

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD

Original Application No.21/96/2019 & MA 462/2019

with

Original Application No.20/65/2019

Original Application No.21/79/2019

Original Application No.21/95/2019

Original Application No.21/370/2019

Original Application No.21/371/2019

Original Application No.21/1250/2018

Original Application No.21/1256/2018

Original Application No.21/1257/2018

Date of Order: 24.06.2019

Between:

OA 96/2019:

1. T. Naga Ramanjaneyulu s/o G. T. Narasimhappa
Age: 52 Years, working as Superintendent, Gr `B'.
O/o Customs, Export Promotion Division, Customs
Commissionerate, Hyderabad.
 2. T. Naga Mahesh, s/o T. Ramachanddra Reddy
Age: 51 years, working as Superintendent,
O/o ICD, Customs Commissionerate, Hyderabad.
- Applicants

AND

1. The Union of India, Rep by its Secretary
Ministry of Finance, Department of Revenue
North Block, New Delhi.
2. The Govt. of India, Rep by its Director General
Directorate General of Human Resource Development
Ministry of Finance, Department of Revenue
Central Board of Indirect Taxes & Customs
Bhai Veer Singh Sahitya Sadan, Bhai Veer Singh Marg
Near Gol Market, New Delhi - 110 001.
3. The Chief Commissioner
Central Tax & Customs
Hyderabad GST Zone, Hyderabad.

4. The Principal Commissioner/Chief Commissioner
Central Tax & Customs
Hyderabad GST Commissionerate
Hyderabad (Cadre Controlling Authority).
.. Respondents
5. A.V.S.S. Viswanath, S/o. A. Venugopal Rao,
Aged 50 years, Occ: Superintendent of Central Tax,
O/o. The Principal Chief Commissioner of Central Tax
and Customs, Hyderabad Zone, Hyderabad.
6. Jidigam Srinivas, S/o. late Jidigam Shankaraiah,
Aged 52 years, Occ: Authorized Officer,
VSEZ, TSIIC Ltd, SEZ for precision Engineering,
Adibatla Village, Ibrahimpatnam Mandal,
Ranga Reddy Dt., Hyderabad - 501510.
7. M. Rajendra Kumar, S/o. M. Kondal Rao,
Aged 50 years, Occ: Superintendent of Central Tax,
O/o. The Principal Chief Commissioner of Central Tax
and Customs, Hyderabad Zone, Hyderabad.
8. Mittapalli Srinivas, S/o. Sri M. Gouraiah,
Aged 51 years, Occ: Superintendent of Central Tax,
Hqrs. Anti-Evasion Section, Secunderabad
Commissionerate,
Basheerbag, Hyderabad - 500 004.

...Respondents 5 to 8

(Impleaded vide order in MA 462/2019)

O.A.No.65/2019:

1. A. Giridhar S/o A. Venkateswar Rao
Aged 52 years, Working as Superintendent, Gr. `A'
Legal Co-ordinates Cell, Central Tax & Customs,
Visakhapatnam Zone, Hyderabad.
2. B. Syed Ahammed S/o Late Ghouse Saheb
Aged 52 years, Working as Superintendent
Central Tax & Customs, Tirupathi Audit Circle,
Guntur Audit, Commissionerate stationed at
Visakhapatnam
Tirupati, Chittoor District.

3. Manoj Kumar S/o Om Prakash
Aged 51 years, Working as Superintendent
Chief Commissioner Office, Central Tax & Customs
Hyderabad.
4. B. Muralidhara Gupta S/o Thimmaiah Setti,
Aged 57 years, Working as Superintendent
O/o Commissioner Audit I, Commissionerate
Central Tax & Customs, Hyderabad.
5. Thota Subbar Rao S/o Satyanarayana
Aged 58 years, Working as Superintendent
Audit I Commissionerate, Central Tax & Customs
Hyderabad.
6. N. Ramakrishna S/o Venkata Ramana Sastri
Aged 52 years, Working as Superintendent
NACIN, 2TI, Central Tax & Customs, Visakhapatnam.
7. Kota Venkateswara Rao S/o Satyanarayana
Aged 69 years, Working as Superintendent
O/o Deputy Commissioner, Central Tax & Customs,
Uppal Division, Hyderabad.
8. D. Srinivasa Reddy, S/o D. Nagi Reddy
Age: 52 years, working as Superintendent
Central Excise, O/o CIU/Estt. Section
Visakhapatnam Central GST Commissionerate
Central Tax & Customs, Visakhapatnam District.
9. Smt. R. Damayanthi, W/o B.V.Subba Rao
Age: 50 years, working as Superintendent
Central Tax & Customs, RGIA, Shamshabad
Ranga Reddy District.
10. G. Bala Brahmam, s/o Late G. Kotaiah
Age: 52, Working as Superintendent
O/o Air Cargo Complex, Hyderabad Customs

Commissionerate, Shamshabad, Ranga Reddy District.

