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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Decision delivered on: 12.09.2024**

+ **W.P.(C) 7444/2024**

SHRI. SUNIL KALGOUNDA PATIL & ORSPetitioner
Through: Ms. Sumita Hazarika and Ms.
Mansi Mehta, Advocates.

versus

UNION OF INDIA, THROUGH SECRETARY, DEPARTMENT
OF REVENUE, MINISTRY OF FINANCE. AND ORS.

.....Respondents
Through: Mr. A.K. Trivedi, Mr. Dhruv
Kothari and Ms. Shipra Yadav,
Advocates.
Mr. D Shashank Bajpai, CGSC
with Mr. Rudra Paliwal,
Government Pleader for UOI.
Mr. Ravinder Agarwal, Advocate
for R-4.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE GIRISH KATHPALIA

J U D G M E N T (O R A L)

1. By way of the present writ petition filed under Article 226 of the Constitution of India, the petitioners have sought the following relief:



“a) Pass an appropriate writ, direction or order quashing and setting aside the impugned judgment and order dated March 24, 2023 passed by CAT, Principal Bench in OA No. 3243/2019;

b) Pass an appropriate Writ, direction or order directing the respondents to grant notional promotion to the Petitioners from the date they were eligible for promotion applying the ratio 13:2:1 for the three feeder categories of Superintendent Central Excise, Customs Preventive and Customs Appraisers from the year 2002 and giving all consequential benefits.”

2. Though the present petition has been filed on 26 grounds, however, learned counsel for the petitioners has confined her submissions to the following grounds only:

“A. Because the Hon'ble Supreme Court vide order dated 3/8/2011 passed in Civil Appeal No.1198/2005 had clearly directed inter alia that; “The Union of India shall duly consider all such representations including those made before it in light of the subsequent development in the cadre strength of the 3 feeder categories of Group-B services and amend/revise the Recruitment Rules including altering the existing ratio to secure just and fair representation to all the 3 feeder categories.”

The Hon'ble Supreme Court while passing the above directions was referring to the change in 2001 and thereafter in the relative cadre strength of the 3 feeder categories of the Group B services and to secure just and fair representation to all the three. Therefore the amended rules had to be applied with retrospective effect to ensure the same.

B. Because the Hon'ble Supreme Court vide order dated 3/8/2011 passed in Civil Appeal No.1198/2005 had further directed inter alia; that “Having perused one of the Office Orders (No.51/2011 dated 18th March, 2011), whereby some officers were promoted from Group B to the grade of Assistant Commissioner of Customs & Central Excise in the Pay Band 3 with Grade Pay of Rs.5400/-on purely ad hoc basis, we direct that all such ad hoc promotions shall abide by the final decision to be taken by the Department in terms of this order.” This direction further clarifies that it was open to the Respondent to apply to amended rules revising the existing ratio to secure just



and fair representation to all the 3 feeder categories to the post of Assistant Commissioner with retrospective effect.

C. Because the Tribunal dismissed the OA holding inter alia that;

“11. We hereby after considering the rival contentions and the material placed before us, are of the view that the Hon'ble Apex Court decision is loud and clear that all the three categories may approach the respondents by way of representation who may consider the same and formulate the promotion policy on the basis of strength certainly not from retrospective date. In view of this, there is 35 Hon'ble 3 Group B just B. Hon'ble 2011 No. Group B the grade Band 3 on just 3 C. Hon'ble 35 no merit in the present OA whatsoever and the same is liable to be dismissed. Hence, the same is dismissed with no order as to costs.”

Therefore the Hon'ble Tribunal could not have concluded that there was no direction to the Respondents to apply the revised Rules from retrospective effect. If that was so the Hon'ble Supreme Court would not have directed that the ad hoc promotions given by the Respondents in March 2011 will be subject to the final decision to be taken by them.

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F. Because in terms of the Board's decision dated September 16, 2011 for seeking a clarification from the Hon'ble Supreme Court with reference to the prospective implementation of the ratio of 13:2:1, an application was moved before the Hon'ble Supreme Court which was dismissed. Therefore it was incumbent upon the Respondents to apply the amended ratio of 13:2:1 in the feeder categories for the post of Asstt Commissioner from a retrospective date matching the alteration in cadre strength of the feeder categories.

