

ALL INDIA ASSOCIATION OF CENTRAL EXCISE GAZETTED EXECUTIVE OFFICERS

MINUTES OF THE ASSOCIATE COMMITTEE MEETING HELD AT NEW DELHI ON 21.09.2013

The meeting was held in the Committee Room of C. R. Bldg. at New Delhi. The meeting was inaugurated by Shri Lokanath Mishra, the President of the Association. While inaugurating the meeting, the President informed the house that it was decided in Patna AEC meeting that our Association should make all out efforts to get approved the group A posts by COS as recommended by FM during April, 2013. Due to our persuasion, finally COS cleared the proposal with certain minor cuts at higher level pots. He informed that though the COS cleared the proposals on 27.08.13, yet minutes of the meeting are awaited. Hence, he requested the delegates present in the house to utilise their political & bureaucratic contacts (if any) in r/o the issuance of the minutes at an early date so that the process for cabinet approval may be started immediately. Finally, he requested the Secretary General to start the business of the house as per agenda points circulated by him.

Sri Ravi Malik, the Secretary General of the Association, acquainted the house about the present position of the Cadre Restructuring and stated that the present austerity measures imposed by D/O Expenditure should not affect the CR proposal of CBEC and placed the agenda points of the meeting as below-

1. Cadre restructuring.
2. Scheme granting parity with common entry counterparts to enter our officers into PB4.
3. Subscription, Funds & DDO certificates.
4. Any other point/s with the permission of Chair.

He requested the delegates to discuss the points one by one. The points were discussed as below-

1. CADRE RESTRCTURING:

Shri N. N. Lal & Sh.G. K. Jhala appreciated the action initiated by our AIB on clearance of CR by COS.

Sh. S. K. Jha also appreciated the efforts of the AIB. He asked whether the posts meant for our promotions would be filled-up in one go or staggered manner.

Shri M. K. Mishra stated that action taken note and minutes of the last AEC meeting are required to be presented in this house for approval. He said that the action initiated by AIB on the issue of correction of seniority list is required to be presented in the house. He further said that though it was resolved that AIB should not file any court case, yet the parity case was filed by AIB in CAT (PB).

Shri S. Chandrasekar stated that the outcome of the COS meeting should be appraised in the meeting. He asked how many posts would go to the Appraisers.

Shri Suresh Kumar wanted to know about the approval of temporary posts & reserved pool posts, whether the temporary AC would be eligible for further promotion or not, whether austerity measures will affect the CR or not, whether CR to be approved by Cabinet will be reviewed again by CBEC in allotment of Commissioneartes/staff etc. or not. He said that it is not correct that 7000 group B officers would get promotion during coming 5 years as a result of

cadre restructuring. He also said that no resolution was passed for AIB to file any court case. He also enquired about the ratio based on which post 1996 ad hoc promotions to the post of AC are to be regularized. He also said that the LTU's have not been covered under CR.

Shri R. G. George stated that new RR's should be effective since 1997. He further said that we should put pressure on Cabinet Secretary to finalise the minutes of COS meeting.

Shri Anurag Chaudhary appreciated the efforts of AIB and wanted to know the procedure to fill up the group A posts to be created during CR whether UPSC would be involved or otherwise.

Shri Buta Singh appreciated the AIB and said that we should enjoy the result of cadre restructuring. He added that a few units are trying to formulate the rules in their own style in the name of the removal of regional disparities. Such units should refrain themselves from making their own rules to implement the CR as it is not possible to promote junior Superintendents earlier than the senior ones already placed in the existing seniority list.

Shri V. N. Jha congratulated the AIB for clearance of CR by COS without any major cut. He appreciated the AIB to get the renewal of Association, get historic judgement from SC in r/o change of RR's, cleared thousands of posts in CR, seniority list published, promotions issued on ad hoc basis despite of UPSC objection etc. He wanted to know as to whether group A RR's will be covered for filling up temporary posts or not and whether austerity measures will affect the present CR or not. He further stated that as regards the request of SG for joining of our members voluntarily in HRD for CR work, it will be better if some circular is issued by DG, HRD for joining/requirement of our officers in HRD.

Shri Niranjana Pradhan congratulated & appreciated the AIB for clearance of CR by COS without any cut and stated that bringing such a huge number of promotional posts is a very commendable job. He wanted to know the calculation of 7000 officers to be promoted during 5 years. He also wanted to know about 250 reserved pool posts and effect of austerity measures on present CR.

Shri Anand Kishore appreciated the efforts of AIB. He asked for creation of more composite Commissionerates by trifurcating the present Raipur Commissionerate on the basis of revenue as well as heavy workload. It was also pointed out by him that the present Bhopal and Indore Commissionerates, which does not fulfill the criteria fixed by the second study group formed for cadre restructuring, are being bifurcated into two Commissionerates and also Nagpur Commissionerate is going to be trifurcated into three Commissionerates which will put us, i.e., the Raipur Commissionerate in disadvantageous situation as far as allocation of the posts is concerned. He also pointed that the cadre of present Nagpur Zone should be separated from Bhopal Zone. He further asked to ensure that the allocation of posts in all the Commissionerates should be equal which was also supported by Shri Chandramouli.

Shri R. K. Solanki also appreciated the AIB giving full credit for its extraordinary efforts made against all odds. He wanted to know as to whether the temporary posts are STS or JTS.

Shri A. S. Roy appreciated the AIB to get cleared so many numbers of promotional posts by COS. He wanted to know about the status of creation of temporary posts. He said that all the posts, permanent or temporary, should be released early in one go and efforts should be made that such posts are not abolished after 5 years. The number of temporary posts created at the STS level cannot be by simple mathematics entirely filled-in by the existing Assistant Commissioners. This gives opportunity to implement our long standing demand of direct promotion of superintendents to the STS level. He asked to ensure that reorganisation does not cause any kind of delay in the release of the new posts and giving effect of the resultant

promotions, it should also be ensured at the same time that minimum infrastructure is provided to the promoted officers. Since such posts covered both JTS and STS, he stated that provisions should be made in RR's for promotion of seniors having GP 6600 in PB-3 directly to STS posts at the time of implementation. Care should be taken for proper reorganisation of Commissionerates as the Service Tax revenue of Kolkata has not been reflected properly by study group. He also stated that more expenditure will be involved on account of infrastructure for creation of new establishments; hence austerity measures may hamper the present CR. He also said that the disparities existed in awarding 3rd MACP upgradation are required to be removed. He mentioned a letter DOF No. A. 32012/16/2013-Ad.II dt. 13.09.13 issued by the Member (P&V) to the Chief Commissioners regarding regularisation of *ad hoc* promotions w.e.f. 1997. The list attached to the said letter contained names of 159 Superintendents, 97 Superintendents (Preventive) and 122 Appraisers. He apprehended that the letter as well as the enclosed list does not in any way indicate that the regularisation is being done at the enhanced ratio as per the new Group A Recruitment Rules or even at the floating ratio prevalent at the material time in terms of the cadre strength of three cadres. He said that the Board should be thoroughly pursued to get the regularisation done in our favour as much as possible.

Shri L. L. Singhavi thanked AIB for getting such a good number of promotional posts. He stated that since posts have been created on temporary basis, IRS Recruitment Rules would not be applicable to fill up such posts. Hence, new RR's are to be framed to fill up these posts. Therefore, provisions should be made in new RR's to remove the regional disparities in promotions. He asked to form a committee on the issue of regional disparities.