11. Mandalaneni Srinivasa Rao S/o Kuchelu Rao
Aged 52 years, Working as Superintendent
O/o Superintendent Central Tax (GST) Kamareddy GST
Range, Kamareddy District.

12. Koti Srinivasa Rao, S/o Koti Prasada Rao
Age: 50 years, working as Superintendent
O/o. Customs Commissionerate, RGIA, Shamshabad
Ranga Reddy District. ... Applicants

AND

1. The Union of India, Rep by its Secretary
Ministry of Finance, Department of Revenue
North Block, New Delhi.
2. The Govt. of India, Rep by its Director General
Directorate General of Human Resource Development
Ministry of Finance, Department of Revenue
Central Board of Indirect Taxes & Customs
Bhai Veer Singh Sahitya Sadan,
Bhai Veer Singh Marg
Near Gol Market, New Delhi - 110 001.
3. The Chief Commissioner
Central Tax & Customs
Hyderabad GST Zone, Hyderabad.
4. The Principal Commissioner/Chief Commissioner
Central Tax & Customs
Hyderabad GST Commissionerate
Hyderabad (Cadre Controlling Authority). ..
Respondents.

O.A.No.79/2019:

1. M.A. Ravoof S/o M.I.Khalleeel
Aged 59 years, working as Superintendent Gr. B
O/o Additional Director, General (Audit),

Central Tax & Customs, Hyderabad Zonal Unit,
Hyderabad.

2. V. Vidya Sagar, S/o VRS Raju
Aged 52 years, working as Superintendent,
O/o Audit Commissionerate, Central Tax & Customs
Hyderabad.
 3. K. Suresh Kumar, S/o K.Satyanarayana
Aged 52 years, working as Superintendent
O/o Air Cargo Complex, Central Tax & Customs
Shamshabad, R.R.District.
 4. A V Ramana Murthy, S/o Late A.V.Hanumantha Rao
Age 51 years, working as Superintendent
O/o Air Cargo Complex, Central Tax & Customs
Shamshabad, Ranga Reddy District.
- ... Applicants

AND

1. The Union of India, Rep by its Secretary
Ministry of Finance, Department of Revenue
North Block, New Delhi.
2. The Govt. of India, Rep by its Director General
Directorate General of Human Resource Development
Ministry of Finance, Department of Revenue
Central Board of Indirect Taxes & Customs
Bhai Veer Singh Sahitya Sadan
Bhai Veer Singh Marg
Near Gol Market, New Delhi - 110 001.
3. The Chief Commissioner
Central Tax & Customs
Hyderabad GST Zone, Hyderabad.
4. The Principal Commissioner/Chief Commissioner
Central Tax & Customs
Hyderabad GST Commissionerate

Hyderabad (Cadre Controlling Authority). ..
Respondents.

5. K. Vijaya Bhaskar Reddy, S/o. K. Kesava Reddy,
Aged 50 years, Occ: Superintendent of Customs & Central
Tax,
O/o. Principal Commissioner of Customs & Central Tax,
Audit-I Commissionerate, Ramanthapur, Hyderabad,
R/o. H. No. 12-5-17/1/4, Flat No.101, Surya Pride
Apartments,
South Lalaguda, Hyderabad – 500017.

..Respondent No. 5

O.A.No.95/2019:

T. Ramalakshmi, W/o T. Rambabu
Age 52 years, working as Superintendent, Gr. B
O/o Commissioner of Customs & Central Tax, Appeals-I
Commissionerate, Hyderabad. ... Applicant

AND

1. The Union of India, Rep by its Secretary
Ministry of Finance, Department of Revenue
North Block, New Delhi.
2. The Govt. of India, Rep by its Director General
Directorate General of Human Resource Development
Ministry of Finance, Department of Revenue
Central Board of Indirect Taxes & Customs
Bhai Veer Singh Sahitya Sadan
Bhai Veer Singh Marg
Near Gol Market, New Delhi – 110 001.
3. The Chief Commissioner
Central Tax & Customs
Hyderabad GST Zone, Hyderabad.
4. The Principal Commissioner/Chief Commissioner
Central Tax & Customs
Hyderabad GST Commissionerate
Hyderabad (Cadre Controlling Authority). ..
Respondents.

