F.No. 10C18/3/2017-Ad.IIB
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
*****

North Block, New Delhi
Dated the 27th October, 2017

To

All Pr. Chief Commissioner/Chief Commissioner/Commissioner
All Directors General under CBEC

Subject: Application of ‘own merit’ rule for determining seniority of Superintendents in Zones under CBEC - regarding.

Madam/Sir

Please refer to the issue relating to application of ‘own merit’ for seniority determination of Superintendents under litigation in some Zones.

2. The Department of Personnel & Training has issued instructions on the subject matter vide O.M dated 30.09.2016 (enclosed) directing, inter alia, that—
   “…the Learned Solicitor General has undertaken that till such time the main matter along with the Contempt Petition is decided, no further promotions of reserved category persons to unreserved posts will be made based on the DoPT OM dated 10.08.2010 and Railway Board Circular dated 14.09.2010.”

3. The Board issued a clarification vide letters F.No. C-18012/2/2011-Ad.IIB dated 23.09.2016 and 29.06.2016 in this regard to CCA Lucknow, which are enclosed.

4. As directed in the OM dated 30.09.2016, it is imperative that till such time that the SLPs referred to therein are decided by the Hon’ble Supreme Court, while considering the promotion, the DoPT OM dated 10.08.2010 is not to be relied upon.

5. Accordingly, all CCAs may ensure that the seniority list of Superintendents are revised, adhering to the instructions contained in DoPT’s O.M dated 30.09.2016.

6. This issues with the approval of the Chairperson, CBEC.

Yours faithfully

Encl. As above.

(Nagendra Kumar)
Under Secretary to the Govt. of India
Tel. No. 011-23095584
P.T.O.
Copy to-


2. The DG (Systems & Data Management), New Delhi with the request to upload this on the official website of CBEC.

(Nagendra Kumar)

Under Secretary to the Govt. of India
F.No.C-18012/2/2011-Ad.IIB
Government of India
Ministry of Finance
Department of Revenue

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New Delhi, the dated 23rd September, 2016

To
The Chief Commissioner,
Customs, Central Excise & Service Tax, Lucknow Zone,
7-A, Ashok Marg,
Lucknow - 226001

(FAX No. : 0522-220 2024/223 3134)


Sir,

I am directed to refer to Commissionerate’s letter C.No.II(3)2-CMSC/Supdt./Legal/OA/2011/Pl./751 dated 26.08.2016 and Board’s letter of even number dated 29.06.2016 on the above subject.

2. As informed vide Board’s letter of even number dated 29.06.2016, status quo of seniority ante E.O. dated 10.09.2010 and 30.09.2010 of Lucknow Commissionerate has to be maintained. Thus, you are requested to maintain the seniority of Superintendents prior to issuance of E.O. dated 10.09.2010 and 30.09.2010.

3. This issues with the approval of Member (Admn.), CBEC.

Yours faithfully,

(B.K. Manthan)
Under Secretary to the Govt. of India
Tele : 011-2309 55 84

Copy to:
(i) Chief Commissioner of Central Excise, Delhi Zone for information and necessary action.
(ii) DG(HRD), Customs & Central Excise, C-4, West Wing, Ground Floor, IRCON Building, District Centre Saket, New Delhi-110017 for information and necessary action.

Issued by S/1
29/9/2016
To

The Chief Commissioner,
Customs, Central Excise & Service Tax, Lucknow Zone,
7-A, Ashok Marg,
Lucknow - 226001

(FAX No. : 0522-220 2024/223 3134)


Sir,

I am directed to refer to Delhi-I Commissionerate’s letter C.No.V(CAT)Vig/77/2015/3019 dated 13.05.2016 forwarding therewith copy of CAT, Principal Bench’s order dated 06.05.2016 in Contempt Petition No.637/2015 in OA No.371/2011 in the matter of Anoop Kumar Srivastava & others before CAT, PB, New Delhi.

2. While dismissing the Contempt Petition, the Hon’ble Tribunal has dealt with the issue at great length examining each aspect of the issue and Judgment of Apex Courts and High Court on the issue. Para 9 of the judgment is of importance where the Tribunal has examined, whether the actions of the department in not keeping the E.Os dated 10.09.2010 and 30.09.2010 in abeyance amounts to willful disobedience. The Tribunal has noted that

“9........In our view, once the order dated 10.09.2010 and 30.09.2010 have been kept in abeyance by this Tribunal the seniority of the petitioners is automatically restored and unless there is a specific order by the Respondents-Contemnors or letter that shows that Deptt. has gone ahead with promotion of the officers on the basis of aforementioned seniority list it cannot be said that there is a violation of the order of this Tribunal dated 07.03.2013. With regard to the submission of the learned counsel for Respondents-Contemnors that they interpreted the word ‘abeyance’ to mean status quo, we can only say that in the present context the abeyance of order dated 10.09.2010 and 30.09.2010 would only mean that status quo ante has to be maintained. In the face of the statement that the respondents have not taken step in violation of the order of this Tribunal we are sanguine that respondents are maintaining status quo ante.

10. In view of the foregoing discussion and aforementioned reasons, we do not find any act of the respondents that could be classified as willful disobedience of the order of the Tribunal. The present contempt petition is devoid of merit and the same is dismissed accordingly.”

3. The issue of reservation in promotion and applicability of ‘OWN MERIT’ concept as enunciated in DOP&T’s instructions dated 10.08.2010 (which has been quashed by Punjab & Haryana High Court and presently sub-judice in the Hon’ble Supreme Court) has not yet been finalized by DOP&T.
4. In view of the observation of the CAT, Principal Bench in para 9 of their order that “in the present context the abeyance of order dated 10.09.2010 and 30.09.2010 would only mean that status quo ante has to be maintained”, in pursuance of Lucknow Commissionerate’s Establishment Orders dated 10.09.2010 and 30.09.2010, it has been decided in the Board that seniority of applicants in the OA No. 371/2011 including other general category Superintendents may not be revised in the All India Seniority of Superintendents till a final view on reservation in promotion is taken by the Government. Violation of above may attract further contempt petition.

5. You are advised not to revise the seniority (AISL) of applicants in the aforementioned OA and contempt petitions including other general category officers in the light of E.O dated 10.09.2010 and 30.09.2010 issued by the Lucknow Commissionerate.

Yours faithfully,

(B.K. Manthan)
Under Secretary to the Govt. of India
Tele: 011-2309 55 84

Copy to:

(i) Chief Commissioner of Central Excise, Delhi Zone w.r.t. their letter C.No.V(CAT) Vig/77/2015/3019 dated 13.05.2016.
(ii) DG(HRD), Customs & Central Excise, C-4, West Wing, Ground Floor, IRCON Building, District Centre Saket, New Delhi-110017 for information and necessary action.

Issued by SLP
11/1/2016