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Central Administrative Tribunal, Principal Bench

O.A. No. 1246 of 2003

New Delhi this the 5th day of June, 2006

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)
Hon'ble Mr. N.D. Dayal, Member (A)

1. Shri R.C. Kaushal
S/o Late Shri Ram Charan Kaushal
Sambhaji Colony, Morar,
Gwalior (M.P.).
2. Shri Kamal Bhanot
Inspector
Central Bureau of Narcotics,
U.1, Green Park Extension,
New Delhi-110 016.
3. Shri D. Bhattacharya
S/o Late Shri S.C. Bhattacharya
Quarter No.21, Type-IV,
Narcotics Colony,
19, The Mall, Morar,
Gwalior (M.P.).
4. Shri Chhote Lal (Sub-Inspector)
Son of Shri Bansi Lal
19, The Mall, Morar,
Gwalior (M.P.).

....Applicants

By Advocate: Shri Suresh Singh.

Versus

1. Union of India
through its Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi-110 001
2. The Chairman
Central Board of Excise and Customs,
North Block, New Delhi.
3. The Narcotics Commissioner,
Central Bureau of Narcotics, 19, the Mall, Morar,
Gwalior (M.P.).
4. O.P. Gupta
5. C.L. Verma
6. B.C. Gupta
7. S.L. Sharma
8. B.S. Jain

9. M.L. Malecha
10. P.T. Verghese
11. J.K. Srivastava
12. A.K. Garg
13. R.C. Srivastava
14. B.L. Cheepa
15. Y.K. Chaturvedi
16. B.S. Jayant
17. I.P. Godia
18. C.K. Jairath
19. M.L. Prajapati
20. A.K. Mishra
21. A.K. Gupta
22. Prahalad Meena, ST
23. K.L. Khagna, ST
24. Sylvester Xalxo, ST
25. B.R. Bhrube, ST
26. P.K. Shah, ST
27. Gauri Shankar
28. Achhaybar Yadav
29. D.L. Lalwani
30. R.N. Srivastava
31. Barkhuram
32. D.L. Prajapati
33. L.N. Sharma
34. Chhotelal Singh
All through
The Narcotic Commissioner, Central Bureau of Narcotics,
19, The Mall, Morar, Gwalior (M.P.). Respondents

By Advocate: Sh. A.D.N. Rao with Sh. Sachin Goyal, Counsel for respondents No.1 to 3.

ORDER

By Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

By filing the present OA, the applicants are seeking the following relief:-

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- (i) That respondents may be directed to prepare and finalise the seniority list of Inspectors in the Central Bureau of Narcotics on the basis of decisions/agreements and points discussed in joint meetings dated 7.11.2000 and 8.11.2000 and in the manner permissible under the law and consider the applicants 1 and 3 for further promotion to the post of Superintendent (Ex.) on the basis of the said seniority list by constituting a regular DPC for the said purpose.
- (ii) That respondents may be directed to give due seniority to the Inspectors promoted against 69 upgraded post of Inspectors according to upgradation norms and place them in the seniority list in bulk at one place instead of placing them in the seniority list in ratio on 1:1:1 by rotation between SIs, UDCs/Steno Grade-III and direct recruits.
- (iii) That respondents may be directed to fill up 69 upgraded posts of Inspectors by promotion only from the cadre of Sub-Inspector and resultant vacancies in the said upgraded posts of Inspectors after retirement/promotion/death of upgraded Inspector should be exclusively filled from the cadre of Sub-Inspector.
- (iv) The respondents may be directed to complete the process of augmentation and restructuring of Central Bureau of Narcotics without any further delay and review the quota of sub-Inspectors from 33.1/2% to 50%.
- (ivA) Seniority list of Inspectors in CBN as on 1.1.2003 including revised seniority list of 7.2.1984, 1.1.1993 and 31.12.1999 may be quashed and respondents 1 to 3 may be directed to prepare a fresh seniority list of Inspectors by giving/fixing due quota to all the three feeder cadres as per law, norms and decisions taken in joint meetings dated 7.1.2000 and 8.1.2000.

2. The allegation of the applicants, in brief, are as follows. The Central Bureau of Narcotics (CBN) is one of the branch of the Ministry of Finance (Department of Revenue), Government of India. The Narcotic Commissioner is the Executive Head of CBN and it functions under the overall control and supervision of Central Board of Excise and Customs. Earlier, Narcotics Department was divided into three units, namely, (i) Headquarter Unit at Gwalior; (ii) U.P. Unit and; (iii) M.P. and Rajasthan Unit and the said units were treated as a separate entity for the purpose of promotion and seniority. Prior to 1967, recruitment, seniority, confirmation and promotion of Class-III officers in the Narcotics Department were made on the basis of year-wise seniority up to the level of Head Clerk on administrative side and up to the level of Preventive Inspector/Gomashta/Factory Assistant on the executive side. This resulted in serious imbalance and anomalies in the career prospects of the employees of the three units in corresponding grades. Vide letter dated 1.5.1967, the respondent No.2 ordered that a common seniority list of three units be issued for the purpose of confirmation and promotion to higher grades. Accordingly, inter-se seniority of the permanent employees

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of the three units was to be arranged in the combined seniority list in the order of the dates of confirmation in the respective grades and in the case of temporary/officiating employees, their continuous service in the grade subject to maintenance of their inter-se seniority in the concerned unit has to be taken into consideration. But the combined seniority list on the basis of the date of confirmation resulted in various anomalies like an officer with longer service in a particular grade in one unit became junior to the officer with shorter service in the same grade in another unit. This issue was raised in the meeting of the Ministry of Finance and Departmental Council held in April, 1968.

3. In January, 1969, one Member Committee, namely, Shiv Nath Singh Committee was appointed, inter alia, to examine and review of organizational and administrative set up and structure in the Narcotics Department. Class-III officer in the Narcotics Department was bifurcated into two sides, viz. Ministerial and Executive. Prior to 6.6.1975 promotion up to the level of Head Clerk was from Ministerial Side, i.e., Upper Division Clerk and Stenographers Grade-III and up to the level of Inspector, Gomashta and Factory Assistant was from Executive Side, i.e., Sub-Inspectors (SI) and Kothi Moharrir. The sanctioned strength of Sub-Inspectors in the Narcotics Department was about 254 and of UDC and Stenographers Grade-III were about 84. Respondent No.2 considering the strength of feeder cadres to the post of Inspector issued letter dated 13.9.1960 fixing the ratio of 2:1 between SI and UDC including Grade-III Stenographers.

4. Shiv Nath Committee vide letter dated 6.6.1975 decided as follows:-

- (i) The executive cadres of Sub-Inspector and Kothi Moharrir should be amalgamated into one cadre of Sub-Inspector with common recruitment procedure. The reorganized post of Sub-Inspector shall be filled by 100% direct recruitment.
- (ii) The executive cadres of Preventive Inspector, Gomashta and Factory Assistant should be merged into one cadre to be designated as Inspector and the posts of Inspector will at present be filled 33.33% by promotion of Sub-Inspectors, 33.33% by promotion of ministerial staff, i.e., UDC and Stenographers Grade-III and 33.33% by direct recruitment.

5. The instructions contained in the said letter were to take effect from the date of its issue, i.e., 6.6.1975. Respondent No.2 vide letter dated 14.4.1969 advised respondent No.3 that pending receipt of recommendation of Shiv Nath Singh Committee, orders

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contained in letter dated 1.5.1969 should not be acted upon and to continue promotion and confirmation on the basis of unit wise seniority and the promotees be informed, in writing that promotions were liable to be revised and regulated in the light of final decision taken regarding rationalization of cadre. Even then the respondent No.3 failed to prepare combined seniority list of Inspectors working in Narcotics Department.

