

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

**Original Application No. 20/1088/2018 & MA No.81/2019
with
OA No. 21/1099/2018 & MA No.82/2019**

Date of CAV: 07.02.2019

Date of Pronouncement: 22.02.2019

OA No. 1088 of 2018

Between:

1. Pradeep Gautam Mandava,
S/o. Durga Kumar Mandava,
Aged about 32 years,
Occupation – Inspector, Group B
O/o the Additional Commissioner of Customs,
Krishnapatnam Customs House,
Muthkur, Nellore Dist(CPC, Vijayawada).
2. V Sukumar, S/o. V Dhanunjaya,
Aged about 35 years,
Occupation – Inspector, Group B
O/o. Principal Commissioner of Customs,
Disposal Section, Basheerbagh, Hyderabad.
3. Shishir Dhangar, S/o. Ramsahai Dhangar,
Aged about 38 years,
Occupation – Inspector, Group B
O/o. Commissioner of Customs,
Basheerbagh, Hyderabad.
4. Sunil Kumar, S/o. Sri Brahmdeo Prasad,
Aged about 43 years,
Occupation – Inspector, Group B
O/o. Commissioner of Audit-I Commissionerate,
Basheerbagh, Hyderabad.
5. Ms Paridhi Mehta, W/o. Parichay Jain,
Aged about 30 years,
Occupation – Inspector, Group B
O/o. Commissioner of Customs,
Hyderabad zone, ARC Section,
Basheerbagh, Hyderabad.
6. Ashwani Kumar, S/o. Kamal Prasad,
Aged about 37 years,
Occupation – Inspector, Group B
O/o. Assistant Commissioner of Customs,
Air Cargo Complex, Shamshabad, Hyderabad.

7. Kanchan Kumar Burnwal,
S/o. Late Ganesh Lal Burnwal,
Aged about 38 years,
Occupation – Inspector, Group B
O/o. Commissioner of Customs,
Technical Section, Basheerbagh, Hyderabad.
8. Atul Kumar Singh, S/o. Nokhai Singh,
Aged about 35 years,
Occupation – Inspector, Group B
O/o. Superintendent, GST Medak Range, Medak.
9. Munendra Pal Gangwar, S/o. Surendra Pal Gangwar,
Aged about 38 years,
Occupation – Inspector, Group B
O/o. ICD Thimapur,
Customs Commissionerate, Hyderabad
10. Pankaj Kumar, S/o. Vishwanath Prasad Singh,
Aged about 37 years,
Occupation – Inspector, Group B
O/o. The Commissioner Secunderabad GST Commissionerate ,
Basheerbagh, GST Building, Hyderabad.
11. Rajeev Ranjan Kumar, S/o. Late Saryug Prasad Singh,
Aged about 32 years,
Occupation – Inspector, Group B
O/o. Principal Commissioner of Customs,
Legal and Prosecution Section Basheerbagh, Hyderabad.
12. Sunil Kumar Suman, S/o. Sri Ram Narayan Yadav,
Aged about 37 years,
Occupation – Inspector, Group B
O/o. Superintendent of Central Tax,
Mahabubnagar Division Office,
Ranga Reddy Commissionerate, Hyderabad.
13. Gujjalamudi Sunil Kumar, S/o. Subba Rao,
Aged about 34 years,
Occupation – Inspector, Group B
O/o. Commissioner of Audit-I Commissionerate,
Basheerbagh, Hyderabad
14. Rakesh Bagri, S/o. Amarnath,
Aged about 31 years,
Occupation – Inspector, Group B
O/o. Commissioner of Customs,
Basheerbagh, Hyderabad.
15. Devender, S/o. Tej Ram,
Aged about 32 years,

Occupation – Inspector, Group B
O/o. Assistant Commissioner of Central Tax,
POP Nalgonda Division,
Ranga Reddy Commissionerate,
Hyderabad Road, Nalgonda-508001.

16. Himmat Singh Meena, S/o. Bhanwar Lal Meena,
Aged about 38 years,
Occupation – Inspector, Group B
O/o. Commissioner of Audit-I Commissionerate,
Basheerbagh, Hyderabad.