5. K. Ravi Kiran, S/o. K. Venkateshwara Rao,
Aged 52 years, occ: Superintendent of Customs & Central
Tax,
O/o. The Principal Commissioner of Customs & Central
Tax,
Audit-I Commissionerate, Ramanthapur, Hyderabad,
R/o. H.No.12-5-17/1/4, Flat No. 201, Surya Pride
Apartments,
South Lalaguda, Hyderabad – 500017.

..Respondent No. 5

O.A.No.370/2019:

K. Rama Chandra Reddy
S/o Late K. Rama Subba Reddy, Gr. B
Age 54 years, working as Superintendent of Central Tax
Plot No.140, Flat No.302, Excel Avenue
Rajeev Nagar, Hyderabad 500 045. ... Applicant

AND

1. The Union of India, Rep by its Secretary
Ministry of Finance, Department of Revenue
North Block, New Delhi.
2. The Govt. of India, Rep by its Director General
Directorate General of Human Resource Development
Ministry of Finance, Department of Revenue
Central Board of Indirect Taxes & Customs
Bhai Veer Singh Sahitya Sadan, Bhai Veer Singh Marg
Near Gol Market, New Delhi – 110 001.
3. The Chief Commissioner
Central Tax & Customs
Hyderabad GST Zone, Hyderabad.
4. The Principal Commissioner/Chief Commissioner
Central Tax & Customs
Hyderabad GST Commissionerate
Hyderabad (Cadre Controlling Authority). ..
Respondents.

O.A.No.371/2019:

N R Aparna W/o C. Ramesh Kumar, Gr. B
Aged 51 years, working as Superintendent
Customs & GST, Jeedimetla Division
Medchal Commissionerate, Hyderabad.

...

Applicant

AND

1. The Union of India, Rep by its Secretary
Ministry of Finance, Department of Revenue
North Block, New Delhi.
2. The Govt. of India, Rep by its Director General
Directorate General of Human Resource Development
Ministry of Finance, Department of Revenue
Central Board of Indirect Taxes & Customs
Bhai Veer Singh Sahitya Sadan, Bhai Veer Singh Marg
Near Gol Market, New Delhi - 110 001.
3. The Chief Commissioner
Central Tax & Customs
Hyderabad GST Zone, Hyderabad.
4. The Principal Commissioner/Chief Commissioner
Central Tax & Customs
Hyderabad GST Commissionerate
Hyderabad (Cadre Controlling Authority). ..
Respondents.

O.A.No.1250/2018:

K. Srinivasa Rao
S/o K. Krishnaiah, Gr. B,
Age 52 years, working as Superintendent of Central Tax &
Customs
Hyderabad, GST, Hyderabad.

...Applicant

AND

1. The Union of India, Rep by its Secretary
Ministry of Finance, Department of Revenue
North Block, New Delhi.
2. The Govt. of India, Rep by its Director General
Directorate General of Human Resource Development
Ministry of Finance, Department of Revenue
Central Board of Indirect Taxes & Customs
Bhai Veer Singh Sahitya Sadan, Bhai Veer Singh Marg
Near Gol Market, New Delhi - 110 001.
3. The Chief Commissioner
Central Tax & Customs
Hyderabad GST Zone, Hyderabad.
4. The Principal Commissioner/Chief Commissioner
Central Tax & Customs
Hyderabad GST Commissionerate
Hyderabad (Cadre Controlling Authority). ..
Respondents.
5. K. Ravi Kiran, S/o. K. Venkateshwara Rao,
Aged 52 years, occ: Superintendent of Customs & Central
Tax,
O/o. The Principal Commissioner of Customs & Central
Tax,
Audit-I Commissionerate, Ramanthapur, Hyderabad,
R/o. H.No.12-5-17/1/4, Flat No. 201, Surya Pride
Apartments,
South Lalaguda, Hyderabad - 500017.
..Respondent No. 5

O.A.No.1256/2018:

Geetha Jayapalan, S/o Late Unnikrishnan Nair Gr.B
Age: 51 years, working as Superintendent,
Central Tax & Customs, Hyderabad, GST, Hyderabad.

