

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

O.A. No.3280/2014  
With  
O.A. No.2000/2018

Thursday, this the 29<sup>th</sup> day of August 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman  
Hon'ble Mr. Mohd. Jamshed, Member (A)**

O.A. No.3280/2014

Krishan Murari Bhardwaj & others

..Applicants

(Applicants in person)

Versus

Union of India & others

..Respondents

(Mr. Rajeev Kumar, Advocate)

O.A. No.2000/2018

Gajender Singh Yadav & others

..Applicants

(Mr. Rohit Sehrawat, Advocate)

Versus

Union of India & others

..Respondents

(Mr. Manjeet Singh Reen, Advocate)

**O R D E R (ORAL)**

**Justice L. Narasimha Reddy:**

91 applicants in O.A. No.3280/2014 and 180 applicants in O.A. No.2000/2018 were working as Inspectors in the Central Excise in the Delhi Zone, by the year 2014. Promotion from the post of Inspector is to the post of Superintendent, in the

Department. Under the Recruitment Rules (RRs), prevalent at that time, the eligibility was 8 years of standing in the post of Inspector.

2. Proposals were mooted in the Department for restructuring of the cadres, in the year 2011. Concrete recommendations were made in November 2013. The steps included addition of posts in certain cadres. In the Delhi Zone, quite large number of posts of Superintendent were added. The applicants procured a "Secret Note for Cabinet" dated 27.11.2013 by submitting an application under the Right to Information Act, 2005. According to paragraph 9.4 thereof, a suggestion was made to the effect that as a one-time measure, and in contemplation of amendment to the RRs, the additional posts in Groups 'A', 'B' & 'C' can be filled in accordance with the O.M. dated 31.12.2010 issued by the Department of Personnel & Training (DoPT), which stipulates that the promotion can be effected on completion of 2 years of service in the feeder category.

3. These two O.As. are filed with a prayer to declare the inaction of the respondents in determining the eligibility of the applicants for promotion to the post of Superintendent, Central Excise, in accordance with the DoPT O.M. dated 31.12.2010 as illegal and arbitrary; and to extend the promotion to the post of Superintendent, on the basis of the O.M.

4. The applicants contend that the Note submitted on 27.11.2013 was approved by the Cabinet in its entirety and despite that, no specific orders were issued, paving the way for implementation. It is also submitted that the respondents are under obligation to fill the newly sanctioned posts of Superintendent, in accordance with DoPT O.M. dated 31.12.2010.

5. On behalf of the respondents, separate counter affidavits were filed in both the O.As. According to them, the promotion to the post of Superintendent is governed by the RRs and an Inspector would become eligible for promotion to the post of Superintendent only on completion of 8 years of regular service. It is stated that when the RRs framed under proviso to Article 309 of the Constitution are in force, administrative instructions, even if issued, cannot override the Rules.

6. It is also stated that notwithstanding the proposal, that emanated at different stages, no specific decision was taken in the form of an order or circular providing for promotion to the post of Superintendent in any different manner.

7. Arguments in O.A. No.3280/2014 were advanced by Sri Bhoopendra Singh, applicant No.4 after seeking discharge of their counsel, Sri M K Bhardwaj. Arguments in O.A. No.2000/2018 were advanced by Sri Rohit Sehrawat, learned counsel for applicants. Sri Rajeev Kumar, learned counsel for respondents advanced arguments in O.A. No.3280/2014 and

Sri Manjeet Singh Reen, learned counsel for respondents advanced arguments in O.A. No.2000/2018. We heard both the parties at length and perused the records.

8. The issue is about promotion to the post of Superintendent, in Central Excise. According to the RRs, that were in force in the year 2014, eight years of regular service in the post of Inspector was necessary for promotion to the post of Superintendent. The relevant clause reads:-

“Promotion

Inspector of Central Excise (ordinary Grade) with 8 years regular service in the grade, if any, rendered in the grade of Inspectors (Senior Grade).”

9. As mentioned earlier, proposals were under consideration for restructuring of the cadres in the Department. At various stages, different suggestions were made. Ultimately, the comprehensive suggestions were submitted by the Cabinet in the form of a Note dated 27.11.2013. Paragraph 9 dealt with the approval, which is sought from the Cabinet. It reads:

“9. Approval Sought : Approval of the Union Cabinet is solicited for the following:-

9.1 Creation of additional 18067 posts in various Group ‘A’ (including 2118 JTS level Temporary posts), Group ‘B’ and Group ‘C’ posts, as approved by the Cadre Review Committee and indicated in the Annexure J. (Page No.53-55).

