



2024:GAU-AS:11395-DB

IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

WP(C) No.5866 OF 2021

1. Union of India through the Secretary to the Government of India, Ministry of Finance, Revenue Department, North Block, New Delhi – 110001.
2. The Chairman, Central Board of Excise and Customs, Department of Revenue, Ministry of Finance, New Delhi – 110001.
3. The Member (P & V), Central Board of Excise and Customs, Department of Revenue, Ministry of Finance, North Block, New Delhi – 110001.
4. The Joint Secretary (Admin.) to the Government of India, Ministry of Finance, Department of Revenue, Central Board of Excise and Customs, North Block New Delhi – 110001.
5. The Under Secretary (Ad. IIIB) to the Government of India, Ministry of Finance, Department of Revenue, Central Board of Excise and Customs, Hudco Vishala Building, Bhikaji Cama Place, New Delhi -110001.
6. The Chief Commissioner, Goods and Services Tax and Customs, Guwahati Zone, GST Bhawan, 5th Floor, Kedar Road, Guwahati – 781001.

.....Petitioners

-Versus-

1. Anil Kumar Sharma,
Son of Late Baleswar Sharma, Inspector (Central
Excise), at present posted at Customs Division,
Custom House, Nilmoni Phukan Path, Christian
Basti, Guwahati – 781005, Assam.

.....Respondent

2. The Chairman, Staff Selection Commission,
Department of Personnel & Training, Ministry of
Personnel, Public Grievances & Pensions, North
Block, New Delhi – 110001.

.....Proforma Respondent

– BEFORE –

**HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

For the Petitioners : Mr. S.C. Keyal, Advocate.

For the Respondents : Mr. S. Dutta, Senior Advocate, assisted by Mr.
S. Choudhury and Ms. R. Medhi, Advocates.

Date of Hearing : 12.11.2024.

Date of judgment : **22.11.2024.**

JUDGMENT & ORDER (CAV)

(Vijay Bishnoi, CJ)

Heard Mr. S.C. Keyal, learned counsel for the
petitioners. Also heard Mr. S. Dutta, learned senior counsel,
assisted by Mr. S. Choudhury and Ms. R. Medhi, learned counsel
appearing for the respondent No.1.

2. This writ petition is filed by the petitioners being
aggrieved with the order dated 24.06.2020 passed by the Central

Administrative Tribunal, Guwahati Bench, Guwahati (hereinafter to be referred as "Tribunal") in O.A. No.339/2015. By the impugned order, the Tribunal has allowed the Original Application preferred on behalf of the respondent No.1 and has directed the petitioners herein (respondents before the Tribunal), more particularly, the Central Board of Excise & Customs (CBEC) to take earnest initiative for streamlining the Rule and Regulation in case of Inspector as well as the Superintendent in order to maintain equality and rationality with reasonableness and to defuse the genuine heartburning/ deprivation amongst the employees in the matter of promotion. The Tribunal has further directed that the petitioners shall review the entire issue on the basis of the principle that the "seniority of merit" shall not be disturbed while making the next promotion to the employees and to consider the case of the respondent No.1 for promotion to the post of Superintendent by convening a DPC and if he is found fit, he shall be promoted to such post at least from the date of his junior Shri Gyanesh Kumar was promoted. The Tribunal has further observed that the entire exercise shall be carried out within a period of 6(six) months from the date of receipt of a copy of the said order. However, it was made clear that the order shall not be treated as precedent for the others.

3. The relevant facts of the case are that the Staff Selection Commission (SSC) of the Department of Personnel & Training, Ministry of Personnel, Public Grievances & Pensions has issued an advertisement for recruitment to the posts of Inspector of Central Excise, Income Tax, etc., 1996. The respondent No.1 applied for the said post for which written examination was held

on 28.04.1996 on zonal basis. In the meantime, it appears that the action of the Staff Selection Commission for recruiting the candidates through the scheme of zone-wise selection was challenged before the Central Administrative Tribunal, Principal Bench, New Delhi, however, the same was dismissed.