... Applicant

AND

1. The Union of India, Rep by its Secretary

Ministry of Finance, Department of Revenue
North Block, New Delhi.

2. The Govt. of India, Rep by its Director General
Directorate General of Human Resource Development
Ministry of Finance, Department of Revenue
Central Board of Indirect Taxes & Customs
Bhai Veer Singh Sahitya Sadan
Bhai Veer Singh Marg
Near Gol Market, New Delhi - 110 001.
3. The Chief Commissioner
Central Tax & Customs
Hyderabad GST Zone, Hyderabad.
4. The Principal Commissioner/Chief Commissioner
Central Tax & Customs
Hyderabad GST Commissionerate
Hyderabad (Cadre Controlling Authority). ..
Respondents.
5. K. Vijaya Bhaskar Reddy, S/o. K. Kesava Reddy,
Aged 50 years, Occ: Superintendent of Customs & Central
Tax,
O/o. Principal Commissioner of Customs & Central Tax,
Audit-I Commissionerate, Ramanthapur, Hyderabad,
R/o. H. No. 12-5-17/1/4, Flat No.101, Surya Pride
Apartments,
South Lalaguda, Hyderabad - 500017.
..Respondent No. 5.

O.A.No.1257/2018:

M.N.Charyulu S/o Late M. Rajagopala Charyulu
Age: 56 years, working as Superintendent, Central Tax &
Customs
Hyderabad, GST (CCO), Hyderabad. ... Applicant

AND

1. The Union of India, Rep by its Secretary
Ministry of Finance, Department of Revenue
North Block, New Delhi.
2. The Govt. of India, Rep by its Director General
Directorate General of Human Resource Development
Ministry of Finance, Department of Revenue
Central Board of Indirect Taxes & Customs
Bhai Veer Singh Sahitya Sadan
Bhai Veer Singh Marg
Near Gol Market, New Delhi - 110 001.
3. The Chief Commissioner
Central Tax & Customs
Hyderabad GST Zone, Hyderabad.
4. The Principal Commissioner/Chief Commissioner
Central Tax & Customs
Hyderabad GST Commissionerate
Hyderabad (Cadre Controlling Authority). ..
Respondents.

Counsel for the Applicants ...Mr. M. Surender Rao, Senior
Mr. M. Srinivasa Rao in all OAs

Counsel for the Respondents ...Mr.A.Praveen Kumar Yadav,
Addl. CGSC;
Mr. K.R.K.V. Prasad, Advocate for
Respondents 5 to 8 in OA 96/2019

Mr. B. Madhusudhan Reddy,
Sr. PC for CG in OA 65/2019

Mr.N.Parameswara Reddy, Sr.PC for CG

Mr. N. Vijay, Advocate for R-5
in OA 79/2019

Mrs. Megha Rani Agarwal, Addl. CGSC
Mr. N. Vijay, Advocate for R-5
in OA 95/2019

Mr. R.V. Mallikarjuna Rao,
in OA 370/2019

Mr. B. Rajeswara Rao, Addl. CGSC in OA
371/2019

Mrs. K.Rajitha, Sr. CGSC
Mr. N. Vijay, Advocate for R-5
in OA 1250/2018

Mrs. B. Gayatri Varma, Sr. PC for CG
Mr. N. Vijay, Advocate for R-5
in OA 1256/2018

Mr. A.Nageswara Rao, Addl. CGSC in OA
1257/2018

CORAM:

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman

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

ORAL ORDER (COMMON)

{By Mr. B.V. Sudhakar, Member (Admn.)}

The question that arises for consideration in this batch of OAs is as to whether an employee, who was allotted to one zone, and was transferred to another zone, on request, is entitled to count the service rendered in both the zones for the purpose of reckoning the eligibility for promotion to the next higher post. This assumes significance from the fact that on transfer to another zone, on request, he is placed lowest in the seniority in the zone to which he is transferred.

2. The broad facts of the cases which need to be adumbrated are that the applicants in the OAs have joined different Collectorates of Customs and Central Excise in the

country at different points of time. They were transferred to Hyderabad Collectorate/zone on different dates on request in the cadre of Inspector and promoted as Superintendents on different dates as furnished in each of the OA. While promoting the applicants as Superintendents their past service rendered prior to joining Hyderabad Collectorate has been ignored thereby delaying their promotions. Applicants have represented to the respondents on different dates citing judgements of various judicial fora, and the latest instructions issued on the subject for counting of past service by the respondents themselves, but of no avail and hence the OAs.