G. Because the delay in amending the ratio to 13:2:1 in the feeder categories to the post of Asstt Commissioner has caused serious prejudice to the Petitioners who have been before the Courts since 1988 for redressal of their grievances. The Petitioners have not only received their due promotion after a delay of 13 years, but have also 37 Hon'ble Group B the officers



Board's 16, a Hon'ble 13:Hon'ble a a 37 missed the opportunity for consideration for at least two more promotion and the resultant denial of an enhanced pension. Therefore justice demands that the Petitioners be promoted as Asstt Commissioners at least from the date their junior Custom Appraisers were promoted.

H. Because it was incumbent upon the Respondents to carry out the change in the promotional quota under their own guidelines issued by the DOP&T. As per clauses 1.1, 3.1.5, 3.3 and 3.12.7 of the DoPT O.M. No. AB-14017/12/87- Estt. (RR) dated 18.03.1988 incorporated in the Handbook of Recruitment Rules published in 1993 by the Nodal Ministry, as soon as there is cadre restructuring or decision taken to create new posts and there is a change in the strength of posts, the Recruitment Rules are to be reviewed, and in any case, they should be reviewed every 5 years. Also, as per clause 3.12.7, where there are two or more feeder grades, a separate percentage for promotion may be prescribed for each of the feeder grade. This Procedure for framing Recruitment Rules continues to date. It is accordingly, submitted that the quota for promotion to the post of Assistant Commissioner, Group A services, from the Grade of Superintendents in Group-B Executive Service, should be based upon the respective sanctioned strength of the three feeder categories."

3. It is pertinent to mention here that before the learned Central Administrative Tribunal (hereinafter referred to as "learned Tribunal"), there were 112 petitioners, however, in the present petition there are only 28 petitioners.
4. The petitioners herein have sought promotion to the post of Assistant Commissioner Group 'A' service from three feeder categories in group 'B' services for Superintendent Central Excise, Superintendent Customs Preventive and Customs Appraisers and were previously appointed as Inspectors through the same selection process.



5. The petitioners, before the learned Tribunal in the OA belong to first two feeder categories, are aggrieved as they have been stagnating for decades and Customs Appraisers junior to them are being promoted before them because of the discriminatory and arbitrary promotion policy of the respondents and the irrational application of Rule 5(4) of the Recruitment Rules 2012 with effect from 13.09.2012 instead of 05.06.2002, or earlier, vide Rule 1(2). The petitioners were granted ad hoc promotion contrary to equal number of promotions as enshrined in the Constitution. Their own circulars provided that the quota for promotion from the feeder cadres is to be apportioned on the basis of comparative cadre strength. As per the Handbook of Recruitment Rules, 1993 Group 'A' service including the clause 3.12.7 which provides that if there is more than one feeder category for promotional cadre, the quota of promotion for each category shall be based upon ratio of their sanctioned strength.

6. It is not in dispute that the present matter went up to Hon'ble Supreme Court. Initially the association of the petitioners approached the learned Tribunal at Bombay Bench which has given the following directions :-

"33. Keeping in view the limited scope of the Tribunal in such matters where promotional avenues are to be considered as there is a substantial increase of the cadre strength of Superintendent of Customs (P) by more than 127% after the determination of their quota by the Apex Court judgment, while there has been a small increase, i.e. 34% in quota of Appraisers we feel it just and fair to direct the respondents to consider the grievances of Superintendent of Customs (P) and Appraisers within a period of three months providing them just and fair opportunity of their representation to the post of Assistant Commissioner of Central Excise and thereafter to fill the existing vacancies. With these Excise and thereafter to fill the



existing vacancies. With these observations, the OAs stand disposed of. No order as to costs.”

7. Thereafter, the Bombay High Court negated the learned Tribunal's order and held therein that the learned Tribunal had no jurisdiction. Ultimately, the matter went up to the Hon'ble Supreme Court where the Hon'ble Supreme Court held that all the three group officers narrated herein above in the feeder categories might make a representation to the Union of India suggesting changes which according to them should be made in the recruitment rules for their promotion to Group 'A' post of Assistant Commissioner (Central Excise and Customs). The Union of India shall duly consider such representation including those before it in the light of subsequent development in the cadre strength of the three feeder categories of Group-'B' services and amend/revise the Recruitment Rules including altering the existing ratio to secure just and fair representation of all the three feeder categories. The Union of India shall complete the entire process by 31st December, 2011 uninfluenced by observations made in the previous judgment passed in ***All India Federation of Central Excise Vs. Union of India & Ors.(1997) 1 SCC 520***, in which the existing ratio was approved as also the observations in the impugned judgment dated 19.12.2003 of Bombay High Court in W.P.(Civil) No. 1324/2002 with regard to jurisdiction of the learned Tribunal.