Shri Sampat Rai congratulated the AIB on grand success and appreciated its efforts. He suggested to take care of austerity measures, so that CR is not referred to Expenditure once again for clearance. He also asked to take care of austerity measures as a lot of expenditure will be involved on account of infrastructure for new establishments to be created.

Shri Pareek congratulated the AIB and appreciated its efforts. He clarified that the temporary posts have been created to avoid the restriction imposed by DOPT not to create more than 33.3% of regular group A posts in course of CR of an organised cadre. He stated that the CR has already been delayed and it should not be delayed further as our senior friends are retiring every month without getting promotion to enter into group A. He added that we should enjoy the achievement of AIB in r/o of CR for coming 5 years regularly because the regional disparities can't be removed with the retrospective effect.

Shri V. Kamble congratulated the SG & President of AIB for excellent work. He stated that SC orders dated 03.08.11 should be implemented retrospectively. He said that we have to see how the RR's can be amended to remove the regional disparities because we don't have all India seniority list of Inspectors. Temporary posts should be converted to permanent. Austerity measures should not affect the CR. New posts are also required to be created at the time of introduction of GST.

Shri Anurag Mishra from Pune stated that an eligibility/seniority list of Superintendents is required to be issued by Board like the eligibility/seniority list of Appraisers.

Shri P. D. Nimhan stated that promotions to group A must be made on the basis of all India seniority list of Inspectors and the minutes of the AC meeting are required to be issued at an early date.

Shri Ravinder Singh appreciated the efforts made by AIB and stated that CR should not be delayed further and only the existing law to promote the officers from the existing seniority

list of Superintendents should be followed for its implementation. He added that the austerity measures should not affect the CR.

Shri Ravi Joshi appreciated the AIB for its commendable job. He said that the promotion to the post of AC can't be affected by considering the length of service as Inspector. He further added that no committee is required on the issue of the removal of regional disparities.

Shri Ajith stated that the Board should be pressurized to implement the new RR's since 1997. He further added that we should meet FM and try to convince him for implementation of new RR's since 1997.

Shri P. Sen appreciated the efforts of AIB and opined for revision of RR's as per the cadre strength to be changed in course of CR.

Shri S. K. Patil stated that RR's should be revised immediately after approval of CR as per DOPT guidelines. The group A RR's should be relaxed to grant promotion taking into account the service rendered in Inspector cadre. All adhoc promotions made during 97 to 2012 are to be declared as invalid because UPSC was not involved in granting these adhoc promotions as per DOPT guidelines. SC orders dated 03.08.11 should be implemented retrospectively. Regional disparities are required to be removed. Finally, he asked for constitution of a committee on the issue of the removal of regional disparities.

The representative of Nasik, Shri Sanjeev Dive, suggested for constitution of committee to look after the CR issues.

Shri Shubhrangshu Deb set the tune with his intense and heartiest thanks for the relentless efforts of AIB, more precisely SG, C.S. Sharma etc., in respect of CR. He appreciated the efforts of AIB in all out manner. He stated that we may like to see the pros and cons of the CR on getting the copy of the same after formal declaration, before that we are not to take any step which may hinder the process of declaration of CR. Being a member of the CR implementation committee, he contacted the office bearers of the AIB and others with a request to the Zonal units to meet the respective cadre controlling authority to start process of keeping ready the ACR's, vigilance clearance, integrity certificate etc. for the DPC in r/o the early implementation of cadre restructuring on the lines of the letter F. No. 8 / B / 152 /HRD (HRM) /2013 (Part II) dispatched to all Cadre Controlling Chief Commissioners vide No. 2652 to 2667 Dt. 03.09.13. As the numbers of the Superintendents in the list enclosed with the above letter are as high as 3430, the staff with the cadre controlling authority presently meant for such work may not be adequate to deal with the same. In such cases, the respective Zonal units may require to volunteer for early completion of the work. He also pointed that there must be a cutoff date for implementation of CR. More precisely the much awaited promotions favouring most stagnating Superintendents, DPC should be started for filling up the posts simultaneously for all cadres instead of filling up the Apex level posts first. Revenue as well as geographical conditions should be taken into account for creation of new establishments.

The representative of Goa, Shri Raikar, stated that the Customs land stations are required to remain with Central Excise Goa. The Chair asked him whether they have conducted the long pending elections for the Goa Unit. He replied that they have postponed the elections keeping in view the Associate Committee meeting. He was asked to conduct the elections immediately. He also said that the two issues of regional disparity & implementation of SC order are linked with CR and so, committees may be formed to look into the various aspects for effective implementation of the same.

Point wise reply made from Dias:

1. Austerity measures- The Ministry of Finance, Department of Expenditure vide letter No.7 (2)/E.Coord/2013 dated 18.9.13 has announced yet another series of austerity measures on the sole ground for revival of economy which inter-alia includes a blanket ban on creation of new posts and surrender of vacancies which were left/kept as vacant for more than one year. But such measures are intended at promoting fiscal discipline without restricting the operational efficiency of the government. Hence, the fresh round of austerity will not come in the way of approval & implementation of Cadre Restructuring in CBEC field formations and conducting of DPC against vacant as well as new posts to be created on account of Cadre Restructuring.

2. Relaxation of group A RR's- The provisions which have been incorporated in RR's can be relaxed in the course of CR but the rota rules or seniority rules which are outside of the provisions or jurisdiction of RR's cannot be relaxed under the provisions of RR's in the course of CR.

3. Seniority list of Appraisers- The seniority lists of Examiners are on zonal basis like seniority lists of Inspectors. Hence, same and one policy has been adopted by Board in preparing the seniority lists of Superintendents and Appraisers (98 to 2002) on all India basis.

4. Scrapping of all adhoc promotions made during 97 to 2012- The adhoc promotions were made by Board duly taking permission from DOPT/UPSC. Apex court has also perused one such order. Involvement of UPSC is not required in granting adhoc promotions but unfortunately since one of our units informed the UPSC about regularization of adhoc promotions pending w.e.f. 97, UPSC directed the Board during 2011 to conduct DPC for adhoc promotions also involving UPSC and on the basis of DOPT guidelines pertaining to regular DPC. Due to such restrictions, UPSC involvement in adhoc promotions became mandatory and DPC is being delayed due to non fixing of the date by UPSC to conduct DPC in time.

5. The Secretary General has already submitted two representations to the concerned authorities recently. 1st one for **filling-up of the regular vacancies/posts of Asstt. Commissioner by stating that** "a total of 402 posts are vacant in Group 'A' as on 01.01.13. This figure may have increased on account of the retirements after 01.01.13. In addition to it, 489 vacancies of Asstt. Commissioner will cascade on account of promotions to higher Group 'A' posts as per the implementation of cadre restructuring. 200 additional posts of Deputy Commissioner and 300 of Asstt. Commissioner are also going to be created on regular basis as a result of cadre restructuring in addition to 2118 temporary posts for 5 years. Thus, the total of regular posts at the level of Asstt. Commissioner comes to be 1391+. It is being expected that the above stated 2118 temporary posts would be filled-up only by promotions in one go and also the vacancies arising out of the retirements against these posts would be filled-up only by promotions for coming 5 years. Now on coming to filling-up of 1391+ regular posts particularly keeping in view the extraordinarily acute stagnation of Central Excise Superintendents, it is requested that the direct recruitment may kindly be minimised to minimal or all of the posts may be filled-up by promotions in one go and make no direct recruitment to IRS at least for next 5 years after the implementation of cadre restructuring. It will also help to improve the stature of direct IRS. Even if any minimum direct recruitment is made to these posts (say that it is 100 or 150), the remaining 1291+ or 1241+ posts may kindly be filled-up by promotions in one go and, thereafter, the posts being vacant on account of retirements also be filled-up by promotions. No need to say that the officers promoted to these posts would retire around within one year on account of their promotions at the fag end of the career and, thus, there would happen no administrative inconvenience". The second one for **regularisation of ad hoc promotions as per**