3. The contention of the applicants is that the issue of counting of past service was adjudicated by the Hon'ble Principal Bench of this Tribunal in OA 651/1997 dt. 26.8.1997 in I.C. Joshi case and the claim of the applicants therein had been accepted and Tribunal issued orders for counting the past service rendered in the previous Collectorate. The orders were confirmed by the Hon'ble High Court of Delhi by dismissing WP (C) No.4005/1997, 4900/1997 & WP (C) No.235/1998 filed by the respondents and when the issue was carried over to Hon'ble Supreme Court in SLP (C) NOs.3506-36062/2010 the outcome was no way different. A similar case

was also adjudicated by the Hon'ble Chandigarh Bench of this Tribunal in OA 338/PB/2012 between Balwinder Singh Matharoo v U.O.I., which was allowed on 3.8.2012 and when contested in the Hon'ble High Court of Punjab & Haryana vide CWP No.25662 of 2012, the same was dismissed on 21.01.2013 following the earlier order in W.P. No.25306, 25461 and 25467 of 2012, dated 19.12.2012. Even RA 153/2013 filed in the said CW.P. No.25662/2012 was also dismissed. Respondents challenged the dismissal of RA 153/2013 in CWP No. 25662/2012 by filing SLP (C) Nos.5408-5409/2014 in the Hon'ble Supreme Court but failed in their endeavour. The ultimate result was that Central Board of Excise and customs ("for short "CBEC"), Government of India has revised the seniority of 11 applicants in I.C Joshi's case vide proceedings dated 2.7.2014 in the All India Seniority list of Superintendents for the period 1993-1997. Further instructions were issued by CBEC on 3.8.2017 to implement the orders in Balwinder Singh Matharoo case issued by the Hon'ble Chandigarh Bench both in respect of those who approached the Tribunal and those who did not. Accordingly, the Commissionerate of the respondents organisation at Chandigarh and Kolkata complied with the orders of Tribunal in 2017 and 2018 respectively. Applicants have also cited a batch of

judgments, including the one in Renu Mullick vs Union of India decided by the Apex Court, in support of their plea for counting past service for the sake of promotion, and not for seniority.

4. Respondents have not filed the reply statement though some OAs were filed in December 2018 and some in January, April 2019. However, when the OAs were being heard, some Superintendents working in the respondents organisation have got impleaded themselves as private respondents in some of the OAs in this batch of cases. They contend that granting promotions to the applicants would make them juniors in the Superintendent Cadre. They also asserted through the reply statements filed by them that the OA No.651 of 1997 heard by the Hon'ble Principal Bench was with regard to upgradation of Inspectors as Superintendents who have completed 17 years of service and not in respect of counting of service of those who were granted inter Collectorate transfers. They also relied upon judgments of the Hon'ble Supreme Court in Union of India v Deo Narain &ors [2008 (10) SCC 84], Naroatham Rath & Ors and Order of this Tribunal, in OA 580/2005 in support of their contentions.

5. We heard learned counsel for applicants and the learned counsel for the respondents and perused the record.

6. I) The issue to be adjudicated is as to whether the service rendered prior to an inter Collectorate transfer in Inspector grade can be considered for determining the eligibility for promotion to the post of Superintendent. Whenever Inter-Commissionerate transfers of Inspectors are made, on request, they are placed at the bottom of the list in the said grade in the Commissionerate, to which they are transferred.

In the backdrop of the above situation some Inspectors of the respondents organisation agitated before the Hon'ble Principal Bench of this Tribunal in OA No.651 of 1997 claiming that the past service in the previous Commissionerate should be counted for the purpose of determining the eligibility for promotion to the next higher grade of Superintendent. Hon'ble Principal Bench on 26.8.1997 has held as under:

"The 11 petitioners in this case were initially appointed as Inspectors outside Delhi zone and thereafter transferred to Delhi on request and are now seeking promotion to the posts of Superintendents on the basis of total length of service in the feeder cadre to be counted from the date of initial appointment to the post of Inspectors. It was an admitted case by the petitioners that since the transfer was on request, an undertaking was given that they are willing to forego their seniority as and when they were duly transferred.

