
Aged 37 years
S/o Shri K.S. Modi,
Inspector (Central Excise)
Service Tax Commissionerate,
Kolkata.
3. Dheeraj Kumar
Aged 34 years
S/o Shri Kamendra Narayan Das
Inspector (Central Excise)
Presently posted as Senior Assistant Director
SFIO, Ministry of Corporate Affairs
New Delhi.
4. Kumar Nawnit
Aged 35 years
S/o Shri Late Shri Ramesh Kumar Verma
Inspector, Office of the Assistant Commissioner
Central Excise and Service Tax Division
Durgapur, West Bengal.
5. Vimal Kishor Tiwari
Aged 37 years

S/o Late Sh. Binda Tiwari
Inspector, Office of the Assistant Commissioner
Central Excise and Service Tax Division
Durgapur, West Bengal.

6. Abhishek Priyadarshi
Aged 34 years
S/o Shri Birendra Prasad
Inspector, Office of the Assistant Commissioner
Central Excise and Service Tax Division
Durgapur, West Bengal.
7. Dharmendra Kumar Pandey
Aged 36 years
S/o Shri Bhikhari Pandey
Inspector, Office of the Assistant Commissioner
Central Excise and Service Tax Division
Asansol-I, West Bengal.
8. Kumar Arunabh
Aged 36 years
S/o Shri Jitendra Kumar Das
Inspector (Central Excise)
Kolkata-VII Commissionerate,
Kolkata.
9. Premjeet Kumar Mishra
Aged 35 years
S/o Shri Braj Kishore Mishra
Inspector (Central Excise), Kolkata-III
Commissionerate, Kolkata.
10. Pradeep Kumar Jha
Aged 34 years
S/o Shri Laxmi Narayan Jha
Inspector (Central Excise)
Haldia Commissionerate,
Kolkata.
11. Devesh Shanker Srivastava
Aged 36 years
S/o Late Kripa Shanker Srivastava,
Inspector (Central Excise)
(Chief Commissionerate Office)
Kolkata.

12. Prashant Pandey

Aged 35 years

S/o Shri Ramesh Chandra Pandey

Inspector (Central Excise)

Kolkata-V Commissionerate

Kolkata.

13. Pravin Kumar Mishra

Aged 35 years

S/o Shri Satish Kumar Mishra

Inspector (Central Excise), Kolkata-VII

Commissionerate, Kolkata.

14. Wasimur Rahman

Aged 37 years

S/o Late Shri Nasimur Rahman

Inspector (Central Excise)

Kolkata Zone

Presently Posted as Intelligence Officer

Directorate General of Central Excise Intelligence

New Delhi .

15. Kaushalendra Sahay

Aged 36 years

S/o Late Shri Mahesh Sahay

Inspector (Central Excise)

Kolkata-IV Commissionerate

Kolkata.

16. Ashish Bajpai

Aged 35 years

S/o Shri Prem Narain Bajpai

Inspector (Central Excise & Service Tax)

Haldia Commissionerate

Kolkata.

17. Sanjeev Kumar Sinha

Aged 31 years

S/o late Shri Satish Kumar Sinha

Inspector (Service Tax)

Service Tax Commissionerate

Kolkata

18. Santosh Kumar Srivastava

Aged 38 years

S/o Shri Kameshwar Prasad

Inspector (Central Excise), Kolkata-IV
Commissionerate, Kolkata.

19. Dipak Kumar

Aged 32 years
S/o Shri Chhiteswar Singh
Inspector (Central Excise)
Customs Division,
Mantribari Road
Agartala, Tripura-799001.

20. Umesh Kumar Yadav

Aged 38 years
S/o Shri Rameshwar Yadav
Inspector (Central Excise), Kolkata-III
Commissionerate, Kolkata.

21. Trinayan Jay Kumar

Aged 37 years
S/o Shri Vijay Kumar
Inspector (Service Tax),
Service Tax Commissionerate,
Kolkata.

22. Gaurav Kumar

Aged 36 years
S/o Shri Lakshman Prasad
Inspector (Central Excise), Kolkata-VI
Commissionerate, Kolkata.

23. Rajeev Kumar

Aged 35 years
S/o Shri Mahavir Prasad Yadav,
Inspector (Central Excise)
Kolkata-VIII, Commissionerate
Kolkata.

24. Ajay Keshri

Aged 36 years
S/o Shri Yogeshwar Keshri
Inspector (Central Excise)
Haldia Commissionerate,
Kolkata.

25. Bijay Krishna

Aged 36 years

S/o Shri Mahendra Pandit
Inspector, Office of the Assistant Commissioner
Central Excise and Service Tax Division
Durgapur, West Bengal.

26. Sadanand Kumar
Aged 34 years
S/o Shri Bhagwan Das
Inspector (Central Excise)
Kolkata-VII Commissionerate
Kolkata.

27. Vinod Kumar Singh
Aged 38 years
S/o Shri Ambika Singh,
Inspector (Central Excise)
Custom Division,
Mantribari Road
Agartala, Tripura-799001.

28. Dinesh Kumar
Aged 37 years
S/o Shri Ram Pratap Meena
Inspector (Central Excise), Kolkata-VII
Commissionerate, Kolkata.

..... Applicants

(through Sh. Manoj Ohri, Senior Advocate with Sh. Mritunjay Kr. Singh, Advocate)
Versus

1. Union of India
Through The Secretary
Department of Revenue,
Ministry of Finance,
North Block, New Delhi – 110001.
2. The Chairman,
Central Board of Excise & Custom,
Department of Revenue,
Ministry of Finance,
North Block, New Delhi - 110001
3. The Member (P & V),
Central Board of Excise & Custom,
Department of Revenue,
Ministry of Finance,
North Block, New Delhi – 110001.

4. The Joint Secretary (Admin.),
Central Board of Excise & Custom,
Department of Revenue,
Ministry of Finance,
North Block, New Delhi – 110001.
 5. The Director General(HRD),
Central Board of Excise & Custom,
Department of Revenue, Ministry of Finance,
409/8, Deepshikha,
Rajendra Place, New Delhi – 110001.
 6. The Secretary,
Ministry of Personnel, PG & Pensions
Department of Personnel & Training,
North Block, New Delhi – 110001.
 7. Prashant Prakhar, Inspector,
Aged about 36 years,
S/o Sh. G.P. Mandal,
R/o F-06, Kaka Nagar,
New Delhi-110003.
- Respondents

(through Sh. R.N. Singh and Sh. A.K. Behera, Advocates)

OA-3518/2014, MA-3015/2014

1. NIKHIL KUMAR AGE 35 YEARS
S/O SHRI SUKH RAM PAL
INSPECTOR, OFFICE OF THE ASSISTANT COMMISSIONER
CENTRAL EXCISE COMMISSIONERATE
MEETUT-II, U.P.
2. SACHIN SINHA AGE 36 YEARS
S/O SHRI RAJ ADIB KUMAR SINHA
INSPECTOR, OFFICE OF THE ASSISTANT COMMISSIONER
CENTRAL EXCISE COMMISSIONERATE
NOIDA, U.P.
3. PRASHANT MOHAN SHARMA AGE 36 YEARS
S/O LATE SHRI MADANMOHAN SHARMA
INSPECTOR, OFFICE OF THE ASSISTANT COMMISSIONER
CENTRAL EXCISE COMMISSIONERATE, NOIDA, U.P
4. ANUPAM KUMAR KUNDU AGE 34 YEARS
S/O SHRI SANTOSH KUMAR KUNDU
INSPECTOR, OFFICE OF THE ASSISTANT COMMISSIONER
CENTRAL EXCISE COMMISSIONERATE
BOLPUR, WEST BENGAL