the verdict given by Hon'ble Supreme Court by stating that “the Hon'ble Apex Court directed the CBEC vide the verdict of 03.08.11 in CWP No. 385/10 to regularise all the ad hoc promotions made to the post of Asstt. Commissioner. These ad hoc promotions are to be regularised since 1997 as no regular DPC has been conducted for the promotion to the post of Asstt. Commissioner since then. It is also well pertinent to submit that the CBEC sought the time only upto October,12 from the Hon'ble Supreme Court for conducting the DPC to regularize the said promotions. The time limit of October,12 has already expired by more than 10 months but no DPC has been conducted till date. It is also worth to mention that the said DPC is required to be conducted as per the Recruitment Rules in force on the date of DPC and also the provisions of extended panel are to be applied to the DPC. The first para of DOPT OM No. 28036/1/2012-Estt(D) Dt. 03.04.13 under the subject of Ad-hoc Appointment/Promotion-Review of-Regarding says that as per the extant policy of the Government, all posts are to be filled in accordance with provisions of the applicable Recruitment Rules/Service Rules. No need to say that the applicable Recruitment Rules in this case are new rules prescribing the ratio of 13:2:1 (it is another thing that these rules are also not acceptable to the Association) instead of 6:1:2 as old rules have already been repealed. Even otherwise, the Recruitment Rules in force on the date of DPC are to be applied for any DPC. Further para 5 of the above mentioned DOPT OM reiterates that an ad-hoc appointment does not bestow on the person a claim for regular appointment and the service rendered on ad-hoc basis in the grade concerned also does not count for the purpose of seniority in that grade and for eligibility for promotion to the next higher grade. It means that all of the ad-hoc promotions made upto the post of Chief Commissioner & above are unlawful and all the officers are required to be reverted back to their original/initial post by making due recovery of higher salaries from them. Para 6 of above OM reiterates that the ad-hoc promotion shall automatically cease on the expiry of the one year term, if the approval of the Department of Personnel & Training to the continuance of the ad-hoc arrangement beyond one year is not received before the expiry of the one year period. In view of the above, it is requested that the said **DPC may kindly be conducted immediately as per the Recruitment Rules in force on the date of DPC applying the provisions of extended panel**”.

6. Implementation of Supreme Court order and revision of ratio- The Apex Court in 306/88 decided for fixation of ratio and fixation of seniority both. But against fixation of ratio, the Writ No. 385/10 was filed by AIB in the name of Sh. Vimal Kumar. The Apex Court decided the case on 03.08.11 and on the basis of the same the new RR's were framed but Board declined to make regularisation of adhoc promotions pending since 97 on the basis of new RR's. The AIB is still pursuing the regularisation of all adhoc promotions to be made as per new RR's. Pune Unit preferred to file contempt without taking into confidence the AIB while the AIB was pursuing the issue with the administration; the contempt petition was disposed off accepting that the Board action is correct and saying that it was never said by the SC to implement the new RR's retrospectively. Again petitions were filed and the directions have been made to the petitioners by the Hon'ble Court to submit representations to the Board. If anyone will be aggrieved by the decision of Board to be taken on the basis of representations, he can approach the CAT. Our Association has already filed a case in CAT for base cadre parity with intra-organisational counterparts (Examiners) as per resolution in the interest of the cadre in accordance of the advice of the advocate and also filed the representation to the Board in conformity with such OA to make consistency on the issue. The representation of our Association is still pending with the CBEC for consideration. After disposal of the same; further action would be taken duly consulting the advocate, if required.

7. Creation of temporary posts- In the course of CR, there is a restriction that more than 33.3% of Group A posts cannot be created in an organised service. Considering the said instructions by the then FM and MOS (DOPT) jointly, it was decided to create around 2500 of Group A posts. But due to our pressure, this was increased by present FM alongwith reserve pool. Still the DOPT objected the same. Therefore, it was decided by Expenditure to create temporary posts to allow hundred percent promotions against such temporary posts without any provision of direct recruitment duly relaxing the RR's. This is blessing in disguise. The entire temporary posts will be filled-up by promotions in one go and further only by promotions for coming five years as per new RR's. After five years, this will be again extended because the persons who will occupy such post during 4th year will be continued further. On completion of 5 years also, requirement on functional justification and stagnation both will be existed. Therefore, there will not be any justification for abolition of the same. Since the Chennai Court had already directed for the promotion of AC to DC on completion of 4 years of service, all the temporary AC would be DC after 4 years of service.

8. Promotion of officers drawing 6600/- to STS- These temporary posts belong to IRS cadre. Hence, Group A RR's are applicable to fill up the same. However, the provisions of RR's will be relaxed to provide 100% promotions against these temporary posts. The senior promotee officers have not yet been granted 3rd MACP upgradation and many inter Commissionerate transferee officers though placed below such promotee officers in the seniority list have been granted GP 6600 in PB-3 on 3rd MACP upgradation. Therefore, granting promotion to seniors to JTS and juniors having GP-6600/- to STS is violative of article 14 &16 of Constitution of India. Hence, this provision cannot be relaxed.

9. The minutes of last AC meeting held at New Delhi were placed before the AEC meeting held at Patna and the same have already been approved. The action taken note was placed verbally in this meeting by stating that the promise made in AEC meeting held at Patna for approval of all Group A posts as recommended by FM has been fully complied with. For amendment of seniority list, the Association has already represented to Board. However, action taken report of AEC meeting does not belong to AC meeting and it is required to be placed before AEC meeting only for confirmation.

10. The Board has given a note to COS stating that around 7000 Group B Gazetted officers will be benefited by the ensuing CR during coming 5 years. The OA for base cadre parity was filed by AIB as per the resolution in the interest of the cadre in accordance of the advice of the advocate. However, raising of such point is surprising in this meeting at such a belated stage as it was never raised in earlier meetings by anyone including last AEC meeting held at Patna. After approval of CR, the cadre strength will be changed. Hence, the ratio based RR's will be amended automatically as per the verdict of Apex Court. The ensuing CR is no way connected with GST; hence fresh CR will be conducted to review the workload vis-a-vis sanction of staff on introduction of GST.

11. A list of around 3500 Central Excise Superintendents has already been circulated by the HRD on the persuasion of Association to keep ready the ACR dossiers, vigilance clearance, integrity certificate etc. for the purpose of DPC for promotion to the post of AC from group B as per the result of CR. A legal case has already been filed in the Principal Bench of CAT for the removal of disparities in MACPS. Draft rules have already been submitted for the formation of separate service and the issue of weightage in promotion to be given to promotee officers is also being pursued.

The SG stressed that we are here to suggest the solutions of the grievances relating to our cadre. He, therefore, requested all to suggest something concrete on the issues relating to the common interest of the cadre instead of putting questions & queries.

2. SCHEME GRANTING PARITY WITH COMMON ENTRY COUNTERPARTS TO ENTER OUR OFFICERS INTO PB4:

Shri S. K. Pareek stated that only time bound promotion scheme can solve our problem. He stated that there is no provision for retrospective amendment of Recruitment Rules and if at all any such rule will be amended retrospectively, that will only invite unnecessary litigations. He stated that since it is a meeting of Associate Committee, if at all any committee will be constituted, the same can be made from amongst the members of such Associate Committee only and also the report of such committee shall be presented before the meeting of Associate Committee only. He said that the regional disparities in promotions from the Inspector to AC can't be removed retrospectively.

