

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

**OA-3326/2013
MA-2505/2013**

Reserved on : 14.08.2015.

Pronounced on : 21.08.2015.

**Hon'ble Sh. G. George Paracken, Member (J)
Hon'ble Sh. Shekhar Agarwal, Member (A)**

1. Sh. N.D. Azad,
Superintendent
COE, NACEN,
3rd Floor, Tower 3, 4 NBCC Plaza,
Pushp Vihar, Sector-5,
Saket, New Delhi-110017.
2. Sh. P.K. Sinha,
Superintendent (Audit),
Central Excise and Service Tax,
Central Revenue Building,
Main Road, Ranchi-834001,
Jharkhand.
3. Sh. Manindra Nath,
Superintendent (presently at Patna City
Central Excise Range),
Central Excise and Service Tax,
Patna Commissionerate, Patna. Applicants

(through Sh. Sumit Kumar, Advocate)
Versus

1. Union of India,
Through Secretary (Revenue),
Ministry of Finance,
Department of Revenue,
North Block, New Delhi-1.
2. The Chairman,
Central Board of Excise & Customs,
Min. of Finance, Deptt. of Revenue,
North Block, New Delhi.
3. The Chief Commissioner,
Ranchi Zone, Patna,
C.R. Building,
Bir Chand Patel Marg, Patna.

4. Commissioner of Central Excise & Service Tax,
C.R. Building,
Bir Chand Patel Marg,
Patna.
5. Sh. ChandraShekhar,
Superintendent,
(presently at Hajipur Central Excise & Service Tax
Range under Muzaffarpur Central Excise & Service
Tax Division), Patna Central Excise and Service
Tax Commissionerate, Patna.
6. Sh. Murlidharan O A,
Superintendent, Customs & Central Excise,
Cochin Commissionerate,
Cochi. Respondents

(through Sh. Rajeev Kumar, Advocate)

ORDER

Mr. Shekhar Agarwal, Member (A)

Applicants No. 1 to 3 joined as Inspectors of Central Excise on 05.07.1982, 04.10.1982 and 15.07.1982 respectively in the Collectorate of Central Excise, Indore. On their request, they were transferred to Patna where they joined on 21.04.1986, 01.05.1986 and 12.05.1986 respectively. According to them, the next promotion for them was the post of Superintendent for which 08 years residency period as Inspector is required. On 10.09.1996 by sanction of the President 716 posts of Inspector were upgraded to the level of Superintendent. It was also decided that with the upgradation of these posts, those Inspectors, who had rendered about 17 years of service, would be upgraded as Superintendents. The applicants were, however, promoted

as Superintendents only on 23.09.2002 after counting their service from 21.04.1986, 01.05.1986 and 12.05.1986. The respondents did not take into consideration service of about 04 years rendered by the applicants in Indore Commissionerate prior to their transfer to Patna. On the other hand, respondent No. 5, who had joined the department on 11.04.1985 was promoted on 06.10.1997 and respondent No. 6, who had joined the department on 08.03.1984 was promoted as Superintendent on 29.08.1997. The contention of the applicants is that had the respondents counted the services rendered by them in Indore Commissionerate prior to their Inter Commissionerate transfer to Patna, they would have been upgraded as Superintendents prior to respondents No.5 and 6. In this regard, they have relied on the judgment of this Tribunal in OA-651/1997 (I.C. Joshi & Ors. Vs. UOI & Ors.) in which the following directions were given:-

“(i) In the light of the findings above, the promotion to all the upgraded posts of superintendents shall be made strictly by selection from among the candidates who possesses the requisite number of years of regular service in the grade in accordance with the Recruitment Rules of the gradation list prepared on the basis of length of service in the grade.

(ii) The promotion made by the order dated 30.09.1996 (in the first phase) are set aside, but those promoted will continue to stay as superintendents on an ad hoc basis until newly selected candidates join their posts. In case any of the persons now promoted by the previous order dated 30.09.1996, get selected subsequently, they will be deemed to be in continued regular service from the date of their initial appointment as superintendents.

(iii) This OA is allowed to the extent mentioned above; no order as to costs."

2. They have submitted that judgment of the Tribunal was based on the judgment of Hon'ble Supreme Court in the case of **Renu Mullick (Smt.) Vs. UOI & Anr.**, AIR 1994 SC 1152 in which the question of loss of seniority on account of voluntary transfer was considered and it was held that services rendered by an Inspector would be counted for the purpose of determining his eligibility for promotion to next higher post in the transferred Commissionerate. The Chief Commissioner of Delhi Zone has even implemented this order of the Tribunal. Even though the cases of the applicants were covered by these judgments, the respondents have refused to extend the same benefits to them.

2.1 The applicants have further submitted that this view of the Tribunal has been reiterated by Bombay Bench of this Tribunal in OA-2166/2004 in the case of **S.V. Khamborkar**. This order was further upheld by Hon'ble Bombay High Court on 24.07.2008 in CWP No. 2687/2008. The applicants have also submitted that this case is also covered by the instructions of the Government issued vide letter F. No. A11012/1/96/AD.IV dated 29.05.1997 issued by Government of India on the subject of Inter Commissionerate transfers wherein it has been recorded as follows:-

"(ii)The transferee will be placed below all officers appointed regularly to that post/grade on the date of

his/her appointment on transfer basis in terms of Part 3.5 of DOP&T's O.M. dated 03.07.1986. In other words, such a transferee will be junior to those regularly appointed officers prior to his/her transfer. However, such transferred officer will retain his/her eligibility of the parent Commissionerate for his/her promotion to the next higher grade, etc., (iii) On transfer he/she will not be considered for promotion in the old Commissionerate."