5. SUJIT KUMAR AGE 37 YEARS
S/O SHRI BABAN SINGH
INSPECTOR, OFFICE OF THE ASSISTANT COMMISSIONER
CENTRAL EXCISE COMMISSIONERATE
BOLPUR, WEST BENGAL

6. DEVENDRA KUMAR AGE 36 YEARS
S/O SHRI JUTHAN PANDIT
INSPECTOR, OFFICE OF THE ASSISTANT COMMISSIONER
CENTRAL EXCISE COMMISSIONERATE
BOLPUR, WEST BENGAL

7. SAURAV KUMAR AGE 36 YEARS
S/O SHRI SHASHI BHUSHAN PRASAD
INSPECTOR, OFFICE OF THE ASSISTANT COMMISSIONER
CENTRAL EXCISE COMMISSIONERATE
BOLPUR, WEST BENGAL

8. ALOK KUMAR AGE 35 YEARS
S/O SHRI KUMAR BRAJENDRA MOHAN
INSPECTOR, OFFICE OF THE ASSISTANT COMMISSIONER
CENTRAL EXCISE COMMISSIONERATE
BOLPUR, WEST BENGAL

9. ASHOK PRASAD AGE 49 YEARS
S/O LATE SHRI LALAN PRASAD
INSPECTOR, OFFICE OF THE ASSISTANT COMMISSIONER
CENTRAL EXCISE COMMISSIONERATE
BOLPUR, WEST BENGAL

10. NAVIN SALUJA AGE 38 YEARS
S/O SHRI GJRUBACHAN SINGH SALUJA
INSPECTOR, OFFICE OF THE ASSISTANT COMMISSIONER
CENTRAL EXCISE COMMISSIONERATE
BOLPUR, WEST BENGAL

11. SUSHIL KUMAR SINHA AGED 34 YEARS
S/O SHRI DINESH KUMAR SINHA
INSPECTOR, OFFICE OF THE ASSISTANT COMMISSIONER
CENTRAL EXCISE COMMISSIONERATE
BOLPUR, WEST BENGAL

12. SACHCHIDANAND YADAV AGE 40 YEARS
S/O SHRI VED PRAKASH YADAV
INSPECTOR, OFFICE OF THE ASSISTANT COMMISSIONER
CENTRAL EXCISE COMMISSIONERATE
GHAZIABAD, U.P.

13. JAI KUMAR AGE 41 YEARS
S/O SHRI DWARIKA PRASAD
INSPECTOR, OFFICE OF THE ASSISTANT COMMISSIONER
CENTRAL EXCISE COMMISSIONERATE
NOIDA, U.P.

14. ASHOK KUMAR AGE 44 YEARS
S/O SHRI SITA RAM PRASHAD
INSPECTOR, OFFICE OF THE ASSISTANT COMMISSIONER
CENTRAL EXCISE COMMISSIONERATE
NOIDA, U.P.

15. MUKESH KUMAR AGE 36 YEARS
S/O SHRI BHGAWAN DAS
INSPECTOR, OFFICE OF THE ASSISTANT COMMISSIONER
CENTRAL EXCISE COMMISSIONERATE
MEERUT-I, U.P.

16. AMAR BHADJUR SAROJ AGE 37 YEARS
S/O SHRI CHHATHU RAM
INSPECTOR, OFFICE OF THE ASSISTANT COMMISSIONER
CENTRAL EXCISE COMMISSIONERATE
MEERUT-I, U.P.

17. KARUNESH SRIVASTAVA AGE 34 YEARS
S/O SHRI JITENDRA SRIVASTAVA
INSPECTOR,
DIRECTORATE OF REVENUE INTELLIGENCE
LUCKNOW, U.P.

18. ANIL KUMAR PANDEY AGE 34 YEARS
S/O SHRI RAJDEO PANDEY
INSPECTOR,
DIRECTORATE OF REVENUE INTELLIGENCE
LUCKNOW, U.P.

19. KRISHNA KUMAR KUSHWAHA AGE 36 YEARS
S/O SHRI R.P. KUSHWAHA
INSPECTOR, OFFICE OF THE ASSISTANT COMMISSIONER
CENTRAL EXCISE COMMISSIONERATE
LUCKNOW, U.P.

20. ANAND SINGH AGE 36 YEARS
S/O SHRI MAAHENDRA PRATAP SINGH
INSPECTOR, OFFICE OF THE ASSISTANT COMMISSIONER
CENTRAL EXCISE COMMISSIONERATE
LUCKNOW, U.P.

21. LEKH RAJ AGE 35 YEARS
S/O SHRI CHINTAMANI
INSPECTOR,
DIRECTORATE OF REVENUE INTELLIGENCE
LUCKNOW, U.P.

22. KRISHNA MURARI YADAV AGE 32 YEARS
S/O FATEH BAHADUR YADAV
INSPECTOR,
DIRECTORATE OF REVENUE INTELLIGENCE
LUCKNOW, U.P.

23. HARDEWA RAM (SC) AGE 41 YEARS
DHANNA RAM
INSPECTOR, OFFICE OF THE ASSISTANT COMMISSIONER
CENTRAL EXCISE COMMISSIONERATE
SILLONG

24. SANJAY KUMAR (SC) AGE 32 YEARS
RAMDAYAL SINGH
INSPECTOR, OFFICE OF THE ASSISTANT COMMISSIONER
CENTRAL EXCISE COMMISSIONERATE
SILLONG

25. SAROJ RANJAN KUMAR (OBC) AGE 37 YEARS
LATE MAHESHWAR PRASAD RAI
INSPECTOR, OFFICE OF THE ASSISTANT COMMISSIONER
CENTRAL EXCISE COMMISSIONERATE
SILLONG

26. RAGHUNATH PRASAD (OBC) AGE 40 YEARS
S/O SHRI KULDEEP SAHU
INSPECTOR, OFFICE OF THE ASSISTANT COMMISSIONER
CENTRAL EXCISE COMMISSIONERATE
SILLONG

27. KRISHNA KUMAR PATEL AGE 35 YEARS
S/O SHRI RAMESH PRASAD PATEL
INSPECTOR, OFFICE OF THE ASSISTANT COMMISSIONER
CENTRAL EXCISE COMMISSIONERATE
SILLONG

28. HARE KRISHNA (OBC) AGE 35 YEARS
S/O SHRI B. P. SUMAN
INSPECTOR, OFFICE OF THE ASSISTANT COMMISSIONER
CENTRAL EXCISE COMMISSIONERATE
SILLONG

29. DHANANJAY KUMAR (OBC) AGE 36 YEARS
S/O SHRI MAHENDRA PRASAD
INSPECTOR, OFFICE OF THE ASSISTANT COMMISSIONER
CENTRAL EXCISE COMMISSIONERATE
SILLONG

30. SANJIT KUMAR (OBC) AGE 32 YEARS
S/O LATE DOCTOR PRASAD
INSPECTOR, OFFICE OF THE ASSISTANT COMMISSIONER
CENTRAL EXCISE COMMISSIONERATE
SILLONG

31. DEEPAK AGE 37 YEARS
S/O SHRI JAGDISH PRASAD
INSPECTOR, OFFICE OF THE ASSISTANT COMMISSIONER
CENTRAL EXCISE COMMISSIONERATE

SILLONG

32. ANIL KUMAR PATHK AGE 36 YEARS
S/O SHRI RAM SURAT PATHAK
INSPECTOR, OFFICE OF THE ASSISTANT COMMISSIONER
CENTRAL EXCISE COMMISSIONERATE
SILLONG

33. SANJEEV KUMAR SINGH AGE 37 YEARS
S/O SHRI GANGA SAGAR SINGH
INSPECTOR, OFFICE OF THE ASSISTANT COMMISSIONER
CENTRAL EXCISE COMMISSIONERATE
SILLONG