8. The learned Tribunal had perused one of the Office Orders No. 51/11 dated 18.03.2011, whereby some officers were promoted from Group 'B' to the grade of Assistant Commissioner of Customs and Central Excise in the



pay Band 3 with grade pay of Rs.5400/- purely on ad hoc basis. Accordingly, the learned Tribunal directed that all such ad hoc promotions shall be abide by the final decision to be taken by the department in terms of the said order.

9. Thereafter, the respondents' department had constituted a Board Meeting on 16.09.2011 vide its office order No. BMB No. 46/2011. Extracts of paragraph 2.2.1 of the Minutes of the said meeting reads as under :-

"2.2.1 The all India Association of Central Excise Gazetted Executive Officers highlights the acute stagnation in executive cadres invited reference to 44 representations made by them during 02.09.2009 to 07.08.2011 and requested for removal of dis parity in promotions between the cares of Superintendents of Central Excise and appraisers. It suggested necessary amendments to Recruitment Rules for IRS (C&CE) so that all Group-B entry level officers recruited in the same year are brought at par in terms of promotions on the basis of base cadre seniority, whether the Central Excise officers are able to get promotion within the eligibility period as prescribed by DOPT (OM dt 04.03.2009). The All India Federation of Superintendent of Customs submitting its representation invited reference to its 12 earlier representations in the matter."

Finally it was held in paragraphs 2.3 (iii) and 2.4 which is reproduced below :-

2.3(iii) Revision of Promotion Quota on the basis of sanctioned strength : In view of the DOPT's guidelines (OM No. 20011/1/2008-Estt.(D) dated 11.11.2010) revision of promotion quota on the basis of the sanctioned strength of the three Group-B executive grades is the logical way forward and in terms of the existing regular sanctioned strength of each of the grades, the ratio of 13 (Central Excise) : 2 (Cus. Prev/) : 1 (appraiser), with the condition that the said ratio would be revised whenever the sanctioned strength of any of the feeder grade undergoes substantial and significant, change is the most plausible manner for resolution of the issue.

.....The suggestion was however, fraught with the



obvious possibility of reversal of officers at different levels thereby compounding the implementation issues with many of the officers having since retired. Thus, in the alternative a proposal for implementation of the ratio on a prospective basis was made out.

2.4.....
It also directed that the Hon'ble Supreme Court be approached for a clarification order with reference to aforesaid and prospective implementation of the said ratio."

10. Accordingly, the outcome of the meeting was that whether the ratio which was to be applied for the promotional benefits of the petitioners herein, their implementation was on prospective basis or not. Thus, the Board directed that clarification from Hon'ble Supreme Court might be sought for.

11. Thereafter, the respondents had approached the Hon'ble Supreme Court by filing modification application seeking clarification of order dated 03.08.2011 passed by the Court in Civil Appeal No. 1198/2005 to the effect that the respondents were permitted to alter the existing ratio of 6:1:2 in the three feeder cadres, namely (i) Superintendent of Central Excise, (ii) Superintendents of Customs (Preventive) and (iii) Customs Appraisers to 13:2:1 respectively on the basis of the existing regular sanctioned strength of the respective feeder cadres, for promotion with effect from the date the amended Recruitment Rules were notified : together with permission to extend the time limit by another three months to complete this exercise. In other words, as to whether the ratio of 13(Superintendent of Central Excise) :2(Superintendent of Customs Preventive) : 1 (Appriaser); and Central Excise were to be implemented retrospectively.

12. After considering the contention of the respondents, the same was



rejected by the Hon'ble Supreme Court by passing the following order:-

"Having heard Ms. IndraJai Singh, learned Additional Solicitor General, we are of the view that order dated 3 rd August, 2011 does not warrant any modification/clarification. Accordingly, the application is dismissed. However, the time to implement the said order is extended by a further period of three months from today."

13. Thereafter, the petitioners filed contempt petition for implementation of the order passed by the Hon'ble Supreme Court which was dismissed by passing the following order :-

"5.....The order did not state anywhere that the quota when changed will apply retrospectively. At best it could be said that according to the petitioners the implementation was not in conformity with the directions of this Court passed on 03.08.2011, but there is no disobedience, whatsoever, of the directions in making the newly formed quota applicable prospectively. 6. Having noted the submissions of both the parties, we are in agreement with the submissions made on behalf of the Union of India as well as the intervenors. All that the order dated 3.8.2011 says is that the ad hoc promotions made in the meanwhile will abide by the final decision to be taken by the Department in terms of Office Order. There is no direction to apply the new quota retrospectively. We do not see that there is any contempt of this Court's order dated 3.08.2011 by the respondents. The contempt petitions are accordingly dismissed."