4. Thereafter the matter went up to the Hon'ble Supreme Court, wherein the Hon'ble Supreme Court, vide judgment dated 09.12.1996 passed in C.A. No.4190/1995 (***Radhey Shyam Singh & Ors. -Vs- Union of Indian & Ors.***), while striking down the scheme of zone-wise selections, observed that the zonal-wise selection cannot be permitted as various candidates who appeared in some of the zones and secured more marks than those who are selected from other zones, would be deprived of their selection resulting into great injustice and consequent discrimination. It was also held that there can be said to exist no nexus between the aforesaid process of zone-wise selection and the object to be achieved, i.e. the selection of the best candidates. It was further held that the process of selection, i.e. zone-wise selection, is violative of Articles 14 & 16 of the Constitution of India and, therefore, the same cannot be sustained.

5. Pursuant to the above direction, re-examination was held for recruitment of Inspector General, Excise, Income Tax, etc. 1996 on 13.06.1999. The result of the said re-examination was declared on 03.04.2000 and thereafter the personality test was conducted and result of which was declared on 05.01.2002. The respondent No.1 was selected in the said selection and was

provided posting at Shillong Commissionerate vide order dated 26.04.2004 and he joined as Inspector in Shillong Zone on 07.06.2024.

6. However, in the year 2014, the respondent No.1 has approached the Tribunal with a grievance that vide order dated 30.09.2014 issued by the Additional Commissioner (CCO), Office of the Chief Commissioner, Central Excise, Customs & Service Tax, Vadodara Zone, one Shri Gyanesh Kumar was promoted to the grade of Superintendent of Central Excise (Group 'B') though he was junior to the respondent No.1 in the All India Merit List of 1996. He has also claimed that several other Inspectors, who are also junior to the respondent No.1 in the All India merit list, were also promoted to the post of Superintendent of Central Excise on 30.09.2014 and by subsequent orders. It is contended by the respondent No.1 that as he has been denied promotion and his juniors have been promoted, he submitted several representations to the petitioners but the same have not been taken into consideration.

7. The Tribunal, vide order dated 24.12.2014 passed in O.A. No.432/2014, has disposed of the said Original Application filed by the respondent No.1 with direction to the petitioners to consider and dispose of the representation filed on behalf of the respondent No.1 on 24.11.2014 within a period of 1(one) month from the date of receipt of the order.

8. Pursuant to the said direction, the Under Secretary to the Government of India, Ministry of Finance, Department of Revenue, Central Board of Excise & Customs, vide order dated

25.03.2015, disposed of the representation dated 24.11.2014 filed on behalf of the respondent No.1. The order dated 25.03.2015 is reproduced hereunder:-

“ORDER

This Order is being made in compliance with the Order dated 24.12.2014 of the Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati in O.A. No.432/2014 in the matter of Shri Anil Kumar Sharma Vs. Union of India & Ors.

2. *The Hon'ble CAT, Guwahati Bench, Guwahati had vide their Order dated 24.12.2014 in O.A. No.432/2014 in the matter of Shri Anil Kumar Sharma directed that:-*

“to consider and dispose of the representation dated 24.11.2014 of the applicant within a period of one month from the date of receipt of the Order and pass a reasoned and speaking order and communicate the same to the applicant”.

3. *Shri Anil Kumar Sharma, OBC, Rank No.SLC/0013 was selected for the post of Inspector, Central Excise through Staff Selection Commission on the basis of 1996 examination.*

4. *Shri Anil Kumar's representation dated 24.11.2014 has been examined. It is noted that he has raised the following grounds for re-consideration of his zonal allocation:*

(i) I had been selected and recruited to the post of Inspector of Central Excise through the/ Examination for Recruitment to the post of Inspector of CE/IT etc., 1996 conducted by SSC on 28.04.1996, which was conducted on Centre-linked-zonal Scheme. But the Hon'ble Supreme Court vide its judgment dated 09.12.1996 in C.A. No.4190 of 1995 – Radhey Shyam Singh & Ors. Vs. UOI & Ors. struck down the scheme of zone-wise selections and rules that in future no such selections should be made on zonal basis. Accordingly, a re-examination was conducted by the SSC on 13.06.1999 on All India basis and after interview and its final result was published in the year 2001, wherein the SSC had prepared All India Merit List of selected candidates and forwarded the same to the CBEC for further allocation. But after receiving the All India Merit List of selected Inspectors, the CBEC had allocated them to different zones arbitrarily, without giving them any option to choose their zones of posting, despite knowing this fact that there is a huge disparity in promotion among different zones.