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5. The petitioners also brought to our notice a decision of the Hon'ble Supreme Court in the matter of *Ms. Ranu Mallik vs. Union of India* and another vide AIR 1994 SC 1152 in which the question of loss of seniority on account of voluntary transfer was considered by a Division Bench of the Hon'ble Supreme Court. It was held in the said case that even though the transferees are to be treated as new entrants in the Collectorate, to which they are transferred for the purpose of seniority, it can only mean that when the question of consideration for promotion as per their turn in the seniority list comes up, only then the loss of seniority will have some effect. On the other hand, when those transferees are considered for promotion on the basis of the past regular service in the grade, their past service in the previous Collectorate cannot be ignored for the purpose of determining their eligibility to the post in accordance with the rules. It may be true that the seniority in the previous Collectorate may have to be ignored for the purpose of giving their seniority in the newly transferred Collectorate but that has no relevance for judging their eligibility for promotion under the statutory rules. This is because the eligibility for promotion is to be determined with reference to the statutory rules alone which prescribes the criteria for eligibility and once they have become eligible, those transferees could not be excluded from being considered, only on the basis of any administrative instructions.

6. In our opinion this is an almost identical situation in the present case. The petitioners have a right to be considered as they have become eligible to be considered under the statutory rules and this right to consideration for promotion, cannot be taken away by enforcing an administrative instruction which will have an effect of excluding the petitioners from consideration for promotion to the post of Superintendent. Therefore, the contention of the respondents that the petitioners are excluded from consideration on the basis of their application of administrative instructions pertaining holding of the DPC, has no legs to stand. The administrative instructions in such circumstances can only fill up the yawning gaps of the statutory rules but it cannot take away the right to consideration for promotion if it has already accrued to the petitioners on the basis of the eligibility from the statutory rules. These administrative instructions could not be allowed to override the statutory rules. Relying on a large number of cases from the Hon'ble Supreme Court on the subject as settled law at the instance of the petitioners, we are of the opinion that the administrative instructions pertaining to holding of DPC issued by the DOP&T, cannot exclude the petitioners' right to be considered in accordance with the relevant statutory Rules, stating that they did not fall within the zone of consideration. If the petitioners have become eligible and had already obtained a right for consideration for promotion to the post of Superintendent

under the statutory rules that cannot be taken away by any Administrative Instructions.

Xxx

8. Total length of service from the initial entry has always been held to be out of the best criteria to decide the zone of consideration for making a selection to any post which are to be recruited on the basis of the methods of selection. In this case, since the petitioners are stated to have completed 16/17 years of regular service in the grade, on the principle of length of service, the petitioners will have to be considered for promotion to the posts of Superintendent in the Directorate.

9. We make it clear that since the posts of Superintendents are to be filled up in accordance with the statutory rules of 1986, and the recruitment rules states that the method of recruitment is selection, seniority in this regard will have no consequence. The respondents should proceed to make selection in accordance with the length of service and applying the principle of selection in such matters. We are told that the 138 posts now allocated to the Delhi Zone was done on the basis of the information supplied by the respondents to the Ministry and that has a correlation to the number of persons already stagnating in the department with 16/17 years of service in the regular grade; and now at the time of recruitment, to exclude these petitioners who are with 16/17 years of service in the regular grade, is nothing but injustice and in the circumstances we would not hesitate to hold that in this particular case, the length of service shall be the principle to be applied for short-listing the candidates on the basis of zone of consideration.

10. The following directions are issued:

(1) In the light of the findings above, the promotion to all the upgraded posts of Superintendents shall be made strictly by selection from among the candidates who possesses the requisite number of years of regular service in the grade in accordance with the Recruitment Rules of the gradation list prepared on the basis of length of service in the grade. "

The decision of the Hon'ble Principal Bench when challenged before the Hon'ble High Court of Delhi in WP (C)

No. 235/1998 & Batch, the same was upheld by observing as under:

"... The fact that as result of transfer does not wipe out his service at the place from where he was transferred. The said service, being regular service in the grade, has to be taken into account as part of this service at the place from where he was transferred. The said service, being regular service in the grade, has to be taken into account as part of his experience for the purpose of eligibility for promotion and it cannot be ignored only on the ground that it was not rendered at the place where he has been transferred. In our opinion, the Tribunal has rightly held that the service held at the place from where the employee has been transferred has to be counted as experience for the purpose of eligibility for promotion at the place where he has been transferred."