6. Respondent No.2 vide letter dated 16.11.1979 again clarified that prior to 6.6.1975 there was only 25% direct recruitment quota in cadre of Preventive Inspector, but there was no direct recruitment quota in the cadre of Gomashta and Factory Assistant. All earlier vacancies prior to 6.6.1975 in the grade of Inspector had to be filled by promotion among Sub-Inspector and UDC etc. in the ratio of 2:1 respectively and the vacancies to the post of Inspector after 6.6.1975 will be filled by rotation among Sub-Inspectors, ministerial officers and direct recruits in the ratio of 1:1:1 as per letter dated 16.11.1979, (Annexure A-2). In November, 1975 a Departmental Promotion Committee was constituted to consider/review the case of promotion to the post of Inspector. It did not consider the unit-wise promotions made during 1970 to 1973 but considered the unit-wise provisional/ad hoc promotions made in 1974. Thereafter, respondent No.2 issued a letter dated 28.6.1982 to respondent No.3 to look into the irregularities committed in the DPC held in 1975 and a review DPC was held. By Memorandum dated 7.2.1984, revised seniority list of Inspectors (OG) promoted from Sub-Inspectors and UDC/Stenographers Grade-III was circulated and it was mentioned therein that all vacancies between 1.6.69 to 6.6.1975 in the grade of Inspectors have been filled amongst Sub-Inspectors and ministerial officers in the ratio of 1:1 which is contrary to the instructions contained in the letters dated 6.6.1975 and 16.11.1979.

7. It was next contended that the Memorandum dated 7.2.1984 and seniority list circulated with the said Memorandum was challenged in the Madhya Pradesh High Court in Misc. Writ Petition No. 128 of 1984 titled Sankatha Prasad Vs. U.O.I. & Others. The said Writ Petition was allowed by order dated 30.10.1985 and the seniority list circulated with the Memorandum dated 7.2.1984 was quashed and set aside. Thereafter respondent No.2 filed LPA bearing No.64/85 against the aforesaid order. In the meantime, order dated 30.10.1985 was implemented in so far as writ petitioner Sankatha Prasad was concerned. At the time of hearing of the LPA, petitioners therein pointed out that certain

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other persons effected by seniority list of 1984 have filed cases before the Tribunal and the parties had agreed to, that the impugned order dated 30.10.1985 be limited to the case of Sankatha Prasad only and validity of seniority list of 1984 may be left open for further adjudication. A Division Bench of Madhya Pradesh High Court by order dated 2.2.1996 directed that without going into the merit of the matter, seniority list of 1984 shall be treated alive for proper contest.

8. It is also submitted that as a result of the reduction of quota of Sub-Inspectors for promotion to the post of Inspector from 2:1:1 to 1:1:1 vide order dated 6.6.1975 there was acute stagnation in the cadre of sub Inspector. The strength of Sub-Inspectors and UDC/Stenographer Grade-III in the Narcotics Department before 1975 was about 254 and 84 respectively. After 1975 the strength was about 244 and 80 respectively. The ministerial cadre had two channel of promotions as a result they stole a march over executive cadre in the matter of promotions. UDCs and Stenographers Grade-III with much lesser years of service became Inspectors while Sub-Inspectors who had rendered 15 to 20 years of service were not getting promotion as Inspector, which badly effected their efficiency. To remove this stagnation, respondent No.1 decided to reorganize the Narcotics Department and vide letter dated 23.2.1993, sanctioned strength in the Grades A, B, C and D posts in CBN was revised and 69 posts of Sub-Inspectors were upgraded to the level of Inspector and sanctioned strength of Sub-Inspectors was reduced from 244 to 160. In compliance of this letter dated 23.2.1993, a DPC for 69 posts of Inspectors was constituted and after recommendation of the DPC, 58 Sub-Inspectors were promoted to the post of Inspectors and for the remaining 11 posts, the incumbents could not be promoted as they were put under Sealed Cover.

9. The applicants also submitted that there were various discrepancies and illegalities in the seniority list of 1984 which applicant No.1 had challenged in his representation dated 24.9.1993, but no action could be taken on the said representation as the aforesaid seniority list is in dispute before the various courts. It was also submitted that the Principal Bench of this Tribunal vide order dated 2.2.1998 dismissed the T.As. No. 14 to 16 and 18 to 21 of 1988. It is also submitted that some vested interest in the office of respondent No.3 had been manipulating the records regarding promotions and seniority in the post of Inspector. The result was that firstly promotions to the post of

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Inspector between 1.5.1969 to 6.6.1975 amongst SIs, UDC/Steno Grade-III and direct recruits were made in the ratio of 1:1:1 inspite of clear provision that instructions dated 6.6.1975 were applicable from the date of its issue and secondly name of certain inspectors promoted from UDC/Steno Grade-III cadres and who had been transferred and/or absorbed in other departments were not shown in the seniority list of 1984 and 1993 for the purpose of depicting the quota of UDC/Steno. Grade-III. That mala fides in actions and decisions of respondent No.3 against the Inspectors are writ large as the respondent N0.3 has not given due seniority to the Inspectors promoted during 1971 to 1973 according to the quota applicable at the relevant time which has resulted various litigations challenging the seniority list of 1984. Further that persons promoted in bulk against 69 upgraded posts of Inspectors were also not given their seniority from the date of their promotions. It is also significant to point out that in Feburary, 1998, 184 Inspectors were working in the Narcotics Department against 170 sanctioned posts. It is admitted by respondent No.3 in letter dated 19.2.1998 written to the Under Secretary of respondent No.1 in reply to Ministry's letter dated 16.1.1998 that persons appointed as Inspector do not correspond to the number of posts. Reasons given by respondent No.3 for the said irregularity were misleading and mala fide. Respondent No.3 further sought clarification from the Ministry of Finance, Revneue Department of Government of India with regard to the placement of Inspectors promoted in bulk against 69 upgraded posts. Vide letter dated 12.3.1998 the respondent No.3 again requested respondent No.1 to clarify as to how 69 Inspectors from the grade of Sub-Inspector against upgraded post be arranged in the seniority list of Inspectors. The respondent N0.3 in a joint meeting dated 27.10.1998 decided to form a Committee to go into all the relevant records relating to DPCs, seniority etc. of Group 'C' and 'D' staff from 1984 onwards to suggest rectificatory actions to be taken in this regard.

10. The Committee submitted its report dated 24.9.1999 through R.C. Kaushal, Member and pointed out that all promotions to the post of Inspector between 1969 to 6.6.1975 should have been made in the ratio of 2:1:1 between SIs, UDCs/Steno and direct recruits respectively. It was pointed out in the said report that with the mala fide intentions to favour ministerial staff in giving seniority, names of certain persons promoted from UDC/Steno Grade-III in Inspectors during 1969 were transferred to other



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Departments, retired and expired were not included in the seniority list of Inspectors issued in 1984 and updated in 1983 giving more quota to ministerial cadres.

11. It is also submitted that the respondent No.3 vide letter dated 22.10.1999 circulated the report to the Committee to various bodies inviting their views. The respondent No.3 also decided to constitute a Special Review Committee to consider the report of Shri R.C. Kaushal. The respondent No.3 on the one hand constituted Special Review Committee and on the other hand Dy. Narcotics Commissioner (A&P) malafidely, arbitrarily and in colourable exercise of power issued draft seniority list as on 31.12.1999 of Inspectors appointed through three feeder cadres viz. SI, UDC/Steno Grade-III and direct recruits allowing objections against it to be discussed with him from 15th to 21st of May, 2000. The draft seniority list of Inspectors updated upto 31.12.1999 was nothing but only a compilation of old disputed seniority list of 1984 and 1993 which was issued without resolving the disputes raised against the said seniority list. The matter was discussed with by Dy. Narcotics Commissioner (A&P) many time in the presence of the officials of ministerial side but no final decision could be taken in the matter despite holding joint meetings between 18.9.2000 to 22.9.2000. In the meeting held on 11.10.2000 the irregularities were tried to be resolved by submitting charter of demands which had already been discussed in the previous meetings. Accordingly, charter of demands with arguments was submitted by Shri R.C. Kaushal on 13.10.2000 on behalf of the executive side. A reply to the said charter of demands was also submitted by office side on 7.11.2000.