(ii) I am senior to Shri Gyanesh Kumar (Rank No.SLC/0014) according to the All India Merit List prepared for Examination for recruitment to the post of Inspector of Central Excise, Income Tax etc. 1996. Further I am also senior to all the Inspectors who are selected subsequently i.e. through CGLE, 2003 conducted by SSC and allocated to Delhi Zone by CBEC. I may kindly be promoted to the post of Superintendent of Central Excise at par with Shri Gyanesh Kumar (Rank No.SLC/0014), who is lower in rank to me in the same All India Merit List and Shri Sanjay Taneja (SLD/0005) and other direct Inspectors of 2003 batch of Delhi Zone promoted on 30.9.2014.'

5. On examination of the facts of this case in compliance with the directions of Hon'ble CAT, Guwahati Bench, Guwahati vide their order dated 24.12.2014 in O.A. No.432/2014, it is found that on the basis of result of Inspectors of Central Excise, Income Tax etc., 1996 (re-examination), 25 candidates were recommended by SSC. The criteria of allocation of 1996 batch was to allocate the neighboring Commissionerates on the basis of domicile and nearest to his/her home town in order of merit. The allocation was done in proportion to the vacancies in that Zone as percentage of the total vacancies and taking into account the domicile. Shri Anil Kumar Sharma, SLC/00013 whose home address was 'Sultan Pokhar West, W.No.2, P.O. Forbesganj, Distt. Araria, Bihar was allocated to Shillong Zone. It was a conscious decision of the Board to make allocation of the candidates proportionate to the vacancies in the Zone as a percentage of total vacancies. The Contention of Sh. Anil Kumar Sharma that the allocating has been made arbitrarily is not correct. It is also stated that the Direct Recruit Inspectors are selected on the results of an All India Competitive Examination conducted by Staff Selection Commission on the basis of an All-India-Merit list. The selected candidates are allocated to one of several zonal cadres. Once, the selected candidates for the post of Inspector (Central Excise, Preventive Officer & Examiner) are allocated to a particular zonal cadre, he/ she gets placed in the zonal seniority list of the cadre in accordance with the special provision contained in para No.4(1) in the notified Recruitment Rules which states that 'Each Commissionerate shall have its own separate cadre unless otherwise directed by the Central Board of Excise and Customs,"

6. Promotion to the next post is on zonal seniority basis and not on All India seniority basis. The Inspector who joined in a particular zone will get promotion in that zone only whenever vacancy arises due to superannuation; promotion to higher grades, creation of new posts pertaining to a particular zonal cadre. As per draft seniority list of Inspectors, Central Excise of Shillong Zone as on 22.8.2014, Shri Anil Kumar Sharma appears at SL. No.352 of the seniority list and the last

officer promoted under UR category is Smt. Larinda Kharkongor, appearing at SI. No.161 and her date of joining as Direct Recruit Inspector is 13.6.1995. Hence, no Inspector junior to Shri Anil Kumar Sharma has been promoted in the Shillong Zone.

7. *In view of the above, since the promotion to the next post is on zonal seniority basis and not on All India seniority basis, Shri Anil Kumar Sharma, Inspector (Central Excise) who joined in Shillong zone will get his next promotion in that zone according to his zonal seniority whenever vacancy arises.*

8. *This issues with the approval of Member (P&V), CBEC.”*

9. Being aggrieved with the same, the respondent No.1 has filed O.A. No.339/2015, which came to be allowed by the Tribunal vide the impugned order dated 24.06.2020, whereby certain directions have been given, which have already been taken into consideration in the earlier part of this judgment.