17. Naresh Munot, S/o. Ramdeo Munot,
Aged about 33 years,
Occupation – Inspector, Group B
O/o. Assistant Commissioner of Customs,
Air Cargo Complex, Shamshabad, Hyderabad.

18. Mahesh Chand Meena, S/o. Ramnarayan Meena,
Aged about 34 years,
Occupation – Inspector, Group B
O/o. Commissioner of Central Tax,
Sitaramprasad Towers, Redhills, Lakdi Ka Pool,
Audit-II Commissionerate, Hyderabad-500004.

19. Surendra Kumar Meena, S/o. Shri Ram Meena,
Aged about 38 years,
Occupation – Inspector, Group B
O/o Principal Commissioner of Customs,
Adjudication Section, Basheerbagh, Hyderabad.

20. Jai Kishan, S/o. Arjunlal Bairwa,
Aged about 32 years,
Occupation – Inspector, Group B
O/o Principal Commissioner of Customs,
ICD, CFS, Kukatpally, Hyderabad.

21. G.Arun Reddy, S/o. G.Narender Reddy,
Aged about 32 years,
Occupation – Inspector, Group B
O/o. Superintendent of Central tax,
Nirmal Range, Nizamabad Division,
Medhal GST Commissionerate,
Indra Nagar, Nirmal.

22. K V Parameswara Rao, S/o. K. Appala Naidu,
Aged about 32 years,
Occupation – Inspector, Group B,
O/o. Assistant Commissioner of Central Tax,
Warangal GST Division,
Secunderabad Commissionerate,
Hanamkonda-506001.

23. Ms Sowmya Ratna Patibandla, D/o. Shri Ram Meena,
Aged about 29 years,
Occupation – Inspector, Group B,
O/o Commissioner of Customs,
Rajiv Gandhi International Airport,
Shamshabad, Hyderabad.
24. S.Nagabhushanam, S/o. S.Anjaneyulu,
Aged about 32 years,
Occupation – Inspector, Group B,
O/o. Supertient of Central tax,
Mahaboob Nagar GST Range,
Mahaboob Nagar GST Division,
Ranga Reddy Commissionerate,
Srinivas Colony, Mahaboob Nagar
25. Tulsai Prasad Gade, S/o. Venkatarao,
Aged about 34 years,
Occupation – Inspector, Group B,
O/o Assistant Commissioner of Central Tax (Technical Section),
Nalgonda GST Division,
Rangareddy GST Commissionerate,
Hyderabad Road, Nalgonda-508001.

... Applicants

And

1. Union of India, Rep. by its Secretary
Ministry of Finance, North Block,
New Delhi – 110 001.
2. The Chairman,
CBEC, North Block,
New Delhi – 110 001.
3. The Chief Commissioner of Central Excise,
Kendriya Shulk Bhavan,
7th Floor, Opp. L.B. Stadium,
L.B. Stadium Road, Basheerbagh, Hyderabad,
Telangana – 500 004.

... Respondents

Counsel for the Applicants ... Mr. M.V. Krishna Mohan

Counsel for the Respondents ... Mrs.L. Pranathi Reddy, Addl. CGSC

OA No. 1099 of 2018

Between:

Pankaj Kumar, S/o. Arjun Sharma,

Aged about 40 years, Occ: Inspector (Group B),
O/o. Selective Audit Group – 23,
Audit-I, Basheerbagh, Hyderabad.

... Applicant

And

1. Union of India, Rep. by its Secretary
Ministry of Finance, North Block,
New Delhi – 110 001.
2. The Chairman,
CBEC, North Block, New Delhi – 110 001.
3. The Chief Commissioner of Central Excise,
Kendriya Shulk Bhavan,
7th Floor, Opp. L.B. Stadium,
L.B. Stadium Road, Basheerbagh, Hyderabad,
Telangana – 500 004.

... Respondents

Counsel for the Applicant	...	Mr. M.V. Krishna Mohan
Counsel for the Respondents	...	Mrs.K. Rajitha, Sr. CGSC

CORAM:

Hon'ble Mr. Justice R. Kantha Rao, Member (Judl)

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

2. Applicants, through the OAs filed, are challenging the order dt 27.9.2018 of the respondents in not including and considering the cases of the applicants for promotion to the post of Superintendent on adhoc basis. The respondents and the issue being the same a common order is passed.