12. In the meeting held on 7.11.2000 and 8.11.2000 at Gwalior under the Chairmanship of respondent No.3 to settle the disputes regarding seniority list of Inspectors in CBN, respondent No.3 decided the following issues:-

- (a) quota/ratio of 2:1:1 between SIs and UDCs and direct recruits respectively should have been adopted for filling up of vacancies to the post of Inspector between 1.5.69 to 6.6.1975.
- (b) Names of Inspectors promoted from ministerial cadres but transferred to Central Excise, retired, resigned or expired should be included in the seniority list.



(c) 69 upgraded posts of Inspectors should be filled only from the SI cadre. UDCs and direct recruits should not be given any share/quota in the said 69 upgraded posts of Inspectors. Respondent No.3 should request respondent No.1 to clarify the same.

(d) The decision of this Tribunal in the case of U.K. Verma and Others does not relate to the quota of SIs and accordingly Dy. Narcotic Commissioner (A&P) was asked to review the matter in the light of discussions and decision taken in the said meeting and rectify the irregularities in due course.

(e) Quota/roster should be vacancy based and should not be cadre based as has been done by CBN.

(f) In view of the tremendous stagnation in the cadre of SI, the quota of SIs in promotion be increased from 1:1:1 to 2:1:1.

13. The applicants next contended that the respondent No.3 vide letter dated 27.3.2001 requested the Directorate of O&M Services, Customs and Central Excise for early decision by respondent No.1 on the cadre of restructuring/review of Group 'B', 'C' and 'D' staff in the CBN. It may also be mentioned that seniority list of Inspectors in CBN is not being finalized inspite of the decision taken by the respondents in the meetings held on 7.11.2000 and 8.11.2000. In fact, no seniority list has been issued after 1993. Proposed seniority list of Inspectors was issued in 1999 and objections if any were invited from the concerned parties against the said proposed seniority list. After various discussions and joint meetings, no final seniority list has been issued after removing the discrepancies and irregularities in the light of decisions taken in the meetings held on 7.11.2000 and 8.11.2000. Respondent No.3 published seniority list of Inspectors in CBN as on 1.1.2003 without considering the objections of applicant No.1 and without affording any opportunity of hearing and, therefore, the said action of respondent No.3 is against the principles of natural justice. The said seniority list is nothing but only a copy of provisional/draft seniority list as on 31.12.1999 issued vide letter dated 27.4.2000. The seniority list as on 1.1.2003 has been prepared without implementing the decisions of Narcotic Commissioner as agreed in Joint Meetings held on 7.11.2000 and 8.11.2000. It simply updated as on 1.1.2003 by adding few names drawn the list.

14. According to the applicants the seniority list dated 1.1.2003 is bad and is liable to be quashed on the following grounds:-

Ans

(a) Respondent No.3 has followed wrong roster/quota between the period 1.5.1969 to 6.6.1975 for filling up the posts of Inspectors in CBN by promotion from the cadre of Sub-Inspectors and ministerial officers (UDC/Steno III) in ratio of 1:1 instead of 2:1. The result was that UDC/Steno III much junior having lesser number of years service in the grade have been promoted as Inspector and became senior in the grade of Inspector whereas Sub-Inspectors who have much senior and having more number of years service in the grade of Sub Inspector were/are not getting chance of promotion to the post of Inspector.

(b) As per letter dated 10.3.1993 the sanctioned strength of Inspectors was increased from 101 to 170 by upgrading 69 posts and surrendering 84 posts of Sub Inspectors. The upgraded 69 posts of Inspectors were to be filled from the cadre of Sub-Inspectors only. Respondent No.3 vide letter dated 8.12.2000 decided that PBR upgraded 69 posts should be shown separately and roster/quota should be maintained against original strength. The said 69 posts should be kept reserved for filling up by promotion from the cadre of Sub-Inspectors as and when any upgraded Inspector is retired/expired or promoted. The decision has not been followed.

(c) Seniority list as on 1.1.2003 indicates that out of 69 upgraded posts of Inspectors, only 56 or 57 posts were filled by the DPC of 1993-94 and remaining 12 posts were left unfilled for the reasons best known to respondent No.3. Further 5 Scheduled Tribe candidates, namely, Prahlad Meena, K.L. Kanga, Sylvester Xaxlo, B.R. Dhruve and P.K. Shah shown at S.No.291 to 295 were much junior to the applicant No.3 but have become senior in the present seniority list. Applicant No.3 was at S.No.95 in the seniority list of Sub-Inspectors as on 1.1.1993 and aforesaid 5 Scheduled Tribes candidates were at S.No.149, 151, 152, 155 and 170 respectively in the said seniority list of Sub Inspectors. There cannot be reservation in up-gradation promotions and the said promotions has to be as per seniority subject to rejection being unfit. A true copy of the correct seniority list of Sub-Inspectors as on 1.1.1993 is annexed as Annexure A-29.

(d) That while fixing the quota to the vacancies to the post of Inspectors, for various categories of posts in feeder cadre, various Inspectors from the ministerial side, i.e., UDC/Steno-III who were either transferred to other departments, resigned, retired, have not been included in the seniority list. The names of such persons have already been

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detailed in the representation of applicant No.1 dated 24.9.1993. Similarly names of certain persons promoted as Inspector from the Executive Side, i.e., Sub-Inspectors but subsequently reverted, have been included with ulterior motives. In this view of the matter, fixation of quota for various categories in the feeder cadre is illegal, arbitrary and has been done with colourable exercise of powers.

(e) That in the case of Barkhoo Ram Vs. Union of India in CWP No. 6826 of 1999, Division Bench of the Hon'ble Delhi High Court has held that there was not valid ground and/or reason to hold review DPC 1998 to reconsider the promotions made by Regular DPC and, therefore, UDCs and Steno-III from Serial No.298 to 337 in the present seniority list could not have been given in the seniority on the basis of the recommendations of the Review DPC in 1998. Further S/Shri M.L. Prajapati (Sl.No.231), A.K. Tulsidasan (Sl.No. 314), L.P. Ojha (Sl.No.316) and K. Saxena (Sl.No.318), who were not selected by Regular DPC, cannot be given seniority on the basis of Review DPC of 1998.

(f) The present sanctioned strength of Inspectors in CBN is 170 including 69 upgraded posts. The executive cadre (SIs) is entitled to 103 posts (69+34=103), the ministerial side and direct recruits are entitled to 34 posts each. As per seniority list of working Inspectors, the working strength is only 148. Out of 148, 66 are from SI cadre, 37 are from UDC/Steno cadre and 45 are from direct recruits. The mala fide and arbitrary action of respondent No.3 is clearly visible from the aforesaid act. As per quota of the aforesaid three feeding cadres, full quota and even more has been given to ministerial side and direct recruits by SI cadre has been denied their full quota.

15. It is next contended that as per Recruitment Rules, as amended by Notification of respondent No.3, dated 27th June, 1984, vacancies in the grade of Superintendent and DOO are to be filled by promotion failing which by transfer on deputation in view of the said Recruitment Rules respondent No.3 is bound to fill up the vacancies in the post of Superintendent firstly by promotion from the cadre of Inspector in CBN and it is only if no suitable candidate is available that the said vacancies can be filled by transfer on deputation. The respondent No.3 vide circular dated 2.3.2001 invited applications for filling the vacancies in the grade of Superintendent on deputation basis without first trying to fill the vacancies by promotion from the cadre of Inspectors working in CBN.

Ans.

