IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 14261 of 2011

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Damodar Singh S/O Sri Kapil Deo Singh R/O Vill.- Etwah, P..S- Shahpur, Distt.- Bhojpur (Bihar) At Present Posted As Superintendent Of Central Excise, (Data Management Cell) Headquarters, C.R. Building, Bir Chand Patel Path, Patna-1

.... Petitioner/s

Versus

1. The Union of India through the Secretary (Finance), Ministry Of Finance, Govt. Of India, New Delhi
2. The Chairman, Central Board Of Excise And Customs, Ministry Of Finance, New Delhi
3. The Commissioner, Central Excise, Central Revenue Building, Bir Chand Patel Path, Patna-1
4. The Commissioner, Central Excise, Jamshedpur
5. The Commissioner, Central Excise, Jaipur
6. Sri R.K. Mittal, the Then Supdt. Of Central Excise, Assistant Commissioner Directorate Of Human Resources, Central Board Of Excise And Customs, North Block, New Delhi
7. Sri L.B. Bist, the then Suptd. Of Central Excise, Joint Commissioner Directorate of Logistics, Central Board of Excise and Customs, North Block New Delhi
8. Shri R.C. Agrawal, the Then Supdt. Of Central Excise (Now Retd.) C/O Chairman, Central Board of Excise and Customs, North Block, New Delhi
9. Shri Anil Kumar Dhabai the then Supdt. Of Central Excise C/O Chairman, Central Board of Excise and Customs, North Block, New Delhi
10. Shri S.R. Gaur, Supdt. Of Central Excise, Joint Commissioner, Central Excise, Patna
11. Shri D.C. Mishra, the Then Supdt. Of Central Excise Joint, Commissioner, C.C.O., Customs, I.G.I. Airport, New Delhi
12. Sri S.P. Rao, the Then Supdt. Of Central Excise, Joint Commissioner, C.C.O., Customs, Mumbai-1
13. Sri B.R. Bhatia, the Then Supdt. Of Central Excise, Now Retd C/O Chairman, Central Board Of Excise And Customs, North Block New Delhi
14. Sri Ashutosh Srivastava, the Then Supdt. Of Central Excise, Joint Commissioner, Vapi Commisionerate of Central Excise, Gujarat
15. Sri R.M. Mandola, the Then Supdt. Of Central Excise, Joint Commissioner, Directorate of System Data Management, Hotel Samrat, New Delhi
16. Sri M.L. Gosain, the Then Supdt. Of Central Excise, Joint Commissioner C/O Chairman, Central Board of Excise and Customs, New Delhi
17. Sri Y.P. Badhwar, the Then Supdt. Of Central Excise, Joint Commissioner, C.C.O., Central Excise, Jaipur
18. Sri R.K. Meherish, the Then Supdt. Of Central Excise, Asstt. Commissioner Now Retd C/O Chairman, Central Board of Excise and Customs, North Block New Delhi
19. Mrs. V.K. Mirchandani, the Then Supdt. Of Central Excise, Asst. Commissioner Now Retd C/O Chairman, Central Board of Excise and Customs, North Block New Delhi
20. Sri S.R. Dass, the Then Supdt. Of Central Excise, Joint Commissioner, Settlement Commission, Central Excise and Customs Central Board of Excise and

Customs, North Block, New Delhi

.... Respondent/s

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Appearance :

For the Petitioner/s : M/s Manoj Priyadarshi & Amit Kr Singh, Advocates

For the Respondent/s : Mr S D Sanjay, Additional Solicitor General &
Mr Satya Prakash Tripathy, Sr SC, Central Excise

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH
And
HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 18-07-2016

Heard the parties and with their consent, this writ petition is being disposed of at this stage itself.