3. Applicants are working as direct recruit Inspectors of Central Tax and Customs in the respondents organisation from 2011/2012. Respondents issued a common cadre seniority list upto the year 2010-11 as on 1.1.2014. Thereafter, respondents issued a letter intending to conduct DPC for promotion to the post of Superintendent on adhoc basis where in names of Juniors figure in the eligibility list. As per recruitment rules of 1986, regular service of 8 years as Inspector is required to be promoted as Superintendent. Applicants though do not

have the required length of service but as per OM dt 25.3.1996 of DOPT they are eligible. In view of the said memo of DOPT, applicants made several representations to the respondents to relax the qualifying length of service and consider them for promotion but of no avail. Similarly situated employees were considered for promotion based on the verdict of the Principal Bench in OA 3405 of 2014 which the respondents challenged in the High Court of Delhi unsuccessfully. The applicants are aggrieved that though they are eligible, respondents negated their request. Hence the OAs.

4. Applicants request to grant relief is based on DOPT memo dt 25.3.1996 which provides for relaxation of length of service to the seniors when juniors are considered for promotion. The issue of the applicants is fully covered by the case of Garima Singh v U.O.I and ors in OA 3278/2010 dt 9.5.2011 and the Hon'ble Principal Bench verdict in OA 3405/2014. Further as per Hon'ble Supreme Court Judgment in N.R.Parmar and ors v U.O.I vide CA No. 7514-7515/2005 dt 27.11.2012 the seniority of the Direct recruits has to be considered from the recruitment year in which the vacancies were available. Hence the seniority of the applicants has to be considered from the date of notification of the post.

5. Respondents resist the contentions of the applicants by taking cover under the recruitment rules of 1986 which stipulate that a minimum of 8 years service in the Inspector cadre is the prerequisite to be promoted as Superintendent. A draft seniority list of Inspectors was drawn on 1.1.2014 which was challenged by the Inspectors promoted from the Ministerial cadre and the Data Entry Operator Cadre in OA 1225/2016. However, based on orders contained in MA 467/2018 of this Tribunal, respondents were permitted to conduct DPC for promotion to the post of Superintendent subject to the outcome

of the decision in the OA 1225/2016. Accordingly a DPC was held on 9/10.8.2018 and another one for the 2019 year vacancies was proposed to be held vide lr dt. 27.9.2018. In the absence of a final seniority list, the eligibility criteria considered was 8 years of service in the Inspector cadre. The applicants who do not have 8 years of service would obviously be ineligible. However, the respondents admit that the Recruitment Rules were amended providing for relaxation of length of service to seniors when juniors are considered for promotion on satisfying the eligibility criteria. Nevertheless, respondents plead that they are handicapped in applying the amendment since the seniority list of inspectors has not been finalised. Same draw back restrains them in implementing the Garima Singh judgment.

6. Heard Sri M.V.Krishna Mohan appearing on behalf of the applicants and Smt L.Pranathi Reddy and Smt. K.Rajitha, on behalf of respondents. The arguments made were in tandem with the written submissions made.

7A. Intrinsic aspects involved in the case are -

- I. Granting relaxation to the seniors in regard to length of service when juniors are being considered for promotion who satisfy the eligibility criteria.
- II. In the absence of a final seniority list the question of junior or a senior cannot be determined and therefore applying (i) does not arise.

In regard to first question, as admitted by the respondents, the recruitment rules 1986 have been amended on 13.12.2018 and the relevant para is extracted here under:

“Where juniors who have completed their qualifying/ eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of the requisite qualifying/ eligibility service by more than half of such qualifying/ eligibility service or two years whichever is less, and have successfully completed probation period for promotion to the next higher grade along with their juniors who have already completed such qualifying/ eligibility service.”

In the context of amendment of the recruitment rules of 1986, recently in OA 841/2018 filed in this Tribunal, respondents have taken the stand that unless the relevant recruitment rule, which is statutory in nature is amended to the extent of relaxation of length of service, it cannot be made applicable merely based on an executive instruction issued. Now since the recruitment rule has been amended respondents should not have any objection to apply the amended rule. On applying the amended rule, applicants do get qualified to be promoted as Superintendents. With the amendment in place the relaxation in regard to length of service has to be granted to the applicants. This answers the first question comprehensively.

B. Turning our attention to the question of seniority list, respondents are now singing a different song. They claim that although the recruitment rules have been amended as required, without the seniority list being finalised, applicants are ineligible for promotion. In contrast, the stand taken in OA 841/2018 was that seniority has no bearing in promotion but it is essentially the length of service. With the knot of length of service untied the new objection raised which requires resolution is the question of seniority. We would like to address it scrupulously. Primarily the seniority of the direct recruits is not under dispute. There is a tussle between Inspectors promoted from the Ministerial cadre and those from the Data Entry Operators on the seniority issue. The pristine seniority of direct recruits does not get impacted due to the raging row

between Inspectors promoted from the ranks. The law is clear in regard to seniority of direct recruits. Direct recruits seniority commences from the date of sending the requisition to the recruiting authority in the recruitment year. Hon'ble Supreme Court observation, adduced here under, in **N.R.Parmar and ors v U.O.I** and ors reported in CA no 7514-7415/2005 dt 27.11.2012 comes to the rescue of the applicants.

22.1. (b) It is not necessary, that the direct recruits for vacancies of a particular recruitment year, should join within the recruitment year (during which the vacancies had arisen) itself. As such, the date of joining would not be a relevant factor for determining seniority of direct recruits. It would suffice if action has been initiated for direct recruit vacancies, within the recruitment year in which the vacancies had become available. This is so, because delay in administrative action, it was felt, could not deprive an individual of his due seniority. As such, initiation of action for recruitment within the recruitment year would be sufficient to assign seniority to the concerned appointees in terms of the "rotation of quotas" principle, so as to arrange them with other appointees (from the alternative source), for vacancies of the same recruitment year.

23. 1 The logic and process of reasoning, emerging from the OM dated 2.2.2000 as is apparent to us is being analysed below:

(a) If the process of recruitment has been initiated during the recruitment year (in which the vacancies have arisen) itself, even if the examination for the said recruitment is held in a subsequent year, and the result is declared in a year later (than the one in which the examination was held), and the selected candidates joined in a further later year (than the one in which the result was declared), the selected candidates will be entitled to be assigned seniority, with reference to the recruitment year (in which the requisition of vacancies was made). The logic and reasoning for the aforesaid conclusion (expressed in the ON dated 2.2.2000) is, if the process of direct recruitment is initiated in the recruitment year itself, the selected candidate(s) cannot be blamed for the administrative delay, in completing the process of selection.

(b) The words "initiation of action for recruitment", and the words "initiation of recruitment process", were explained to mean, the date of sending the requisition to the recruiting authority.

C. Based on the above laid down principles, the direct recruit seniority would be as per date of requisition made to the recruitment authority in the recruitment year. Respondents have to take cognizance of the Hon'ble Supreme

Court directions. In the context of the stated principle of the Apex Court eligibility list prepared by the respondents (Annexure A-III) as on 1.1.2014, makes it evident that juniors to the applicants are being considered for promotion. Service jurisprudence, in no uncertain terms, makes it abundantly clear that no junior shall be promoted without considering the senior who is equally eligible. This principle is postulated by Hon'ble Supreme Court in ***Balkishan v. Delhi Admn., 1989 Supp (2) SCC 351*** where in it was held as under:-

9. In service, there could be only one norm for confirmation or promotion of persons belonging to the same cadre. No junior shall be confirmed or promoted without considering the case of his senior. Any deviation from this principle will have demoralising effect in service apart from being contrary to Article 16(1) of the Constitution.