34. ALOK GUPTA AGE 39 YEARS
S/O SHRI RAM PRASAD GUPTA
INSPECTOR, OFFICE OF THE ASSISTANT COMMISSIONER
CENTRAL EXCISE COMMISSIONERATE
SILLONG

35. SASHIDHAR MISHRA AGE 35 YEARS
S/O SHRI BHARAT MISHRA
INSPECTOR (CENTRAL EXCISE)
KOLKATA ZONE,
WEST BENGAL

36. SHRI NIRANJAN KUMAR NIRAJ AGE 32 YEARS
S/O SHRI DINESH CHANDRA PATHAK
INSPECTOR (CENTRAL EXCISE)
KOLKATA ZONE,
WEST BENGAL

37. MOHAN SAROJ RANJAN AGE 36 YEARS
S/O SHRI MANMOHAN DWIVEDI
INSPECTOR (CENTRAL EXCISE)
KOLKATA ZONE,
WEST BENGAL

38. LAKSHMI NARAYAN DAS AGE 36 YEARS
S/O SHRI GOVIND DAS
INSPECTOR (CENTRAL EXCISE)
KOLKATA ZONE,
WEST BENGAL

39. YOGESH KUMAR SHARMA AGE 31 YEARS
S/O SHRI KASHINATH
INSPECTOR (CENTRAL EXCISE)
KOLKATA ZONE,
WEST BENGAL

40. MD. UMAR FARUQUE AGE 36 YEARS
S/O SHRI MD. FAZAL HAQUE
INSPECTOR (CENTRAL EXCISE)

KOLKATA ZONE,
WEST BENGAL

41. MURTAZA SHAGIRD AGE 37 YEARS
S/O MD. SAHID ALAM
INSPECTOR (CENTRAL EXCISE)
KOLKATA ZONE,
WEST BENGAL

42. TUSHARENDRA SINGH AGE 37 YEARS
SHRI KAMLESH KUMAR SINGH
INSPECTOR (CENTRAL EXCISE)
KOLKATA ZONE,
WEST BENGAL

43. SANDEEP KUMAR DIKSHIT AGE 38 YEARS
S/O SHRI SHAMBHU SHARAN DIKSHIT
INSPECTOR (CENTRAL EXCISE)
KOLKATA ZONE,
WEST BENGAL

44. SANJAY KUMAR SINHA AGE 42 YEARS
S/O SHRI PARAMANAND PRASAD
INSPECTOR (CENTRAL EXCISE)
KOLKATA ZONE,
WEST BENGAL

45. RAGHURAJ SINGH AGE 27 YEARS
S/O SHRI CHANDRIKA PRASAD SINGH
INSPECTOR (CENTRAL EXCISE)
KOLKATA ZONE,
WEST BENGAL

46. AMIT KUMAR SINGH AGE 38 YEARS
S/O SHRI VISHWANATH SINGH
INSPECTOR (CENTRAL EXCISE)
KOLKATA ZONE,
WEST BENGAL

47. VIJAY KUMAR AGE 33 YEARS
S/O LATE SHRI SHREERAM
INSPECTOR (CENTRAL EXCISE)
KOLKATA ZONE,
WEST BENGAL

48. ARBIND KUMAR AGE 40 YEARS
S/O SHRI MAHABIR PRASAD
INSPECTOR (CENTRAL EXCISE)
KOLKATA ZONE,
WEST BENGAL

49. SANJAY KUMAR VISHWAKARMA AGE 40 YEARS
S/O SHRI VIJAY VISHWAKARMA

INSPECTOR (CENTRAL EXCISE)
KOLKATA ZONE,
WEST BENGAL

50. DIPLAL PRASAD AGE 36 YEARS
S/O LATE TULSI SAW
INSPECTOR (CENTRAL EXCISE)
KOLKATA ZONE,
WEST BENGAL

51. VIKASH KUMAR AGE 34 YEARS
S/O SHRI KRISHNA PRASAD
INSPECTOR (CENTRAL EXCISE)
KOLKATA ZONE,
WEST BENGAL

52. NAND KUSHORE SINGH YADAV AGE 34 YEARS
S/O SHRI SURAJ SINGH YADAV
INSPECTOR (CENTRAL EXCISE)
KOLKATA ZONE,
WEST BENGAL

53. SHILANAND TIGGA AGE 37 YEARS
S/O SHRI EMMANUEL TIGGA
INSPECTOR (CENTRAL EXCISE)
KOLKATA ZONE,
WEST BENGAL

54. KUNDAN SINGH AGE 42 YEARS
S/O SHRI MEHAR SINGH
INSPECTOR (CENTRAL EXCISE)
KOLKATA ZONE,
WEST BENGAL

55. DHEERENDER KUMAR JHA AGE 33 YEARS
S/O SHRI HITANAND JHA
INSPECTOR CENTRAL EXCISE
CENTRAL EXCISE COMMISSIONERATE
SILIGURI, WEST BENGAL

56. KRISHNA BALLABH PRASAD AGE 35 YEARS
S/O SHRI KEDAR PRASAD
INSPECTOR CENTRAL EXCISE
CENTRAL EXCISE COMMISSIONERATE
SILIGURI, WEST BENGAL

57. DINESH KUMAR AGE 36 YEARS
S/O RAMESH CHANDRA DIWAKAR
INSPECTOR CENTRAL EXCISE
CENTRAL EXCISE COMMISSIONERATE
SILIGURI, WEST BENGAL

58. HARI RAM RAI AGE 37 YEARS

S/O GANESH RAI
INSPECTOR CENTRAL EXCISE
CENTRAL EXCISE COMMISSIONERATE
SILIGURI, WEST BENGAL

59. NEERAJ KATYAYAN AGE 37 YEARS
S/O SHRI JANARDANKHAN
INSPECTOR CENTRAL EXCISE
CENTRAL EXCISE COMMISSIONERATE
SILIGURI, WEST BENGAL

60. GIRISH KUMAR AGE 39 YEARS
S/O LATE SHEO NANDAN PRASAD
INSPECTOR CENTRAL EXCISE
CENTRAL EXCISE COMMISSIONERATE
SILIGURI, WEST BENGAL

61. RAJESH KUMAR AGE 37 YEARS
S/O SHRI B.R. PRASAD
INSPECTOR CENTRAL EXCISE
CENTRAL EXCISE COMMISSIONERATE
SILIGURI, WEST BENGAL

62. VIJAY MINZ AGE 37 YEARS
S/O SHRI ABRAHAM MINZ
INSPECTOR CENTRAL EXCISE
CENTRAL EXCISE COMMISSIONERATE
SILIGURI, WEST BENGAL

63. CHHUTTAN LAL MEENA AGE 33 YEARS
S/O SHRI SHRIMAN LAL MEENA
INSPECTOR CENTRAL EXCISE
CENTRAL EXCISE COMMISSIONERATE
SILIGURI, WEST BENGAL

64. PEIMIYA KHANGARH AGE 35 YEARS
SON SHRI RUPHUS KHANGARH
INSPECTOR CENTRAL EXCISE
CENTRAL EXCISE COMMISSIONERATE
SILIGURI, WEST BENGAL

65. NAWAL KISHORE TRIPATHI AGE 36 YEARS
S/O SHRI PARAS NATH TRIPATHI
INSPECTOR CENTRAL EXCISE
CENTRAL EXCISE COMMISSIONERATE
SILIGURI, WEST BENGAL

66. UPENDRA AGGARWAL AGE 35 YEARS
S/O SHRI AWADHESH AGARWAL
INSPECTOR CENTRAL EXCISE
CENTRAL EXCISE COMMISSIONERATE
SILIGURI, WEST BENGAL