The respondent No.1 in exercise of powers under Article 309 of the Constitution and in suppression of Narcotics Department (Group 'B' Posts) Recruitment Rules, 1984 framed Central Bureau of Narcotics (Group 'B' Posts) Recruitment Rules, 2001 published in the Gazette of India on 19th July, 2001. As per these rules, persons working as Inspectors in Central Excise with 3 years service in the grade are eligible for deputation to the post of Superintendent in CBN but person working as Inspectors in CBN with more number of years of service are not allowed to go on deputation in Central Excise and Customs even on the same post. Duties assigned to the Inspectors and Superintendents are more simple than the duties assigned to incumbents working in CBN. Persons working in Central Excise and Customs have no experience in monitoring of illicit opium cultivation including issue of licences for poppy cultivation measure, test measurement and transportation of opium to opium factories etc.

16. The applicants next contended that on 31.8.2002 there were 5 vacancies to the post of Superintendent three vacancies to the post of DDO in Group 'B' and about 35 vacancies to the post of Inspector in Group 'C' cadre in CBN/CCF. Here it may be mentioned that applicant No.2 was promoted as Inspector in 1993 due to upgradation of 69 posts of SIs and is still waiting his next promotion to the post of Superintendent because of disputes with regard to seniority list inspite of specific agreement in joint meetings dated 7.11.2000 and 8.11.2000. Similarly applicant No.3 was promoted as Inspector 1994 is also waiting for his next promotion due to same reason.

17. Lastly the applicants have submitted that the applicants have no other effective and efficacious remedy against the impugned action of respondents in not preparing seniority list of Inspectors in CBN and the respondents are unnecessarily delaying augmentation and restructuring of CBN on one pretext or the other, therefore, it is prayed that the OA be allowed.

18. The respondents contested the OA by filing the counter-reply. They have pleaded that prior to 1.5.1967 the Narcotics Department was trifurcated into 3 self-contained administrative units, namely, (i) Headquarters office at Gwalior (ii) U.P. Unit and (iii) M.P. & Rajasthan Unit. They were treated as separate entities for personnel and establishment activity, including employment, promotion and seniority. Each had its own seniority list and chances of further promotion depended entirely on vacancies available

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at a particular time in that unit. Thus, the promotion prospects were not at par and comparable amongst these units leading to anomalies that in one unit even a junior could rise to senior rung before his senior contemporaries in other units.

19. The Central Board of Excise and Customs in order to rectify the anomalies by letter dated 1.5.1967, inter alia, directed the Narcotics Department to unify their Ministerial and Executive cadres for purposes of Seniority, confirmation and promotion by drawing common seniority list on the basis of dates of confirmation in cases of permanent employees and length of service/order of merit in case of temporary and officiating employees. This, however, lead to a situation where prospects of confirmation varied from unit to unit and accordingly, ministry decided to examine the matter further.

20. A one man committee comprising of Shiv Naubh Singh was asked to look into the matter and meanwhile, the Ministry issued directions vide letter dated 15.4.1969 advising the Narcotics Commissioner not to act upon their letter dated 1.5.1967 and to continue to make promotions, confirmation as it existed before 1.5.1967, i.e., Unit Wise. It was also submitted that while the question of rationalization of various cadres was under its active consideration, promotions could continue (a) according to the existing regulations, (b) on provisional basis and (c) the persons promoted thus be informed in writing that the promotion were liable to be revised and regulated in the light of final decision regarding rationalization of cadre. These ad hoc promotions would not count for the purpose of seniority in respective grades or the purpose of computing the minimum qualifying service for becoming eligible for promotion to higher grades. Therefore, till Shiv Naubh Committee made its final recommendations all promotions were made on ad hoc/provisional basis during the period from 1969 onwards.

21. It is next submitted that on 6.6.1975 on the basis of the request of Shiv Naubh Committee, Central Board of Excise and Customs issued directions for determination of seniority in the ratio of 1:1:1 besides the earlier condition of promotion to Inspector as per CBEC's letter dated 4.3.1971 (it was 5 years both for promotion from SIs and UDCs) from UDC/Stenos Grade and SIs on the basis of 3 years service in the grade of Sub-Inspector and 5 years in the grade of UDCs. The DPC dated 21.11.1975 was accordingly held to regularize all ad hoc/provisional appointees prior to 6.6.1975. This meant that all promotions in the grade of Inspectors had been ad hoc before 6.6.1975. A Review DPC

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was held as a consequence to representation made to the Board by S/Shri M.C. Dhawan, P.S. Sachdeva, R.L. Goyal and H.C. Punshi regarding DPC dated 21.11.1975 on the ground that the DPC did not consider the ad hoc provisional appointment cases of Inspectors for the period 1970-73 and had only considered the ad hoc/provisional promotee cases of the year 1974 and the ad hoc promotee/provisional cases of the earlier years from 1971 onwards had been taken as regular. After the review DPC held on 7/8.12.1983 rectified the mistakes of 1975 DPC a Memorandum dated 7.2.1984 regarding seniority list of the Inspectors was issued.

22. The respondents next contended that the Writ Petition filed before the Hon'ble Madhya Pradesh High Court by Shri Sankatha Prasad impugning the seniority list of 7.2.1984 was disposed of with the following directions:-

“In the result, the petition is allowed to the extent stated below. The seniority list produced as Annexure P-6 is quashed and set aside and it is directed that the petitioners shall be shown as senior to the respondents 4 to 26 in the Cadre of Preventing Inspectors and further promotions shall be dealt with accordingly, giving due weight to the seniority to the extent it is considered relevant. It is unnecessary to call upon respondents 1-3 to re-draw the seniority list. Let an order in the nature of mandamus be issued directing the respondents 1-3 to assign seniority to the petitioners over the respondents 4-26. Seniority list shall stand re-drawn as herein indicated”.

23. On 4.2.1986, a seniority list was re-drawn and circulated amending the seniority list dated 7.2.1984 in view of the above order. Thereafter a Letters Patent Appeal No.64/1985 was filed by Central Bureau of Narcotics against the order dated 30.10.1985 so vide order dated 8.11.1986, the seniority list circulated on 4.2.1986 was kept in abeyance. But the LPA was finally disposed off on 2.2.1996 extending the benefit of the order dated 30.10.1985 only to Shri Sankatha Prasad, the applicant in WP No.128/1984. However, it was mentioned therein that the benefit granted to Shri Sankatha Prasad was not to be a binding precedent for other employees.

24. This Bench of the Tribunal had an occasion to deal with the issue and interpret the orders dated 30.10.1985. In para 17 of the order passed in OA No. 1395/1988, the Tribunal had held as follows:-

- (i) The order of the Madhya Pradesh High Court in the Writ Petition has been passed in personam and not in rem.
- (ii) It had a limited effect of giving relief only to Shri Sankata Prasad.
- (iii) That the seniority list dated 7.2.1984 had not been quashed in its entirety.

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(iv) That the order never called upon the Department to redraw the entire seniority list as it was held to be unnecessary.

25. In accordance with the liberty granted by the Madhya Pradesh High Court the matter was pursued by other effected employees. By order dated 9.3.1995 the Tribunal dismissed the OA on the ground of bar of limitation for non-joinder of necessary parties and that the benefit of the final order in LPA 65/88 would be available to applicants as also other orders passed, if any, in pending Transfer Applications in the impugned matter. The Tribunal also made it clear that the seniority list once drawn should not be disturbed even after 3-4 years as held in the case of K.R. Mudgal Vs. R.B. Singh, AIR 1986 SC 2086. The said order also disposed off various other OAs such as OA No. 1394/88, OA No. 1395/1988, OA No. 1396/1988, OA No. 1397/1988. At that time, seven TA Nos. 14, 15, 16, 18 – 21/1988 were pending. They were dismissed by order dated 2.2.998. It was held that applicants knew that promotion was on ad hoc/provisional basis, when such ad hoc/provisional promotion order were issued in 1971 no body raised objection so the applicants shall be deemed to have acquiesced to a situation that seniority was not taken as final, none of the applicant was eligible for regular promotion as none had completed requisite 5 years service in 1971. As such the present OA is hit by the principles of res judicata and also that the present OA was not filed within the limitation prescribed and as such is liable to be dismissed.

