

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. /593/93

T.A.NO.

DATE OF DECISION 24/2/1997

Mr. I.D. Khatri

Petitioner

Mr. K.V. Oza

Advocate for the Petitioner [s]

Versus

Union of India & Ors.

Respondent

Mr. Akil Kureshi

Advocate for the Respondent [s]

Mr. Shailesh Brahmabhatt

CORAM

The Hon'ble Mr. V. Ramakrishnan

Vice Chairman

The Hon'ble Mr. T. N. Bhat

Member (J)

JUDGMENT

- 1, Whether Reporters of Local papers may be allowed to see the Judgment ?
- 2, To be referred to the Reporter or not ? *yes*
- 3, Whether their Lordships wish to see the fair copy of the Judgment ?
- 4, Whether it needs to be circulated to other Benches of the Tribunal ?

102

Ishwarlal Dashrathlal Khatri

Add: H-100/817, Nirmal Apartments,
Opp. Jay Managal Society, Bus Stop,
Ring Road, Naranpura,
Ahmedabad.

Applicant

Advocate Mr.K.V.Oza

versus

1. The Secretary,
Central Board of Excise and
Customs, Ministry of Finance,
Dept. of Revenue, Govt. of India,
New Delhi.
2. The Collector,
Central Excise & Customs,
Central Excise Building,
Race Course, Vadodara.
3. The Additional Collector,
Central Excise (P&V),
Customs House,
Nr. All India Radio,
Navrangpura,
Ahmedabad.
4. Naik Prakashchandra Chhotabhai, Surat-1.
5. Bhagat Harishkumar Jaykrishna,
Baroda Coll'te.
6. Yakshi Madan Mohan,
Rajkot, Coll'te.
7. Sharma Munsilal Bhupat,
Ahmedabad Coll'te
8. Sharma Devendrakumar, Vinodchandra,
Rajkot Coll'te
9. Verma Brijesh Kumar (Kulshreshtha Brijeshkumar
Prambahadur) Rajkot Coll'te
10. Dave Rameshchandra Kanialal, Rajkot Coll'te
11. Kaptan Sanatkumar P. Baroda- Divn. IV
12. Mehta Rajeshkumar S., Ahmedabad Coll'te
13. Desai Pankaj S., Customs Bulsar,
14. Patel Rameshbhai B, Ahmedabad Coll'te
15. Vasava Manubhai M, Ahmedabad Coll'te
16. Sheth Pradipkumar S., Baroda Coll'te
17. Patel Mahesh K, Ahmedabad Coll'te
18. Rishwardkar Vishwas V., Ahmedabad Coll'te

19. Rajput Lochansinh D, Ahmedabad Coll'te
20. Macwan Manharkumar N, Ahmedabad Coll'te
21. Sharma Pradipkumar B., Ahmedabad "
22. Naithani Ashok N. "
23. Pandey Manishkumar K. Baroda "
24. Anthoney Josaph V. Ahmedabad "
25. Shukla Shaileshkumar C. Rajkot "
26. Parihar Awardhaj Singh, Baroda C "
27. Mathew Chothirakunnil I, Rajkot "
28. Fortunate Alex Gomes, Ahmedabad "
29. Rajgopal Ramaswamy, " "
30. Ajay D. Parihar, Baroda "
31. Shah Mahendra P., Ahmedabad "
32. Botham Mukesh M, " "
33. Bice Pradipsingh B, Rajkot "
34. Gaurushani Surendra E, Ahmedabad "
35. Sheth Bharat K., Baroda "
36. Bhatt Subhashchandra Y., Surat "
37. Jadeja Raghuvir P, Ahmedabad "
38. Thapoliyal Dayaram M., " "
39. Mehta Kartik V. Surat "
40. Bhat Yogesh S., Ahmedabad "
41. Rufus Rockey, Surat "
42. Raithatha Rajendrakumar S, Rajkot "
43. Palkar Pradip R, Baroda "
44. Karakjgeokar Laxman V., Baroda "
45. Savant Ramesh N, Ahmedabad "

Respondents

Advocate Mr. Akil Kureshi
 Mr. Shailesh Brahmhatt

ORAL ORDER

O.A. 593/93

Date: 24-2-97

Per Hon'ble Mr. V. Ramakrishnan

Vice Chairman

Heard both the sides. The grievance of
 the applicant is that on his promotion to the cadre of

Inspector of Central Excise his seniority was not fixed on the basis of the date of entry but was fixed on the basis of the date of confirmation. The applicant submitted a representation dated 8-7-1991, at Annexure A-1, to the Collector of Central Excise, Baroda where he had requested to refix his seniority taking into account the date of entry and not the date of confirmation. He refers in his representation to a decision of the Central Administrative Tribunal, Ernakulum Bench, in the case of V. Narayanan and ors. Vs. Collector of Central Excise and Customs. According to him the same principle shall apply to his case. He was informed initially some time in 1991 that the matter was under consideration by the department and as there was no further response from the respondents, he approached the Tribunal by filing the present O.A. in 1993.

2. The learned counsel for the applicant forcefully submits that for fixing of seniority, the date of entry is ~~not~~ important and the date of confirmation is not relevant and this position in fact has been recognised by the department and the circular dated 22-12-1959 which had fixed certain principles for fixing of seniority was later replaced by the another circular in 1986 on the basis of various court decisions. The learned counsel for the applicant

draws our attention to the judgment of the Ernakulum Bench against which the department has filed an S.L.P. which was dismissed. According to him, the O.A. deserves to be allowed.

3. Mr. Kureshi for the respondents resists the application on the ground that the O.A. is hopelessly time barred. He also submits that according to him, the principle regarding the date of entry for the purpose of seniority cannot be applied in the present case as the recruitment to this level was made on the basis of ROTA QUOTA principle and the seniority has already been determined earlier prior to the issuance of the order laying down revised principle. He says that this case ~~xxx~~ is not required to be reopened in view of the ~~the~~ instructions issued by the department in November 1992.

4. We have considered the rival contentions. We are of the view that it is not necessary in this case to go into the merits of the question whether seniority is to be reckoned on the basis of the date of entry or date of confirmation. It is stated by Mr. Kureshi, that the initially seniority list in this cadre was published by a letter issued in 1982 and reissued from time to time by subsequent orders. In fact

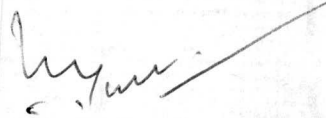
This has not been disputed BA

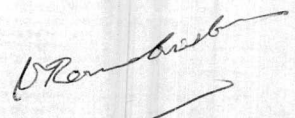
we find from the representation dated 08/7/1991, at Annexure A-1 that ^{the Applicant} he had thought it fit not to represent earlier as ^{according to him} there was no decision for interpreting the correct scope of applicability of the rules for fixing of the seniority. He further states that he came to know about the decision of the Erakulum Bench in Narayanan's case ^{and} with enclosing a copy of the decision had sought for refixing the seniority. In other words, he moved the department in respect of the seniority list, which was finalised earlier from 1982 onwards ^{only} and in 1991, ^{and} he approached the Tribunal by filing the present O.A. only in 1993. We hold that it is not a valid ground to explain the delay. We may ~~mention~~ in this context refer to the case of P.S.Sadasiva Vs. State of Tamil Nadu ((1975) 1 SCC 152) 1975 SCC(L&S) 22: AIR 1974 SC 2271), whereas the Supreme Court has observed that it would be sound and wise exercise of discretion for the courts to refuse to exercise their extra ordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and approach the Tribunal to put forward stale claims and try to unsettle settled matters. Again in the case of Government of Andhra Pradesh Vs. M.A.Kareem ((1991) 2 SLJ 15), the Supreme Court reversed the orders of the Andrapradesh Administrative Tribunal and observed that

the Courts and Tribunals should be slow in disturbing the settled affairs in a service for such a long period. They had also referred to the judgment in the case of K.R.Mudgal Vs. R.P.Singh ((1986) 4 SCC 531) , where a reference was ^{made} ~~not~~ to the observations made by the constitution Bench in the case of Malcom Lawrance Vs. Union of India. (1975 Supp SCR 409). The Supreme Court has ~~been~~ laid down the law that raking up the old matters ⁱⁿ like seniority after a long time cannot be permitted as it likely to result in administrative complications and difficulties and ~~it~~ would be in the interest of smoothness and efficiency of service that such matters should be given a quiescent after lapse of some time. Again in the case of G.C.Gupta Vs. N.K.Pandey ((1988) 1 SCC 316) , the Supreme Court had observed as under :

" The challenge to the seniority of the applicants was made after nearly 17 years and they have sought the relief of redetermination of the seniority in accordance with the provisions of the aforesaid rules. This cannot be permitted as it would amount to unjust deprivations of the rights of the appellants."