67. ATUL KUMARVERMA AGE 37 YEARS
S/O SHRI RAM JIYAWAN VERMA
INSPECTOR CENTRAL EXCISE
CENTRAL EXCISE COMMISSIONERATE
BOLPUR, WEST BENGAL

68. RAJ MANISH AGE 37 YEARS
S/O SHRI RAMANAND JHA RAMAN
INSPECTOR CENTRAL EXCISE
CENTRAL EXCISE COMMISSIONERATE
BOLPUR, WEST BENGAL

69. AKHIL KUMAR AGE 33 YEARS
S/O SHRI NAVIN KUMAR
INSPECTOR CENTRAL EXCISE
CENTRAL EXCISE COMMISSIONERATE
BOLPUR, WEST BENGAL

70. KISHORE KANT AGE 36 YEARS
S/O KADAR LAL PRASAD BHASKAR
INSPECTOR CENTRAL EXCISE
CENTRAL EXCISE COMMISSIONERATE
BOLPUR, WEST BENGAL

71. PRASHANT KUMAR GUPTA AGE 38 YEARS
S/O LAKSHMI PRASAD SAH
INSPECTOR CENTRAL EXCISE
CENTRAL EXCISE COMMISSIONERATE
BOLPUR, WEST BENGAL

72. OM SHANKER AGE 38 YEARS
S/O SHRI TULU GOPE
INSPECTOR CENTRAL EXCISE
CENTRAL EXCISE COMMISSIONERATE
BOLPUR, WEST BENGAL

73. YUGAL KISHORE PANDIT AGE 33 YEARS
S/O SHRI MAHAGU PANDIT
INSPECTOR CENTRAL EXCISE
CENTRAL EXCISE COMMISSIONERATE
BOLPUR, WEST BENGAL

74. ASHUTOSH KUMAR AGE 35 YEARS
S/O SHRI RAM SWARTH PRASAD
INSPECTOR CENTRAL EXCISE
CENTRAL EXCISE COMMISSIONERATE
BOLPUR, WEST BENGAL

75. PAWAN KUMAR AGE 36 YEARS
S/O SHRI HARI PRAJAPATI
INSPECTOR CENTRAL EXCISE
CENTRAL EXCISE COMMISSIONERATE
BOLPUR, WEST BENGAL

76. PREM KISHORE AGE 35 YEARS
S/O SHRI RAMADHIN PRASAD
INSPECTOR CENTRAL EXCISE
CENTRAL EXCISE COMMISSIONERATE
BOLPUR, WEST BENGAL

77. SANJIT KUMAR SINGH AGE 39 YEARS
S/O SHRI BIKRAMMA SINGH
INSPECTOR CENTRAL EXCISE
CENTRAL EXCISE COMMISSIONERATE
BOLPUR, WEST BENGAL

78. BASANTI TIRKEY AGE 36 YEARS
W/O SHRI GAGAN SUMANT TOPPO
INSPECTOR CENTRAL EXCISE
CENTRAL EXCISE COMMISSIONERATE
BOLPUR, WEST BENGAL

79. RAJEEV KUMAR HANSDA AGE 38 YEARS
S/O SHRI RAJU HANSDA
INSPECTOR CENTRAL EXCISE
CENTRAL EXCISE COMMISSIONERATE
BOLPUR, WEST BENGAL

80. SANJAY ORAON AGE 33 YEARS
S/O SHRI PRADIP ORAON
INSPECTOR CENTRAL EXCISE
CENTRAL EXCISE COMMISSIONERATE
BOLPUR, WEST BENGAL

81. SOLALI KOEL AGE 37 YEARS
D/O SHRI PETER PAUL KOEL
INSPECTOR CENTRAL EXCISE
CENTRAL EXCISE COMMISSIONERATE
BOLPUR, WEST BENGAL

82. AJIT KUMAR JHA AGE 36 YEARS
S/O SHRI SUBHA CHANDRA JHA
INSPECTOR CENTRAL EXCISE
CENTRAL EXCISE COMMISSIONERATE
BOLPUR, WEST BENGAL

83. RAM NATH PRASAD AGE 39 YEARS
S/O SHRI RAM BRIKSHA SAHU
INSPECTOR CENTRAL EXCISE
CENTRAL EXCISE COMMISSIONERATE
BOLPUR, WEST BENGAL

84. JITESH KUMAR MODI AGE 37 YEARS
S/O SHRI BINOD KUMAR MODI
INSPECTOR CENTRAL EXCISE
CENTRAL EXCISE COMMISSIONERATE
BOLPUR, WEST BENGAL.

.... Applicants

(through Sh. Manoj Ohri, Senior Advocate with Sh. Mritunjay Kr. Singh, Advocate)

Versus

1. UNION OF INDIA
THROUGH THE SECRETARY
DEPARTMENT OF REVENUE,
MINISTRY OF FINANCE,
NORTH BLOCK, NEW DELHI - 110001

2. THE CHAIRMAN,
CENTRAL BOARD OF EXCISE & CUSTOM,
DEPARTMENT OF REVENUE,
MINISTRY OF FINANCE,
NORTH BLOCK, NEW DELHI - 110001

3. THE MEMBER (P & V),
CENTRAL BOARD OF EXCISE & CUSTOM,
DEPARTMENT OF REVENUE,
MINISTRY OF FINANCE,
NORTH BLOCK, NEW DELHI - 110001

4. THE JOINT SECRETARY (ADMIN.),
CENTRAL BOARD OF EXCISE & CUSTOM,
DEPARTMENT OF REVENUE,
MINISTRY OF FINANCE,
NORTH BLOCK, NEW DELHI - 110001

5. THE DIRECTOR GENERAL(HRD),
CENTRAL BOARD OF EXCISE & CUSTOM,
DEPARTMENT OF REVENUE, MINISTRY OF FINANCE,
409/8, DEEPSHIKHA,
RAJENDRA PLACE, NEW DELHI - 110001

6. THE SECRETARY,
MINISTRY OF PERSONNEL, PG & PENSIONS
DEPARTMENT OF PERSONNEL & TRAINING,
NORTH BLOCK, NEW DELHI – 110001.

..... Respondents

(through Sh. R.N. Singh and Sh. A.K. Behera, Advocates)

O R D E R

Mr. Shekhar Agarwal, Member (A)

The issue involved in these two OAs is the same. Hence, they are being disposed of by this common order. For the sake of convenience facts of OA-3055/2014 are being discussed hereunder:-

2. The applicants joined the respondents' organization in the year 2005 as Inspectors (Central Excise) on the basis of CGLE-2003 conducted by SSC.

According to them, some of them secured very high ranks in the said examination. For example, applicant No.1 secured rank No.1 and applicant No.2 secured rank No.6 etc. Earlier, the selections to this post were made by SSC on zonal basis by preparing zonal merit list. This policy was, however, challenged before Hon'ble Supreme Court in the case of **Radhey Shyam Singh & Ors. Vs. UOI & Ors.**, (1997) 1 SCC 60. By their judgment dated 09.12.1996, the Hon'ble Supreme Court struck down zonal selections and mandated that future selections shall not be made on zonal basis. When the judgment of Hon'ble Supreme Court came, the SSC was in the process of conducting the zonal selection. They have, however, cancelled the same and resorted to selection in accordance with the judgment of Hon'ble Supreme Court. The applicants were candidates in the next selection held in the year 2003 through CGLE-2003. They were appointed in the year 2005. They were, however, allocated different zones by the respondents without taking any option from the candidates. In support of their contention, the applicants have produced a copy of information obtained under RTI on 03.05.2006, according to which, zones were allocated to the candidates primarily on the basis of their permanent home address i.e. the allocated zone was nearest to their permanent home address depending on the availability of vacancy (this contention has not been disputed by the respondents).

