

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA NO.1035/96

New Delhi this the 21st day of February, 2000.

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice-Chairman
Hon'ble Mr. M.P. Singh, Member (Admnv)

1. H.C. Sahni,
R/o G-13 (WZ 16),
Shiv Nagar,
New Delhi-110 058.
2. S.S. Josan,
R/o 111A, Pkt. A,
Mayur Vihar Phase II,
Delhi-110 031.

(By Advocate Shri K.B.S. Rajan)

-Versus-

1. The Union of India,
through the Secretary,
Ministry of Finance,
Department of Revenue,
South Block,
New Delhi.
2. The Commissioner of Central Excise,
Old Customs House,
I.P. Estate,
New Delhi.
3. The Addl. Commissioner (P&W),
Customs and Central Excise,
Old Customs House,
I.P. Estate,
New Delhi.

...Official Respondents

(By Advocate Shri R.R. Bharti)

4. Shri N.K. Gupta
5. Shri Ravi Prakash
6. Shri V.S. Hira
7. Shri V.K. Verma
8. Shri D.S. Nagi
9. Shri Kailash Chand

...Private Respondents

(Impleaded respondents 4-9 working as Inspectors,
Customs & Central Excise, New Delhi, O/o the
Commissioner, Central Excise, New Delhi.)

(By Advocate Shri M.L. Ohri)

O R D E R

By Reddy, J.-

The applicants are Inspectors in the Customs and
Central Excise Department recruited through competitive

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examination held in 1981. They joined the Delhi Collectorate. Their services were, however, not confirmed, though they have completed the probation satisfactorily.

2. The applicants submit that they are governed by the OM dated 22.12.59 issued by the Ministry of Home Affairs for determining seniority of various categories of persons employed in the Central Services. As per the proviso to paragraph-4 of the OM the seniority of an Inspector was to be fixed on the basis of his confirmation and not on the basis of the date of joining into service. The Hon'ble Supreme Court in the case of S.B. Patwardhan & Others v. State of Maharashtra & Others, 1977 (3) SCC 399 held that the seniority cannot be made to depend upon the fortuitous circumstances of confirmation and that the said principle was violative of Articles 14 and 16 of the Constitution of India. So far as the inter-se-seniority is concerned, merit in the competitive examination is the deciding factor of seniority. It is further submitted that the seniority in the posts of Inspector is maintained Collectoratewise. The applicants joined in the Delhi Collectorate in 1981 and their correct seniority position was reflected in the seniority list of 1981, as it was prepared on the basis of the rank held by them in the competitive examinations. At that time there was no confirmation of the applicants or others who have joined alongwith them even prior to them or after them. The applicants state that the respondents had circulated the tentative seniority list only in 1994, calling for the objections from the affected individuals. The applicants are aggrieved by the Select List of 1994 as they have been

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pushed down in the said seniority list and the persons belonging to the subsequent batches and who had joined years later, have been shown as seniors to them. In addition to this, the names of the Inspectors who were transferred from other Collectorates, who would forfeit their past service for the purpose of seniority in the new Collectorate, were given higher seniority than the applicants. The representations made by the applicants against the tentative seniority list of 1994 has been rejected in the impugned order. It is their grievance that the confirmation should be delinked from the seniority as held by the Supreme Court in Patwardhan's case (supra) and The Direct Recruit Class II Engineering Officers Association v. State of Maharashtra, JT 1990 (2) SC 264. However, following the above dicta of the Supreme Court the Department of Personnel and Training issued OM dated 4.11.92 stating that the seniority of the persons would depend upon the merit and date of joining of the employees and not according to the date of their confirmation. These orders, however, were given effect and the seniority of the employees already determined was not to be reopened.

2. It is firstly contended by the learned counsel for the applicants Shri K.B.S. Rajan that the impugned order was passed by a one line order and applying mind and on this ground alone the impugned order has to be set aside.

