

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.14525 of 2016
Date of Decision: August 24, 2017

Union of India represented by its Secretary, Government of India, Ministry
of Defence, New Delhi & others

...Petitioners

Versus

Central Administrative Tribunal, Chandigarh Bench & others

...Respondents

**CORAM: HON'BLE MR.JUSTICE AJAY KUMAR MITTAL, JUDGE
HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE**

Present: Mr.Praveen Chander Goyal, Advocate &
Ms.Aarti Goyal, Advocate,
for the petitioners.

AMIT RAWAL, J.

1. Union of India has invoked the jurisdiction of this Court under Articles 226/227 of the Constitution of India for quashing of the order dated 21.1.2016 (Annexure P-4) passed by the Central Administrative Tribunal, Chandigarh Bench (for short "CAT"), whereby O.A.No.060/00374/2015 filed by applicant-respondents No.2 to 4, has been allowed and the petitioners have been directed to treat respondents No.2 to 4 as eligible for consideration for promotion as Superintendent in recruitment year 2015-2016 and also to include them in the list of eligibles to be considered by the Departmental Promotion Committee (DPC) when the same meets to consider promotions to the post of Superintendent for recruitment year 2015-2016.

2. Mr.Praveen Chander Goyal, learned counsel representing the

petitioners submitted that the Staff Selection Commission conducted Combined Graduate Level (Main) Examination-2004-Scheme 'A' & 'B' for the post of Assistant, Inspector of Income Tax/Inspector (Central Excise), Inspector (Preventive Officer), Inspector (Examiner), Assistant Enforcement Officer (AEO) etc., in which the applicants/private respondents ranked at Sr.Nos.132, 104 and 275 respectively. Vide letter dated 29.3.2007, the private respondents were issued appointment letters. They joined the service on 4.4.2007, 16.4.2007 and 5.4.2007 respectively, whereas other candidates, who were lower in rank to the applicants were given appointment much earlier. Resultantly, they joined earlier to the applicants. The next promotional post of the applicants is Superintendent of Central Excise, which is governed by the Superintendent of Central Excise Recruitment Rules, 1986 (for short "Recruitment Rules") in the pay scale of Rs.2000-3500. The said Group B Gazetted post is to be filled in by promotion provided that not more than 5% of the total (subject to maximum number specified in Appendix II) may be filled by direct recruitment as and when considered necessary. Inspectors of Central Excise (Ordinary Grade) with eight years regular service in the grade, if any, rendered in the grade of Inspectors (Senior Grade) fall in the feeder cadre.

3. It was further contended that the instructions dated 28.5.2014 (Annexure A-7) were issued by the Department of Personnel and Training, New Delhi fixing the date of eligibility as "1st April" of the vacancy year and in the present case, the cut off date for the vacancy year 2015-2016 was 1.4.2015. The applicants alleged that the Delhi Zone of Central Excise issued Establishment Order No.59/2015 dated 1.4.2015 promoting Inspectors on adhoc basis to the grade of Superintendent of Central Excise

in the pay scale of ₹9300-34800 with grade pay of ₹4800 w.e.f. 1.4.2015.

The final list contained the names of the persons, who were lower in the rank as per merit list prepared by the Staff Selection Committee, i.e., Sr.Nos.213, 234, 306, 319, 340, 421 and 486. The grievance of the applicants was that they had become eligible for promotion w.e.f. 1.4.2015 and cannot be made to suffer on account of the issuance of delayed appointment letters despite the fact that they have completed eight years regular service.

4. The aforementioned stand of the applicant-private respondents was contested on the premise that the dates of joining of the alleged junior persons, i.e., Naveen Kalotra and Ashok Kumar Bodh in the parent cadre zone were 7.2.2007 and 30.10.2006 respectively and as such they completed the qualifying service of eight years as on 1.4.2015, whereas the case of the private respondents was not considered owing to the fact that they had not completed eight years of qualifying service. The CAT has committed illegality and perversity in not taking into consideration the SSC Guidelines, which envisage that the offer of the appointment to the candidates should be sent after completion of the formalities contained in Annexure II (Annexure R-1). Annexure II stipulated for the completion of medical examination, verification of character antecedents and certificate relating to date of birth, educational qualification, caste certificate and claim of age relaxation. It was also claimed that CAT had not considered the character verification report of one of the candidates of CGLE 2004 Batch received on 9.3.2007 and, therefore, offer of appointment to the same was issued in March, 2007. On the aforesaid premises, delay in completion of appointment/formalities was attributed to the respondents.

5. Reference was made to the provisions of the DOPT OM No.AB/14017/12/68-Est (RR) dated 25.3.1996, where juniors, who completed their qualifying/ eligibility service, were being considered for promotion and the seniors to be considered provided they were not short of the requisite qualifying/ eligibility service by more than half of such qualifying/eligibility service or two years whichever was less and successfully completed their probation period for promotion to the next higher grade along with their juniors, who completed such qualifying/eligibility service. It was contended that the aforementioned provisions have not been incorporated in the Recruitment Rules and, therefore, the names of the Inspector of Chandigarh Zone, who had not completed eight years of qualifying service on relevant date, were not eligible for consideration for promotion to the grade of Superintendent. The learned counsel, thus, urged the Court for setting-aside of impugned order.

6. We have heard the learned counsel for the petitioner, appraised the paper book and in our opinion the reasoning assigned by the CAT does not warrant any interference. The objection of the petitioners, while contesting the claim of the private respondents/applicants, was that they had not completed the qualifying service of eight years owing to the issuance of the appointment letters belatedly. The applicant-respondents could not be excluded from the zone of consideration, especially when the applicant-respondents admittedly ranked higher than the other persons.

7. Further, the Inspectors (Central Excise) were appointed on the basis of Combined Graduate Level Main Examination conducted by the Staff Selection Committee from year to year. On the basis of the preference indicated by each candidate and the position of the candidate in the merit

list, they were assigned different Commissionerates in the department. The promotion from the level of Inspector to the Superintendent takes place at the Commissionerate level and the next higher post of Assistant Commissioner is filled from amongst the Superintendents. The petitioners themselves are responsible for creating anomaly as two persons, who got Inter Commissionerate Transfer, were earlier assigned Commissionerates other than Chandigarh, but were later transferred to the Chandigarh Commissionerate. They had joined in their respective Commissionerates prior to 1.4.2007. Hence, they had completed eight years of service as on 1.4.2015 and had been included in the list of persons eligible for promotion as Superintendent for the vacancy year 2015-16. However, the Inspectors of the Chandigarh Commissionerate, who were of this very batch, joined “after 1.4.2007” had been declared ineligible by the petitioners on the premise of having not completed eight years of service. This stand cannot stand judicial scrutiny especially when admittedly, the applicant-respondents were issued appointment letters belatedly without any fault attributed to them for the delay.

8. For the reasons aforementioned, the order of the CAT does not appear to be erroneous or suffering from any illegality or perversity. Resultantly, the writ petition is dismissed.

**(AJAY KUMAR MITTAL)
JUDGE**

**(AMIT RAWAL)
JUDGE**

**August 24, 2017
ramesh**

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No