2.1 The applicants were thereafter posted to Shillong Zone. Their appointment letter contained a clause, according to which, the appointees were liable for transfer/posting within their zone only and in no circumstances their request for transfer to any other Commissionerate outside their zone was to be entertained. Feeling aggrieved by this condition, some of the appointees of CGLE-2003 batch filed OA No. 540/2007 (Sh. Ram Kishore & Ors. Vs. UOI & Ors.). This was disposed of on 30.03.2007 with a direction to the Chairman, Central

Board of Excise & Custom to pass appropriate orders on the representations of the applicants therein within a period of three months. When the aforesaid order was not being complied with, the applicants filed CP No. 292/2007. The respondents filed their reply in which they stated that while Group-B non-gazetted status has already been conferred on Inspectors, necessary changes were being made shortly in the Recruitment Rules in consultation with DoP&T. The C.P. was thereafter closed.

2.2 When nothing was coming out of various representations made by the affected parties before the respondents, the same set of applicants again approached this Tribunal by filing OA No. 1086/2008. This Tribunal vide order dated 24.12.2008 set aside the above mentioned condition in the appointment letter, which denied All India transfer liability to the applicants and directed the respondents to consider providing All India transfer liability to the appointees of CGLE-2003 batch. The department preferred a Review Application No. 210/2009, which was dismissed on 13.11.2009. The department further challenged the order of this Tribunal before Hon'ble High Court of Delhi vide Writ Petition (C) No. 1624/2010 but the same was dismissed on 10.09.2010. Thereafter, in compliance of the directions of the Hon'ble High Court, the respondents granted All India transfer liability to the applicants.

2.3 The applicants have further stated that the next promotion of Inspectors is to the post of Superintendent (Central Excise). Inspectors with 08 years of regular service are eligible for such promotion by holding meetings of DPC. The grievance of the applicants is that such promotions are being made on the basis of zonal seniority completely disregarding all India merit list of CGLE-2003. Finding this action of the respondents to be arbitrary and unreasonable, some of the applicants preferred representations dated 30.12.2013, 28.03.2014 and

02.04.2014 before respondent No.2. However, no action has been taken by the respondents in this regard.

2.4 Further, the applicants have contended that DoP&T Instructions particularly those dated 03.07.1986 clearly lay down that relative seniority of all direct recruits was to be determined in the order of merit in which they were selected through the concerned selecting body. Moreover, All India seniority and All India transfer liability of the Inspectors was natural corollary of the dictum pronounced by the Hon'ble Supreme Court in **Radhey Shyam Singh's** case (supra). It is the basic postulate of service jurisprudence that when selection is based on All India merit list, the inter se seniority of those selected shall remain according to the merit position secured by them. Since the appointment to the post of Inspector was made on All India basis, the next promotion should also be made on the same basis. Denial of this seniority to the applicants has serious implications to the detriment of the principles of fair play, reasonableness and equality as guaranteed by the Constitution of India.

2.5 The applicants have submitted that under the present arrangement, an officer placed low in the All India merit list but allocated to a zone having better promotional prospects gets promotion earlier than the officer having high rank but allocated to a zone where there is stagnation due to non-availability of sufficient promotional avenues. This according to the applicants was unreasonable, unfair, arbitrary and discriminatory.

2.6 The applicants have further tried to demonstrate how the promotional avenues in different zones were vastly different. To illustrate their point, they have given example of one Sh. Uma Srinivas, who was 2002 appointee in Delhi Zone and was considered for promotion to the next post on completion of the prescribed 08 years service. In contrast, from Kolkata Zone Somalika Giri, who

was 1996 appointee has been so considered. As far as Shillong Zone is concerned Mr. Zamkhothang, who was 1989 appointee, only has been considered for promotion.

2.7 The applicants have further submitted that the respondent department has promulgated the Central Excise and Land Customs Department Inspector (Group-C posts) Recruitment Rules, 2002 vide Notification dated 29.11.2002. Rule-4(1) states as follows:-

“Each Commissionerate shall have its own separate cadre unless “ otherwise directed by the Central Board of Excise and Customs.”

The applicants have alleged that this rule was ultra vires of principles of All India Seniority (Merit List) as propounded by Hon'ble Supreme Court in **Radhey Shyam Singh's** case (supra). The respondents, however, have published draft seniority list of Inspectors (Central Excise) on zonal basis and proposed to go ahead with promotions also on zonal basis. (During the course of the arguments, it was agreed upon by the parties that such promotions have since been made during the pendency of the OA.) Feeling aggrieved by the action of the respondents in going ahead with promotions on zonal basis, the applicants have approached this Tribunal by filing the present O.A. and seeking the following relief:-

“(i) Direct the Respondents to promote the Petitioners in accordance with eligibility criteria laid down in the Superintendents of Central Excise Recruitment Rules, 1986, based upon the All India Merit List prepared by the Staff Selection Commission (SSC);

(ii) Declare that Clause ‘4’ of Central Excise and Land Customs Department Inspector (Group C’ post) Recruitment Rules, 2002 is void, arbitrary and without any consequence and is liable to be ignored/struck-off ;

(iii) Restrain the Respondents for promoting Inspectors (Central Excise) selected on All India basis by making Zonewise promotions being contrary to the spirit of the decision rendered in “Radhey Shyam Singh Vs. Union of India & Ors.”(1997) 1 SCC 60;

(iv) Declare that the consideration for Zonal Promotion of the Inspector (Central Excise) selected on All India Basis is void and illegal in view of the judgment of the Supreme Court passed in the matter of "Radhey Shyam Singh Vs. Union of India & Ors." (1997) 1 SCC 60; and

(v) Pass such other and further orders as this Hon'ble Tribunal may deem fit."

3. When this O.A. came up for admission on 01.09.2014, this Tribunal as an interim relief granted that any appointments made in this regard shall be subject to the outcome of this O.A. We had also directed that the respondents shall record this interim order in every appointment letter issued by them.

4. The contention of the applicants is that they have had a remarkable career and have always performed their best. Their record is unblemished and their ACRs/APARS are all above benchmark. However, the zonal promotions would be detrimental to their cause as despite having high seniority on All India basis they would be placed at disadvantage as compared to those who secured lower ranks than them simply because promotional avenues in other zones were better. The principle of seniority and promotion on the basis of merit would thus be compromised. A candidate, who secures high rank was entitled to get preference not only in appointment but also in promotion. Hon'ble Supreme Court in catena of judgments has held that guarantee of fair consideration in the matter of promotion flows from Articles 14 and 16 of the Constitution of India. The respondents have stated before this Tribunal that the Inspectors had been upgraded to Group-B by the respondents w.e.f. 11.12.2003. They were also considering to amend the Recruitment Rules to incorporate this up-gradation as well as take care of zonal disparities in the matter of promotion. However, till today, no such decision has been taken by them. In the case of **UOI & Anr. Vs. Hem Raj Singh Chauhan & Ors.**, Civil Appeal No. 2651-52 of 2010 (Arising out of SLP(C) No. 6758-6759/2009) decided on 23.03.2010 Hon'ble

Supreme Court has held that the right of eligible employees to be considered for promotion was virtually a part of their fundamental right guaranteed under Article 16. Even DoP&T vide their O.M. dated 03.07.1986 has laid down that relative seniority of direct recruits was to be determined by the order of merit in which they were selected for such appointment. In **Radhey Shyam Singh's** case Hon'ble Supreme Court struck down the policy of zonal recruitment. Further, the respondents themselves have conceded All India Transfer Liability to the Inspectors in the light of Hon'ble Supreme Court judgment in the case of **Ram Kishore** (supra). Yet the respondents wilfully, deliberately and with mala fide intention have been acting in violation of express legal provisions as well as DoP&T Instructions, thereby violating the rights of the applicants.