3. It is next contended that originally in the 1981 seniority list, the date of appointment and the rank were taken into consideration for fixation of the



seniority. Subsequently, the seniority list has been altered and was prepared on the basis of the date of confirmation of the employee concerned.

4. It is next contended that the SC/ST candidates who were given reservation even in confirmation were shown as seniors to the applicants. Likewise, another illegality was crept, in giving seniority over the applicants to the transferred Inspectors from other Collectorate taking into consideration their service in the parent Collectorate. It is, therefore, contended that the seniority list prepared in April, 1994 is wholly illegal inasmuch as the seniority has been prepared on the basis of the date of confirmation of the employees though the said principle has been held as illegal and violative of Articles 14 and 16 of the Constitution in Patwardhan's case (supra) and The Direct Recruits' case (supra) and that the OM dated 4.11.92 ought to have been given retrospective effect, as the seniority prepared on the basis of the confirmation was declared invalid by the Supreme Court as early as in 1977 and thus the seniority list has to be recast w.e.f. 1981.


5. It is, however, the case of the respondents that the OA is barred by limitation as the seniority list of Inspectors has been settled much before 1983 and several lists have been prepared and published since 1981 in 1983, 1988 and 1990 but the applicants made the representations only in May, 1994 to the seniority list recast in April, 1994, and hence the OA is hit by Section 21 of the Administrative Tribunals Act, 1985.

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6.. As the applicants were appointed on temporary basis their seniority should depend upon their confirmation. The allegation that the Inspectors from outside the Collectorate were shown senior to the applicants is denied. It is stated that their seniority was fixed strictly in terms of letter dated 20.5.80 and 12.3.87 issued by the Central Board of Excise & Customs. Further it is stated that the Government of India issued orders revising the OM dated 22.12.59 w.e.f. 4.11.92 in accordance with the decisions of the Supreme Court on the subject. Learned counsel Shri Bharti and Shri Ohri contended that the OA has to be dismissed on the ground of limitation itself.

7.. We have given careful consideration to the arguments advanced by the learned counsel for the parties in this case.


8.. The preliminary objection as to limitation has to be first considered before considering the facts of the case. The learned counsel for the official respondents Shri R.R. Bharti and the learned counsel for the private respondents Shri M.L. Ohri vehemently contend that the seniority list of 1981 has been recast in 1983, 1988 and 1990 all along linking seniority with the confirmation of an employee. The applicants should have questioned the seniority lists of 1983, 1988 and 1990 as they were affected adversely by their placements in the said lists. The allegation that subsequent to 1981 no lists have been circulated except the tentative seniority list of 1993, is stoutly denied. The learned counsel for the applicants, however, asserts that no list has been




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circulated since 1981. Hence, the applicants could not question the intermediate lists which were not brought to their notice. He also contends that as none of the Inspectors who were appointed along with the applicants have been promoted, even if the impugned seniority list is quashed and fresh list is prepared on the principle of delinking the seniority with confirmation, it would affect no body's interests except changing their positions in the seniority lists. He, therefore, contends that their positions would not be unsettled in the sense that their promotions would not be disturbed.

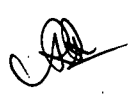
9. It is not in dispute that the seniority positions of the applicants have been altered to their disadvantage in the seniority lists that were alleged to have been published and circulated in 1983 and thereafter. The only question that is to be seen is whether the applicants have the knowledge of these seniority lists. In the counter-affidavit it is averred that after the seniority list of 1.4.81, the seniority list as on 1.7.83, 1.3.88, 31.12.88 and 31.12.93 were also published calling objections from the individuals. There were approximately 1200 Inspectors working in the Delhi Collectorate and hence the copies of the seniority list were got published and as it was not possible to give every officer a copy of the seniority list. It was despatched to all the Divisions/Formations with instruction to circulate it among the officers working under their charge in such a way that every officer has an access to see his position in the seniority list. The reply is deposed to by a responsible officer. He must have made the above averments on the basis of the records. We do not find any



material to discredit the statements made in the reply. If the applicants had any objection to these seniority lists they should have made their objections and if they were not satisfied with the final lists the applicants should have questioned them in the appropriate forum which they have not done. It must be kept in mind that the applicants who are the Inspectors of the Central Excise Department are the responsible officers and that they must be aware of the promotions already made. In OA-1412-13/94 Mukut Ranjan Das and Prodyut Kumar Roy Chowdhury v. Union of India and Others the Chandigarh Bench of the Tribunal has held, in an identical case where the Inspectors of Central Excise challenged the seniority list, that the applicants therein being responsible officers under the Central Government holding the posts of Inspector of Central Excise, considering the rank and status it could not be believed that the applicants were totally in dark, like casual labourers, about their seniority and also their confirmation. We agree with the observations made by the learned Judges of the Tribunal in this regard. The applicants relied upon the seniority list of 1981 and banking upon their places in the said seniority list they now seek to challenge the seniority list of 1993 though the said seniority list of 1981 has been recast several times in between. However, placing reliance upon Kuldip Chand v. Union of India & Others, 1995 (5) SCC 680, learned counsel submits that laches and delay would not disentitle the employees to claim seniority. In our view this judgement cannot have any application in the present case to the proceedings before the Tribunal under Section 19 of the Administrative Tribunals Act, 1985. In the above case a Writ Petition was filed in the High Court

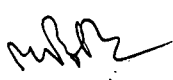


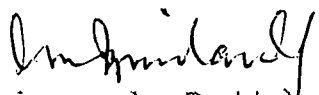
against the wrong determination of seniority under Article 226 of the Constitution, where there is no provision as to period of limitation for filing Writ Petition under Article 226 of the Constitution. However, the law is trite that the delay and laches would deprive a person of his rights as well as remedies, as held by the Hon'ble Supreme Court in Ratam Chandra Samanta & Ors. v. The Union of India & Ors., JT 1993 (3) SC 418. Over the period of more than 15 years so much water has flown and the seniority of many persons in the department has been settled. It may be that none of the Inspectors have been promoted even then the employees who are senior would have had their legitimate expectations with regard to their chances of promotion and if we rake up the issue at the instance of the applicants who had been idling for a decade and half, even after the pronouncement of the judgement in The Direct Recruits case (supra) in 1990 and the subsequent notifications in 1992, it would cause serious prejudice to them, we would be unsettling the settled positions of several employees. The Supreme Court has clearly held in a catena of decisions that the settled position of seniority should not be unsettled, vide S.B. Dogra v. State of Himachal Pradesh & Others., 1992 (4) SCC 455.. The grievance of the applicants arose in 1993 when the seniority list has been prepared in accordance with the date of confirmation, which principle was held ultra vires of the Constitution. The starting point for limitation under Section 21 of the Administrative Tribunals Act is 1983. They should have questioned the said seniority list before the appropriate forum well before limitation. The OA filed in 1996 is, therefore, clearly barred by limitation.



10. The applicants filed MA-1074/96 to condone the delay in filing the OA. It is stated therein that the representation against the seniority list has been rejected by letter dated 24.1.95 which has been received by the applicants on 14.3.95. Assuming that the said date is the starting point for limitation the OA filed on 17.5.96 is beyond one year, which is the period of limitation under Section 21 of the Act. We do not find any good reason for the delay. The vague reason is given that the applicant No.2 has been heavily pre-occupied in his official duties and hence he could not file the case in time and that there was delay in filing the OA. This cannot be a satisfactory explanation for the delay. The MA cannot, therefore, be accepted.

11. In the circumstances we have no hesitation to hold that the OA is hopelessly barred by limitation. In the circumstances we are constrained to dismiss the OA on the ground of limitation. The O.A. is accordingly dismissed. No costs.


(M.P. Singh)
Member (A)


(V. Rajagopala Reddy)
Vice-Chairman (J)

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