26. The respondents next contended that the oblique motive of the applicants is clear from the fact that the answering respondent had on 25.7.2002 issued an OM declaring the provisional seniority list of Inspectors as issued vide Memorandum dated 14.9.1993 as final. Objections were also invited and this fact was brought to the notice of the Tribunal and the Tribunal was pleased to direct/permit the respondents to go ahead and finalize the seniority and publish the same but shall not pass any promotion orders. The applicants herein without raising any objections have on the contrary written to the Department that it would not be appropriate for the respondents to decide the matter on the pretext of a representation dated 24.9.1993 which stood rejected by virtue of the orders of the Tribunal mentioned above. It would not be out of place to mention here that in compliance of the orders of the Tribunal dated 30.7.2003 the seniority lists have been finalized on 13.8.2003 as during the relevant period, no objections have been received.

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27. The only regular DPC was held on 7/8.12.1983 for rectification of mistakes of 1975 DPC. As per recruitment rules dated 25.4.1979 the ratio of promotion between Sis, UDCs and DR prescribed was 1:1:1. So the seniority list dated 7.2.1984 was fully legal.

28. As regards upgraded 69 posts of Inspectors it is submitted that it was one time measure and could not be treated separate posts to be filled in only by promoted SIs. They were to be filled in as per Recruitment Rules 1979 and no executive order could override the statutory rules.

29. The next contention of the respondent is that no final seniority list has been issued after removing the alleged discrepancies and irregularities in the light of the decisions taken in joint meetings held on 7.11.2000 and 8.11.2000. Promotions of Inspectors in the higher grade to the post of Superintendents are held up because of action of respondents. The present application has been filed on the ground that after receipt of Notice in the present OA respondent No.3 with mala fide intentions to overreach this Hon'ble Tribunal and in colourable exercise of power, issued Memorandum dated 25.7.2003 and declared that provisional seniority list issued vide Memorandum dated 14.9.1993 is final. It is submitted that once a seniority list is issued the grievance of the applicants stand redressed and no further orders are called for. As such the OA deserves to be dismissed.

30. In the rejoinder the applicants have reiterated their own case and controverted the pleas raised by the respondents.

31. We have heard the learned counsel for the parties and perused the relevant record.

32. At the outset, the learned counsel for the applicants has stated that applicant No.1 Shri R.C. Kaushal has retired from service and he is not interested in proceeding with the matter any further. He has also submitted that the respondent No.4 has also been promoted to the post of Inspector and is no more interested in pressing this OA. The learned counsel for the respondents has stated that the respondent Nos. 2 and 3 had joined the service in July, 1976 and they cannot question the seniority prior to their joining in those grades and that respondent No.2 even otherwise has got his post in the upgraded list, so his grievance does not survive.

33. Before examining the controversy about the determination of the seniority in the feeder grades for promotion to the post of Inspector in the Narcotics Department, a few

relevant facts may be recapitulated. Prior to 1.5.1967, this department was divided in three self contained administrative units, namely, (i) Headquarters office at Gwalior (ii) U.P. Unit and (iii) M.P. & Rajasthan Unit. These units had separate entity for personnel and establishment activities, including employment, promotion and seniority. The Class-III personnel in the Narcotics Department were divided into Ministerial cadre and Executive Cadre and prior to the issue of the instructions by the Central Board on 6.6.1975 promotion up to the level of the Head Clerk was from the Ministerial side, i.e., Upper Division Clerk (UDC) and Stenographer Grade-III and up to the level of Inspector, Gomashta and Factory Assistant were from the Executive Side, i.e., Sub Inspectors (SI) and Kothir Moharrir. As per the allegation of the applicant, which has not been controverted by the respondents, the sanctioned strength of the Sub Inspector in the Department was about 254 and of UDC and Stenographer Grade-III was about 84. The applicants have also stated that the ratio of promotion between SI and UDC (including Grade-III Stenographer) to the post of Inspector was 2:1 fixed by letter dated 13.6.1960. Each unit had its own seniority list and chances for further promotion depended on availability of vacancy in that unit so the promotional prospect of the employees of these units also varied. This led to an anomaly. In one unit, the employees with shorter length of service had risen to the higher ladders in the hierarchy as compared to their contemporaries in other units. The Central Board of Excise and Customs (Central Board) in order to rectify the anomaly by letter dated 1.5.1967 decided to unify the Ministerial and Executive Cadre for the purpose of seniority, confirmation and promotion by drawing a common seniority list on the basis of the date of confirmation in the case of permanent employee and length of service/order of merit in the case of temporary and officiating employee. Since the prospect of confirmation varied from unit to unit, the Government decided to get the matter examined by a Committee headed by Shiv Naubh Singh. The Ministry also issued a letter on 15.4.1969 asking Narcotics Commissioner not to act upon the letter dated 1.5.1967 and to continue to make promotions/confirmation as before 1.5.1967, i.e., Unit-Wise. In 1970 it was directed that till Shiv Naubh Singh Committee submitted its report on unification and rationalisation of various cadres, the promotion may be made as per the existing regulation provisionally stipulating that the promotions were liable to be revised and regulated in the light of the final decision taken

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in the matter. Accordingly, certain promotions from the Ministerial as well as Executive cadre were made to the post of Inspector between 15.4.1969 to 6.6.1975.

34. Shiv Naubh Singh Committee had submitted its report in 1970. Based on this report of the Committee, the Central Board had issued directions by letter dated 6.6.1975. The salient features of these directions were that the Executive Cadre of Sub-Inspector and Kothir Moharrir was amalgamated into one cadre of Sub Inspector with common recruitment procedure and the reorganized cadre of Sub Inspector was to be filled up 100% by direct recruitment. Further, the Executive Cadres of Preventive Inspector, Gomashta and Factory Assistant was merged into one cadre to be designated as Inspector and the said post was to be filled in the ratio of 1:1:1 by promotion of 33.33% of Sub Inspector, 33.33% by promotion of Ministerial staff, i.e., UDC and Stenographers Grade-III and 33.33% by direct recruitment respectively. These instructions came into force from 6.6.1975. As observed above, certain promotions from the two cadres of Ministerial and Executive were made to the post of Inspector between 1.5.1969 to 6.6.1975. In November, 1975, a Departmental Promotion Committee considered the promotions made to the post of Inspector in the year 1974 only. Accordingly, a review DPC was convened vide letter dated 28.6.1982 to remove the mistake pointed out by some employees that the appointments made between 1969 and 1975 were considered as regular promotion.

35. Thereafter, vide Memorandum dated 7.2.1984 a seniority list of Inspectors who were promoted from the feeder grade of Sub Inspectors and UDC/Stenographers Grade-III was issued. The correctness and legality of this seniority list was challenged by some employees including one Shri Sankatha Prasad in Writ Petition No.128/1984, i.e., Sankatha Prasad Vs. U.O.I. & Others filed before the Madhya Pradesh High Court. The High Court quashed the seniority list and directed Sankatha Prasad and others to be given seniority above certain respondents in the writ. In 1986, the respondents issued a revised seniority list but the same was put in abeyance as a LPA No. 64/1985 was filed against the order of the learned Single Bench. The LPA was disposed off on 2.2.1996 by the Division Bench limiting the benefit of the order of the Single Bench to only Sankata Prasad who had since sought voluntary retirement and had been given the benefit of the order. The Bench left the seniority list dated 7.2.1984 open to challenge in view of the

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pendency of some OAs assailing the seniority list which was pending before the Benches of this Tribunal at that time. At the time of the decision of the TA No. 14 to 16 and 18 to 21 of 1988 titled **Raj Kumar Menon and Others Vs. U.O.I. & Others (TA No.14 of 1988)**, other T.As (copy of the order Annexure A-10 to the OA), were pending. These seven T.As. were decided by the Principal Bench of the Tribunal by a common order dated 7.2.1988. The opening paragraph of the order disclosed that the applicants therein were assailing the revised seniority list dated 7.2.1984 of the post of Inspectors (OG) and sought a direction that the respondents should not act upon it. The Tribunal dismissed all these T.As.