5. The official respondents have filed their reply in which they have stated that in the O.A. no violation of any fundamental or statutory right of the applicants has been alleged nor it has been alleged that there has been violation of any policy of the Government. Hence, no cause of action has accrued to the applicants.

5.1 The respondents have also raised the plea of territorial jurisdiction of Principal Bench of this Tribunal on the ground that all the applicants herein were from Kolkatta zone and this Bench did not have jurisdiction to entertain their plea. The respondents have also submitted that O.A. was barred by non-joinder of necessary parties inasmuch as the applicants have not impleaded any of the Inspectors who are likely to be adversely affected in case applicants' plea for promotion on the basis of All India merit list was allowed. Further, the respondents have stated that the O.A. was barred for misjoinder of parties inasmuch as several authorities have been unnecessarily been impleaded in the O.A. Learned counsel for the respondents also argued that there was no merit

in the plea of the applicants that promotions are granted to them on the basis of All India merit list prepared at the time of their appointment. He stated that promotions are made on the basis of eligibility list and not on the merit list prepared at the time of appointment. To clarify his submission, learned counsel argued that there was 33% quota for appointment to promotees on the post of Inspectors. The eligibility list prepared for making promotions to the post of Superintendents would consist names of both direct recruits appointed through CGLE and promotees appointed through promotion quota. Since promotees cannot be denied their right to be considered for next promotion to the post of Superintendent, their names have unnecessarily to be included in the eligibility list. Since promotees will not be part of All India merit list prepared at the time of recruitment of direct recruit Inspectors, this list can under no circumstances be used for promotion.

5.2 Learned counsel further argued that as far as the applicants were concerned, the cause of action arose when they were allocated to a zone at the time of their recruitment. This, according to their own admission, was in the year 2005. Thus, the O.A. is barred by limitation inasmuch as it has been filed in the year 2014 i.e several years after expiry of the limitation. Since then several rounds of promotion have taken place and the applicants have chosen not to question any of those promotions. Several seniority lists have also been issued in the meanwhile and they have also not been challenged by the applicants. Thus, the O.A. was barred by limitation.

5.3 In support of their claim, the respondents have relied on several judgments. First, they have relied on the judgment of this Tribunal in the case of **Ms. Shakuntala Sharma Vs. Govt. of NCT**, (2006) 1 ATJ 239 in which it has been held that when preliminary objections are raised regarding maintainability of the

OA, it was the foremost duty of the Court to decide these issues first before proceeding to decide the case on merits. The respondents have relied on the judgment of Hon'ble Supreme Court in the case of **D.C.S. Negi Vs. UOI & Ors.** (CC No. 3709/2011) dated 07.03.2011 in which it has been held that the Tribunal cannot abdicate its duty to decide the plea of limitation in accordance with the Statute i.e. Administrative Tribunals Act, 1985. The respondents have also relied on the judgment of Apex Court in the case of **UOI & Ors. Vs. M.K. Sarkar,** (2010) 1 SCC (L&S) 1126 in which it has been held that a belated representation in regard to a stale or a dead issue cannot be considered as furnishing a fresh cause of action for reviving the dead issue or a time barred issue. The issue of limitation should be considered with reference to the original cause of action, which in this case occurred way back in 2005.

5.4 The respondents have further relied on the judgment of Hon'ble High Court of Delhi in **WP(C) No. 1353/2011** (UOI & Anr. Vs. Indian Railways Civil Engg. Officers Association & Ors.) dated 30.05.2011 in which the order of the Tribunal challenged in the Writ Petition was set aside because the affected persons had not been impleaded as parties.

5.5 Lastly, the official respondents have stated that it was within the purview of the Executive to frame the Recruitment Rules for determination of seniority and promotion and the Court should not give any directions in this regard. In support of their contention, the respondents have relied on the judgment of Apex Court in the case of **Mallikarjuna Rao and Ors. Vs. State of A.P. & Ors.,** (1990) 2 SCC 707 in which it has been held as follows:-

“11. The observations of the High Court which have been made as the basis for its judgment by the Tribunal were only of advisory nature. The High Court was aware of its limitations under Article 226 of the Constitution and as such the learned Judge deliberately used the word "advisable" while making the observations. It is neither legal nor proper for the High

Courts or the Administrative Tribunals to issue directions or advisory sermons to the executive in respect of the sphere which is exclusively within the domain of the executive under the Constitution. Imagine the executive advising the judiciary in respect of its power of judicial review under the Constitution. We are bound to react scowlingly to any such advice.

12. This Court relying on *Narender Chand Hem Raj v. Lt. Governor, Union Territory, Himachal Pradesh* (1972) 1 SCR 940 : (AIR 1971 SC 2399) and *State of Himachal Pradesh v. A Parent of a Student of Medical College, Simia* (1985) 3 SCC 169 : (AIR 1985 SC 910) held in *Asif Hameed v. State of Jammu & Kashmir*, 1989 Supp. (2) SW364:(AIR 1989SC 1899) as under (Para 19):

"When a State action is challenged, the function of the Court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the Constitution and if not, the court must strike down the action. While doing so the court must remain within its self-imposed limits. The court sits in judgment on the action of a coordinate branch of the Government. While exercising power of judicial review of administrative action, the court is not an appellate authority. The Constitution does not permit the court to direct or advise the executive in matters of Policy or to sermonize qua any matter which under the Constitution lies within the sphere of legislature or executive."

13. The Special Rules have been framed under Art. 309 of the Constitution. The power under Art. 309 of the Constitution to frame rules is the legislative power, This power under the Constitution has to be exercised by the President or the Governor of a State as the case may be. The High Courts or the Administrative Tribunals cannot issue a mandate to the State Government to legislate under Article 309 of the Constitution. The Courts cannot usurp the functions assigned to the executive under the Constitution and cannot even indirectly require the executive to exercise its rule making power in any manner. The Courts cannot assume to itself a supervisory role over the rule making power of the executive under Article 309 of the Constitution of India."

Further, they have relied on the judgment of Apex Court in the case of **P.U. Joshi and Ors. Vs. Accountant General, Ahmedabad**, (2003) 2 SCC 632 in which it has been held as follows:-

"10. We have carefully considered the sub-missions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the

Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/substruction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/ posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.

6. During the course of hearing of the aforesaid case, we had allowed MA No. 900/2016 and permitted one Sh. Prashant Prakhar, Inspector of Delhi Zone to be impleaded as private respondent in the aforesaid case on the ground that in case this O.A. was allowed his seniority and promotional chances were likely to be adversely affected. The aforesaid private respondent has not filed any counter in the case but learned counsel Sh. A.K. Behera appeared for him and argued on his behalf. Learned counsel drew our attention to the offer of appointment made to the applicants at the time of their appointment by producing one such letter issued to one Sh. Pankaj Nayan, who undisputedly was selected through CGLE-2003. A copy of the same has been produced before us along with the compilation filed by Sh. A.K. Behera, learned counsel for private respondent. Learned counsel drew our attention to Clause-xiv and Clause-xviii of Conditions of Service offered to the applicants as well as similarly placed persons at the time of recruitment. The same reads as follows:-

"14. He/she is liable to serve in any part of the state of West Bengal and Andaman & Nicobar Islands and Sikkim or any part of the country that may be included in the Commissionerates of Customs (Prev.) and Central

Excise, Kol-I, Kol-II, Kol-III, Kol-IV, Kol-V, Kol-VI, Kol-VII, Siliguri, Bholpur, Haldia, Service Tax and any other offices as decided by the appointing authority.