The C.B.E.C. in their Board's meeting held on 28.09.2007 accepted the judgment dated 27.03.2007 of Hon'ble Kerala High Court in Writ Petition (C) Nos. 7821, 7945, 8808 and 2518/2007 regarding extending the benefit of service rendered prior to Inter Commissionerate transfer for the purpose of promotion.

2.2 The applicants submitted several representations on 02.12.2011, 23.01.2012 and 29.12.2011. They again submitted representations on 31.05.2013 seeking benefit of the judgment in **I.C. Joshi's** case (supra). However, the respondent No.1 had rejected all such representations by the impugned order stating that the benefit of the judgment of **I.C. Joshi's** case cannot be extended to similarly placed officers. Hence, this O.A. has been filed seeking the following relief:-

"(i) set aside the impugned letter in F No. 28012/27/2012-AD IIB dated 11.04.2013 issued by the Respondent No.1;

(ii) to grant the benefit of the judgment of this Hon'ble Tribunal dated 26.08.1997 in O.A. No. 651 of 1997 and M.A. No. 754/97 in I.C. Joshi & Ors. Vs. Union of India & Ors. to the applicants and direct the Respondent No. 1 to 3 to consider the Applicants

eligible for notional promotion to the cadre of Superintendent by counting their seniority in the grade of Inspector w.e.f. 05.07.1982, 04.10.1982 and 15.07.1982 respectively i.e. the date on which the applicants joined the department as Inspector;

(iii) to direct the Respondent Nos. 1 to 3 to fix the seniority of the Applicants in Central Excise Ranchi Zone above Respondent No.5 who joined the department in Patna Collectorate in 1985, promoted as Superintendent in Patna Collectorate in 1997 (2nd phase upgradations) and presently placed at S.No. 1674 in the latest All India Seniority list of Superintendents, Central Excise as promoted/appointed from 01.01.1993 to 31.12.1997, circulated by the Board; and accordingly to put their seniority above the Respondent No.6 in All India Seniority list of Superintendents, Central Excise promoted/appointed from 01.01.1993 to 31.12.1997, circulated by the Board.

(iv) To pass such other order/orders as this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case."

3. In their reply, the respondents have opposed the averments made by the applicants even though factual position regarding dates of joining and transfer of applicants from Indore Commissionerate to Patna Commissionerate as mentioned in the O.A. have not been disputed. According to the respondents, as per ICT Circular F.No.A-22015/34/80-Ad.III B dated 20.05.1980 the service rendered prior to ICTC was not to be counted for the purpose of seniority in the new change. The applicants want their past services to be counted contrary to the instructions. They are relying on the judgment of this Tribunal in **I.C. Joshi's** case (supra). However, CBEC has already decided not to extend benefits of the judgment to similarly placed officers.

4. We have heard both sides and have perused the material on record. It is now settled legal position that on Inter Commissionerate transfer while a transferee loses his seniority and is placed at the bottom of the seniority list in the new Commissionerate, yet he does not forgo the length of service rendered by him prior to his transfer. Thus, while he loses seniority, he does not lose the service already rendered by him. Therefore, if in the new Commissionerate, despite being at the bottom of the seniority list, if he is senior enough to fall within the zone of consideration for next promotion, his eligibility for such promotion shall be determined after counting his service rendered prior to ICT. This has been laid down by this Tribunal in the case of **I.C. Joshi's** case (supra). However, the respondents have refused to extend the same benefits to similarly placed officers. Their stand is indeed baffling. The respondents have not denied that the applicants were similarly placed and their cases were squarely covered by the judgment in **I.C. Joshi's** case (supra). Yet, without assigning any reason they have refused to extend the same benefits to the applicants. They have also misinterpreted the law laid down by Hon'ble Supreme Court in the case of **UOI Vs. Deo Narain** in Civil Appeal No. 8017/2013 and **Narotham Rath** in CA No. 5357/2008. In our view this stand taken by the respondents is totally unacceptable. It will only lead to further litigation and waste

of precious judicial time. Once the ratio has been laid down by this Tribunal, the respondents should themselves have examined the case of the applicants and extended the same benefits to them as have been allowed to applicants in **I.C. Joshi's** case.

5. We, therefore, allow this O.A. and direct the respondents to consider ante dating promotion of the applicants by counting their services rendered in Indore Commissionerate prior to their transfer to Patna Commissionerate in terms of the judgment in **I.C. Joshi's** case (supra). After ante dating of the promotion, the applicants shall also be entitled for the benefit of seniority commensurate with the revised dates of promotion in the grade of Superintendent. The respondents shall complete this exercise within a period of eight weeks from the date of receipt of a certified copy of this order. No costs.

(Shekhar Agarwal)
Member (A)

(G. George Paracken)
Member (J)

/Vinita/