2 The petitioner joined service at Jaipur Collectorate on 18.07.1976 in the Cadre of Inspectors which is, admittedly, a Collectorate Level Cadre in the Central Excise Department of Government of India. Because of illness of his mother, he sought transfer to Patna Collectorate from Jaipur Collectorate. He was aware that this was inter-Cadre and not intra-Cadre transfer and that too at his request. The Department agreed to this and transfer orders were issued on 22.09.1978. One of the conditions was that he would be treated as a fresh entrant in the Cadre of Inspector at Patna Collectorate. The second was that he would be put at the bottom of the seniority list below the last temporary Inspector. He would not be considered for confirmation and promotion in the Jaipur Collectorate. This clearly envisaged two things. First, he had no lien left at Jaipur and secondly being an inter-Cadre transfer, his seniority at Patna Collectorate Inspectors Cadre would be reckoned afresh. As he had put in two years in service at Jaipur, he wanted that benefit to accrue to him. His representation to the Department having gone unheeded, he filed OA No 601 of 1993 before the Central Administrative Tribunal, Patna Bench, Patna, claiming seniority over one Raman Malhotra at Patna in the seniority list that was prepared on 01.01.1992. The matter was considered and ultimately the Department went to the Apex Court. The Apex Court dismissed the Department's appeal vide judgment and order dated 31.03.1998 in Civil Appeal No 6734 of 1996 holding that the writ petitioner herein would be entitled to addition of his service rendered in Jaipur Collectorate. This is the limited relief to which the writ petitioner was entitled to. He had not claimed his seniority nor was he granted his seniority in the Jaipur Collectorate Cadre which, as noted above, he had ceased to be a Member. It appears that there were some Inspectors at Jaipur who were junior to the writ petitioner at Jaipur in the Jaipur Collectorate Cadre. The petitioner had moved from the said Cadre to Patna Collectorate Cadre which has an independent seniority list. As per the two independent seniority list that is Jaipur

Collectorate Inspectors Gradation List and Patna Collectorate Inspectors Cadre Gradation List, from time to time, people were considered for promotion. People, from Jaipur, got their promotion in 1989 itself to the All India Cadre of Excise Superintendent. Petitioner did not complain. Ultimately, petitioner's case for promotion was considered in 1998, considering his seniority in the Patna Inspectors Cadre and he was granted promotion to the Cadre of Superintendent in 1998 with effect from 30.06.1993. In the meantime, the All India Seniority List of the Cadre of Excise Superintendent was published in 1996. Naturally, petitioner's name could not have figured for the reasons that he was granted entry in this cadre only in 1998 though with effect from 1993. The grievance of the petitioner now being that he was senior to some of the Inspectors in the Inspector Cadre initially at Jaipur, those persons had been granted appointment by way of promotion in the Superintendent's Cadre which is All India Cadre in 1989 and, as such, he should be granted promotion in the Superintendent's Cadre either just before them or alongwith them. It is with this grievance he approached the Tribunal at Patna and the Tribunal, in our view, rightly rejected his prayer.

3 Firstly, when other respondents were promoted to the Cadre of Superintendent in the year 1989, if petitioner considered them to be his juniors, he should have protested. He did not. He waited till 1998 when he was granted entry in the Cadre with effect from 1993 and then made a grievance that in the gradation list, as published in 1996, his name did not figure. Obviously, his name would not have been there in the 1996 Gradation List of Superintendent, inasmuch as he was not in the Cadre then. Petitioner does not dispute that either the respondents were given wrong promotions in appointment to the Cadre of Superintendent ignoring his claim nor does he dispute that he was wrongly denied entry into the said All India Cadre from an earlier point of time. The entry into the All India Cadre from the Collectorate Cadre is dependent upon the individual Gradation List of those Cadres. An Inspector would become eligible for consideration to the appointment by way of promotion into Superintendent's Cadre only when his turn in the Collectorate Cadre come and not prior to that. Therefore, if the petitioner had to wait for consideration of his turn for appointment by way of promotion longer than others of the Jaipur Collectorate, he could only blame himself for having left the Jaipur Collectorate Cadre and migrated to the Patna Inspector Collectorate Cadre. He lost comparative seniority because of his own fault or on his own volition.

4 It is next submitted that in All India Seniority, petitioner was senior. To us, this appears to be a misnomer. As noticed earlier, there is no dispute amongst parties or authorities that the Inspector's Cadre is Collectorate Level Cadre. Therefore, the Inspector's Cadre of Jaipur Collectorate cannot be compared to Inspector's Cadre at Patna. They are two independent Cadres having their own Gradation List. Petitioner cannot claim to hold down his seniority in the Jaipur Collectorate Cadre having migrated to Patna Collectorate Inspector's Cadre. It is not a case of deputation or a mere transfer where lien is maintained. It is an inter-Cadre movement on personal request.

5 Learned counsel for the petitioner places reliance on the case of *S K Mathur & Others –Versus- Union of India & Others, (1998) 4 Supreme Court Cases 134.* We have examined the said decision and it is quite inapplicable to the facts of this case. There the case was of a deputationist who maintained his lien. As pointed out above, the case here is just the opposite.

6 Thus, we find no merit in the writ application. It is, accordingly, dismissed.

(Navaniti Prasad Singh, J)

(Nilu Agrawal, J)

M.E.H./-AFR

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