18. He/she is liable to transfer/posting within the Commissionerate/Zone to which he/she is nominated and under no circumstances his/her request for transfer to any other Commissionerate will be entertained before 2 years of completion of his/her service."

7. Learned counsel argued that the applicants had accepted these conditions with open eyes willingly. Thus, it does not lie in their mouth to challenge these conditions now. In this regard reliance has been placed by Sh. Behera on the judgment of Hon'ble Supreme Court in the case of **P.S. Gopinathan Vs. State of Kerala & Ors.**, (2008) 7 SCC 70 wherein it has been held that once the delinquent had accepted his initial promotion on temporary basis and had acquiesced to the same he was estopped from challenging it later on. Learned counsel has also relied on Apex Court judgment in the case of **C. Beepathumma and Ors. Vs. Velasari Shankaranaryana Kadambolihaya and Ors.**, (1964) 5 SCR 836, in paras-17 & 18 of which the following has been held:-

¶17. The doctrine of election which has been applied in this case is well-settled and may be stated in the classic words of Maitland-

"That he who accepts a benefit under a deed or will or other instrument must adopt the whole contents of that instrument, must conform to all its provisions and renounce all rights that are inconsistent with it:"

(See Maitland's lectures on Equity Lecture 18)

The same principle is stated in White and Tudor's Leading cases in Equity Vol, 1 8th Edn, at n. 444 as follows:

"Election is the obligation imposed upon a party by courts of equity to choose between two inconsistent or alternative rights or claims in cases where there is clear intention of the person from whom he derives one that he should not enjoy both That he who accepts a benefit under a deed or will must adopt the whole contents of the instrument."

18. The Indian courts have applied this doctrine in several cases and a reference to all of them is hardly necessary. We may, however, refer to a decision of the Madras High Court in Ramakottayya v. Viraraghavayya, ILR 52 Mad 556: (AIR 1929 Mad 502 FB) where after referring to the passage quoted by us from White and Tudor, courts Trotter, G. J. observed

that the principle is often put in another form that a person cannot approbate and reprobate the same transaction and he referred to the decision of the Judicial committee in Rangaswami Gounden v. Nachiappa Gounden, ILR 42) Mad 523: (AIR 1918 PC 196). Recently, this court has also considered the doctrine in Bhau Ram v. Baij Nath Singh, AIR 1961 SC 1327."

8. Learned counsel for the private respondent argued that the applicants cannot be permitted to approbate and reprobate at the same time. Once they have knowingly accepted the conditions of appointment they were estopped from challenging the same at this stage. Reliance has been placed on Apex Court's judgment in the case of **Rajasthan State Industrial Development and Investment Corporation and Another Vs. Diamond & Gem Development Corporation Limited and Anr.**, (2013) 5 SCC 470, in para-15 of which the following has been held:-

¶15. A party cannot be permitted to "blow hot-blow cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract, or conveyance, or of an order, he is estopped from denying the validity of, or the binding effect of such contract, or conveyance, or order upon himself. This rule is applied to ensure equity, however, it must not be applied in such a manner, so as to violate the principles of, what is right and, of good conscience. (Vide: Nagubai Ammal & Ors. v. B. Shama Rao & Ors., AIR 1956 SC 593; C.I.T. Madras v. Mr. P. Firm Muar, AIR 1965 SC 1216; Ramesh Chandra Sankla etc. v. Vikram Cement etc., AIR 2009 SC 713; Pradeep Oil Corporation v. Municipal Corporation of Delhi & Anr., AIR 2011 SC 1869; Cauvery Coffee Traders, Mangalore v. Hornor Resources (International) Company Limited, (2011) 10 SCC 420; and V. Chandrasekaran & Anr. v. The Administrative Officer & Ors., JT 2012 (9) SC 260)."

On the same issue reliance has also been placed on the judgment of Hon'ble Supreme Court in the case of **R.N. Gosain Vs. Yashpal Dhir**, (1992) 4 SCC 683. Learned counsel stated that these judgments have been followed by a Co-ordinate Bench of this Tribunal in OA-1168/2013 (**M. Rajamannar Vs. UOI & Ors.**) dated 20.08.2014.

8.1 Learned counsel further argued that it has been a long standing practice in the respondent department to make promotions to the post of Superintendent on the basis of zonal seniority. The question now to be determined is whether this needs to be changed and whether this Tribunal would be justified in giving a direction to unsettle this long standing practice. During last several years when this practice has been in vogue, hundreds of promotions have been made. Reversing or reviewing the same would cause administrative chaos. Conscious of this fact even Hon'ble Supreme Court while deciding the **Radhey Sham Singh's** case (supra) directed that their judgment would have only prospective effect. Even the applicants in **Radhey Shyam Singh's** case (supra) did not get relief in the same even though their petition was allowed, since the relief was only granted prospectively. Learned counsel argued that under these circumstances, this Tribunal may not like to upset the long standing administrative practice prevalent in the department. In this regard reliance has been placed on the judgment of Apex Court in the case of **N. Suresh Nathan & Anr. Vs. UOI & Ors.**, (1992) Suppl(1) SCC 584 in which the following has been observed:-

"4. The real question, therefore, is whether the construction made of this provision in the rules on which the past practice extending over a long period is based is untenable to require upsetting it. If the past practice is based on one of the possible constructions which can be made of the rules then upsetting the same now would not be appropriate. It is in this perspective that the question raised has to be determined."

9. We have heard counsel for the parties and have perused the material on record. First we deal with the preliminary objections raised by official respondents.

9.1 The first objection raised is regarding territorial jurisdiction of the Principal Bench of this Tribunal to entertain this O.A. Learned counsel for the official

respondents had argued that all the applicants herein were from Commissionerates located in West Bengal and should, therefore, have filed their petition in Kolkatta Bench of this Tribunal rather than the Principal Bench. To counter this, learned counsel for the applicants stated that the applicants were mainly challenging Clause-4 of the Centre Excise and Land Customs Department Inspector (Group-C posts) Recruitment Rules, 2002 and since these Rules have been framed by respondents No. 1 and 2, who were both located in Delhi, Principal Bench is competent to entertain this petition. We are inclined to agree with the applicants in this regard and reject the contention of the official respondents.

9.2 Next official respondents argued that the O.A. was not maintainable due to non-joinder of necessary parties inasmuch as none of the persons likely to be adversely affected in case this O.A. was allowed had been impleaded as a party in this case. To counter this argument, learned counsel for the applicants stated that in this O.A. the Rule governing the promotions itself was being challenged. He stated that Apex Court in several cases had laid down that if Rule itself was being challenged, there was no necessity of impleading private respondents as parties. In this regard, he placed reliance on the judgment of Apex Court in the case of **General Manager, South Central Railway, Secunderabad & Anr. Vs. A.V.R. Siddanti & Ors.**, (1974) 4 SCC 355 in which it was held that since the petitioners were impeaching the Constitutional validity of policy decisions of Railway Board, non-joinder of employees, who were likely to be adversely affected, would not prove fatal for the petition. Reliance has also been placed by the applicant on the judgment of Apex Court in the case of **D.D. Joshi & Ors. Vs. UOI & Ors.**, AIR 1983 SC 420, in para-23 of which the following has been held:-

"3. On behalf of the respondents, it was urged that if the contention of the petitioners is accepted which could compel the first respondent to re-settle the seniority list, those over whom petitioners and those similarly situated would score a march should have been impleaded as respondents and in their absence, no relief can be given to them. We would not accept this contention for two reasons : (i) that the decision in General Manager, South Central Railways, Secundrabad etc., (AIR 1974 SC 1755) would permit us to negative the contention, this being not a case of individual claim or claim of seniority by one person against specified others, but a question of interpretation of a provision and which interpretation could be given because it would be binding on the Union of India, the presence of others is unnecessary. Union of India would have merely to give effect to the decision of this Court. Therefore, the absence of those who may by our interpretation be adversely affected in the facts and circumstances of the case need not be necessarily here and if the relief could have been granted, the same would not have been denied on the ground that proper parties were not before the Court. But the second reason why we should not examine this contention is that we are not inclined to grant any relief and the matter ends there."