Shri A. K. Sasmal stated that it is required to conduct one Associate Executive Committee meeting immediately and a committee is required to be constituted to study as to how the regional disparity in promotions can be removed. Mumbai Unit is willing to hold this Associate Executive Committee meeting. He further stated that as Board in the counter to the parity case has stated about existence of regional disparities, hence this regional disparity issue is required to be removed first and thereafter efforts can be made for parity with Examiner. Sh. Sasmal used some unacceptable wordings which were objected by the SG. The house condemned such wordings and these wordings were withdrawn by Sh. Sasmal after feeling sorry.

Mr. N. N. Lal stated that a committee is required to be constituted to look after the issue of regional disparities.

Shri A. Ravinder Singh stated that only the existing seniority list of the Superintendents in conformity with the existing Recruitment Rules should be applied for promotions to the post of Asstt. Commissioner and there is no need of formation of any committee on such issue.

Shri G. K. Jhala said that the seniors in the existing seniority list are to be promoted first. He was also not in favour of formation of any committee but later said that the committee may be formed to resolve the issue without harming any body.

Shri S. K. Jha stated that the seniors can't be deprived of their right of promotion. The regional disparities should only be removed by harming the interest of nobody already placed in the existing seniority list.

Shri Chandramouli and Shri Suresh Kumar asked the Secretary General to elaborate the subject issue before deliberations on such point.

Shri Ravi Malik, the Secretary General, elaborated that there is a quite difference between 'parity with common entry counterparts' and 'removal of regional disparities in the promotions from Inspector to the post of AC'. However, the issue of disparity is automatically covered under the parity with common entry counterparts. He said that regional disparities should certainly be removed but in the manner that the interest of no senior already placed in the existing all India seniority list is harmed. These regional disparities are based on many factors including more/less retirements of the officers and recruitment/non-recruitment of Inspectors in the particular Commissionerate/s. Due to these factors, the imbalance is kept tilted sometimes to some Commissionerate/s and sometimes to other Commissionerate/s. Sometimes some Commissionerate/s is/are placed at beneficial position and on other times some other Commissionerate/s is/are placed at beneficial position on account of the fluctuations in these

factors. He said that our common entry counterparts of CBDT, CSS etc. are already attaining the PB4 levels while we are retiring on PB2 post barring 1% of us who are able to touch only the group A JTS level at the fag end of the career. As a result our salary, pension and other related benefits are hugely less than our common entry counterparts. This disparity can only be removed by granting us parity with them by functional or non-functional methods. He said that the parity is possible by the following measures-

a) Time bound promotions/scales (**time scales after every 7 years for us were also recommended by CBEC to 6th CPC but the same is now being back tracked by CBEC itself**).

b) Notional promotions granting batch to batch parity with the best placed common entry counterparts like CSS etc.

c) Creation of supernumerary posts which will be personal to the officer at each level of the promotion and will be abolished with the retirement of the officer.

d) Creation of separate service (**it was also recommended by CBEC to 6th CPC but now it is also being back tracked by the CBEC itself**). The draft RR's for separate service have already been submitted to the administration by the Association.

e) Direct promotion to higher post/s (**Customs Ministerial officers are being promoted to the post of Customs Appraiser without working even for a single day on the post of Customs Examiner; if it is possible in their case, it should also happen to us by promoting our officers directly to the higher posts**).

f) In-situ promotions (**requiring no creation of posts**).

g) Batch to batch **functional upgradation at par with the best placed common entry counterparts like CSS etc.**

h) Batch to batch **non-functional upgradation at par with the best placed common entry counterparts like CSS etc. also requiring no creation of posts** on the lines of DOPT OM No. AB.14017/64/2008-Estt.(RR) dt. 24.04.09 granting NFU to other group 'A' officers at par with IAS.

i) Re-framing the recruitment rules without trifurcating the single cadre of Inspector/Superintendent and prescribing the qualifying service in consonance of the DOPT OM No. AB-14017/61/2008-Estt.(RR) dt. 24.03.09 which stipulates the promotion of the grade of Inspector to the grade of Joint Commissioner, Additional Commissioner & Commissioner after completion of 12, 17 & 20 years of service respectively. The validity of this OM was also not questioned by CBEC during the presentation of cadre restructuring proposal on 18.01.11 but they showed their inability to implement it due to the want of the required number of vacancies/posts. The officers may even be granted in-situ promotions after completion of the prescribed service also **requiring no creation of posts** independent of cadre restructuring, if they don't have the required number of posts/vacancies. The above mentioned DOPT guidelines are not merely for decoration purpose. A little deviation from the guidelines may be understood but the non-implementation of the guidelines at all is never understandable. If they can't give us the prescribed grade within 20 years, they may grant it to us after completion of 21, 22, 23, 24, 25, 26, 27, 28, 29 or even 30 years (after completion of one & half times of qualifying service based on the precedent of CSS where all the SO's were promoted to the post of US after completion of one & half times of qualifying service in 1999).

The SG further said that the Hon'ble Supreme Court has also intended in Dr. Ms. O.Z. Hussain v. Union of India [1990 Supp. SCC 688] that similarly placed officers in different ministries should have the same benefit of promotions. So, the officers recruited as Central

Excise Inspectors should get parity not only with the intra-organisational counterparts like Examiners and intra-departmental counterparts like Income Tax Inspectors but also with the inter-departmental/inter-Ministry counterparts of CSS & other best placed counterparts. He further added that the zonal disparities would automatically be removed, if we are able to get parity with the best placed common entry counterparts. He elaborated that all the officers would be benefitted by the grant of parity but the process of the removal of the regional disparities to the post of AC from Inspector would certainly harm the interest of the many of the officers by the negative shifting of their seniority and they would prefer to approach the legal courts giving rise to the innumerable intra-Central Excise litigations for unlimited period which would, in turn, certainly hamper the implementation of the CR. No need to say that the officers already placed in the existing all India seniority list of the Superintendents have absolutely strong legitimate right to be promoted to the post of AC first in comparison to them who want to attain the higher position in the seniority list on account of their length of service as Inspector being counted for the purpose. We don't know which units and how many officers would be affected adversely getting their interests harmed by the process of removal of these regional disparities. We have to calculate the names of such units and numbers of such officers who will not like to be reversed to the lower positions from well established existing higher positions. Keeping in view all the circumstances, we have to decide whether 'parity with the best placed common entry counterparts' or 'intra-Central Excise infightings' is better. The raising of issue of regional disparities at such a too later stage shall definitely dilute our issue of parity with the best placed common entry counterparts and we would never be able to get this parity. He said that we should not become the prey of the trick of the Board who want to dilute our issue of parity in the name of the regional disparities. If Board is worried about the regional disparities, why these disparities were created by it and were not removed timely because only the Board is responsible for creation of these disparities? None of us should talk in the language of the Board; it will give no benefit to us. The process of removal of regional disparities will neither increase the number of promotions nor raise the level of promotion. It may merely shift the benefit of promotion (only entry to group A JTS level at fag end of the career) from the officers already being placed at senior positions in the existing established seniority list of Superintendents towards others who are juniors or even not placed in the seniority list. Thus, it may be shifted from one unit to other or one group of officers to other group of officers. But the increase in the number of promotions and raising the level of promotion is possible only by the parity with other best placed common entry counterparts. Despite of being itself responsible for each disparity, discrimination & injustice, now Board is deviating the issue of parity in the name of zonal disparities instead of immediately removing intra-organisational, intra-departmental & inter-departmental disparities which will also remove the regional disparities automatically.

