IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

1. OA NO.1455/90 DATE OF DECISION: 1.7.1991

SHRI J.P. KAUSHIK ...APPLICANT

VERSUS

UNION OF INDIA & OTHERS ...RESPONDENTS

2. OA NO.1407/90

SHRI B.K. AGGARWAL ...APPLICANT

VERSUS

UNION OF INDIA & OTHERS ...RESPONDENTS

3. OA NO.1456/90

SHRI SURJIT SINGH ...APPLICANT

VERSUS

UNION OF INDIA & OTHERS ...RESPONDENTS

4. OA NO.153/89

SHRI S.R. NARAYANAN ...APPLICANT

VERSUS

UNION OF INDIA & OTHERS

FOR THE APPLICANTS S/Shri Ravi Wadhwani, Aman Vaccher, K.N. Bhatt, Counsel

FOR THE RESPONDENTS S/Shri P.P. Khurana, S.K. Mehta, Aman Vaccher, V. Jogayya Sarma, Gopal Subramanyam, Counsel.

CORAM:

THE HON'BLE JUSTICE MR. AMITAV BANERJI, CHAIRMAN

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not? Yes.
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal? Yes

1.7.91

(AMITAV BANERJI)
CHAIRMAN

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(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE MR. I.K. RASGOTRA, MEMBER (A))

OAs No.1455/90, 1407/90, 1456/90 and 153/89 raise common issues of law and fact. We, therefore, propose to deal with them through this common judgement.

Application No.691/89 was filed by Shri J.P. Kaushik, Collector of Customs, Bangalore in the Bangalore Bench of the Tribunal under Section 19 of the Administrative Tribunals Act, 1985 and after transfer under the

orders of the Hon'ble Chairman to the Principal Bench, New Delhi has been renumbered as **OA-1455/90.**

The applicant herein is working as Collector of Customs and Central Excise in the pay scale of Rs.5900-6700. In the seniority list of Collectors, Senior Administrative Grade (SAG for short) Level II as on 1.4.1986 the applicant was shown at serial number 8 immediately below one Shri J. Ramakrishnan who was at serial No.7. By a subsequent notification of the Government of India No.SN6/87 dated 16.2.1988 the applicant alongwith 6 others was promoted from the grade of Collector of Customs and Central Excise, SAG Level II to the grade of Collector of Customs and Central Excise, SAG Level I w.e.f. 9.12.1986 (Annexure A-6). These promotions are from the pay scale of Rs.2250-2500 SAG (Level II) to the pay scale of Rs.2500-125/2-2700 SAG (Level I) (pre-revised) w.e.f. 9.12.1986. As the entire issue revolves around the notification dated 16.2.1988 the same is reproduced below:-

"To be published in part-I Section 2 of the Gazette of India.

Government of India
Ministry of Finance
Department of Revenue

. . . .

New Delhi, the 16th February, 1988.

NOTIFICATION

Customs & Central Excise Establishment

SN.6/87. It is hereby notified that the Appointment Committee of the Cabinet has approved the appointment of following officers in the grade of Collectors of Customs & Central Excise Level II of the Indian Customs & Central Excise Service Group 'A' to officiate in the grade of Collector of Customs and Central Excise Level-I in the pay scale of Rs.2500-125/2-2750 (pre-revised) with effect from 9.12.1986

and until ;further orders:-

SNo.	Name S/Shri	Present posting
A-Against the vacancies which arose in 1984:		
1.	J.P. Kaushik	Collector of Customs, Bangalore.
2.	S.K. Dhar	Collector of Central Excise, Meerut.
B.Against the Vacancies which arose in 1985:		
1.	S.K. Kohli	OSD, CEGAT, New Delhi.
2.	K.S. Venkataramani	Member (Tech) CEGAT, New Delhi
3.	P.C. Jain	-do-
4.	B.C. Mondal	-do-
5.	Surjit Singh	Collector of Central Excise, Bombay-II.

Sd/-
(R.R. BHARATI)
UNDER SECRETARY TO THE GOVT. OF INDIA.

SN.6/87-F. No.A-32012/7/85-Ad.II

To

The Manager, Govt. of India Press,
Faridabad."