10. In view of the case law cited by the applicants and also in view of the fact that one private respondent has also been impleaded by us in representative capacity, we reject the contention of the official respondents that this O.A. is not maintainable due to non-joinder of necessary parties.

11. Learned counsel for the official respondents has also argued that O.A. is bad for mis-joinder of parties as well inasmuch as various authorities have unnecessarily been impleaded in this O.A.

12. We have perused the memo of parties and we find that the following have been impleaded as official respondents:-

- "1. Union of India,
Through The Secretary,
Department of Revenue,
Ministry of Finance,
North Block, New Delhi-110001.
2. The Chairman,
Central Board of Excise & Custom,
Department of Revenue,
Ministry of Finance,
North Block, New Delhi-110001.

3. The Member (P&V),
Central Board of Excise & Cumstom,
Department of Revenue.
4. The Joint Secretary (Admin.)
Central Board of Excise & Custom,
Department of Revenue,
Ministry of Finance,
North Block, New Delhi-110001.
5. The Director General (HRD),
Central Board of Excise & Custom,
Department of Revenue, Ministry of Finance,
409/8, Deeepshikha,
Rajendra Place, New Delhi-110001.
6. The Secretary,
Ministry of Personnel, PG & Pension,
Department of Personnel & Training,
North Block, New Delhi-110001."

13. Learned counsel argued that as far as official respondents No. 1, 2 & 6 were concerned, there was no doubt that they were necessary parties since they would be concerned with formulation of Recruitment Rules. Respondent No. 3 – Member (P&V) has been impleaded as he was heading Committee constituted by the department to look into the problem of huge disparities in promotion in different regions. Learned counsel for the applicants has produced document to substantiate his claim that Member (P&V) was indeed Chairman of such a Committee. Learned counsel also argued that respondents No. 4 & 5, namely, Joint Secretary (Admn.) of Central Board of Excise & Custom and Director General (HRD) of the same Board shall also be concerned since this was a matter regarding the HR policies of the department. After hearing the parties, we are inclined to agree with the applicants and reject this objection of the official respondent as well.

13.1 The next argument of official respondent was that the O.A. is barred by limitation. In this regard, learned counsel for the applicants argued that

although the applicant had joined the department in the year 2005, they were now being considered for promotion after having put in required 08 years of service as Inspector. Learned counsel stated that when the OA was filed in August, 2014 and even till 01.09.2014 when it came up for admission, no promotions from the CGLE batch to which the applicants belong have been made. Since it was promotion on the basis of All India seniority that the applicants were seeking, it is now that their grievance has arisen and, therefore, there was no delay in filing this O.A. On the other hand, as mentioned above, both learned counsel for the official respondents Sh. R.N. Singh and learned counsel for private respondent Sh. A.K. Behera had argued that the cause of action as far as the applicants were concerned arose at the time of allocation of zone to them on their initial appointment in the year 2005. The main grievance of the applicants was that zone was allocated to them without taking any choices from them or without giving them any option. Consequently, they got allocated to a zone (purportedly on the basis of permanent address of the applicants) in which there was stagnation. Delayed promotion was now only a consequence of zone allocation done to the applicants. The applicants had accepted the zone allocation at that time without demur and it did not lie in their mouth to challenge the same now. Having heard the parties, we find merit in the contention of the private respondents. The applicants should have protested at the time of zone allocation. On the contrary, they accepted the same with open eyes as it gave them the benefit of serving near their native place since it was done on the basis of their permanent addresses. Subsequently, realising that there was stagnation in the zone to which they were allocated, they have approached this Tribunal for directions to the respondents to make promotion on All India seniority basis.

13.2 In this regard, learned counsel for the applicants has argued that the respondents were themselves seized of the problem and had constituted a Committee called the Bharadwaj Committee to look into the issue of huge disparities in promotion in different regions. They have also produced a copy of the recommendations of this Committee which are available at pages-270 to 277 of the paper-book. Further, learned counsel for the applicants has produced a copy of the Note dated 30.05.2006 of the Revenue Secretary obtained through RTI to demonstrate that the respondents themselves realized that the problem of the applicants was a genuine one.

14. We are, however, not impressed by these arguments of the applicants. While the Bhardwaj Committee report and Revenue Secretary's Note do establish that the respondents realized that the problem of disparities in promotion in different regions is a genuine one, production of these documents does not help the applicants in any manner as they cannot serve the purpose of extending the limitation period. That period will be counted from the date on which the cause of action first arose. This, as already mentioned above, was the time when zone allocation was done to the applicants in the year 2005. We are, therefore, of the opinion that this O.A. suffers from delay and laches and is barred by limitation.

15. Even on merits, we do not find much substance in the contention of the applicants. Their main prayer is that promotions be made on the basis of All India merit list prepared at the time of initial recruitment as Inspectors. The respondents have rightly argued that promotions are made on the basis of eligibility list and not on the basis of merit list prepared at the time of recruitment. The eligibility list is prepared after considering all those who are fulfilling the eligibility conditions and are senior enough to be included in the zone of

consideration. This would necessarily include those who have become Inspectors through promotion quota as well. If the prayer of the applicants was accepted then the promotees who do not figure in the All India merit list prepared at the time of recruitment will get totally excluded from promotion. This obviously cannot be permitted. Hence, on this ground as well, it is not possible to grant relief asked for by the applicants.

16. The applicants have challenged the Recruitment Rule, which provides for preparation of zonal seniority and making promotion on the basis of the same. They have not pointed out any reason why this Rule should be struck down except for saying that there are huge disparities in various regions as far as promotions were concerned. This Rule itself has not been challenged on grounds of being ultra vires of the Constitution or being discriminatory in nature. It has been challenged merely because there were regional disparities in promotion. The issue of regional disparities can be addressed in several ways and cannot be the sole reason for setting aside the Rule. Moreover, the respondents have rightly argued that this Rule has been continuing for several years and has stood the test of time. It would not be appropriate for this Tribunal to direct the respondents to change this Rule and make promotions in a particular manner. How recruitments have to be made and how promotions have to be carried out lies exclusively within the domain of the executive. As long as they carry out this exercise in accordance with the Rules, which were not arbitrary or unreasonable and which could withstand the test of constitutionality, there would be no reason for this Court to interfere in the domain of the executive.

17. Learned counsel for the applicants argued that the Rule in question providing for zonal seniority was also in contravention of the law laid down by Hon'ble Supreme Court in **Radhey Shyam Singh's** case (supra).

18. We have gone through the aforesaid judgment and in our opinion there is not a whisper in the same regarding the system of zone allocation and preparation of zonal seniority. The judgment itself is confined to the selection process adopted at the time of initial recruitment. Hon'ble Supreme Court has held that in order to give equal chance to all those getting equal marks, the system of zonal selection cannot be permitted. However, there is nothing in the aforesaid judgment on the basis of which it could be extended to zonal promotions as well.

19. Thus, in our opinion, this O.A. is not only barred by limitation but even on merits it is not maintainable. We, therefore, dismiss the same. No costs.

(Shekhar Agarwal)
Member (A)

(V. Ajay Kumar)
Member (J)

/Vinita/