The house appreciated the elaboration given by the Secretary General with clappings.

Shri Chandramouli stated that only in situ promotion scheme can solve the disparity issue. He further stated that committee should be formed consulting all unit secretaries.

Shri R. George stated that a committee is required to be formed to study the disparity issue.

Shri Ravi Joshi was not in favour of constitution of any committee. He said that the promotions to the post of Asstt. Commissioner should be made based on the existing seniority list of the Superintendents.

Shri Anurag Chaudhary totally opposed the formation of any committee saying that only the existing all India seniority list of Superintendents should be used to grant promotion to the post of Asstt. Commissioner.

Shri V. N. Jha also opposed the formation of any committee and stated that practically it is not possible to remove regional disparities with retrospective effect. The executive committee of Patna-Jamshedpur-Ranchi Unit has totally opposed such idea. He asserted that we should concentrate on the issue of parity instead of regional disparity. He said that I/C transfer cases and rota quota system would also create problems in removing the regional disparities.

Shri R. K. Solanki also opposed the formation of any committee on the issue of regional disparities saying that the promotions should be affected only on the basis of the existing all India seniority list of the Central Excise Superintendents.

Shri Shubhrangshu Deb was also not in the favour of any committee on the issue of regional disparities saying that these disparities can only be removed prospectively instead of retrospectively, rather a Committee may be formed for formulating assured Career Progression where the issue of regional disparities may be addressed also. He said that the issue of regional disparities, as such, is not going to solve the problem of acute stagnation as a whole and obviously going to give rise to fragmentation amongst the members. He wished that all the members present here should get promotion at the earliest, but in seriatim as per the present seniority list. He said that we, at the same time, should be cautious enough to take the decision keeping in mind the reasonable desire of all the members who are not present here because any unreasonable & unrealistic decision taken here does not bar members who are not present here to seek justice through alternate remedies. Keeping in view the large numbers of our cadre members, assured promotion scheme in any form appears to be the only way to remove stagnation. The move of the Association so far as promotion is concerned should be continued till we get an assured promotion scheme after completion of specific years of service at least upto the grade of PB-4. In order to come out of the acute stagnation; in-situ promotions scheme, separate service etc. are required to be created and weightage in promotion is required to be given to promotee officers. The officers having GP 6600/- are required to be granted promotion to STS directly as all such officers have completed 30 years of service and do not require to get acquainted with the working of the officers unlike in the case of direct recruit AC's who are necessarily required to complete 4 years of service to qualify for STS. No one can deny the pivotal role of the Superintendents in the Department with their junior brothers named Inspectors. The Department will become stand still without their service at any and every point of time. By virtue of their service rendered, they deserve the benefit/facilities like those others are entitled to. In order to achieve this; we must remain united with our constructive & factual efforts aimed solely towards the benefit of the cadre as a whole without keeping any place /scope for fragmentation.

Shri Niranjan Pradhan also opposed the formation of any committee and stated that the executive committee of Bhubaneswar unit is not in favour of removal of regional disparities with retrospective effect as the same is not practically and legally possible. It will only delay the implementation of CR. He said that we should pursue for in-situ or time bound promotions to bring parity with counterparts.

Shri A. S. Roy stated that it is not possible to remove intra-base cadre disparities in relation of promotion to group A with retrospective effect. Hence, he was in favour of introduction of more numbers of functional promotions or time bound promotions upto the desired level or notional promotions or in situ promotion scheme to bring parity. He, however,

said that the retrospective regional parity among us is an ideal situation and there should not be any problem in removing regional imbalance from the date of availability of all India merit list. He said that the issue may be decided whether with retrospective effect or prospective effect by a committee. He said that the functional promotion can be achieved at par with our counterparts in Income Tax by modification of the CBEC structure on the lines of CBDT. He also said that such structural change is also very much possible by creation of separate service for the promotee officers with the interfacing level of Additional Commissioner. He added that the change of scale of Superintendent to the pre-revised equivalent of 8000-13500/- seems to be a dire necessity to achieve any success in the matter of reaching higher grade pay.

Shri Suresh Kumar was also in the favour of time bound or notional promotions scheme to bring parity with counterparts. He said that the issue of removal of regional disparities is not so easy and it requires serious examination by committee.

Shri S. K. Patil stated that it is required to amend the RR's in every five years as per DOPT guidelines. The RR's can be challenged on this ground for retrospective revision/amendment to make it from zonal to all India. This mistake was committed in past by not pressing for converting the RR's from zone to all India. Now in the era of RTI, the solution is very simple for correcting past mistakes. First the 'eligibility list' of Inspectors can be prepared since 1975 on all India basis for promotion to the grade of Superintendent duly scrapping the RR's of Superintendents and forming new rules retrospectively. Thereafter, seniority list of Superintendents can be re-arranged with reference to their "date of completion of regular qualifying years of service". He opined that otherwise the officers of stagnated Zones can file CAT case for removal of zonal disparity as everybody is free to approach legal court on any issue. He was in favour of formation of one committee on such issue.

Shri Anurag Mishra of Pune stated that the regional disparities can be resolved by granting the promotions to persons having more qualifying years of service after being recruited as Inspector above the persons who is having less qualifying years of service.

Shri Singhvi said that a committee should be formed to resolve the issue of the regional disparities in the promotions to the post of Asstt. Commissioner.

Shri Kamble was not in the favour of the constitution of any committee on the issue as there are already the zonal office bearers to assist AIB & SG.

Shri Anand Kishore opposed the formation of any committee on the issue of the removal of regional disparities and said that we should pursue the issue of parity with the best placed common entry counterparts. He added that the issue of regional disparities would merely delay the implementation of CR and a good number of our senior officers would retire without promotion in the meantime.

Point wise reply made from Dias:

The regional disparities in promotions are existed in our Department since its creation. These regional disparities in promotions are also existed in other departments like Railways, AG, CBDT, Postal etc. The promotions to the post of Superintendent are being allowed on zonal basis as per the Superintendent of Central Excise RR's of 1986. These RR's were challenged in the High Court of Hyderabad to convert the seniority list from zonal to all India but High Court rejected the appeal and accepted the RR's as valid ones. The decision of High Court was challenged in Apex Court but the Apex Court also accepted the decision of High Court and directed to determine the seniority as per decision of W. P. Civil No. 306/88. Vide the Apex Court's decision in case of All India Federation of Central Excise vs. U.O.I (W. P. Civil No. 306/88) under para-7 of the said decision, it is interalia held that Superintendents of Central