36. The seniority list of Inspectors dated 7.2.1984 was issued determining the inter-se seniority of the employees appointed as Inspectors from feeder cadres and direct recruits. The Ministerial, Executive cadre as well as direct recruits were placed therein in the ratio of 1:1:1 as provided in the Recruitment Rules for the post of Inspectors which were issued on 25.4.1979. The main contention of the applicants who belonged to Ministerial cadre is that the Central Board's directions dated 6.6.1975 were prospective in application and, therefore, the regular promotions form the Ministerial and Executive Cadre between 1.5.1969 to 6.6.1975 ought to have been in the ratio of two from the cadre of Sub Inspector and one from the cadre of Executive and one from the direct recruitment as per the circular of 13.6.1960 and in accordance with the Ministry's Circular dated 6.6.1975 in the ratio of 1:1:1. Conversely, the contention of the respondent is that the promotions between 1969 and 1975 were purely provisional made with a clear stipulation that they would not confer any legal right to seniority in the grade of Inspector, therefore, these promotions were rightly made in the ratio provided in the Ministry's circular dated 6.6.1975 and the Recruitment Rules of April, 1979 in the ratio of 1:1:1 and there is no legal basis for the applicant to challenge it.

37. Primary contest in the present proceeding is to the seniority list dated 7.2.1984. The order of the Hon'ble Division Bench of Madhya Pradesh High Court in LPA No.64/1985 dated 2.2.1996 has left the contest to the seniority list open as a number of OAs were already pending before the Tribunal challenging the said list. In 1993, the respondent issued a provisional seniority list which on consideration of the objections/representation filed against it was confirmed in 2003 as on 1.1.2003. This is

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also under challenge. When the seniority list dated 1.1.2003 was issued, the applicant sought an amendment in the OA and specifically challenged that list along with the list dated 1984. They also submitted another provisional seniority list dated 31.12.1999 which stands merged in the list 1.1.2003. The respondents had further issued another seniority list dated 1.2.2004. Since it was issued during the pendency of the OA, the validity of the said list being based on seniority list dated 1.1.2003 was allowed to be assailed in the present proceeding. Accordingly, all these seniority lists which are based on seniority list dated 7.2.1984 with slight modification in view of the intervening development and the DPC recommendations etc. are under challenge in the present proceedings. The basic dispute is as such about the correctness and validity of the seniority list of 1984. As subsequent lists are primarily based on this list, the question for consideration is whether it is open to the applicant to challenge this list by filing this OA in 2003 and whether the inter-se seniority of the Ministerial and Executive Cadre has not been correctly determined in this list.

38. Broadly, the Recruitment Rules for the post of Inspector which fixed the ratio for promotion from the Ministerial, Executive and Direct Recruitment in the ratio of 1:1:1 had come into force in April, 1979. They were prospective in their application. The ratio of promotion from three streams would thus also be as per these rules from the date on which these Recruitment Rules were given effect to.

39. The Board's directions fixing the ratio of promotion between the Executive, Ministerial and Direct Recruit vide circular dated 6.6.1977, based on the recommendation of Shiv Naubh Committee was also prospective in application and thus came into force on 6.6.1975. The settled law is that the promotions and the inter se seniority has to be determined as per the Recruitment Rules and in their absence, the service regulations and instructions issued by the department in this regard.

40. The first question is whether the applicant can be allowed to challenge the seniority list of 7.2.1984 after almost 19 years of its issue. Admittedly, the list of 1984 though quashed in the Writ Petition No. 128/1984 by order dated 30.10.1985 and the Writ Petitioners were given seniority above certain respondents in the Writ but the operation of the order dated 30.10.1985 remained stayed in LPA No.64/1985 which was filed on 25.11.1985. The LPA was disposed off on 2.2.1996. The order dated

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30.10.1985 was set aside leaving the benefit of that order to be given to Sankathya Prasad who had in the meantime voluntarily retired. The contest to seniority list dated 7.2.1984 was also left to be decided in the pending proceeding before the Tribunal. In view of the order passed in the LPA 64/1985 on 2.2.1996 the seniority list dated 7.2.1984 revived. The applicants who were aggrieved by fixation of the inter-se seniority of the different feeder grades promoted to the cadre of Inspectors did not challenge this seniority list firstly within one year from the date of its issue nor did they challenge it within one year from the date on which the order in the LPA was passed on 2.2.1996, in accordance with the sub-section (1) of Section 21 of the Administrative Tribunals Act, 1985. The applicants have, in fact, not given any explanation for keeping quiet for such a long time. Assuming that they were waiting for the outcome of the original applications, which were pending on 2.2.1996 and which were referred to by the Hon'ble Division Bench in its order, those OAs bearing TA Nos.14, 15, 16, 18 to 21 of 1988 were also dismissed on 2.2.1998. Counting the period of one year prescribed in sub-section (1) of Section 21 of the Administrative Tribunals Act, 1985 from that date also the present OA which was filed in 2003 is clearly beyond the period of limitation. There is no explanation why filing of the present OA challenging the seniority list of 1984 was delayed further after 1998. The OA challenging seniority list of 1984 also suffers from gross delay and laches. Indeed the provisional seniority lists were issued in 1993 and 1999 and the objections and representations against them were submitted and the final seniority list based on provisional seniority lists of 1993/1999 was issued on 1.1.2003. That list has been challenged within the time prescribed under sub-section (1) of Section 21 of the Administrative Tribunals Act, 1985. Same would be in respect of the seniority list issued in 2004 during the pendency of the present proceeding. The challenge to the list of 2003 and 2004 would, thus, not be barred by any limitation.

41. But the fact remains that provisional seniority lists of 1993, 1999 and final seniority lists of 2003 and 2004 are on the basis of the inter-se seniority fixed vide seniority list dated 7.2.1984. For the reasons stated above, it would be not possible to disturb the seniority list dated 7.2.1984 in the present OA. However, the validity of the seniority list of 2003 and 2004 may be examined in the present OA to the extent possible.

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42. On merit also we do not find that the grounds on which the seniority list of 1984 is challenged in the present OA are untenable. Admittedly, the promotions which were made between 1969 and 1975 were purely provisional on ad hoc basis and did not confer any legal right to the seniority on the promotees as per the promotion orders and the administrative instructions issued soon after Shiv Naubh Committee was constituted in 1969. According to the applicants, the quota for promotion from the grade of Sub Inspectors, UDC (Stenographer Grade-III) and direct recruitment was fixed at 50%, 25% and 25% vide Central Board's letter dated 13.9.1960, copy of which has been filed as Annexure A-26 with the rejoinder. The applicants themselves have filed a copy of the Board's another circular dated 6.6.1973 which is at page 210 of the file and has been filed along with the rejoinder which stated that the post of Inspector (as reorganised) will, for the present, be filled 33.1/3% by promotion of Sub Inspector, 33.1/3% by promotion of ministerial officers and the remaining 33.1/3% by direct recruitment. The same document also reproduced, a copy of the memorandum dated 7.2.1984 which stated that the promotions made during the years 1970 to 1973 on the basis of unit wise seniority were not reviewed by the DPC held in November, 1975 which was against the Board's letter dated 6.6.1975 so as ordered by the Board, all the past cases of promotion to the grade of Inspector (OG) pertaining to the period 1.5.1969 to 6.6.1975 were reviewed by a duly constituted DPC to set right the irregularities in the light of the instructions issued by the Board in consultation with the Department of Personnel and Administrative Reforms and that the seniority in the grade of Inspector (OG) has been recast in accordance with the position assigned by the review DPC for promotion from the grade of UDC/Stenographer Grade-III vis-à-vis Sub Inspectors and all vacancies prior to 6.6.1975 (i.e. from 1.5.1969 to 6.6.1975) in the grade of Inspector (OG) were filled by promotion from amongst the SIs and ministerial officers in the ratio of 1:1 and their inter se seniority was arranged likewise and that the seniority of Inspector (OG) appointed against the vacancies arisen after 6.6.1975 has been reckoned in the ratio of 1:1:1 earmarked for Sub-Inspectors, UDC/Stenographers Grade-III and direct recruits respectively. These documents have explained as to how the ratio of the inter-se seniority in the ministerial and the executive cadres and the direct recruits came about. According to the applicants, the ratio of the