14. Subsequent to that, I.A No. 1198/2005 was filed by the petitioners seeking clarification as to whether the said ratio of 13:2:1 was applicable on the amended Recruitment Rules was from retrospective effect or not. The Hon'ble Supreme Court disposed of the same and held as under :-

"Heard Mr. A. K. Ganguly, learned senior counsel in support of I.A No. 1/2013.

In our view, the applicants seek almost a review of the order dated 3rd August, 2011 passed by this Court and we do not see



any reason to interfere with the said order. We are of the view that it will be reopening the entire case. We are, therefore, not inclined to entertain this application. It is accordingly dismissed.

Mr. Ganguly, however, states that the applicants may avail of their remedy by approaching the Administrative Tribunal. If they do so, the Tribunal will look into the matter on its own merits.

Heard Mr. V. Giri, learned senior counsel in support of these I.As. He states that the applicants would like to make a fresh representation to the Union of India and in the event the petitioners are aggrieved by the decision thereon, they may take appropriate recourse. After making this statement Mr. Giriprays for withdrawal of these I.As. These are accordingly dismissed as withdrawn.”

15. In the order impugned before this Court, The learned Tribunal observed that though time and again petitioners were referring for retrospective implementation of the Recruitment Rules which were infact formulated after the Hon’ble Supreme Court directions in the year 2012, but the fact remains that the Hon’ble Supreme Court nowhere stated that whether the amended ratio of 13:2:1 would be applicable from prospective or retrospective date. The Hon’ble Supreme Court had directed the petitioners and all the three streams to make a representation to the respondents who may formulate a policy and accordingly, it had to be implemented.

16. At that stage, counsel for the respondents drew the attention of the learned Tribunal to the fact that there were four difficulties they were facing while implementing the said policy from retrospective date i.e. from 2012 onwards which had been questioned before the learned Tribunal, as they had already made ad hoc promotion to the post of Assistant Commissioner. Some



of the officers who were granted benefits in year 1997 either superannuated or further promoted to the next higher level.

17. Accordingly, reversal of the officers concerned might cause inconvenience. The said four conditions are enumerated below:-

“(i) The promotions made since the year 1997 from Group „B” feeder categories to Junior Time Scale of IRS.(C&CE) are ad-hoc, and hence any retrospective application of ratio 13:2:1 would lead to huge shortfall/excess promotions from the three feeder grades viz. Superintendent of Central Excise, Superintendent of Customs (P) and Appraiser.

(ii) Majority of those promoted to the JTS on ad hoc basis since 1997 have either since superannuated or many of the remaining officers have been further promoted to the higher grades.

(iii) Review of the ad hoc promotions made to JTS since 1997 on the basis of the revised ratio, i.e., 13 (Superintendent of Central Excise) : 2 (Superintendent of Customs Preventive) : 1 (Appraiser), may at this distance of time of 14 years cause reversion of many such officers, who are still in service and is fraught with adverse personnel issues.

(iv) Such reversion of officers may cause administrative anarchy jeopardizing the best interest of the indirect taxes administration, as it may slowdown the pace of revenue collection, which may eventually lead to loss of revenue.”

18. The learned Tribunal, accordingly, observed that time and again the Hon’ble Supreme Court had been approached by both sides and the matter was heard, however, the Hon’ble Supreme Court had nowhere directed that it should be implemented from the retrospective date i.e., with effect from 2012.

19. It is not in dispute that the affected officers, who approached the learned Tribunal, were not made parties before the Tribunal or this Court. It is also not in dispute that most of the officers have superannuated or promoted to higher rank and if the present petition filed by the petitioners is allowed,



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there will be reversal of so many officers and the benefit which they have already received, the recovery of the same would be affected upon them.

20. The learned Tribunal, accordingly, rightly observed that in the present OA, after exhausting remedies up to consideration up to highest level, had no merit.

21. In view of the above, we find no error or perversity in the order passed by the learned Tribunal.

22. Accordingly, finding no merit in present petition, the same is hereby dismissed.

(SURESH KUMAR KAIT)
JUDGE

(GIRISH KATHPALIA)
JUDGE

SEPTEMBER 12, 2024/riya