Excise are to be placed in their respective seniority (consideration) list on the basis of their continuous length of service in the cadre of Superintendent. As per the decision of the Apex Court in Radhey Shyam vs. U.O.I, DOPT directed that a requisition in the prescribed form is to be placed to the SSC by the appointing authority for selection of candidates by direct recruitment. The selected candidates will be appointed by the appointing authority under its jurisdiction only. For all service matters including vigilance and seniority etc., the appointing authority is the deciding authority as per various guidelines. The names of the selected candidates will take place in the seniority list maintained by such appointing authority as per merit. Therefore, one is losing the seniority on inter Commissionerate transfer as being transferred to the jurisdiction of another appointing authority. The full bench of Supreme Court in R. D. Gupta vs. U.O.I- 1990(1) ATJ 212 had clarified that if an employee is promoted after DPC has found him fit for promotions, that period should be counted for seniority. The clarification given by Gupta case is clearly consistent with the law laid down by the Apex Court in 1990(2) ATJ35-JT(2) SC 264 between direct recruit vrs. State of Maharashtra. It has been laid down that where an incumbent is appointed to a post according to the Recruitment Rules, his seniority is to be counted from the date of his appointment. Very interestingly para-5 of the said decision provides that if the initial appointment is not made by rules but the appointee continues in the post uninterrupted, the period of officiating service will be counted for his seniority. The Apex Court in the judgement of Radheshyam Singh (which is not related to Recruitment Rules or seniority but related to selection by examination) clearly stated for prospective amendment of examination provisions on or after 01.01.1998. After pronouncement of judgement by Apex Court in Radheshyam case, the Board decided for merger of all three base categories (Inspector, PO & Examiner) into one cadre and, accordingly, the minutes were recorded but, very unfortunately, none of our Associations pursued for such implementation. The issue was raised in OA No's. 451/2002, 429/2002 & 454/2002 before CAT, Mumbai. The CBEC in counter to said OA's stated that the matter is under active consideration and would be dealt separately. Accordingly, the Board constituted Bharadwaj committee popularly known as merger committee. Bhardwaj Committee recommended for merger of all three base categories prospectively w.e.f. 01.01.06. But at that time, our Association did not raise any objection to such recommendations.

After a long time, one of our office bearers of Mumbai raised such issue for merger of all three base categories in the Associate Committee meeting of our Association during 2011. After such meeting, he sent a mail stating that –“I say parity not with x, y or z, I say we are Group 'B' officers recruited by passing same exam, we perform all the duties (Customs, Central Excise & Service Tax) including of Central Excise Officers and possess the same qualification. Whereas our counterparts do not perform the duties of Central Excise or Service Tax officers, so we are above them. Then, we should be placed at same place at least where our counterpart of same recruitment year has reached as of now, if not above. That parity can be achieved with this order as it says just and fair representation and in past also ratio was fixed on same lines. So this will serve the purpose. And all cadres can join with same demand in agitation as it will help all of us. If by any imagination CBEC says not possible, separate us immediately. Our counter should be before restructuring with only rider that DR IRS should only be posted to Central Excise and those who have more background of Excise. I am sure that if we toe this line of action vigorously, there is no answer with CBEC how to deny and why they discriminated us for all these years. By this we can even achieve unity in whole cadre”.

However in our AC/AEC meetings, the issue was discussed again and it was resolved that we should raise before Board to allow parity in promotions with Examiners and other counterparts of Income Tax, CSS etc. Accordingly, several representations were submitted by our Association to Board for consideration of the same. Since Board did not move even an inch on the basis of our representations, an OA bearing No. 2323 was filed before CAT (PB) as per resolution in the interest of the cadre in accordance of the advice of the advocate with the following prayers:

(a) Pass order or direction commanding the respondents to produce the records of the promotion policy and produce the records in r/o the action taken against para 3.1 at S. No. 3 (BMB No. 06/2011) of the minutes of the meeting of CBEC held on 12-1-11 as well as presentation dt 18-1-11.

(b) Direct the respondents to amend/revise the Recruitment Rules to bring all the Inspectors (i.e., Inspectors of Central Excise, Preventive Officers and Examiners of Customs) recruited in a particular year through All India Combined Examination in parity as per their seniority position in respect of their service conditions and promotions to maintain the principal of equal opportunity & equality before law.

(c) Direct the respondents to dispose off all the representations of the applicants with speaking order and to save the senior Central Excise officers from humiliation of working under their juniors recruited much after in Customs belonging to the same cadre of Inspector in CBEC.

(d) Pass any such other order or orders, as may be deemed fit and proper.

The case was heard on 19.07.12 and notice was issued to the CBEC to file the counter. In the counter, Board pleaded about existence of regional disparity in promotions in our cadre. In rejoinder, we are pleading for removal of the same by bringing parity among all of three categories of Inspectors. While the matter is subjudice, one unit raised a point for the first time in the history of our Association for removal of regional disparities retrospectively and preparation of all India seniority list of Inspectors and the relaxation of Group A RR's to allow promotion to the post of AC on the basis of this all India seniority list of Inspectors to be prepared by Board duly scrapping all promotions made to the post of Superintendents in accordance of Superintendent of Central Excise Recruitment Rules in our last AEC meeting held at Patna. A resolution committee was constituted in AEC meeting to adopt resolution on the same but, as majority units wanted time for discussion on such issue, the resolution committee in a note suggested to discuss such issue in our next AEC meeting.

As regards relaxation of Group A Recruitment Rules to allow promotions to the post of Asst. Commissioner on the basis of one all India seniority list of Central Excise Inspectors, the DOPT vide OM No. AB.14017/48/2010- Estt(RR) dated 31.12.2010 prescribed the guidelines for framing/amendment/relaxation of RR's. Part-IV of this OM provides for amendments and relaxation in the case of organised cadre only. A proposal for relaxation can be made out as a result of review of such service, if Cabinet has approved to fill up certain posts by promotion from feeder categories. The proposal for relaxation should be made in the formant prescribed under Annexure-IV. The formant duly filled in should be forwarded to DOPT/UPSC alongwith the approved seniority lists of feeder categories (which are to be considered for such relaxation) prepared on the basis of DOPT guidelines. Relaxations as a result of cadre review can be considered in case of feeder categories only but this facility cannot be extended to sub feeder categories. No relaxation can be provided with reference to fixation of seniority in sub feeder categories. Relaxation of RR's does not mean relaxation of seniority. If parity with Examiners will be settled, automatically the issue of regional disparities will be solved. The regional

disparities as existed in the cadre of Superintendent can be settled, if the Superintendents of Central Excise Recruitment Rules are amended retrospectively with a retrospective provision of preparation of all India seniority list in the cadre of Inspector and with due declaration that all the promotions made to the post of Superintendents till date are illegal and fresh promotions to the cadre of Superintendent on the basis of so called proposed amended RR's are to be granted. However, the removal of regional disparities or preparation of seniority list in the cadre of Inspector is no way related to CR. Since promotions to the post of Superintendent are being allowed on the basis of Superintendent of Central Excise Recruitment Rules, the promotions to higher posts must be granted on the basis of seniority list or gradation list prepared as per DOPT guidelines in the cadre of Superintendent only. The Apex Court has decided to prepare the seniority list in the cadre of Superintendent only to allow promotion to the post of AC in prescribed ratio. Inspector is one class and Superintendent is another class. Comparison for the purpose of article 14 is required to be made between same classes; otherwise the same will not be considered treating equal with the equal and that will violate the basic principles of Constitution of India.

Therefore, the RR's cannot be relaxed under the present circumstances. Unless the provisions of Superintendent RR's are set aside by a court of law with retrospective effect, the regional disparities cannot be resolved retrospectively. Since AIACEGEO has already filed a case for parity with the intra-organisational common entry counterparts and took a stand as per resolution in the interest of the cadre in accordance of the advice of the advocate, it is not possible to withdraw the case and file another petition with a different footing. In the counter of the case, Board has also raised the point about disparity as existed on Zonal basis, but in rejoinder AIACEGEO is appealing for removal of the same alongwith the grant of parity with Examiners. AIACEGEO is working for the benefit of all including stagnated zones. AIACEGEO is interested for removal of intra cadre as well as inter cadre disparities. In the case of T. R. Kapur & Ors vs State Of Haryana & Ors on 17 December, 1986 Supl. 584 JT 1986 1092 1986 SCALE (2)1051 CITATOR INFO : F 1987 SC 424 (11) RF 1987 SC1676 (17) R 1988 SC1645 (6) RF 1989 SC 307 (5) D 1990 SC1072 (5), the Apex court has decided that benefits acquired under existing service rules cannot be taken away by amendment of rules with retrospective effect. Persons already appointed or promoted under the valid Recruitment Rules are seniors to officers of feeder categories to be promoted later. Recruitment Rules cannot be amended retrospectively to make such officers juniors to the officers who were promoted or appointed later on. Service laws cannot be amended retrospectively. In Sabarwal, Ajit Singh-I, Ajit Singh-II, Virpal Singh Chauhan cases, it was decided to amend service laws prospectively only. The Apex Court in the judgement of Radheshyam Singh (which is not related to Recruitment Rules or seniority but related only to selection by Examination) has clearly stated for prospective amendment of examination provisions.