9.2 Filling up the new posts in the HAG+ level immediately with all the existing HAG level officers (Chief Commissioners) by placing them in the HAG+ directly, as permitted to CBDT. Thereafter, a DPC will be conducted to place these officers in the Apex Grade;

9.3 One-time relaxation from the extant IRS (C&CE) Recruitment Rules, 2012 for filling up 2118 Temporary posts at JTS level by promotion from feeder Group 'B' Gazetted grades, viz. Superintendent of Central Excise, Superintendent of Customs (Preventive) and Appraiser, for five years from the date of implementation of the Cadre Restructuring plan;'

9.4 As a one-time measure, permission for filling up the additional posts in Group 'A', 'B' & 'C' that are to be filled by promotion, on the basis of the guidelines on recruitment rules issued by DOP&T, pending amendment of the relevant recruitment rules, as permitted by CBDT (Annexure M) (Page 60-61);

9.5 One-time permission for filling up promotion quota posts in various grades by promotion on ad hoc basis;

9.6 One-time relaxation of clause regarding qualifying service, as prescribed in the DoP&T guidelines for recruitment rules, for filling up some posts in HAG+;

9.7 Incurring additional expenditure of Rs.774 crore per annum on account of cadre restructuring."

10. The applicants lay emphasis on paragraph 9.4, which is to the effect that as a one-time measure, permission for filling the posts of Groups 'A', 'B' & 'C', on the basis of the guidelines issued by the DoPT, may be accorded, pending amendment to the RRs. In other words, the proposal was to fill the posts not in accordance with the RRs, but on the basis of guidelines issued by the DoPT.

11. During the course of hearing, the applicants have placed before us the Resolution of the Cabinet, which is also called as

the “Secret Note”. The gist thereof is that the Note dated 27.11.2013 is approved. Assuming that there was an approval of the Note, which contains a proposal that suggests a different method for promotion, the implementation thereof would arise, only when a specific order is issued by the competent authority. The applicants made available to us, a copy of letter dated 18.12.2013 issued by the Central Board of Excise & Customs, Ministry of Finance, which indicated the steps to be taken, consequent upon the approval of the Note by the Cabinet. Paragraph 5 thereof reads:-

“5. All additional posts created in various other grades will also be filled up in accordance with the provisions of the relevant recruitment rules.”

12. From the perusal of this, it becomes clear that a conscious decision was taken to fill the additional posts also, in accordance with the existing RRs. It is not out of place to mention that the RRs are amended, as recently as on 05.08.2019. For promotion to the post of Superintendent, the residency period in the feeder category is reduced from 8 years to 2 years. It is also important to note that the applicants were promoted to the post of Superintendent during the pendency of these O.As., as and when they completed 8 years of residency period in the post of Inspector.

13. The entire claim of the applicants rests upon the clause contained in Note dated 27.11.2013. Assuming that it has been

approved by the Cabinet, there must exist an enforceable order passed by the competent authority, paving the way for implementation thereof. There are instances where the Executive orders, providing for method of recruitment, different from the one, contained in the RRs, were held to be inoperative in law.

14. The Hon'ble Supreme Court in **Union of India & others v. Somasundram Viswanath & others**, 1988 AIR 2255 has held as under:-

“It is well settled that the norms regarding recruitment and promotion of officers belonging to the Civil Services can be laid down either by a law made by the appropriate Legislature or by rules made under the proviso to Article 309 of the Constitution of India or by means of executive instructions issued under Article 73 of the Constitution of India in the case of Civil Services under the Union of India and under Article 162 of the Constitution of India in the case of Civil Services under the State Governments. If there is a conflict between the executive instructions and the rules made under the proviso to Article 309 of the Constitution of India, the rules made under proviso to Article 309 of the Constitution of India prevail, and if there is conflict between the rules made under the proviso to Article 309 of the Constitution of India and the law made by the appropriate Legislature the law made by the appropriate Legislature prevails.....”

15. When a method of recruitment is contained in the RRs, one just cannot contemplate promotion to a post in a different way, just on the strength of Cabinet Note or approvals, not followed by any specific order.

16. We do not find any merit in these O.As. They are accordingly dismissed.

There shall be no order as to costs.

**( Mohd. Jamshed )**  
**Member (A)**

**( Justice L. Narasimha Reddy )**  
**Chairman**

**August 29, 2019**  
**/sunil/**