2. The applicant, Shri J.P. Kaushik is promoted against an available vacancy which arose in 1984 while Shri S.K. Dhar, who was at serial No.I in the SAG, Level II seniority list as on 1.4.1986 (Annexure A-5) is at serial No.2 in the said notification against the second vacancy of 1984. It is apparent that the applicant superseded Shri S.K. Dhar, arrayed as respondent No.3 in the application, on promotion from SAG Level II to SAG Level I. In the seniority list of Collectors, SAG Level II as on 1.4.1986 (Annexure A-5) the order of seniority is as under:-

S/Shri

1. S.K. Dhar
2. M.S. Kanwal
3. Smt. Ila Chatterjee
4. R.K. Thawani
5. S.K. Kohli

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6. V.P. Gulati

7. J. Ramakrishnan

8. J.P. Kaushik

The applicant has not only superseded Shri S.K. Dhar, respondent No.3, but also the officers shown at serial Nos.2-7 above as per notification dated 16.2.1988. He assumed charge as Collector, SAG Level I w.e.f. 9.12.1986 vide joining report dated 22.2.1988 (Annexure A-7).

3. In the meantime, the Government of India issued resolution No.F-14(2)/II/86 dated 13.3.1987 and notification No.F-15/7/IC/86 dated 13.3.1987 merging S.A.G. Level II pay scale (Rs.2250-2500) with SAG Level I (Rs.2500-2750) w.e.f. 1.1.1986.

In pursuance thereof, the respondents issued fresh seniority list on 5th May, 1988 of Collectors of Customs and Central Excise as on 1.10.1987 (Annexure A) wherein the applicant has been placed at serial No.31 while respondent No.3, Shri S.K. Dhar is placed at serial No.24. The impugned seniority list of 1.10.1987 indicates that the promotions made vide notification dated 16.2.1988 were deemed as non-est consequent to the merger of the SAG Level II with SAG Level I retrospectively w.e.f. 1.1.1986 vide Government of India's resolution and notification dated 13.3.1987. The contention of the applicant is that he was promoted against one of the vacancies relating to 1984 from SAG Level II to SAG Level I, even though the notification dated 13.3.1987, merging SAG Level II pay scale in SAG Level I w.e.f. 1.1.1986 had already been issued. Further, he was also allowed to take over as Collector, SAG Level I w.e.f. 9.12.1986, his seniority, therefore, would be just below the last SAG Level I Collector, Shri Doungal who was placed at serial No.24 of the seniority list of SAG Level I

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Collectors as on 1.4.1986. Accordingly, there is no question of reviewing his seniority was no question of reviewing his seniority, first because he was promoted w.e.f. 9.12.1986, secondly because the vacancy against which he is promoted relates to the year 1984 and thirdly because he was allowed to take over as Collector SAG Level I.

By way of relief the applicant has prayed that the seniority assigned vide seniority list of 1.10.1987 notified under letter dated 5.5.1988 (Annexure A) be quashed with a further direction that he should be assigned seniority below Shri C. Doungal, the last SAG Level I Collector in the seniority list as on 1.4.1986 (Annexure A-5).

In brief the applicant would like that the notification dated 16.2.1988 should be upheld as legal and valid, conversely the seniority list issued under letter dated 5.5.1988 as on 1.10.1987, restoring inter-se-seniority in SAG Level II be quashed.

4. Application No.278/89 was filed by Shri B.K. Aggarwal, Collector of Customs and Central Excise at the Jabalpur Bench of the Tribunal under Section 19 of the Administrative Tribunals Act, 1985 and on transfer under the orders of the Hon'ble Chairman has been renumbered as **OA-1407/90.** The applicant herein is aggrieved by the notification of 16.2.1988 as according to him with the merger of SAG Level II in SAG Level I w.e.f. 1.1.1986, there is no question of promoting SAG Level II officers to SAG Level I. He, therefore, prays that the notification dated 16.2.1988 should be quashed and the respondents directed to make further appointments in accordance with the seniority list of 1.10.1987. The prayer herein is, therefore, directly the opposite of that as in OA-1455/90.

notification dated 16.2.1988.