The cadres of Inspector and Superintendent are not falling under any service (like CSS, IRS etc.). The promotions to the post of Superintendent are being awarded on the basis of the valid Superintendent of Central Excise Recruitment Rules which have been issued under the provisions of Article 309 of the Constitution of India. These RR's have been providing for promotion on CCA (Zonal) basis. Therefore, Seniority Lists as per DOPT guidelines are being issued for the cadre of Inspector of Central Excise on Zonal basis since creation of this department. Therefore, the senior and junior concept as stated in DOPT circular as presented by Shri Anurag Mishra of Pune is applicable on zonal basis and not on all India basis. Therefore, those joined in the grade of Superintendent early are seniors to those joined in the grade of

Superintendent subsequently irrespective of the date of joining in Inspector grade. All India seniority list of Inspectors can be prepared since 1975, if the RR's are to be amended retrospectively. But as stated above, no RR's can be revised retrospectively and promotions granted to the post of Superintendent cannot be taken away by any retrospective revision. For preparation of seniority list since 1975, the names of all officers whether retired or promoted are required to be mentioned for proper determination of quota & rota rules and reservation policy. If seniority policy is to be changed, the proper notice is required to be served to individuals concerned and the seniority list can be approved & amended only after taking proper acknowledgement and considering representations (if any). The court may not interfere for revision of RR's retrospectively at a belated stage but the court will definitely interfere immediately on change of policy afresh. Thus, at least 10 years time will be taken for preparation of such list. The Apex Court in 1990(2) ATJ35-JT(2) SC 264 between direct recruit vrs. State of Maharashtra vide para-5 of the said decision provides that 'if the initial appointment is not made by rules but the appointee continues in the post uninterruptedly, the period of officiating service will be counted for his seniority'. Hence; if at all the RR's are revised, the same will not provide any benefit for fixation of seniority retrospectively in r/o the service rendered in the cadre of Inspector in view of such landmark decision.

The contention advanced to the effect that Group A RR's are to be framed in course of CR for promotion to the post of AC considering the service rendered in the Inspector and Superintendent cadres jointly shall not also be acceptable in view of the provisions of direct recruitment in the Superintendent Central Excise Recruitment Rules.

Shri Venkat of Indore tried to show some taunting gestures which were objected by SG. The house condemned the behaviour of Shri Venkat and he felt sorry.

The Secretary General was requested by some delegates to constitute a committee to make study on the issue of regional disparity in promotions and place its findings to Associate Executive Committee. He said that the committee may be formed after convincing the delegates who are not in the favour of its formation and he would try to convince them. Accordingly, it was decided that this committee will make a detailed study duly collecting the figures & data from all of our units & office bearers keeping in view that interest of no unit/officer is harmed on the issue.

The SG, w.r.t. the support of Shri Sasmal to the reply of govt. in the parity case, also clarified that Inspectors of Central Excise, PO's & Examiners, all are mentioned as Inspectors only in the RR's. Even the Inspector of Central Excise is also mentioned as the Inspector of Land Customs. They all were also mentioned as Inspectors only in the last cadre restructuring without any tri-furcation. This proves that all of them relate only to a single cadre. Further, all of them merge at the level of AC after being promoted to group B gazetted post. It also proves that all of three categories at Inspector as well as group B gazetted level belong to one & single cadre.

3. SUBSCRIPTION, FUNDS & DDO CERTIFICATES:

The SG raised the issue of the pending subscription & funds and also not providing the DDO certificates by the units. It was decided that all the units would clear their dues immediately and also provide the DDO certificates to AIB being mandatory under statutory provisions.

4. ANY OTHER POINT/S WITH THE PERMISSION OF CHAIR:

The following points were raised with the due permission of the Chair-

(A) **Provisional inclusion of the interested promotee group A officers as members of the Association:** It was principally decided in the Patna AEC meeting to include the interested promote Central Excise group A executive officers as the members of the Association but final decision was to be taken by the General Body as the Constitution of the Association is also to be amended accordingly. The SG said that the interested promotee group A officers may be made our members provisionally pending the amendment of Constitution. It was objected by the majority of delegates saying that they would be allowed to become the members of the Association only after the amendment of the Constitution by General Body. The Chair opined that they may be made members provisionally till amendment of the Constitution. (N.B.: Constitution may, however, be amended by AEC itself as per constitutional provisions).

(B) **Regional Committee meetings:** The SG raised the point saying that no regional committee meeting has been held during the stint of this body. He said that the said meetings may be held at an early date particularly keeping in view that only around 50-60% units are able to attend the AEC meetings. The absentee units may easily attend the Regional Committee meetings. It was decided that the said meetings would be held at an early date.

(C) **Elections of the units:** As pointed out by the Chair to Goa delegate, the SG raised the point that there may be some more units where elections are pending after being due. Many more units were located in addition to Goa, where the elections are due. It was decided that every unit, where the elections are due, would initiate the process of conducting the elections at an early date. Otherwise, the local administration may pretend not to entertain them due to the want of the elections. Wherever required, the AIB will depute its delegate/s to conduct/observe elections of the concerned units.

(D) **Grant of laptops, mobiles etc.:** Shri A. S. Roy raised the issue of the grant of laptops, mobiles etc. to our officers on the lines of CBDT. He said that we were given the impression by the authorities that the Tarang scheme is on its way for implementation as all the necessary administrative approvals have been obtained. But on the contrary, the introduction of the scheme by the CBEC has been unceremoniously stopped and funds diverted to unproductive heads like hiring of vehicles etc. So, immediate efforts should be made to implement the scheme as our counterparts are enjoying the benefit since long. It was decided that he would send a draft to the AIB on this issue.

(E) **Counting of regular service:** Shri A. S. Roy also raised the issue of the counting of regular service from 1st July of the year following the year of examination for direct recruits/ from 1st July of the select year in respect of the promotee officers. He said that the matter has been referred in para 11 of the minutes of the Meeting with Member (P&V) held on 31.01.13 with assigned action on the part of DG, HRD. In this connection, the DOPT OM No. 5/23/94-CS. I dt. 05.07.95 is relevant which indicates that amendment to CSS Rules has been made to give effect such counting. So, initiative should be taken to amend the Recruitment Rules of Inspectors. It was decided that he would send a draft to the AIB on this issue.

(F) **Road-map for CR:** Sh. V. N. Jha said that we should prepare a road-map in advance for the implementation of CR and related infrastructure. He was asked to send a draft to AIB on the issue. The SG said that we have not to draft anything which may be counter-productive to our interest and the CBEC may use such things against us because nothing can be forecasted in advance about the impact of CR or action of CBEC on it. The things will have the clear shape only after the due notification because all of the proceedings started from COS and upto the level of Cabinet fall under the Official Secret Act. We can get only hearsay information before actual

notification. It was decided that a committee would be formed on cadre restructuring relating to career progression of officers and infrastructure study.