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promotions between the three streams the Sub-Inspector, UDC (including Stenographers Grade-III) and direct recruitment was fixed by an administrative order dated 13.9.1960. There were no Recruitment Rules framed under Article 309 of the Constitution of India prior to 1979. Therefore, the ratio which was fixed by memorandum dated 13.9.1960 could be altered and modified by any administrative order. As observed above, the promotions between 1.5.1969 and 6.6.1975 did not confer any legal right on the officers who are promoted from the different streams, from the Ministerial/Administrative grades because they were purely provisional and were made with clear stipulation that they would not vest any legal right in the promotion and in the seniority. First DPC was held in November, 1975 to consider the promotions which were made in 1974 but it did not take into consideration the promotions which were made between 1.5.69 to and 1973. Another review DPC was held in 1982 which considered all these promotions. The recommendations for promotions made between 1.5.1969 to 6.6.1975 and the inter-se seniority, were accepted and given effect to by the Government. The ratio of the promotion between Ministerial and Executive cadre was fixed in the ratio of 1:1. It is also an administrative order in modification of circular dated 13.9.1960. The controversy about the ratio fixed and the seniority of the officers promoted between 1.5.1969 and 6.6.1975 was also raised, considered by the Tribunal in TA No, 15, 16 and 18 to 21 of 1988. The dispute was also raised against seniority list dated 7.2.1984 and the same was rejected by the Tribunal by order dated 2.2.1998. We are in respectful agreement with the findings recorded in that OA on these questions. The Recruitment Rules of 1979 have now been followed by the new Recruitment Rules for the post of Inspectors issued by notification dated 10.2.2001. Prior to 1979 the ratio was fixed only by administrative orders. The ratio of promotion from the grade of Ministerial cadre and Executive cadre thus was regulated by the administrative instructions which do not suffer from legal infirmity.

43. If in some meetings with staff senior departmental officers had taken a view that the promotions should have been made in the ratio of 2:1:1 between 1.5.1969 and 6.6.1975, those decisions have not been accepted by the competent authority the Central Board and Ministry of Finance, therefore, they have no legal force. Accordingly, we do not find that the seniority list dated 7.2.1984 is firstly open to challenge by the applicants

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in the present proceeding and secondly even if their challenge is considered on merit, the seniority list dated 7.2.1984 cannot be held legally infirm warranting interference by the Bench.

44. Moreover, the seniority list dated 7.2.1984 has been acted upon and number of promotions have been made on that basis and some of the persons so promoted have been promoted to further higher post in the hierarchy so interference with the seniority list 19 years after it was circulated and at least 7 years after the order was passed in the LPA in 1996 will unsettle the settled seniority of the officers. In K.R.Mudgal and others vs. R.P.Singh AIR 1986 SC 2086 the seniority list was challenged after 18 years and the Hon'ble Supreme Court held that the petition was liable to be dismissed on the ground of laches alone.

45. Before proceeding to examine the seniority lists of 1.12003 and 1.2.2004, it would be pertinent to mention that the provisional seniority lists of 1993 and 1999 stand merged with the seniority list dated 1.1.2003. We need not deal with the provisional seniority list of 1993 and 1999 individually and may consider them at the time when we discuss the seniority list of 1.12003.

46. The learned counsel for the applicants has strenuously argued that in order to alleviate the stagnation in the cadre of Sub Inspectors, 69 posts of Sub Inspectors were upgraded to the grade of Inspectors in 1993. It is submitted that the number of sanctioned strength of the cadre of Inspector was 101 with that upgradation number rose to 170. It is submitted that in the upgradation order and the clarification issued by the Government/Board in this behalf all those 69 upgraded posts were to be filled up from the cadre of Sub Inspectors. It is submitted by the applicants that in 1993 the respondents promoted 58 Sub-Inspectors but did not promote remaining 11 persons to the upgraded posts. One of the grievance of the applicants is that the respondents should consider promotion from the grade of Sub Inspector to the grade of Inspectors against those 11 posts. The respondents have refuted this allegation and have stated that all those upgraded posts have been filled up by promotion from the grade of Sub Inspectors. In fact, in the OA the applicants had alleged that the Sealed Cover Procedure was adopted in respect of the 11 vacancies out of 69 posts upgraded posts of Inspectors as per the recommendation of the DPC. In the entire OA there is no mention about the opening of the Sealed Cover

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and promotion of those affected by the Sealed Cover Procedure being considered for promotion at a later stage. Another contention of the applicants was that the reservation policy should not have been followed in promoting the Sub Inspectors to the 69 upgraded posts. Controverting these contentions, the respondents submitted that since appointment to the upgraded post involved shouldering of higher responsibilities, the rule was applicable and that out of 69 posts, 10 fell for SC candidates and 5 for ST candidates but reservation was not required for 10 SC candidates as they got upgraded on the basis of individual seniority without any reference to reservation and 5 ST candidates got appointed by virtue of the applicability of the rule of reservation. It was stated that upgradation involved the entire process of selection including consideration of suitability, the rule of reservation was made applicable to it. Even otherwise, if the rule of reservation to ST candidate was not followed then the applicant No.3 would not have been promoted against the 69 upgraded posts. The applicant No.2 was within the zone of consideration and was found suitable and had also been appointed to the upgraded post in 1993.

47. The learned counsel for the applicants has argued that the reservation policy could not have been made applicable to the 69 upgraded posts but has not been able to justify these arguments. Therefore, we are unable to hold that the reservation policy would be applicable in filling these 69 upgraded posts of Inspectors and 5 ST candidates should have been excluded from consideration on the basis of the reservation policy.

48. According to the respondents after the upgradation of 69 posts of Inspector, a DPC was held in 1993 and 1994 wherein 13 SIs in the seniority list could not secure their place because of the adverse entries in their ACRs. Later on, these adverse entries were expunged in respect of the 12 SIs. In the review DPC held in the year 2003-2004, the adverse remarks have been expunged in the case of the some of the SIs at that time. Thus 12 SIs were promoted, the details of which have been given by the respondents in their written argument. It is further submitted that the review DPC also considered 5 more vacancies, which were not considered by the DPC of 1993-1994 as the said DPC had considered only the vacancies which arose due to upgradation. Thus the review DPC in all promoted 74 Sub Inspectors to the grade of Inspectors, but six SIs were kept in Sealed Cover and the only promotion was for 68 and their names were figuring at S.No.240 to

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307 of the seniority list of 2004. It is also stated that the Sealed Cover cases were dealt as per the rules and in the subsequent DPCs and promotions were given depending on the outcome of the disciplinary case. It was accordingly strongly refuted that any of the 69 upgraded posts was not filled from the cadre of Sub-Inspectors. The applicants have not been able to explain as to what happened to the 11 vacancies which were not filled up because of adoption of sealed cover procedure and whether those officers who were covered by Sealed Cover Procedure were promoted by opening the Sealed Cover later on or not. Therefore, there is no reason for us to discard the explanation given by the applicants. We hold that all the upgraded 69 posts have been filled by promotion of Sub Inspectors.

49. The next contention of the applicants in this regard is that the Sub-Inspectors who had been promoted against the 69 posts should have been put en block senior to the persons who had been promoted after them. The respondent in the written arguments drew our attention to the officers whose names appeared from S.No.240 to 307, i.e., 68 officers who were promoted from the cadre of Sub Inspectors and had been placed en block above the promoted UDC and direct recruits, which has been placed in the ratio of 1:1:1 as per the Recruitment Rules. The grievance of the applicants, therefore, to that extent does not have any merit.

50. Yet another contention of the applicants in the OA is that the 69 upgraded posts of Inspector should be treated as a separate category of vacancies and should for all time to come be filled up from the cadre of SIs only. The argument does not have any merit. The question of filling up of 69 vacancies in the cadre of Inspectors at the time of re-organisation of the cadre of Inspectors/Sub Inspectors by Sub-Inspectors only is understandable but their claim that in future also when the vacancy arose all the 69 upgraded posts should be filled only by SIs, sans merit. Once the posts were upgraded and they were filled up in accordance with the reorganization/rationalization order, they became part and parcel of the cadre of the Inspector and the future vacancies in the cadre of Inspector are to be filled strictly in accordance with the ratio prescribed in the Recruitment Rules. There is no administrative order for maintaining separate roster for promotion in respect of those 69 upgraded posts. Even if there was such an

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administrative order the same would not override the provision of the Recruitment Rules.

The contention of the applicants to that extent is not tenable and is rejected.

51. Reverting to the seniority list of 2003 and 2004, it may be stated that the learned counsel for the applicants has tried to point out the discrepancies and changes in positions in the provisional seniority lists of 1993 and 1999 vis a vis the final seniority lists of 2003 and 2004. However, it has not been denied that the seniority lists of 1993 and 1999 were only provisional and that 69 upgraded posts of Sub Inspectors were to the grade of Inspectors were filled up. DPCs were also held for promotion. The objection and representations were also made against the provisional seniority lists. The DPC and review DPCs have been held to rectify the mistake. Even after the seniority list as on 1.1.2003 was issued review DPC was held in January, 2004. The changes occurred on account expunging of adverse entries in ACRs, dropping of disciplinary proceedings, additional five vacancies etc. being taken into consideration. This resulted in the change in the seniority position. As per the recommendation of the review DPC for all the subsequent years till 1998-99, the Sealed Cover vacancies for each year resulted in change of vacancy position every year, for example, in the original DPC 1993-94, there were 12 carry forward vacancies due to pending sealed cover cases. However, in the review DPC, there were only six carry forward vacancies as the remaining were promoted which has resulted in changes in seniority of certain officers in the list of 2003 and 2004. The review DPC was held in January, 2004 and thereafter the seniority list as on 1.2.2004 was issued which is final. The contention of the respondent in this regard also does not have force so it is rejected.

52. Considering the pendency of the proceedings before the Madhya Pradesh High Court and before the Tribunal, re-organisation of the cadre of Sub Inspectors and Inspectors, the Sealed Cover Procedure adopted in cases of some officers the position of certain officers had to be changed. Now, the seniority list of 1.2.2004 is a final seniority list as it is based on the seniority list of 1984 and 1.1.2003 with necessary changes between 1984 and 2004, i.e., en block promotion of SIs to 69 upgraded posts, the promotion of certain officers who were covered by Sealed Cover Procedure besides retirement, death and promotion/transfer of certain officers. The applicants had made a representation against the seniority position of the certain officers who were transferred

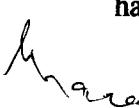
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on deputation basis to Central Excise Department had expired or retired from the Ministerial cadre still have not been shown in the seniority list but they have not been able to name those officers. It is not stated that this mistake has not been rectified in the latest list, i.e., seniority list of 1.2.2004. The consideration and suggestion in the meeting by themselves will not prove that the seniority lists of 2003 and 2004 are not correctly drawn or that the objections and representations made against them have not been given due consideration before they were finalised.

53. A controversy was also raised on behalf of the applicants about the total number of post in the cadre of Inspectors. It is submitted that the sanctioned strength of the cadre of Inspector was 170 but the respondents are showing it as 184. The learned counsel for the respondents has pointed out that 14 posts falling under the Chief Controller of Factories formed part of the common cadre posts of the Central Bureau of Narcotics and the Narcotics Commissioner is the controlling authority as such they have been shown as $170+14=184$ which has not been properly appreciated by the applicants. There is no rebuttal to this submission by the applicant.

54. One of the arguments of the respondents is that in view of the decisions of this Tribunal in OA 1395/1988 and TA Nos. 14, 15, 16 and 18 to 21 of 1988 the prayer made in the present OA is barred by principles of res judicata. The learned counsel for the respondents has referred to the judgment in the case of Ferro Alloys Corporation Ltd. and Another Vs. Union of India and Others, (1999) 4 SCC 149 and P.M.A. Metropolitan and Others Vs. Moran Mar Marthoma and Others, AIR 1995 SC 2001 where it was held that before an issued is said to be heard and finally decided, the court considering it has to be shown to have expressly considered issue and to have decided it one way or the other and such decision should have obtained finality in the hierarchy of proceedings, then only the principle of res judicata will apply. If the suit is decided not on merit but for want of jurisdiction or for being barred by time or for being defectively constituted, then the finality of the findings stand disturbed which cannot be permitted. Controverting their arguments the learned counsel for the applicants submitted that the present applicants were not party to the aforementioned OAs and the issues raised in the present OA have not been decided and considered in those OAs. The learned counsel for the respondents has not argued the provisional seniority list of 1993 and 1999 which stands merged with





list of 2003 and the list of 2004 were considered and were decided in those OAs or the disputes relating to 69 upgraded posts were decided in that proceedings. We, therefore, do not find that the present OA is barred by principle of res judicata or constructive res judicata.

55. The learned counsel for the respondents has referred to Dwarka Prasad and Others Vs. Union of India and Others, 2003 (5) SCALE 461 wherein the Hon'ble Supreme Court has observed that for fixation of quotas or different avenues and ladders for promotion in favour of various categories of posts in feeder cadres based upon the structure and pattern of the Department is a prerogative of the employer, mainly pertaining to policy making field and the relevant considerations in fixing a particular quota for a particular post are various such as the cadre strength in the feeder quota, suitability more or less of the holders in the feeder posts, their nature of duties, experience and the channels of promotion available to the posts in the feeder cadres. It has been cited to rebut the contention of the applicants in the OA that as the number of posts in the grade of SIs have far exceeded the post of Ministerial cadre, UDC (Stenographer Grade-III), therefore, the promotions from these cadres in the ratio of 1/3rd:1/3rd, (remaining going to direct recruitment) is arbitrary and unjust. As held by the Hon'ble Supreme Court, the ratio of promotion in the promotional post of Inspectors from the Ministerial grade and the direct recruitment is the sole prerogative of the State and pertains to the domain of State policy. We cannot interfere with the policy decision of the State unless they are violative of any statutory provision or the provision of the Constitution or mala fide, capricious or whimsical. No mala fide or arbitrariness has been shown in fixing the ratio of promotion from the feeder grades to the post of Inspector. It did not contravene any statute or the statutory rules or the provision of the Constitution. The new statutory Recruitment Rules came into force in 1979. Present Recruitment Rules were notified in 2001. We, therefore, do not find that the ratio of promotion fixed by various administrative orders is legally vitiated or warranted interference.

56. As regards the relief prayed in clause (iv) of para 8 of the OA proper course for the applicants, if so advised, is to approach their cadre controlling authority/nodal Ministry which are competent to take a decision in the matter. This Tribunal is not the proper forum to agitate this grievance.

*h
Devesh*

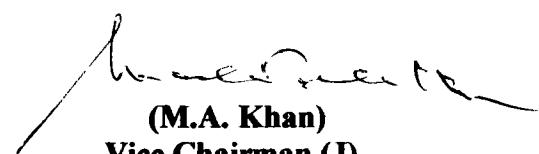
57. Seniority list has now been settled. Further promotion of the eligible officers may be in due course as per the Recruitment Rules.

58. For the reason stated above, we do not find that the applicant could be granted any of the relief claimed in the OA or the seniority lists warrants any interference.

59. As a result of the above discussion, OA fails it is dismissed but without any order as to costs.



(N.D. Dayal)
Member (A)



(M.A. Khan)
Vice Chairman (J)

Rakesh