10. From the perusal of the impugned order, it appears that the Tribunal has ultimately come to the conclusion that, as a matter of fact, the allocation of the respondent No.1 to Shillong Zone by the Department was not in accordance with law. It is also observed that the CBEC on its own has allocated Shillong Zone to the respondent No.1 without granting any opportunity to submit his option to opt on any zone. The Tribunal has also recorded a finding that as the respondent No.1 is a resident of Bihar, which falls under the jurisdiction of Central Excise Cadre Controlling Zone Commissionerate, Ranchi/Patna, he could have been allotted to the Ranchi Zone, Patna Zone, Bhubaneswar Zone, Kolkata Zone or Lucknow Zone instead of Shillong Zone.

Interestingly, at the same time, the Tribunal has also observed that the respondent No.1 has also failed to establish that there is a mandatory provision for offering option in regard to

allocation of zones. Despite recording this finding, the Tribunal has come to the conclusion that allocation of 1996 Batch of Inspectors in Central Excise in different zones merely on the basis of domicile, without giving opportunity to select their zone posting in order of their merit, is clear cut example of discrimination in the matter of Government as it violates Article 16(1) & (2) of the Constitution of India. The Tribunal has went upto the extent that when the Hon'ble Supreme Court in **Radhey Shyam Singh** (supra) has already ruled that zonal-wise selection is bad in law then the allocation of zones to the selected Inspectors is also bad.

While observing all these, the Tribunal has issued direction to the petitioners herein to convene a review DPC for the respondent No.1 and in case he is found fit, he shall be promoted to the post of Superintendent of Customs at least from the date when his junior Shri Gyanesh Kumar was promoted. The Tribunal has also issued a direction to the CBEC to take earnest initiative for streamlining the Rules and Regulations in case of Inspectors as well as Superintendents.

11. It is also to be noticed that though the Tribunal has observed that the respondent No.1 is deprived of his promotion even in 2020 but the learned counsel for the petitioners and the counsel appearing for the respondent No.1 have frankly admitted that the respondent No.1 has been promoted to the post of Superintendent of Customs in Shillong Zone in the year 2017 itself but the said fact could not be brought to the notice of the Tribunal at the time of hearing of the case.

12. Be that as it may, having heard the learned counsel appearing for the parties and after going through the material available on record, we are of the view that the order passed by the Tribunal cannot be sustained for the following reasons:

(i) Though the respondent No.1 was posted in Shillong Zone on the post of Inspector in the year 2004, he has never raised any grievance regarding allocation of zone till 2014, i.e. when Shri Gyanesh Kumar was promoted to the post of Superintendent of Customs in Vadodara Zone.

(ii) Though the Hon'ble Supreme Court in **Radhey Shyam Singh** (supra) has ruled that zone-wise recruitment on the post of Inspector is not permissible but there is no direction from the Hon'ble Supreme Court to allocate the selected Inspectors the zones or Commissionerates as per their All India Merit.

(iii) Rule 4(1) of the Central Excise and Land Customs Department Inspector (Group 'C' Post) Recruitment Rules, 2002 provides that each Commissionerate shall have its own separate cadre, unless otherwise directed by the Central Board of Excise & Customs. However, the validity of the said Rule has not been challenged by the respondent No.1 nor the criteria adopted by the Department of allocating the neighbouring Commissionerate on the basis of domicile and nearest to the hometown of the selected candidate, have been put to challenge by the respondent No.1.

(iv) The last person promoted on the post of Superintendent of Customs in Shillong Zone was senior to the respondent No.1 in the zone-wise merit list of Shillong Zone and no person junior to the respondent No.1 was promoted in Shillong Zone.

(v) The claim of the respondent No.1 of committing illegality in allocation of the zone was hopelessly time barred as Section 21(1)(a) of the Administrative Tribunals Act, 1985 clearly provides that an application to the Tribunal cannot be entertained unless the same is made within 1(one) year from the date on which final order has been passed. In the case of the respondent No.1, he was allotted Shillong Zone in the year 2004 but he has never raised any grievance about such allotment till 2014 and for that, no explanation has been offered by him.

13. In such circumstances, this writ petition is allowed. The impugned order dated 24.06.2020 passed by the Tribunal in O.A. No.339/2015 is set aside.

No order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant