

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. No. 1887/2017

The 16th day of January, 2019

**HON'BLE MR. V. AJAY KUMAR, MEMBER (J)
HON'BLE MS. ARADHANA JOHRI, MEMBER (A)**

1. Kamal Singh Bora,
Superintendent, Group 'B'
Aged about 41 years,
S/o Shri Pratap Singh Bora,
R/o B-102, Coral Palace,
Gaurav Path, Pal, Adajan,
Surat, Gujarat-395009.
2. Pradeep Kumar Sharma,
Superintendent, Group 'B'
Aged about 41 years,
S/o Shri Ramavtar Sharma,
R/o D-1004, Nakshatra Solitaire,
Canal Road, Palanpor,
Surat, Gujarat-395009.
3. Diwakar Kumar,
Superintendent, Group 'B'
Aged about 36 years,
S/o Shri Ramanand Jha,
R/o H-304, Sripad Ethics,
Near Raj World, Palanpor Gam,
Surat-395009.
4. Dharmendra Singh Rajpurohit,
Superintendent, Group 'B'
Aged about 35 years,
S/o Shri Nain Singh,
R/o G-601, Vaishnodevi Sky,
Jhangirpura, Surat, Gujarat.
5. Amit Kumar,
Superintendent, Group 'B'
Aged about 39 years,
S/o Late Shri Ramakant Sahay,

R/o E-204, Samarthya Status,
D-Cabin, Sabarmati, Ahmedabad,
Gujarat-19.

.. Applicants

(By Advocate : Mrs. Priyanka Bhardwaj for Shri M.K. Bhardwaj)

Versus

1. Union of India & Ors.
Through its Secretary,
Ministry of Finance,
North Block, New Delhi.
2. Central Board of Excise & Customs,
Through its Chairperson,
North Block, New Delhi.
3. The Member (Admn.),
CBEC, North Block,
New Delhi.
4. The Director (Ad.II A&B),
CBEC, North Block,
New Delhi.

.. Respondents

(By Advocate : Shri Rajeev Kumar)

ORDER (ORAL)

By Shri V. Ajay Kumar, Member (J)

The applicants, 5 in number and presently working as Superintendents in the respondent – Central Board of Excise & Customs in Vadodara Zone, filed the O.A. seeking quashing of Annexure A-1 letter dated 02.05.2017.

2. In O.A. No. 3405/2014 decided on 12.05.2016 in *Pankaj Nayan & Ors. vs. UOI & Ors.*, a Coordinate Bench of this Tribunal

by following a Full Bench judgment of this Tribunal in *Garima Singh vs. Union of India & Ors.* in O.A. No. 3278/2010 dated 09.05.2011 declared that the applicants therein, who were working as Inspectors and who have not completed the period of 8 years as required under the recruitment rules, as on the relevant date, were deserved to be considered for promotion by granting relaxation upto 2 years in terms of O.M. dated 25.03.1996.

3. It is not in dispute that though writ petitions were filed against the Full Bench decision of this Tribunal in *Garima Singh*, the same were withdrawn by the official respondents and, accordingly, the said decision becomes final. It is also not in dispute that a Writ Petition bearing No. 11277/2016 was filed by the respondents against the orders of this Tribunal in ***Pankaj Nayan & Others*** (supra), but the same was dismissed by the Hon'ble High Court of Delhi on 29.10.2018. However, the learned counsel for the respondents would submit that they are contemplating to file an SLP in ***Pankaj Nayan's*** case.

4. It is also not in dispute that the respondents treating that the applicants in the instant O.A. are also identically placed like the applicants in *Pankaj Nayan's* case and following the said decision, considered their cases and promoted them as Superintendents vide the Establishment Order No.91/2016 dated 09.09.2016. However,

when the respondents issued the impugned Annexure A-1 letter dated 02.05.2017 proposing to withdraw the said promotion by observing that as the Recruitment Rules were not amended, the promotions given to the applicants are to be reviewed, the applicants filed the instant O.A.

5. Heard Mrs. Priyanka Bhardwaj proxy for Shri M.K. Bhardwaj, learned counsel for the applicants and Shri Rajeev Kumar, learned counsel for the respondents and perused the pleadings on record.

6. In WPC No.7743/2018 in **Union of India vs. Rajeev Kumar & Ors.**, the Hon'ble High Court by its order dated 29.10.2018, while noticing that the respondent – CBEC is taking different stand in respect of different Zones with respect to applicability and adaptability of decisions in **Pankaj Nayan** (supra) and **Garima Singh** (supra), observed as under:

“The Union of India cannot be seen to take different stands in different petitions involving the same issue, merely on the ground that different Commissionerates of the Excise Department were involved in different cases. The controlling authority in the matter of the service conditions of Civil Servants of the Central Government is the Department of Personnel & Training (in short (‘DoPT’)). The DoP&T has taken the stand that the decision in **Garima Singh** (supra) should be accepted and implemented.”

7. Since it is not in dispute that the respondents treating that the decisions in **Garima Singh** and **Pankaj Nayan** are applicable to the

applicants' case and following the said decisions, promoted the applicants to the post of Superintendent and, as of today, both the decisions are still subsisting without any change in the legal position and the respondents even in the impugned order not said that the applicants are not identically placed like the applicants in *Pankaj Nayan's* case (supra), the impugned orders are unsustainable and liable to be set aside.

8. In the circumstances and for the aforesaid reasons, the O.A. is allowed and the impugned orders are quashed. However, it is made clear that this order is subject to the result of the SLP, if any to be filed by the respondents in **Pankaj Nayan's** case. No order as to costs.

(ARADHANA JOHRI)
Member (A)

(V. AJAY KUMAR)
Member (J)

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