Having regard to the aforesaid settled position of law and as learned counsel for the petitioners could not point out any judgment to the contrary, we are of the opinion that the judgment of the Tribunal holding that the service rendered by these private respondents before their transfer to Delhi Commissionerate could not be ignored for the purpose of up-gradation to the post of Superintendents is without blemish and there is no reason to take contrary view.

Xxx

The private respondents herein, pursuant to the directions of the Tribunal, shall be placed in the upgraded pay scale of the Superintendents. The benefit of promotion shall be given from the date when it accrued to other similarly situated persons without consequential benefits. However, the actual arrears of pay shall be paid from the date of the judgment rendered by the Tribunal. The question of inter se is left open as it does not arise in the present case. For effecting these promotions, the department shall create supernumerary posts, if necessary."

Respondents filed Petition for Special Leave to Appeal (Civil)/2011 (CC 18748-18749/2011) against orders of the Hon'ble Delhi Court but they stood dismissed on 12.12.2011, with the Hon'ble Apex Court opining as under:

"Apart from the fact that we are not satisfied with the explanation furnished on behalf of the Union of India for condonation of inordinate delays of 895 and 468 days in filing the special leave petitions, we are of the view that even otherwise

in light of order dated 10th December, 2010, passed by this Court in SLP (C) Nos. 35061-35062 of 2010 arising out of the same very order, e.g., 18th February, 2009, the subject matter of the present special leave petitions, these petitions cannot be entertained. The special leave petitions are dismissed accordingly. "

II) Further, Hon'ble Chandigarh Bench of this Tribunal relying on the observation of Hon'ble Principal Bench in OA 651/1997 has allowed an identical case involving officers transferred to Chandigarh Collectorate of the respondents organisation in OA 338/2012 between Balwinder Singh Matharoo and Union of India dated 3.8.2012. The order passed by the Tribunal was upheld by Hon'ble High Court of Punjab and Haryana by dismissing the CWP No.25662 of 2012 on 21.1.2013 followed by the Hon'ble Apex Court dismissing the SLP Nos.5408-5409/2014 on the subject vide order dated 23.2.2017.

III) Ultimately, the Central Board of Exercise and Customs (CBEC) on 2.7.2014 has antedated seniority of the applicants in OA 651/1997, in consonance with the orders of the Hon'ble Principal Bench dated 26.8.1997. This was followed up by another order of the CBEC on 3.8.2017 where in it was decided to extend the benefit of counting the past service to all petitioners and non petitioners under CBEC, based on the order

of the Hon'ble Chandigarh Bench of this Tribunal in OA No.338/PB/2012. The orders of CBEC have been complied with by the Chandigarh and Kolkata Commissionerates on 7.9.2017 and 12.12.2018 respectively. However, such benefit was not extended to the similarly placed Inspectors in the Hyderabad Commissionerate. In fact, the Hon'ble Supreme Court has observed that when employees are granted some relief, the same has to be extended to others who are similarly situated, without forcing them to go over to the courts for similar relief. In this regard, Hon'ble Supreme Court has held as under:

In *Amrit Lal Berry v. Collector of Central Excise, New Delhi & Others*, (1975) 4 SCC 714:-

We may, however, observe that when a citizen aggrieved by the action of a government department has approached the Court and obtained a declaration of law in his favour, others, in like circumstances, should be able to rely on the sense of responsibility of the department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to court.

In *Inder Pal Yadav & Others Vs. Union of India & Others*, 1985 (2) SCC 648:

"...those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment if not by anyone else at the hands of this Court."

In a latter case of **Uttaranchal Forest Rangers' Assn (Direct Recruit) Vs. State of UP (2006) 10 SCC 346**, the Apex Court has referred to the decision in the case of **State of Karnataka Vs. C. Lalitha, 2006 (2) SCC 747**, wherein it was held as under:

"29. Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court that would not mean that persons similarly situated should be treated differently."