8. The issue for adjudication which emerges from the facts of the case is whether the promotions made from SAG Level II to SAG Level I (pre-revised scales of pay) vide notification dated 16.2.1988 with effect from 9.12.1986 i.e. prior to the issue of the Government resolution and notification dated 13.3.1987, implementing the recommendations of the Fourth Central Pay Commission regarding the merger of SAG Level II in SAG Level I retrospectively w.e.f. 1.1.1986 would nullify such promotions, when SAG Level II had ceased to exist w.e.f. 1.1.986.

9. Pleadings in all the cases are complete and the affected parties have been arrayed as respondents in one or the other OA before us.

10. The facts of the case are not disputed by the respondents in their counter-affidavit. They, however, submit that promotion from SAG Level II to SAG Level I of Collectors in the pre-revised scale was on the principle of selection.

The SAG Level II and SAG Level I were merged and replaced by a single scale of pay of Rs.5900-200-6700 in pursuance of the recommendations of the Fourth Central Pay Commission. Thus the promotion to the grade of Collector are now directly made from among the Deputy Collector of Customs and Central Excise in the Junior Administrative Grade (pre-revised 1500-2000) equivalent to Rs.3700-5000 w.e.f. 1.1.1986. In may, 1985 a proposal was sent by the Department of Revenue to the UPSC for convening a meeting of the DPC for selction of officers for promotion from Collector SAG Level II (Rs.2200-2500 pre-revised) to Collector SAG Level I (Rs.2500-2750 pre-revised) against vacancies which arose in 1984 and 1985. They further submit that as per the instructions of the D.P. & T the select

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list should be drawn up calender yearwise depending upon the number of vacancies arising in each year. The DPC met on 6.8.1986 and recommended a panel of two officers for promotion as Collector level I against two vacancies which arose in 1984 and 10 officers for promotion against vacancies which arose in 1985. The recommendations of the DPC were considered and approved by the competent authority in respect of the promotion of 7 officers (out of 12 officers recommended by the DPC) to SAG Level I prospectively w.e.f. 9.12.1986. In the case of remaining five officers, the competent authority asked for some additional information. By this time the recommendations of the Fourth Central Pay Commission regarding the merger of Collectors SAG Level II and SAG Level I w.e.f. 1.1.1986 had been notified vide Government of India resolutation and notification dated 13.3.1987. Since the officers were recommended by the DPC for promotion against vacancies relating to 1984 and 1985, the question of making promotion retroactive from 1984, 1985 respectively was examined in consultation with the Department of Personnel and Training and Ministry of Law. After detailed examination the Government took the view that it was not possible to give retrospective effect to the promotions of officers recommended by the DPC. Nevertheless, it was considered necessary to promote officers, recommended by the DPC, as otherwise this would affect their seniority in the grade of Collectors. Accordingly, the notification dated 16.2.1988 promoting 7 Collector SAG Level II to Collector SAG Level I against vacancies of 1984 and 1985 w.e.f. 9.12.1986 was issued. After the issue of the notification dated 16.2.1988 several representations were received by the Government from those who were superseded in the matter of promotion from SAG Level II to SAG Level I and also from some of those who were promoted in the said notification. The latter primarily sought to relate back their promotions to

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1984, 1985, as the case may be. As all these representations were under consideration, no reply could be sent to the applicant. In the meantime, five applications were filed before the various Benches of the Tribunal after the issue of the notification dated 16.2.1988. The Hyderabad and Jabalpur Benches of the Tribunal passed interim orders on 7.4.1989 and 12.5.1989 respectively, directing the respondents not to disturb the seniority of the Collectors pursuant to the notification dated 16.2.1988.

11. While the proceedings in the various OAs at different Benches were going on, the respondents filed an MP No.260/90 in OA-1455/90 (691/89 Bangalore) under Section 25 of the Administrative Tribunals Act, 1985, praying for orders of the Chairman of Tribunal to the effect that all similar cases be transferred to the Principal Bench so that the possibility of conflicting judgements could be avoided, as the issues of law and fact in all the OAs were common and identical. They further submitted that common disposal of all the OAs would be in the interest of justice, as it would also cut out delay in the final disposal of various OAs. After considering the matter and hearing the parties, Hon'ble Chairman ordered the transfer of all the pending OAs to the Principal Bench. The respondents at this stage filed another MP-356/91 in OA-1455/90 praying for the stay of the operation of orders passed by the Hyderabad Bench and Jabalpur Benches of the Tribunal to enable the respondents to make promotion to the grade of Principal Collector (Rs.7300-7600) on the basis of the existing seniority list or on any other basis considered appropriate by the Tribunal on provisional basis subject to the final decision. After hearing the respective parties an interim order was passed on 28.2.1991. The operative part of which is reproduced below:-