D. Invariably seniority tempered with merit would be the principle where zone of consideration is worked out on a specific formula, such as “ $2n+2$ ”, “ n ” denoting the number of vacancies. Subject to fulfilment of the requisite residency period in the feeder grade as also suitability, promotion is afforded and the panel is in the order of seniority. Merit tempered with seniority could be the criteria where the merit is tested not on the basis of residency period but on the basis of coming out meritorious in the competitive examinations. (Earlier, till 02-08-2002 there used to be system of arranging the candidates in the order of “outstanding” “very good” “good” etc., as per their performance and preparing a panel where seniority is only secondary, primary being merit). Now, in the instant case, what is predominant is seniority and if junior fulfils the requisite residency period while senior does not, relaxation as per rule (half the period of requisite years of service or two years, whichever is less) is to be afforded to the senior. Added to above, in this case, the draft seniority list which rules the roost as on date places the applicants above those considered for

promotion as Superintendents. There is no whisper in the OA that the seniority of the direct Recruits is being contested. The seniority of the direct recruits holds ground in the presence or absence of the contest between others referred to.

E. Therefore the second question about seniority of applicants who are direct recruits is also comprehensively answered by the verdict in N.R.Parmar case. A conjoint reading of the Hon'ble Supreme Court observation in regard to seniority of the direct recruits and the amended recruitment rule, 1986 tilts the scales in favour of the applicants. To get promoted as Superintendent, the amended recruitment rule provides the requisite length of service of 8 years and the N.R. Parmar judgment propels them to the plane of being considered as seniors over those juniors who are figuring in the eligibility list for promotion annexed to the letter dt 27.9.2018.

F. Before we put the issue to rest, we cannot refrain from declaring that in OA 841/2018 dealing with an identical issue, respondents have taken the stance that the applicant in the cited OA cannot be promoted to Superintendent cadre as he does not possess 8 years of service on the theory that the length of service is relevant and not seniority. Taking a diagonally opposite stance in the present OAs, by profusely lining their reply with the claim that seniority is the crux of the matter is indeed perplexing. Moreso, when the respondents have admitted that the recruitment rule has been amended and in the context of the Hon'ble Supreme Court judgment in regard to the seniority of direct recruits. It would be proper for the respondents to take a consistent stand and not change the same at the drop of a hat in different OAs, because they are the State in themselves. "Consistency is a virtue (*State of Karnataka vs Umadevi* (2006) 4 SCC , para 20". The respondents need also bear in mind that they are a model employer and the observations of the Apex Court in *Dev Dutt v. Union of*

India,(2008) 8 SCC 725 are apt and relevant for the respondents to follow, namely “*The State must be a model employer, and must act fairly towards its employees. Only then would good governance be possible.*”

G. Thus based on the merits of the case, rules in vogue, observations of the Hon’ble Supreme Court cited in paras supra, the case of Garima Singh v U.O.I and ors in OA 3278/2010 dt 9.5.2011 and the Hon’ble Principal Bench verdict in OA 3405/2014, the applicants have made out a cast iron case which fully succeeds. The observations of this Tribunal in OA 841/2018 fortify the case in favour of the applicants. Evaluated against the aforesaid observations, action of the respondents is against rules, arbitrary and illegal. Consequently, the respondents are directed as under:

- i) To consider promoting the applicants on an adhoc basis to the post of Superintendent, on the basis of the draft seniority list with consequential benefits making the same, if desired, subject to final seniority.
- ii) As the legal point on the matter has first been crystallized and the same telescoped upon the facts of the case which resulted in the above decision, the legal position stands in the nature of a judgment in rem, whereby, persons similarly situated should be able to rely on the sense of responsibility of the department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to court. Hence, the respondents are directed to apply the axiom at (i) to not only those who have approached this Tribunal but to all those who did not, provided they are similarly placed in all respects, to avoid unnecessary and avoidable litigation, valuable time

and precious man hours of the stakeholders involved. In short, judgment rendered be treated *in rem*.

- iii) Time calendared for compliance of this order from the date of receipt of copy of this order is 3 months so far as the case of the applicants are concerned, and within a reasonable time so far as (ii) above is concerned.
- iv) The OAs are allowed as above. Consequently, MA Nos. 81/2019 & 82/2019 stand disposed. There shall be no order to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)

Dated, the 22nd day of February, 2019

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