(G) **Filing of MACP case:** Sh. A. S. Roy pointed out that a decision was taken in one of the earlier meetings to the effect that a court case will be filed by the all India body to remove the various anomalies of the MACP scheme. In response to the information that a case has already been filed by the all India body in the Principal Bench of CAT, he requested to send the copy of the petition to him. He said that as there has not been any opportunity to go through the petition at the draft stage, it might be necessary to file further petition on any unaddressed MACP issues not incorporated in the existing petition and Kolkata Unit is preparing itself for doing it. It was replied from the Dias that the draft petition was placed on the blogspot of the AIB but no comments/suggestions were received from anybody. It was, however, said that the copy of the petition would be sent to Sh. Roy.

The meeting ended with a happy note with the vote of thanks by the Chair.

Attendance

The meeting was attended by the following delegates-

- 1) Lokanath Mishra
- 2) Ravi Malik
- 3) S. K. Pareek
- 4) Sampat Rai
- 5) Vatan Kamble
- 6) Anurag Chaudhary
- 7) A. K. Sharma
- 8) Buta Sibgh
- 9) Ravi Joshi
- 10) Mangal Singh
- 11) A. Ravinder Singh
- 12) Rajan G. George
- 13) P. C. Ajith Kumar
- 14) A. S. Roy
- 15) Anjan Dutta
- 16) Alok Bandhopadhyaya
- 17) Shubhrangshu Deb
- 18) P. K. Sen
- 19) P. D. Nimhan
- 20) S. K. Patil
- 21) S. K. Jha
- 22) Anand Kishore,
- 23) Laxmi Lal Singhvi
- 24) Venkatraman
- 25) N. N. Lal,
- 26) R. K. Solanki
- 27) G. Srinath
- 28) V. Suresh Kumar
- 29) S. Chandrasekar
- 30) R. Chandramouli

- 31) N. Raman
- 32) Niranjana Pradhan
- 33) V. N. Jha
- 34) G. K. Jhala,
- 35) M. K. Misra
- 36) A. K. Sasmal
- 37) C. S. Sharma
- 38) N. R. Manda
- 39) Sanjeev Dive
- 40) M. S. Raikar
- 41) Anurag Mishra
- 42) A. P. Singh

Drawn by: Sh. C. S. Sharma, OS.

N. B.: The reply to Sh. S. K. Patil (non-member of Associate Committee) by the Chair in r/o of his mail regarding the draft minutes of Associate Committee meeting is also enclosed herewith as Annexure- I.

Annexure-I

Mr Patil-1. ----- [From my side, '2' corrections are required; as CORRECT facts are not mentioned.

at Para 6: When thing was not discussed, wrongly said that -" If anybody is not satisfied with CBEC decisions (on SC Representation), then one shall go to CAT".

This is wrong. Why & who said that one should go to CAT? When we (not Pune, but even our AIB) is in SC, one can go back to SC [and not to CAT].}-----

Chair's Comments—These above are the opinions of Patil .These were not the opinion of Dias. Moreover SC has already stated that to pronounce any verdict on the issue of retrospective applicability of RRs since 97 amounts to review of the decision dated 03.08.11 and the power of review at present is not with them in a belated stage. Hence alternative remedy in this case is available only to approach CAT. Pune has without consulting AIB made all the issue to a mess, hence if required AIB will take a decision on consulting Advocate after disposal of the representation and not consulting Pune to convert the issue again to a mess.

Mr Patil-2. ----- at Para 2(Zonal DisParity):

The things not said by me are put in Draft: Shri S. K. Patil stated that

CORRECT: [it is required to amend the RR's in every five years as per DOPT guidelines. The RR's can be challenged on this ground for retrospective revision/amendment to make it from zonal to all India. This mistake was committed in past by not pressing for converting the RR's from zone to all India. Now in the era of RTI, the solution is very simple for correcting past mistakes.]

WRONG: [First the 'eligibility list' of Inspectors can be prepared since 1975 on all India basis for promotion to the grade of Superintendent duly scrapping the RR's of Superintendents and forming new rules retrospectively.]

CORRECT: [The seniority list of Superintendents can be re-arranged with reference to their "date of completion of regular qualifying years of service". He said that otherwise the officers of stagnated Zones can file CAT case for removal of zonal disparity as everybody is free to approach legal court on any issue. He was in favour of formation of one committee on such issue.]-----.

Chair's COMMENTS--- Filing of a case for challenging on the issue of not amending the RRs in every five years will not solve the issue because the Apex Court in 1990(2) ATJ35-JT(2) SC 264 between Direct Recruit Engineers vrs. State of Maharashtra vide para-5 of the said decision provides that 'if the initial appointment is not made by rules but the appointee continues in the post uninterruptedly, the period of officiating service will be counted for his seniority'. Hence; if at all the RR's are revised, the same will not provide however any benefit for fixation of seniority in the cadre of Inspector retrospectively in view of such landmark decision. The promotions already gained by virtue of such RRs cannot be withdrawn either prospectively or retrospectively because, the period of officiating service in Superintendent post uninterruptedly, will be counted for seniority'.

As per the Inspectors of Central Excise recruitment rules "the appointing authority" in relation to Inspector grade means the authority empowered under the Central Civil Services

(Classification, Control and Appeal) Rules, 1965, to make appointments to that grade. Similarly as per the Superintendents of Central Excise Recruitment Rules "the appointing authority" in relation to Superintendent grade means the authority empowered under the Central Civil Services (Classification, Control and Appeal) Rules, 1965, to make appointments to that grade. As per these rules, Commissioner of Central Excise (CCA) is the proper authority which is empowered under the Central Civil Services (Classification, Control and Appeal) Rules, 1965, to make appointments to both the grades of Inspector & Superintendent. There are no provisions under such rule for delegation of powers to subordinate or exercise of powers by higher officials. Hence Commissioner (CCA) is the only competent person to appoint both Inspector and Superintendent. Neither Board nor DG/HRD is empowered under the Central Civil Services (Classification, Control and Appeal) Rules, 1965 to make appointments to the Grades of Inspector & Superintendent. Since Commissioner (CCA) is the competent authority for appointment of Superintendents, he is also competent to prepare seniority list of Inspectors working under his jurisdiction to grant promotions to the grade of Superintendent on zonal basis as per the provisions of RR as he is the appointing authority for the post of Superintendent. Board is not authorised to prepare a unified seniority list of Inspectors of Central Excise on all India basis unless the Central Civil Services (Classification, Control and Appeal) Rules, 1965 is amended suitably. Since appointments have already been made and promotions have already been granted, these rules cannot be amended retrospectively. Since the Union Govt.(through CBEC) is competent for appointment of AC as per Gr-A RR, CBEC is preparing the seniority list of feeder categories (including Superintendent of Central Excise)on all India basis to grant promotions to the post of AC. Under the Central Civil Services (Classification, Control and Appeal) Rules, 1965, Chief Commissioners/CBEC are the appellate /revision authority respectively for the grade of Superintendent. Appellate authority cannot exercise the power of adjudicating authority. Example Commissioner (Appeal) cannot adjudicate any case which is empowered for adjudication by Commissioner or by any subordinate to Commissioner. The Central Civil Services (Classification, Control and Appeal) Rules, 1965 also provides different provisions pertaining to vigilance, accounts and other service matters, there is not a single instance for amendment of the same retrospectively. The Authority of such rules at present is DOPT. There is also a provision of direct recruitment in the Superintendent of Central Excise Recruitment Rules, hence the seniority list of Superintendents cannot be re-arranged with reference to the date of joining in feeder post.