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"We therefore order that pending final decision in the matter, the appointments to fill up the posts of Principal Collector may be made from the list of Collectors approved for promotion to Level I vide Notification dated 16.2.1988. The promotions shall, however, be subject to the final result of the OAs pending before the Tribunal. We further direct that the above conditionality for the promotion so ordered shall be made manifest in the order of promotion to be issued."

12. This provoked the affected parties to file SLPs (Civil) No.5897-99 of 1991 under Article 136 (1) of the Constitution of India against the interim order dated 28.2.1991 as above in the Hon'ble Supreme Court of India. These SLPs, however, were dismissed as withdrawn on 16.4.1991. On 18.4.91 our attention was also drawn to the MP-984/91 in OA-1456/90 and MP-1606/91 in OA-1407/90 for impleadment of certain officers as respondents. As these officers were found to be arrayed as party in one case or another listed before us, these MPs were treated as allowed in agreement with the learned counsel of various parties.

13. We have heard Shri Gopal Subramanyam, Shri Aman Vacher, Shri P.P. Khurana, Shri K.N. Bhatt, Shri R.P. Wadhwani Shri S.K. Mehta, learned counsel for the parties at some length. Ms. Sunita Rao, proxy counsel for Shri V. Jogayya Sarma, counsel for respondent No.9 however stated that Shri Sarma was not available and another date may be fixed for hearing Shri Sarma. While we did not accede to the prayer for adjournment, Shri Sarma was allowed to file written argument by 23.4.91 and the orders were reserved.

We have also gone through the record of the case very carefully, as also the written arguments submitted by Shri V. Jogayya Sarma, the learned counsel for respondent No.9 in OA-1455/90. We note with dismay that some of documents attached to the written arguments are completely

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illegible.

There is no dispute about the facts of the case. Promotion from SAG Level II to SAG Level I was by an act of positive selection. The SAG Level II was merged with SAG Level I vide resolution and notification of the Govt. of India of the same date viz. 13.3.1987 retrospectively w.e.f. 1.1.1986. In the meantime, the respondents convened a DPC on 6.8.1986 for considering the eligible Collectors SAG Level II for promotion to SAG Level I to fill up two vacancies which arose in 1984 and 10 vacancies relating to year 1985. Based on the recommendations of the DPC the competent authority approved the names of the seven officers out of 12 recommended by the DPC to the grade of Collector SAG Level I, w.e.f. 9.12.86 prospectively vide notification dated 16.2.1988. In the case of remaining 5 officers the competent authority asked for some additional information.

The significant points to be noted are:

a) that the vacancies filled vide notification dated 16.2.1988 relate to years 1984 and 1985, and yet the date of effect of the orders promoting officers from SAG Level II to SAG Level I is from 9.12.1986 prospectively. The date 9.12.1986 has no nexus with the date on which the vacancies arose in 1984/1985;

b) The notification dated 16.2.1988 promoting Collectors SAG Level II to Collector SAG Level I was issued when SAG Level II had already been merged with SAG Level I w.e.f 1.1.1986 and replaced by a single scale of pay of Rs.5900-6700.

c) The panel drawn up by the DPC is normally valid for one year and if extended ceases to be in force on expiry of a period of one year and six months or when a fresh panel is prepared whichever is earlier.

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d) What is the impact of the retrospectivity on the merger of SAG Level II with SAG Level I w.ef. 1.1.1986 vide notification dated 13.3.1987 on the promotions made w.e.f. 9.12.1986 but not from 16.2.1988.

It is not in dispute that the panel was drawn up by the DPC in its meeting held on 6.8.1986 to fill up two vacancies relating to 1984 and 10 vacancies realting to 1985 and that the promotions made subsequently are not related back to the dates when the vacancies arose; nor has any financial benefits been allowed to the officers promoted by the said order from those dates. The established position is that "functionally the posts in two levels are interchangeable and involve similar duties and responsibilities" (Para 8.65 of the Report of the Fourth Central Pay Commission).