Even the V Central Pay Commission in its recommendation, in regard to extension of benefit of court judgment to similarly situated, held as under:-

"126.5 – Extending judicial decisions in matters of a general nature to all similarly placed employees. - We have observed that frequently, in cases of service litigation involving many similarly placed employees, the benefit of judgment is only extended to those employees who had agitated the matter before the Tribunal/Court. This generates a lot of needless litigation. It also runs contrary to the judgment given by the Full Bench of Central Administrative Tribunal, Bangalore in the case of C.S. Elias Ahmed and others v. UOI & others (O.A. Nos. 451 and 541 of 1991), wherein it was held that the entire class of employees who are similarly situated are required to be given the benefit of the decision whether or not they were parties to the original writ. Incidentally, this principle has been upheld by the Supreme Court in this case as well as in numerous other judgments like G.C. Ghosh v. UOI, [(1992) 19 ATC 94 (SC)], dated 20-7-1998; K.I. Shepherd v. UOI [(JT 1987 (3) SC 600)]; Abid Hussain v. UOI [(JT 1987 (1) SC 147], etc. Accordingly, we recommend that decisions taken in one specific case either by the judiciary or the Government should be applied to all other identical cases without forcing the other employees to approach the court of law for an identical remedy or relief. We clarify that this decision will apply only in cases where a principle or common issue of general nature applicable to a group or category of Government employees is concerned and not to matters relating to a specific grievance or anomaly of an individual employee."

IV) The applicants have been transferred from different Collectorates in the country to Hyderabad Collectorate/zone on their request. They are entitled to count their services in their previous zones, for promotion to the post of Superintendent. Various judgements referred to above support their contention.

V) The private respondents contend that the judgments of Hon'ble Principal Bench and Hon'ble Chandigarh Bench, are only in relation to length of service, and that the service rendered in the previous Commissionerate can also be considered for the purpose of up-gradation. The submission of the private respondents is incorrect. The judgments referred have clearly dealt with promotion to the grade of Superintendent, selection and the criteria. The length of service in the Inspector cadre, and, not the seniority, was held to be relevant. The other averment made by the private respondents is that, Hon'ble Supreme Court in Union of India & Ors v Deo Narain & Ors, while dealing with the promotion of LDC to UDC in the respondents organisation, has held that though past experience in earlier Commissionerates could be added to decide the length of service, but it cannot be the criteria in effecting promotion from LDC to UDC. Those who have come

on inter Commissionerate Transfer are placed at the bottom of the seniority list in the new cadre and therefore, being junior will have to wait for their turn.

In the rejoinder, applicants reiterated the ratio in the case of Renu Mullick (*supra*)

A question would arise whether the ratio in the case of Renu Mullick is to be applied or that of Deo Narayan. A comparison of the facts of the cases in the two judgments with that in the present case would afford the answer to this question.

The following table would thus bring out the answer:-

RenuMullick	Deo Narayan	Present OAs
Inter-Commissionerate transferees	Inter-Commissionerate transferees	Inter-Commissionerate transferees
Promotion from non- selection to selection post (i.e. UDC to Inspector)	Promotion from non -selection to another non- selection post	Promotion from non- selection to selection post (Inspector to Superintendent)
(i) Requisite service for promotion, taking into account service of previous Commissionerate fulfilled and (ii) within zone of consideration	(i) Requisite service for promotion, taking into account service of previous Commissionerate fulfilled but (ii) Outside zone of consideration	(i) Requisite service for promotion, taking into account service of previous Commissionerate fulfilled and (ii) within the zone of consideration
Juniors have been promoted ignoring the applicant as her	No junior has been promoted as none came within the	If the service in the previous Commissionerate

service in the previous Commissionerate has not been reckoned for experience purpose	zone of consideration.	of the applicants is not taken into account, junior would have been considered.
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Telescoping the above ratios in the present cases, as the promotional post is one of selection post, ratio in Renu Mullick applies in this case. The applicants were within the zone of consideration and further, their experience in the present Commissionerate coupled with that in the previous Commissionerate fulfils the requirement of experience. In other words, the mere fact that an Inspector would become eligible for promotion on counting of his service in the previous and present zones, would not enable him to steal a march over his seniors in the present zone.

VI) Thus from the aforesaid, we have no hesitation to hold that the action of the respondents in refusing to count the services of the applicants rendered in the previous zones, is illegal and contrary to the law laid down by the Hon’ble Supreme Court on the subject. The impugned order is quashed and set aside. The OAs are allowed and the respondents are directed to count the service of the applicants from the date they have been regularly appointed in the cadre of

Inspector as per instructions contained in OM dated 3.8.2017 issued by the respondents, and grant consequential benefits thereof; in the context of promotion to the post of Superintendent, within a period of 3 months from the date of receipt of a copy of this order.

There shall be no order as to costs.

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

(JUSTICE L. NARASIMHA REDDY)
CHAIRMAN

Dated, the 24th day of June, 2019
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