

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**OA No.4426/2014
MA No. 3893/2014**

New Delhi, this the 26th day of September, 2019

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

1. Mr. R. K. Deo,
Son of Late Sahadeo Das,
Ages about 56 years,
Resident of
E-100, East of Kailash,
Ew Delhi – 110065
Presently posted as:
Assistant Commissioner,
Central Excise, Audit-II, Delhi,
Plot No. 31, 32, Sector-32, Gurgaon (Haryana)
2. Ram Adhar,
Son of Late Dhaneshwar,
Ages about 57 years,
Resident of
626/21C,
Faridabad,
Presently posted as:
Assistant Commissioner,
Custom (Prev),
New Custom house, IGI Airport,
New Delhi.
3. S. S. Josan,
Son of Shri. T. S. Josan,
Ages about 58 years,
Resident of
111-A, Pocket A,
MayurVihar Phase II,
Delhi
Presently posted as:
Assistant Commissioner,
Customs, ICD, Parparganj,
New Delhi.
4. Ram Baboo,

S/o Late Girand,
 Aged about 58 years,
 R/o F-112, Sector 56, Noida,
 Presently posted as:
 Assistant Commissioner,
 Regional Training Center,
 NACEN, Faridabad (H).

5. Pooran Singh Meena,
 S/o Late Sh. Beg Raj Meena,
 Aged about 56 years,
 R/o A-1/118, 2nd Floor, Janakouri,
 New Delhi,
 Presently posted as:
 Assistant Commissioner,
 Service Tax,
 Commissionerate Delhi -III,
 Delhi.
6. Amar Chand Meena,
 S/o Sh. Ram Shukla Meena,
 Aged about 54 years,
 R/o 9/743 Lodhi Colony, New Delhi,
 Presently posted as
 Assistant Commissioner,
 DG (System), Custom & Central Excise,
 Samraat Hotel, New Delhi.

...Applicants

(By Advocate: Mr. Sudarshan Rajan with Mr. Ramesh Rawat)

Versus

1. Union of India through the Secretary,
 Ministry of Finance, Department of Revenue,
 North Block, New Delhi.
2. The Chairman,
 Central Board of Excise and Customs,
 North Block, New Delhi.
3. The Chief Commissioner,
 Central Excise,
 (Delhi Zone),
 C.R. Building,
 I.P. Estate,

New Delhi.

4. The Commissioner,
Central Excise Delhi -I,
C.R. Building,
I.P. Estate,
New Delhi.

...Respondents

(By Advocate:Mr. Hanu Bhasker)

O R D E R (ORAL)

Justice L. Narasimha Reddy, Chairman:-

The applicants were appointed as Inspectors of Central Excise in the year 1979 and were posted in the Delhi Zone. In the year 1996, the Government decided to upgrade certain posts of Inspectors to the post of Superintendents. The eligibility was stipulated as 17 years of service in the post of Inspector. Mr. I.C. Joshi and 08 other Inspectors came on transfer to Delhi Zone on request and they were kept at the bottom of the seniority list. Initially, 09 Inspectors were promoted against the upgraded vacancies in the year 1996. Mr. I.C. Joshi and others felt aggrieved and instituted proceedings. In WP(C) No. 4005/1997 and batch the Hon'ble Delhi High Court took the view that the denial of promotion to Mr. I.C. Joshi and others on the ground that they were juniors in the cadre despite the fact that they had more than 17 years of service

was not correct; and the Writ Petition was allowed. The implementation thereof resulted in promotion of Mr. I.C. Joshi and others through order dated 21.11.2011 w.e.f. 30.09.1996.

2. The applicants herein were denied promotion at the time when the batch of 9 Inspectors were promoted. It was on the ground that they did not have the requisite 17 years of service to their credit by that time. They were promoted in 1997 on completion of 17 years of service. The applicants made a representation to the respondents claiming the promotion with effect from the date on which Mr. I.C. Joshi and others were promoted and for assigning them the seniority above Mr. I.C. Joshi and others. Through an order dated 21.04.2014, the respondents rejected the representation. It was mentioned that the applicant did not have the minimum eligibility to be promoted by 30.09.1996 and the question of antedating their promotion, much less the assignment of seniority over others, does not arise.

This OA is filed with a prayer to set aside the order dated 21.04.2014 and to direct the respondents to fix the seniority of the applicants above their respective juniors in

the cadre of Superintendent, and for extension of other consequential benefits.

3. On behalf of the respondents a counter affidavit is filed opposing the OA. An objection is raised as to the maintainability of the OA on the ground that necessary parties, namely, so called juniors of the applicants in the cadre of the Superintendent, are not made parties. It is also stated that the applicants were not promoted in the year 1996, since they did not have the requisite length of service to their credit. Various other grounds urged by the applicants are opposed by the respondents.

4. We heard Mr. Sudarshan Rajan with Mr. Ramesh Rawat, learned counsel for the applicant and Mr. Hanu Bhasker, learned counsel for the respondents.

5. The whole issue turns around the conditions that governed the promotions or up-gradation to the post of Superintendent and the eligibility and entitlement of the Inspector who came on request transfer, to another zone; to count their services in the earlier zone. The applicants were the Inspectors in the Delhi Zone from the beginning of their career. Mr. I.C. Joshi and others came to Delhi Zone on request and naturally they were shown at the bottom of the seniority list. The question, as to whether, the Inspectors

who came on request transfer from other zone can count their services in the parent zone in the context of deciding eligibility, was the subject matter of several proceedings in the courts. As of now, the law is that in the context of deciding eligibility, they are entitled to reckon their services in both the zones. At the same time, they have to respect the places assigned to them, in the seniority list of the zone to which they are transferred.

6. Had it been a case of ordinary promotion, the issue would not have posed any problem as such. The seniors in the zone were entitled to be promoted and juniors have to take their chance later. What has taken place in 1996 was the up-gradation of the post of Inspector. The important condition that was attached to that was that it is only the Inspectors with 17 years of service or more, that are entitled to be upgraded as Superintendents. In the context of identifying the officers for up-gradation, the deciding factor would be length of the service, but not their place, in the seniority list. An Inspector may have occurred fairly high in the seniority list but if he did not have the 17 years of service he has to be bye-passed. In contrast, if an Inspector is at the bottom of the seniority list, but has 17 years or more service, he has to be chosen.

7. Nine officers were upgraded at the first stage. The length of their service was less than that of Mr. I.C. Joshi and others. Therefore, they felt aggrieved. The department pleaded that Mr. I.C. Joshi & others were at the bottom of the seniority list and they cannot claim preferential rights but the High Court granted the relief to those Inspectors for promotion w.e.f. 13.09.1996.

8. The applicants were no doubt senior to Mr. I.C. Joshi and others, but, by 1996 they did not have 17 years of service. It is only in the next year, that they got the eligibility and were promoted. The applicants did not challenge the promotion of Mr. I.C. Joshi and others w.e.f. 13.09.1996 or denial of such benefit to them, at that stage. It is only after so much of development, that they came forward with a plea that they deserve to be placed above the Inspectors who were promoted with effect from the earlier date. It cannot be accepted in view of the settled position of law. Further, they did not implead the affected parties.

9. We, therefore, dismiss the OA. MAs, if any, shall stand disposed of. There shall be no order as to costs.

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

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

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