In view of the above, it was perhaps not felt necessary to convene the DPC when it ought to have been nor were the promotions made related to 1984 and 1985. In the meantime vide notification dated 13.3.1987 the posts in Level II ceased to exist w.e.f. 1.1.1986. The fact that the vacancies related to 1984 and 1985 were filled prospectively w.e.f. 9.12.1986 divested them of their essential and concomitant attributes viz. they lost the character of retrospectivity, as also the financial benefit which is immanent in promotion. Lastly the promotions were ordered from SAG Level II to SAG Level I on 16.2.1988, when SAG Level II itself was non-existent. The promotions ordered vide notification dated 16.2.1988 therefore are only a myth and varily not a fact.

Further, the panel was drawn up by the DPC on 6.8.1986 while the orders of promotion were notified only on 16.2.1988 to take effect from 9.12.1986. In accordance with the Deptt. of Personnel instructions as contained in paragraph XII (2) appearing in Chapter 44 of Swamy's complete Manual on Establishment and Administration

(October 1988 Edition) the date of commencement of the validity of the panel is the date on which the DPC meets. Only cases where the panel requires partially or wholly the approval of the Commission the date of validity of panel would be the date of Commission's letter communicating their approval to the panel.

No material has been produced before us to indicate that the panel was valid on 16.2.1988 when it was actually operated. Any order issued after the expiry of the validity of the panel is ab-initio, illegal and void.

It was argued on behalf of the applicants in OA Nos. 1455/90 & 1456/90 that the validity of the promotions made vide notification dated 16.2.1988 cannot be assailed, as the vacancies that had arisen in 1984 and 1985 have to be filled in accordance with the statutory rules then existence. This line of argument is based on the judicial pronouncements in **P. Ganeshwar Rao v. State of Andhra Pradesh 1988 (supp) SCC 740** & **Y.V. Rangaiah v. J. Sreenivasa Rao AIR 1983 SC 852.**

A careful and indepth consideration of the decisions of the Hon'ble Supreme Court cited above indicates that the facts and circumstances of both cases are distinguishable from the matters before us.

We are also not persuaded to accept the argument that in case the notification dated 16.2.1988 is set aside the concerned officers will be adversely affected by way of losing the benefit of added seniority. It is well settled that if the meaning of the words used indicates an intention that the Act is to have retrospective operation then, no matter, what the consequences this operation must be given to the provisions.* If the language is plainly retrospective, it must be so interpreted.** If there are words in the enactment which either expressly or by necessary intendment imply that the statute is to be given

retrospective operation even in respect of substantive rights or pending actions, the courts have no other alternative than to give such operation to the statutes even though the consequences may appear to be unjust or hard.*** The notification issued by the Govt. of India dated 13.3.1987 is in exercise of the powers conferred by the proviso to Article 309 and Clause V of Article 148 of the Constitution of India. The rules were promulgated, as if they had been framed and approved by the Legislature.

In the facts and circumstances of the case, as discussed above, we are of the view that the notification dated 16.2.1988 promoting 7 officers out of 12 recommended by the DPC held on 6.8.1988 is invalid and therefore illegal for the reasons given above. Accordingly the same is set aside and quashed. We further direct that the respondents shall order promotion in accordance with the seniority list issued by them under their letter dated 5.5.1988 as of 1.10.1987.

In the circumstances of the case OAs No.1455/90, 1407/90, 1456/90 and 153/89 are disposed of, as above with no order as to costs. The interim order passed on 28.2.1991 shall also cease to be operative with immediate effect.

(I.K. RASGOTRA)
MEMBER(A) 1/7/91

1.7.91
(AMITAV BANERJI)
CHAIRMAN

/SKK/

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* Rashid Bibi v. Tufail Muhammad AIR 1941 LAH 291-292..
: Banwari Gope v. Emperor AIR 1943 PAT 18:20

** Maxwell's Interpretation of Statutes 11th Edition page 205.

***MM.L. Bagga v. C. Murher Rao AIR 1956 Hyd. 35.