5. It is clear that in the present case, whereby the seniority list following certain principle was published in 1982 ^{and} has been challenged before the Tribunal only in 1993 after submitting the representation to the department in June 1991. The relief sought for is ^{hopelessly time barred} ~~without merit~~ and the application is barred by delay and laches and on that ground, ~~the~~ we dismiss the O.A. with no order as to costs.


(T.N.Bhat)
Member (J)


(V.Ramakrishnan)
Vice Chairman

*ssh..

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD

Applicati on No. OA/593/93
Transfer Application No. —

CERTIFICATE

Certified that no further action is required to be taken
and the case is fit for consignment to the Record Rood (Decided).

Dated: 2/4/97

Countersign :

Section Officer.


Signature of the Dealing
Assistant

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NAME OF THE PARTIES

QA 59.3 93

Shri L. D. Khatri

VERSUS

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CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

C.A.T./Judicial Section.

Submitted :

Original Petition No 593
of 1993

Miscellaneous Petition No _____

Shri D. Khatri Petitioner(s)

versus

U.O. 1208 Respondent (s)

This application has been submitted to the Tribunal by
Shri K.V. 039

Under Section 19 of the Administrative Tribunal Act, 1985.
It has been scrutinised with reference to the points mentioned in
the check list in the light of the provisions contained in the
Administrative Tribunal Act, 1985 and Central Administrative
Tribunals (Procedure) Rules 1985.

The application has been found in order and may be given
to concerned for fixation of date.

The application has not been found in order for the reasons
indicated in the check list. The applicant advocate may be asked
to rectify the same within 14 days/draft letter is placed below
for signature.

ASST.

S.O.(J)

D.R.(J)

1. Index not prepared properly
2. Annexures not filed as per index.

27/8/93.

we may issue objection letter

for removal
Removal
27-8-93

Submitted 27/8/93

Kindly Rec above rules
objection letter is placed below
for signature M

30/8 SO (J) Removal
30/8/93

DR 11/9/93

See bundled

Kindly see order on over leaf
office objections have not been
complied with. A reminder is
placed opposite for signature
if approved.

Che

22/9/93

C Bhagat

22-9-93

Draft Gail
22-9-93

Letter issued
on 23/9/93

Submitted

Kindly see order on over leaf.

Office objections have been complied
with. The matter, if approved, will be handed
over to the concerned for necessary action.

Che

12/10

S.O. (J)

C Bhagat

12-10-93

Draft

P

12-10-93

OA SR 634/93
OA/593/93

IN THE CENTRAL ADMINISTRATION TRIBUNAL
ADDITIONAL BENCH : AHMEDABAD :

1. Shri Ishwarlal Dashrathlal Khatri Applicant

V/s.

1. The Secretary,
Central Board of Excise and Customs,
Ministry of Finance,
Department of Revenue,
Government of India,
New Delhi.

2. The Collector,
Central Excise and Customs,
Central Excise Building,
Race Course, Vadodara-390 005.

3. The Additional Collector,
Central Excise and Customs (P&V),
Customs House,
Near All India Radio,
Navrangpura,
Ahmedabad 380 009.

.....

Respondents.

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Advocate

- ④ 4. Naik Prakashchandra Chhotabhai
Surat-1.
5. Bhagat Harishkumar Jaykrishna,
Baroda Coll'te.
6. Yakmi Madan Mohan, Rajkot Coll'te.
7. Sharma Munsilal Bhupat, Ahmedabad Coll'te.
8. Sharma Devendrakumar, ~~Mahesara~~ Vinodchandra, Rajkot Coll'te.
9. Verma Brijesh Kumar (Kulshreshta Brijeshkumar
Prambahadur), Rajkot Coll'te.
10. Dave Rameshchandra Kanialal, Rajkot Coll'te.
11. Kaptan Sanatkumar P., Baroda, Divn.-IV.
12. Mehta Rajeshkumar S., Ahmedabad, Coll'te.
13. Desai Pankaj S., Customs Bulsar.
14. Patel Rameshbhai B., Ahmedabad Coll'te.
15. Vasava Manubhai M., Ahmedabad Coll'te.
16. Sheth Pradipkumar S., Baroda Coll'te.
17. Patel Mahesh K., AHMEDABAD COLL'TE.
18. Rishwadkar Vishwas V., Ahmedabad Coll'te.
19. Rajput Lochanmih D., Ahmedabad Coll'te.
20. Macwan Manharkumar N., Rajkot Coll'te.
21. Sharma Pradipkumar B., Ahmedabad Coll'te.
22. Naithani Ashoka N. Ahmedabad Coll'te.
23. Pandey Manishankar K., Baroda Coll'te.
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25. Shukla Shaileshkumar C., Rajkot Coll'te.
26. Parihar Awadhraj Singh, Baroda Coll'te.
27. Mathew Chothirakunnil I., Rajkot Coll'te.
28. Fortunate Alex Gomes, Ahmedabad Coll'te.
29. Rajgopal Ramaswamy, Ahmedabad Coll'te.
30. Ajay D. Parihar, Baroda Coll'te.
31. Shah Mahendra P., Ahmedabad Coll'te.

4. Rajk Prakashchandra Chhotabhai
Surat-1.

5. Bhagat Harishankar Jaykrishna,
Baroda Coll'ce.

6. Yashwanth Mahan Mohan, Rajkot Coll'ce.

7. Shri Ram Kishorji Bhagat, Ahmedabad Coll'ce.

8. Shri Ram Govindkrumar, Rajkot Coll'ce.

9. Varma Brijesh Kumar (Kishorji Brijeshkrumar
Premchandur), Rajkot Coll'ce.

10. Jave Ramachandras Kantilal, Rajkot Coll'ce.

11. Kapten Ramachandras P., Baroda, D.V.N.-IV.

12. Mohan Brijeshkrumar S., Ahmedabad Coll'ce.

13. Desai Ramji S., Gujrat Coll'ce.

14. Patel Ramachandras P., Ahmedabad Coll'ce.

15. Vasava Ramachandras M., Ahmedabad Coll'ce.

16. Bhat Pradipkrumar S., Baroda Coll'ce.

17. Patel Mahesh K., AHMEDABAD COLL'CE.

18. Rajwadekar Vithal V., Ahmedabad Coll'ce.

19. Rajput Ichandras B., Ahmedabad Coll'ce.

20. Mawani Mahatkrumar M., Rajkot Coll'ce.

21. Sharma Pradipkrumar S., Ahmedabad Coll'ce.

22. Wadhvani Ashwin W., Ahmedabad Coll'ce.

23. Pandey Manishankar K., Baroda Coll'ce.

24. Anthony Joseph V., Ahmedabad Coll'ce.

25. Shukla Shantisankar C., Rajkot Coll'ce.

26. Parthab Awadhraj Singh, Baroda Coll'ce.

27. Mathew Chintakrumarji I., Rajkot Coll'ce.

28. Fortunate Alex Gomez, Ahmedabad Coll'ce.

29. Rajopai Ramswamy, Ahmedabad Coll'ce.

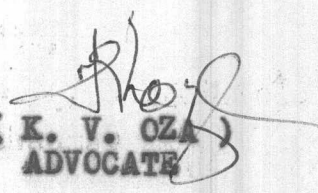
30. Ajay D. Prithvi, Baroda Coll'ce.

31. Shan Mahendra P., Ahmedabad Coll'ce.

32. Botham Mukesh M., Ahmedabad Coll'te.
33. Bice Pradipsingh B., Rajkot Coll'te.
34. Gaurushani Surendra T., Ahmedabad Coll'te.
35. Sheth Bharat K., Baroda Coll'te.
36. Bhatt Subhashchandra Y., Surat Coll'te.
37. Jadeja Raghuvir P., Ahmedabad Coll'te.
38. Thapoliyal Dayaram M., Ahmedabad Coll'te.
39. Mehta Kartik V., Surat Coll'te.
40. Bhat Yogesh S., Ahmedabad Coll'te.
41. Rufus Rockey, Surat Collectorate.
42. Raithatha Rajendrakumar S., Rajkot Coll'te.
43. Palkar Pradip R., Baroda Coll'te.
44. ~~Palkar~~ Karanjgeokar Laxman V., Baroda Coll'te.
45. Savant Ramesh N., Ahmedabad Coll'te. ... Respondents.

Place : Ahmedabad.

Date : 24/1/95


(K. V. OZA)
ADVOCATE

- 45. Savant Ramesh M., Ahmedabad Coll'ce.
 - 44. Patkar Karantgeekar Laxman V., Baroda Coll'ce.
 - 43. Patkar Pradip R., Baroda Coll'ce.
 - 42. Patilbhai Rajendrakumar S., Rajkot Coll'ce.
 - 41. Purna Hockey, Surat College.
 - 40. Pat Yogesh S., Ahmedabad Coll'ce.
 - 39. Mehta Kartik V., Surat Coll'ce.
 - 38. Maholal Dayaram M., Ahmedabad Coll'ce.
 - 37. Jadhav Rajiv P., Ahmedabad Coll'ce.
 - 36. Mehta Subhashchandra Y., Surat Coll'ce.
 - 35. Mehta Bhairav K., Baroda Coll'ce.
 - 34. Gaurishankar Surendra T., Ahmedabad Coll'ce.
 - 33. Bice Pradip Singh B., Rajkot Coll'ce.
 - 32. Botnam Mahesh M., Ahmedabad Coll'ce.
- ... Respondents.

Date : 24/1/55
Place : Ahmedabad.

(K. V. OSA)
ADVOCATE

DETAILS OF APPLICATION :

1. Particulars of applicant :

Name of the applicant : Ishwarlal Khatri.
Name of the father : Dashrathlal Khatri.
Designation and office in which employed : Inspector,
Central Excise & Customs,
Office of the Collector of
Central Excise & Customs,
Ahmedabad.
Office Address : Customs House, Near All
India Radio, Navrangpura,
Ahmedabad-380 009.
Address of service of notice : H-100/817, Nirmal ~~Block~~,
Apartments, Opp. Jay Mangal
Society Bus Stop, Ring Road,
Naranpura, Ahmedabad-380013.

2. Particulars of respondents :

Name of the respondents : 1. The Secretary,
Central Board of Excise
and Customs, Ministry of
Finance, Department of
revenue, Government of
India, New Delhi.
2. The Collector,
Central Excise & Customs,
Central Excise Building,
Race Course, Vadodara,
Pin - 390 005.
3. The Additional Collector,
Central Excise (P & V),
Customs House,
Near All India Radio,
Navrangpura, Ahmedabad,
Pin 380 009.

(X) Note: See below

3. Particulars of the order against which
application is made.

The application is against the wrong fixation of seniority for which a representation was made on 8.7.91 and subsequent reminders thereon dated 16.10.91, 6.3.92, 10.6.92, 9.2.93 and 5.7.93. The representation is still not decided.

4. Jurisdiction of the Tribunal.

The applicant declares that the subject matter of representation against which he wants redressal is within the jurisdiction of the Tribunal.

5. Limitation :

The applicant further declares that the application is within the limitation prescribed in Section 21 of the Administrative Tribunal Act, 1985.

(X) Note:
Today, i.e. 24/11/95 amendment is made but all the
the list of new recruits is incomplete.

24/11/95
S.O. (J)

6. Facts of the case :

I was recruited in the department as an L.D.C. in the year 1969 and joined my duties on 18.09.69 and got promoted as U.D.C. and as an Inspector of Central Excise on 25.7.77, was confirmed as an Inspector on 04.04.82. It may kindly be seen from the seniority list prepared as on 1.1.88 and 1.1.91 that the Inspector whose date of recruitment is later to me have been placed as seniors to me and above me. The names of such Inspectors appear at S.No. 694 to 696, 698 to 700, 702 to 703, 705 to 709, 718 to 21, 724, 728 to 729, 731, 733 to 734, 735, 737, 739 to 740, 742 to 744, 746 to 748, 750 to 752, 754 to 756, 759 to 760, 762 to 764 who are recruited in the years 1978 ~~to~~ 1979. My name is placed at S.No. 765 in the seniority list circulated in the year 1991. The numbers are abnormally high. From these facts, your Honour will readily agree with me that apparant injustice ~~is~~ is done to me.

7. Details of remedies exhausted :

Copy of representation dated 8.7.91 and reminders thereon dated 16.10.91, 5.3.92, 20.6.92, 9.2.93 and 5.7.93 are enclosed herewith.

8. Matter not previously filed or pending with any other Court.

The applicant further declares that I had not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made before any Court, of Law, or any other authority or other Bench of the Tribunal and nor any such application writ petition or suit is pending before any ~~one~~ of them.

9. Relief soughts :

- My seniority may please be refixed.
- Any other relief as deemed proper may be given.
- Any monetary or promotional relief ensuing from the order may please be awarded.
- Till the matter is finally decided, a stay to be granted for the promotion of the junior officers who have been posted above me.

10. Interim order :

Till the matter is finally decided, a stay to be granted for the promotion of the junior officers who have been placed above me.

: 5 :

11. Personal hearing is requested at the admission stage.
12. Particulars of Bank Draft :
Postal order No. 924665 dated 24.7.93.
for Rs. 50/- (Rupees fifty only) issued by S.P.M.
Guj High Court P.O. A'bad.
13. List of enclosures : As per Index above.

VERIFICATION.

I Ishwarlal son of Dashrathlal Khatri aged 44 years working as an Inspector of Central Excise and Customs Ahmedabad resident of Ahmedabad do hereby verify that the contents of Paras 1 to 13 are true to my personal knowledge and paras 1 to 13 believed to be true on legal advice and that I have not suppressed any material facts.

Place : Ahmedabad.
Dated : 24.7.93

Ishwarlal Khatri
(I.D. KHATRI),
Signature of Applicant.

Filed by Mr. K.V. Gaj
Learned Advocate for Petitioners
with second set &.....3.....spares
copies ~~copy~~ served/not served to
other side

19-8-93
By Registrar C.A.T.(I)
A'bad Bench
Bhajan

FORM II
(See rule 4(4).).

R E C E I P T ~~MxExMxEx~~ S L I P S.

Receipt of the application filed in the Central Administrative Tribunal, Ahmedabad Bench by Shri I.D.Khatari working as an Inspector of Central Excise in the office of the Collector of Central Excise and Customs, Ahmedabad and resident of H-100/817, Nirmal Apartments, Opp. Jay Mangal Society Bus Stop, Ring Road, Naranpura, Ahmedabad is hereby acknowledged.

Place : Ahmedabad.
Dated : .7.93.

Seal

For Registrar,

Central Administrative Tribunal,
Ahmedabad Bench.

From:

I.D.Khattri,
Inspector of C.Ex., A.R.IV,
Ahmedabad Divn. IV, Ahmedabad

Kaushik V. On

569, ...
Raj ...
Date 8.7.91

To,
The Collector of C.Ex.,
Vadodara (Submitted through proper channel).

Respected Sir,

Sub : Estt. : Fixation of Seniority :
Representation by Shri I.D.Khattri,
Inspector of C.Ex., A.R.IV, Dn.IV, Ahmedabad:

I the undersigned I.D.Khattri, Inspector of Central Excise presently working in Assessment Range IV, Division IV, Ahmedabad (Ahmedabad C.Ex.Collectorate) hereby request your goodself to consider the following submissions in regard to fixing of the correct seniority.

I invite your kind attention to the Seniority list prepared as on 1.1.88 and circulated on 29.4.88. Though, I perused the list and observed that the seniority fixed in respect of mine is not proper against the facts and rules published from time to time. At the material time, I did not think it fit to represent in this regard on account of the fact that there were no decisions interpreting the correct scope of applicability of the rules for fixing the seniority but they are available now and on the basis of that, I feel certain that my seniority fixed is not on the ratio laid down in the said decisions. The facts involved in these decisions are identical to me and the interpretation of rules for fixing the seniority and the ratio laid down there-in is squarely applicable to the facts of my case.

I also invite your kind attention to the seniority list prepared as on 1.1.91 and circulated vide your letter No. 34/8/91 Estt. dated 13.6.91. The position in 1988 seniority list is not changed even in 1991 seniority list.

I, therefore, request your honour to do justice to me and refix my seniority at proper place and may be obliged. To appreciate the facts involved, I narrate the same as under :

28 1/21
I was recruited in the department as an L.D.C. in the year 1969 and joined my duties on 18.9.69 and got promoted as U.D.C. and as an Inspector of C.Ex. on 25.5.77, was confirmed as an Inspector on 4.4.82. It may kindly be seen from the seniority list prepared as on 1.1.88 that the Inspectors whose date of recruitment is later to me have been placed as seniors to me and above me. The names of such Inspectors appear as S.No. 692, 694, to 696, 698 to 700, 702 to 703, 705 to 709, 712, to 713, 718 to 721, 723 to 724, 728 to 729, 731, 733 to 734, 735, 737, 739 to 741, 742 to 744, 746 to 748, 750 to 752, 754 to 756, 759 to 760, 762 to 764 = 49 who are recruited in the years 1978 and 1979. The numbers of such Inspectors placed above me comes to 49. The number is abnormally high. From these facts, your honour will readily agree with me that apparent injustice is done to me.

In support of my request to revise and refix the seniority, I am drawing your kind attention to two decisions of Central Administrative Tribunals. In both the cases, the seniority lists prepared were held not in conformity of the rules of seniority and have been struck down and order was made to refix the seniority of the applicants by preparing the fresh lists.

The principles for fixing the seniority evolved are ;

*Held that the identity of a member of the service with reference to his source of entry or mode of recruitment

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stands submerged and lost after * his appointment to the service and he become~~d~~ a member of one homogeneous group. The relative placement of inter seniority of members of three cadres * for preparing eligibility list of Group-A has to be based. In absence of any other rule of seniority on the principles of continuous length of service in that grade"

Regn No. OA-1089/1986 dated 28.5.87 published in C.B.E.C. Digest-Sept.1988.

This decision deals with the quota of Direct recruit and promoted/ appraisers from Cl.II. The ratio is 1:1.

The another decision is given by Central Administrative Tribunal, Ernakulam in the case of Shri V.Narayanan and 3 others v/s. Collector of Central Excise and Customs, cochin in appeal No. 473/89 dated 26.3.91. Copy of which is enclosed for your ready reference. It is directly on the promotees and Direct recruits in the cadre of Inspector. The ratio is 3:1. Discussing the various judgements, the Hon'ble CAT has taken into consideration the principles laid down by Hon'ble Supreme Court. It is held that if there has been deviation from the quota rule, then to that extent rota rule of seniority should not be applied and the proper rule of seniority to be applied in such cases * is the date of entry and continuation officiation in the cadre.

In view of this submissions, I request your honour to consider my case sympathetically and remove the anomaly and the injustice occurred to me.

I thank you, Sir in anticipation and look forward with hope.

For this act of kindness, I, as in duty bound, shall even pray.

ENCL : As above

Yours faithfully,

Ob 8/5/91
(I. D. KHATRI)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No.
~~P. A. No.~~

473/89 122

DATE OF DECISION 26.3.1991

V. Narayanan & 3 others Applicant (s)

M/s K Sasikumar & CA Joy Advocate for the Applicant (s)

Versus

Collector of Central Excise, Respondent (s)
and Customs, Central Revenue Bldg.,
I.S. Press Road, Cochin. 18 & 19 others

Mr. P. Sankarankutty Nair, ACGSC Advocate for the Respondent (s)
(for res. 1 & 2)

CORAM:

The Hon'ble Mr. S.P. Mukerji - Vice Chairman
and
The Hon'ble Mr. A.V. Haridasan - Judicial Member

JUDGEMENT

(Mr. A.V. Haridasan, Judicial Member)

The subject matter of this application is the dispute regarding inter-se seniority between the direct recruits and promotees in the cadre of Inspectors of Central Excise. The grievance of the applicants 4 in number is that, though they were directly recruited to the cadre of Inspectors of Central Excise on 17.11.80, persons promoted to that post from the cadre of Upper Division Clerks long after the date on which the applicants were appointed have been shown as senior to the applicants in the seniority list, Annexure-A1, according to the applicants following a wrong principle of seniority.

The persons who would be affected by grant of the relief

...2/-

Kaushikbhai

Advocate

569, Thengalwad
Raipur, Ahmedabad.
Phone 348257

claimed in the application have been impleaded as respondents 3 to 19. The material facts of the case as averred in the application can be briefly stated as follows.

2. There are two channels for making appointment to the cadre of Inspectors of Central Excise, namely direct recruitment and promotion. Upper Division Clerks with 5 years regular service are entitled to be considered for promotion to the posts of Inspectors of Central Excise. After 1.8.72, the ratio between promotees and direct recruits is 3:1. According to the ^{Official} Memorandum of the Ministry of Home Affairs dated 22.12.59 (Annexure-A2) the relative seniority of direct recruits and promotees was to be determined according to the rotation of vacancies basing on the quota prescribed for direct recruitment and promotion. A roster was to be maintained, and the direct recruits and promotees were to be fitted in their respective slots. If for any reason either direct recruitment or promotions could not be affected to fill the ear-marked slots for each category, the practice was to keep the slots vacant and to fill the same as and when the recruitment is made. This resulted in an anomalous situation in which persons whether it be promotees or direct recruits who were fortunate enough to get accommodated in the slots being kept vacant in the roster of any earlier year even-though their appointment was on a far later date became seniors to persons who were appointed earlier than them in the post but unluckily accommodated in the later roster.

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Various High Courts and Supreme Court in a catena of decisions held that this method of fixing inter-se seniority between promotees and direct recruits were illegal and arbitrary and violative of Article 14 and 16 of the Constitution of India. In the light of the decision of the Supreme Court and the High Courts, the Government of India issued an order dated 7.2.86 (Annexure-A3) with a view to cure the defect in the method of reckoning seniority between direct recruits and promotees, as follows:

"This matter, which was also discussed in the National Council has been engaging the attention of the Government for quite some time and it has been decided that in future, while the principle of rotation of quotas will still be followed for determining the inter-se seniority of direct recruits and promotees, the present practice of keeping vacant slots for being filled up by direct recruits of later years, thereby giving them unintended seniority over promotees who are already in position, would be dispensed with. Thus if adequate number of direct recruits do not become available in any particular year, rotation of quotas for purpose of determining seniority would take place only to the extent of the available direct recruits and the promotees. In other words, to the extent direct recruits are not available, the promotees will be bunched together at the bottom of the seniority list, below the last position upto which it is possible to determine seniority, on the basis of rotation of quotas with reference to the actual number of direct recruits who become available. The unfilled direct recruitment quota vacancies would, however, be carried forward and added to the corresponding direct recruitment vacancies of the next year (and to subsequent years where necessary) for taking action for direct recruitment for the total number according to the usual practice. Thereafter, in that year while seniority will be determined between direct recruits and promotees to the extent of the number of vacancies for direct recruits and promotees as determined according to the quota for that year, the additional direct recruits selected against the carried forwarded vacancies of the previous year would be placed en-bloc below the last promotee (or direct recruit as the case may be) in the seniority list based on the rotation of vacancies for that year. The same principle holds good in determining seniority in the event of carry forward, if any, of direct recruitment or promotion quota vacancies (as the case may be) in the subsequent years."

...4/-

But even after the issuance of Annexure-A3 order, on 10.6.86 the respondents issued a seniority list of Inspectors of Central Excise, Annexure-A4 in which they had ranked persons who were promoted to the cadre of Inspector of Central Excise after the date of recruitment of the applicants to that cadre namely 17.11.80, as seniors to the applicants. To quote certain examples, the first applicant who was appointed as Inspector of Central Excise on 17.11.80 was placed at Serial No.390, while Shri P Mohammed Kasim, the 16th respondent, though promoted to the post only on 3.10.1981 was assigned at Serial No.387. While the second applicant at Serial No.402, one C.K.Padmakumari who was appointed on 30.9.81 has been placed at Serial No.401. Several other persons who were appointed to the post of Inspectors of Central Excise after 17.11.80 were placed in the seniority list at Annexure-A4 above the applicants. The applicants submitted representations to the second respondent pointing out the irregularity and claiming proper placement in the seniority list. A copy of the representation submitted by the first applicant to the second respondent is at Annexure-A5. The claim of the first applicant for re-fixation of the seniority was turned down by Annexure-A6 order dated 20.11.86. The first applicant filed an appeal to the first respondent. Subsequently, the second respondent prepared and circulated another seniority list of Inspectors of Central Excise on 1.1.89, on 28.2.89, a copy of this is Annexure-A1. In this seniority list also the respondents adopted the old

...S/-

principle of fixation of seniority and did not follow the procedure laid down in the Annexure-A3 instructions as in paragraph 7 of Annexure-A3, it was mentioned as follows:

"These orders shall take effect from 1st March, 1986. Seniority already determined in accordance with the existing principles on the date of issue of these orders will not be reopened. In respect of vacancies for which recruitment action has already been taken, on the date of issue of these orders either by way of direct recruitment or promotion, seniority will continue to be determined in accordance with the principles in force prior to the issue of this OM."

In the Annexure-A1 seniority list, the applicants 1 to 4 were ranked 366, 376, 350, 344 respectively. But persons who were appointed to the post long after 17.11.80 have been given seniority over the applicants. The paragraph 7 of the OM dated 7.2.86 (Annexure-A3) making the order only prospective in operation thereby taking away from the applicants, the benefits of proper fixation of seniority is arbitrary and illegal and against the spirit of the judgement of the Supreme Court and High Courts, pursuant to which the OM itself has been issued by the Government. The cut off date of 1.3.86 denying the benefit of the persons who were appointed earlier and extending the benefit only on those appointed on and from that date is discriminatory, illegal and violative of Articles 14 and 16 of the Constitution of India. In determining the inter-se seniority of members belonging to the same grade in the service, the rule of continuous officiation, length of service should be the ^{ordinarily} the

The Hyderabad Bench of the Central Administrative Tribunal has in OA 156/86 filed by some Inspectors of the Central Excise, as the applicants held that the applicants therein were entitled to get the seniority revised in accordance with the principles laid down by the Supreme Court, which were accepted by the Government of India, Department of Personnel and Administrative Reforms OM No.35014/2/80 Estt. D dated 7.2.1986. Therefore, the applicants pray that the paragraph 7 in the OM dated 7.2.85, Annexure-A3 may be declared as arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India, and therefore unsustainable, that Annexure-A1 seniority list may be quashed, and that the respondents may be directed to determine the seniority of the applicants by issuing seniority in relation to others in the Annexure-A1 a revised seniority list, refixing their seniority list taking into account their date of appointment and continuous officiation in service in the grade of Inspectors and also in the light of Annexure-A3 order dated 7.2.1986.

3. Respondents 1, 2 and 20 were represented by the Central Government Standing Counsel. The other respondents though notified did not appear. A reply statement was filed on behalf of the respondents 1 and 2. In this reply statement, it has been contended that the seniority of the applicants and others who were appointed prior to 1.3.1986 has been fixed in the seniority list at Annexure-A4, though issued on 10.6.1986, after the issuance of Annexure-A3

...7/-

order dated 7.2.1986, following the principles contained in OM dated 22.12.59, because as per paragraph 7 of Annexure A3 regarding persons who were recruited prior to 1986, the principles that have to be followed in fixing seniority was those contained in the OM dated 22.12.59. It has been further contended that in Annexure-A1 seniority list, as on 1.1.1989 also the same procedure has been adopted, and that this is perfectly in accordance with the directions in Annexure-A3 order. It has further been contended that ~~on~~ this Tribunal has in the judgement in OA K-67/88 considered the same question and observed that the inter-se seniority of direct recruits and promotees is to be fixed in accordance with the quota laid down by the rules and seniority has to satisfy the test of equality of opportunity in the matter of service. Therefore, the respondents 1 and 2 contend that there is no merit in the application, and that the same is liable to be dismissed. The respondents 1, 2 and 20, though were given several opportunities to file additional reply statement after the amendment of the application, incorporating the prayer for declaration that paragraph 7 of Annexure-A3 order illegal and inoperative, they ^{did} ~~have~~ not file any additional reply statement.

4. We have carefully gone through the pleadings and documents produced, and have also heard the arguments of the counsel on either side.

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inapplicable to persons already in service upto 1.3.1986
and applicable only to persons recruited ^{after} ~~from~~ that date
is violative of Article 14 and 16 of the Constitution and
therefore liable to be struck down. It is an undisputed
fact that several persons appointed after 17.11.1980 on
which date the applicants were recruited directly as
Central Excise Inspectors have been placed higher in the
seniority list at Annexure-A1 and A4. The reasons for
this anomaly is that in their case seniority was fixed
not on the basis of the date of entry into service or
length of continuous officiation in the cadre but on the
basis of rotation of quota. ^{vacancies} The applicants have averred
in the application that as 5 years ⁷ regular service in the
cadre of U.D.C is required for promotion as Inspector of
Central Excise, on the date on which the applicants were
appointed by direct recruitment to that post the promotees
had not become eligible for promotion, that was why they
were promoted only subsequently and that placing the appli-
cants below such persons in the seniority list is highly
arbitrary and violative of Articles 14 and 16 of the Con-
stitution of India. It has also been averred that it was
with a view to avoid such inequitable situation ^{and} persuaded
by the various judgements of the Supreme Court and High
Courts that the Government had issued Annexure-A3 memorandum
wherein it has been provided that if adequate number of
direct recruits or promotees do not become available in
a particular year, rotation of quota for the purpose of
determining seniority should take place only to the extent
of availability of direct recruits or promoters, that

unfilled quota of vacancies would be carried forward and added to the corresponding quota of the next year and that the additional recruits selected against the carry forward vacancies of the previous year should be placed enblock below the last promotee or direct recruits as the case may be in the seniority list based on rotation of vacancy for that year. According to the applicants if qualified persons to be promoted to the post of Inspector of Central Excise were not available, at that time when the applicants were directly recruited to that cadre instead of leaving the posts of promotees vacant as directed in Annexure-A3, the vacancies in the quota of promotees should have been carried forward and that if that was done there would not have been any occasion for placing persons appointed by promotion to the post of Inspector of Central Excise after the appointment of the applicants above them. The respondents' contention is that, since Annexure-A3 has come into effect only from 1.3.1986 and as seniority of persons in service upto that date in the cadre is to be continued to be determined according to the existing guidelines contained in the OM dated 22.12.1959 at Annexure-A2, there is no merit in the case of the applicants and that no injustice has been caused to them in the matter of seniority in Annexure-A4 list. The learned counsel for the applicant argued that the paragraph 7 in the Annexure-A3 list making the principles laid down in the above memorandum applicable only in the case of persons appointed after 1.3.1986 is arbitrary and

violative of Articles 14 and 16 of the Constitution. A classification of officers into persons recruited prior to 1.3.1986 and after that date for the purpose of applying the correct seniority according to the learned counsel amounts to hostile discrimination. Even before the issuance of Annexure-A3, the Supreme Court has in a catena of decision indicated that where a quota has failed, it is improper to allow the rota rule of seniority to prevail. As early as in the year 1967 the Supreme Court has in D.R.Nim Vs. Union of India, AIR 1967 SC 1301, observed that continuous officiation in a cadre must be counted for seniority.

It has been observed as follows:

"....Where an officer has worked for a long period as in this case for nearly fifteen to twenty years in a post and had never been reverted it cannot be held that the Officer's continuous officiation was a mere temporary or local or stop gap arrangement even though the order of appointment may state so. In such circumstances the entire period of officiation has to be counted for seniority. Any other view would be arbitrary and violative of articles 14 and 16(1) of the Constitution because the temporary service in the post in question is not for a short period intended to meet some emergent or unforeseen circumstances."

In Janardhan Vs. Union of India, AIR 1983 SC 769 the Supreme Court has observed as follows:

"As quota rule was directly inter-related with the seniority rule, and once the quota rule gave way, the seniority became wholly otiose and ineffective. It is equally well-recognised that where the quota rule is linked with the seniority rule, if the first breaks down or is illegally not adhered to giving effect to the second would be unjust, inequitable and improper."

In GS Lamba Vs. Union of India, AIR 1985 SC 1019 the

authority can prescribe quota for each course. It is equally correct that where the quota is prescribed, a rule of seniority by rotating the vacancies can be a valid rule for seniority. But as pointed out earlier, if the rule of seniority is inextricably intertwined with the quota rule and there is enormous deviation from the quota rule, it would be unjust, inequitable and unfair to give effect to the quota rule. In fact as held in O.P. Singla's case (AIR 1984 SC 1595) giving effect to the quota after noticing enormous departure from the quota rule would be violative of Article 14. Therefore, assuming that quota rule was mandatory in character, as pointed out earlier, its departure must permit rejection of quota rule as valid principle of seniority."

The Supreme Court has again in the same ruling held that:

"...giving effect to the quota rule after noticing the enormous departure from the quota rule would be violative of Articles 14 and 16, ruled that selection or recruitment of one year shall have precedence over selection or recruitment of the next year and this is what is known as service jurisprudence as seniority, according to continuous officiation in the cadre or the grade ... This is in tune with fair play and justice and ensures equality as mandated by Article 16."

It is taking note of the principles enunciated in the above decisions that Annexure-A3 was issued by the Government. Even before the issuance of Annexure-A3 in the judgement referred to above the Supreme Court has held that if there has been deviation from the quota rule, then to that extent the quota rule of seniority should not be applied and the proper rule of seniority to be applied in such cases is the date of entry and continuous officiation in the cadre. So giving a cut off date as 1.3.1986 and making the principles of seniority properly formulated in the light of the decisions of the Supreme Court applicable only to persons recruited after that date, is highly improper and arbitrary. It does not stand the test of reasonableness in classification.

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Therefore, we have no hesitation in striking down paragraph 7 of the memorandum dated 7.2.1986 at Annexure-A3 as irrational and violative of Articles 14 and 16 of the Constitution. It naturally follows that the fixing of the seniority in the case of the applicants basing on the Annexure-A-2 memorandum dated 22.12.1959 is irregular and improper.

6. In the conspectus of facts and circumstances, we allow the application, declare the paragraph 7 of the OM of the Government of India, Ministry of Personnel, Public Grievances and Pensions dated 7.2.1986 at Annexure-A3 null and void and set aside the impugned seniority list Annexure-A1 and A4 and direct the respondents 1, 2 & 20 to recast the seniority of the applicants and other persons in the cadre on the basis of the principles laid down in the remaining part of Annexure-A3 OM. Action as directed above should be completed within a period of three months from the date of communication of this order. There is no order as to costs.

Sd/-
(A.V.HARIDASAN)
JUDICIAL MEMBER

Sd/-
(S.P.MUKERJI)
VICE CHAIRMAN

26.3.1991



shall be released within three months from the date of receipt of this order. In the circumstances of the case, there will be no order as to costs.

Application allowed

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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH; NEW DELHI**

DATE OF DECISION: 28TH MAY, 1987

REGN. NO. OA 1089/1986

SHRI LAL BULCHAND SHIVDASANI AND OTHERS

VS.

UNION OF INDIA & OTHERS

- APPLICANTS

- RESPONDENTS

HON'BLE MR. JUSTICE K. MADHAVA REDDY, CHAIRMAN
HON'BLE MR. KAUSHAL KUMAR, MEMBER.

HELD

Held that the identity of a member of the Service with reference to his source of entry or mode of recruitment stands submerged and lost after his appointment to the Service and he becomes a member of one homogeneous group. The relative placement or inter-seniority of members of three cadres for preparing eligibility list for Group-A has to be based, in the absence of any other valid Rule of seniority, on the principle of continuous length of service in that grade.

JUDGEMENT

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985 by the applicants in a representative capacity, representing the interests of the promotee officers belonging to the Customs Appraisers Service Class II, challenging the Circular No.A.23011/1/86-Ad.II(A) dated the 22nd May, 1986 issued by the Ministry of Finance (Department of Revenue), Government of India, regarding "Promotion of Appraisers of Customs to the Indian Customs and Central Excise Service, Group - A - Principles regarding" and praying for quashing the "All India Combined List of Appraisers" circulated alongwith the said letter and for a direction to respondents to prepare a fresh seniority list on the basis of length of service and in accordance with the law, quashing the promotion of respondents No.6 to 26 to the post of Assistant Collector of Customs and central Excise, for a direction to the respondents to promote the applicants to the post of Assistant Collector of Customs and for a further direction to the respondents to give the benefit of revised seniority with retrospective effect.

2. The applicants had earlier moved the Hon'ble Supreme Court of India under Article 32 of the Constitution of India for redressal of their grievances. The Supreme Court, vide its order dated 28th October, 1986 allowed the writ petition to be withdrawn with liberty to move the Central Administrative Tribunal. In its order dated 28th October, 1986, the Supreme Court also observed that "There is no basis for the submission that the Administrative Tribunal has no authority to entertain the petitions in a representative capacity."

3. Although lengthy arguments have been advanced on behalf of the applicants and the respondents comprising not only the parties in the Original Application but many others, whose applications for being impleaded were allowed by the Tribunal, the short point for determination in this case is whether the "All India Combined List of Appraisers with effect from 15th September, 1970 (Direct Recruits and Promotees in the ratio 1:1)" circulated with the letter dated the 22nd May, 1986 by the Ministry of Finance (Department of Revenue), Government of India, is valid and can stand judicial scrutiny in the light of various judicial pronouncements, rules and administrative instructions issued by the Government from time to time.

4. This All India Combined List of Appraisers is based on an amalgamation of two lists of direct recruits and promotees - the former according to their inter-se ranking determined by the Union Public Service Commission and the latter according to continuous length of service in the grade and then integrating the two lists into a combined All India list by rotating the officers in the two lists in the ratio of 1:1.

Kaushikbhai V. O.

Advocate

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Raipur, Ahmedabad.
Phone 348257

5. For a proper appreciation of the various contentions raised in this case, we have to go a little into the past history and a few judicial pronouncements pertaining to this service. As far back as 1936, an order was passed by the Central Board of Revenue which laid down that recruitment to the Customs Appraisers Service would be from two sources, i.e., 50 per cent by promotion, 25 per cent directly from experts and 25 per cent by means of a competitive examination or selection by the Public Service Commission. It was also said in the order that those percentages would be the maximum and the Collectors of Customs would not be bound to recruit upto the maximum particularly in the case of recruitment by promotion. It was in 1961 that for the first time, statutory rules under the proviso to Article 309, of the Constitution were framed called 'The Customs Appraisers' Service, Class-II Recruitment Rules, 1961'. Rules 3 & 4 of the said Rules, which prescribe the method of recruitment are in the following terms:

Rule - 3

Recruitment to the Service shall be made by any of the following methods-

- (a) By competitive examination in India in accordance with Part-III of these rules.
- (b) By promotion in accordance with Part IV of these rules.
- (c) By transfer of an officer in Govt. Service in accordance with Part V of these rules.
- (d) By direct recruitment by selection otherwise than by competitive examination in accordance with Part VI of these rules.

Rule - 4

- (a) No appointment shall be made to the service or to any post borne on the cadre of the service by any method not specified in Rule-3.
- (b) Subject to the provisions of Sub-rule (a) the Board shall determine the method or methods of recruitment to be employed for the purpose of filling in particular vacancies in the service, as may be required to be filled during any particular period and the number of candidates to be recruited by each method.
- (c) The percentage of posts to be filled by direct recruitment by competitive examination or by selection otherwise than by competitive examination shall not be less than 50 per cent of the total cadre of Appraisers. The remaining posts may be filled by any other method mention in rule -3".

6. On 31st July, 1963, the Bombay Custom House issued a circular conveying the decision of the Board of Central Excise & Customs that "the position with regard to the Appraisers confirmed earlier than 15.8.1947 is not to be disturbed and that the seniority of direct recruits vis-a-vis promotees in the ratio of 1:1 should be worked out from the 15th August, 1947 only and a fresh seniority list drawn up on this basis." In pursuance of the said circular, a seniority list was also drawn up by the Bombay Custom House. This seniority list was challenged by the promotee Appraisers in the Supreme Court under Article 32 of the Constitution. The Supreme Court disposed of this petition by holding that "The order of the Board of 1963 on the basis of which the impugned seniority list of Appraisers has been prepared clearly lays down that 'the principle of determination of seniority of the direct recruits and the promotees inter se in the prescribed ratio of 1:1 should be worked out'."

(Mervyn Continho v. Collector of Customs, Bombay - AIR 1967 S.C.52).

7. Whereas in Mervyn Continho and others v. Collector of Customs Bombay and others referred to above, the Supreme court held valid the seniority of Appraisers determined on the basis of rotation of direct recruits and promotees in the ratio of 1:1 on the clear assumption that appointments had been made to the cadre of Appraisers 50% by promotion and 50% by direct recruitment, they at the same time quashed the seniority list of Principal Appraisers on the ground that "The source of recruitment of Principal Appraisers is one, namely, from the grade of Appraisers. There is, therefore, no question of any quota being reserved from two sources in their cases. The rotational system cannot, therefore, apply when there is only one source of recruitment and not two sources of recruitment. In a case, therefore, where there is only one source of recruitment, the normal rule will apply, namely, that a person promoted to a higher grade gets his seniority in that grade according to the date of promotion subject always to his

being found fit and being confirmed in the higher grade after the period of probation is over." (Para 8). The Supreme Court also held that "The present method by which the respondent puts a direct recruit from the grade of Appraiser, though he is promoted later, above a promotee who is promoted to the grade of Principal Appraisers on an earlier date clearly denies equality of opportunity where the grade of Principal Appraiser has only one source of recruitment, namely, from the grade of appraisers. In such a case the seniority in the grade of Principal Appraisers must be determined according to the date of continuous appointment in that grade irrespective of whether the person promoted to that grade from the Appraisers' grade is a direct recruit or a promotee." (Para 8).

8. The grade of Principal Appraiser, which was a Group 'B' post and promotions to which were made on regional basis by the respective Custom Houses, was abolished on 14.9.1970 and the Appraisers became eligible for promotion directly to the post of Assistant Collector of Customs, a Group 'A' post in the Indian Customs and central Excise Service. The principles for preparation of an all-India list of Appraisers were decided by the Ministry of Finance, Department of Revenue & Insurance, vide their circular F.No.A.23011/2/71-Ad.IIA, dated 28.2.1973. In the said circular, the following principles were laid down for the preparation of the all-India list of Appraisers for the purpose of their consideration for promotion to the Class I Service:-

- (i) Direct recruitment Appraisers belonging to three different cadres were arranged in the order of their ranking in the select list prepared by the UPSC. This was done taking into consideration that direct recruitment is made on all India basis.
- (ii) The names of promotee Appraisers belonging to the different cadres were so placed in the all-India list of direct recruits that their relative seniority vis-a-vis the direct recruits as obtaining in the respective cadres to which the promotees and the direct recruits belong to the year was maintained.
- (iii) In case where more than one promotee officer belonging to different cadres got placement between two direct recruits, names of such promotees were arranged in the order of their length of continuous service as Appraiser.

The basic principle followed for preparing all-India list was that inter-se seniority of Appraisers in the particular region cadre was maintained. However, as per this list, some promotee Appraisers belonging to Bombay Custom House cadre became junior to the promotee Appraisers of Calcutta and Madras Custom Houses cadres who were promoted from later dates. The seniority list prepared on this principle was challenged before the Bombay High Court by two promotee Appraisers of Bombay Custom House vide Writ Petition No.2699/72. The Bombay High Court vide its judgement dated 18th October, 1979 set aside the promotions made on 16th November, 1972 on the basis of all-India list prepared in pursuance of the principle contained in the circular dated 28.2.73 and issued directions to the Government to prepare a combined seniority list of Appraisers all over India on the basis of continuous length of service rendered by them as Appraiser or on any other legal and valid principle. It is significant that whereas the all-India list is stated in the counter filed by the respondents to have been prepared on the basis of principle contained in the circular dated 28th February, 1973 and the promotions were made on 16th November, 1972, the actual circular incorporating this principle was in fact issued on 28.2.73. The Bombay High Court, in its judgement dated 18th October, 1979, while quashing the impugned order of promotions, did not express any opinion in regard to the validity of the principles set out in the circular dated 28.2.73. The observations of the Bombay High Court relevant in this behalf are as follows:

"Even regarding the alleged principles reflected in the letter of 28th February 1973, Mr. Singhvi, the learned counsel submitted that the same also violate the petitioners' fundamental rights under Articles 14 and 16 of the Constitution, inasmuch as the same discriminate the promotees inter-se without any rational basis and without there being any just or substantial relation with the question of seniority and promotion. (Prima facie, there is substance in this contention of Mr. Singhvi) Inter se seniority of promotees does not appear to be determined according to the entry in the appraisers' cadre, i.e. according to the continuous length of service as Appraisers, though inter se seniority of direct recruits is in fact determined according to their rank in the selection, with the result that persons appointed on the basis of earlier selection would rank senior to persons appointed on the basis of subsequent selection, thus prima facie resulting in discrimination not only amongst promotees inter se but also between direct recruits and promotees. Again, when all the promotee-Appraisers belong to one class and have to be treated equally in the matter of fixation of seniority in all India cadre, the principle of equality requires that seniority of promotees inter se should be fixed on the normal principle, i.e. according to their entry in the grade of Appraisers.

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"The principles reflected in the letter of 28th February 1973 do thus prima facie appear to deny equality of opportunity to the promotees in the matter of seniority and promotion. Seniority inter se of promotee Appraisers has been linked with the fortuitous circumstances of promotees of a particular Collectorate having a direct recruit of earlier year. Such a principle can result in denial of equality of opportunity in the matter of employment to the promotees such of the petitioners herein. Significant to note is also the fact that petitioner No.1 herein having been appointed as Principal Appraiser in a clear vacancy ought to have been placed above all the other appraisers and below the principal appraisers. He should have been treated in the category of principal Appraisers for the purpose of determination of his seniority in the All India Seniority list of Appraisers. We however, do not feel it necessary to pursue all these aspects further in this petition because we are of the view that the principles reflected in the letter of 28th February, 1973 can have no relevance while determining the validity of the impugned order of 16th November, 1972, as also while determining the validity of the consideration list of 60 Appraisers as also while considering the validity of the all India list of Appraisers of Customs placed before the Departmental Promotion Committee in August/September 1972 all these events being such prior to the letter of 28th February, 1973. We must also state that our observations aforesaid on the principles reflected in the letter of 28th February, 1973 are only prima facie observations. The validity of these principles is left expressly open. If occasion arises, the principles reflected in the letter of 28th February, 1973 will have to be fully considered and adjudicated upon.

In the result, so far as this position is concerned, the same succeeds. The impugned order dated 16th November, 1972, Exhibit 'A' to the petition, issued by the Government of India, Ministry of Finance (Department of Revenue and Insurance) is set aside and quashed. Respondent No.1 Union of India is directed to prepare a combined seniority list of Appraisers all over India on the basis of continuous length of service rendered by them as Appraisers or on any other legal and valid principles and to consider the claims of the petitioners herein for promotion as Assistant Collectors/ Superintendents of Central Excise, Class I as on 16th November, 1972 and if found fit, to promote them and pay them arrears of salary and allowances consequent thereupon. Rule earlier issued on this petition will be made absolute. Respondent No.1 will pay the costs of this petition."

9. The Union of India filed a Special Leave Petition in the Supreme Court against the order of the Bombay High Court, but the same was rejected by the Supreme Court on 22.2.1972. Consequent upon dismissal of the S.L.P. by the Supreme Court, the Department decided that the direct recruits and promotee Appraisers would be brought on two different lists on all India basis and the posts of Assistant Collector of Customs/Central Excise falling in the share of Appraisers will be divided equally between the direct recruits and the promotees, vide Ministry of Finance (Department of Revenue), Government of India, circular F.No. A. 23011/2/82/Ad.II-A, dated 29th October, 1982. Paras 8.1. to 8.4 of the said circular are extracted below:-

- "8.1 After careful consideration of all aspects of the matter, the Government have decided that the vacancies in Group-A falling in the share of Appraisers should be apportion between the direct recruits and the promotee Appraisers on 1:1 basis which corresponds to ratio prescribed for recruitment to the grade of Appraiser.
- "8.2 For this purpose, two separate lists of appraisers will be prepared - one of the direct recruits on the principles mentioned in paragraph 3(iv) above and the other of the promotee Appraisers of all the Custom Houses on the basis of their continuous length of service subject to the order in which they were included in the panel prepared by the D.P.C. in the respective Custom Houses.
- "8.3 Two separate panels for promotion to Group-A will be prepared by the DPC from the respective consideration lists.
- "8.4 The vacancies in Group-A meant for Appraisers will be filled up - from these two panels in the ratio of 1:1 alternative vacancies going to promotees and direct recruit Appraisers."

10. Immediately after the revised principles of promotion of Appraisers to Group 'A' posts were issued, a few promotee-Appraisers filed two writ petitions (Nos. 9925 of 1982 and 3077 of 1983) in the Madras High Court challenging the circular issued on 29th October, 1982, referred to above. The Madras High Court vide its judgement dated 12.9.1985 quashed paras 8.1 to 8.4 of impugned communication dated 29.10.82 and gave a direction to fix the seniority of the petitioners and respondents (promotee and direct recruit Appraisers) on some fair and just principle without causing serious prejudice to either the promotees or the direct recruits. Para 6 of the said judgment of the Madras High Court reads as under:-

"6. No doubt, in the course of the elaborate arguments addressed by counsel on both sides, several methods for fixing the seniority were suggested, namely, the circular dated 12.12.1959 the combined seniority list for each port, the bases on which the judgment was rendered by the Bombay High Court on Special Civil Application No.2699 of 1972 dated 18.10.1979 the principles laid down by the decision of this Court in C.N.Raghavan V.P.B. Vedantam and others (W.A. No.195 of 1973 dated 11.10.1977, etc.). However, this Court is not inclined to give a direction that any particular method in the fixation of seniority should be adopted, for, that would embarrass this Court later, in the event of the propriety of the fixation of seniority in the manner suggested should be challenged before this very Court. Under those circumstances, besides directing the government to consider the question of fixing inter se seniority in the category of Appraisers consisting of promotees as well as direct recruits in a just and fair manner and also without causing serious prejudice to either the promotees or the direct recruits and prepare a seniority list of Appraisers and consider their claims for promotion, the impugned communication in so far as it apportions the vacancies of Assistant Collector of Customs between Appraisers belonging to the same integrated class but making a distinction between direct recruits and promotees, is quashed. In other words, paragraphs 8.1 to 8.4 of the impugned communication dated 29.10.1982 cannot be sustained and they are accordingly quashed. The writ petitions are allowed to the extent indicated above. There will be no order as to costs."

11. L.P.As. were filed both by the Government and the direct recruit respondents against the said judgement of the Madras High Court. Whereas the Government have withdrawn the L.P.A., the one filed by the direct recruit respondents is till pending in the Madras High Court.

12. In pursuance of the direction of the Madras High Court, the Government decided that the promotees of all the three cadres may be placed together on the basis of their continuous length of service and the direct recruits on the basis of their inter-se ranking assigned by the U.P.S.C. and then all -India list be prepared by rotating the officers in the two lists in the ratio of 1:1. This is incorporated in the Ministry of Finance, Department of Revenue, circular letter dated 22nd May, 1986, which has been impugned in the present application before us. The circular dated 22nd May, 1986, while adopting the principle regarding preparation of two separate lists of direct recruits and promotees on an all-India basis - the former according to their inter-se ranking determined by the Union public Service Commission and the latter according to continuous length of service in the grade and then preparing combined all-India list by amalgamating these officers in the two lists in the ratio of 1:1 provides that this method will be applicable only to those Appraisers who were in position on 15th September, 1970 and were recruited/promoted to the grade on regular basis upto 28th February, 1986, and suitable modification will be made in respect of those promoted/recruited to the grade on or after 1st March, 1986 in keeping with the principles contained in Department of Personnel and Training O.M.No. 35014/2/80-Estt.(D) dated 7th February, 1986. The said circular dated 7.2.1986 lays down that "while the principle of rotation of quotas will still be followed for determining the inter-se seniority of direct recruits and promotees, the present practice of keeping vacant slots for being filled up by direct recruits of later years, thereby giving them unintended seniority over promotees who are already in position, would be dispensed with. Thus, if adequate number of direct recruits do not become available in any particular year, rotation of quotas for purpose of determining seniority would take place only to the extent of the available direct recruits and the promotees. In other words, to the extent direct recruits are not available, the promotees will be bunched together at the bottom of the seniority list below the last position upto which it is possible to determine seniority, on the basis of rotation of quotas with reference to the actual number of direct recruits who become available. The unfilled direct recruitment quota vacancies would however, be carried forward and added to the corresponding direct recruitment vacancies of the next year (and to subsequent years where necessary) for taking action for direct recruitment for the total number according to the usual practice, thereafter, in that year while seniority will be determined between direct recruits and promotees, to the extent of number of vacancies for direct recruits and promotees as determined according to the quota for that year, the additional direct recruits selected against the carried forward vacancies of the previous year would be placed en-block below the last promotee (or direct recruit as the case may be) in the seniority list based on the rotation of vacancies of that year. The same principle holds good in determining seniority in the event of carry forward, if any, of direct recruitment or promotion quota vacancies (as the case may be) in the subsequent years".

13. In para 20 of the counter, the rationale in regard to fixation of seniority with effect from 1.3.1986 has been explained in the following words:-

"In the meantime Supreme Court and various High Courts have pronounced several judgments where they

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brought out inappropriateness of the direct recruits of later years becoming senior to promotees with long years of service. This matter was discussed in the National Council and it was decided that in future while the principle of rotation of vacancies will still be flowed for determining inter-se seniority of direct recruits and promotees, the present practice of keeping vacant slots for being filled up by direct recruits of later years thereby giving them seniority over promotees who are already in position, would be dispensed with."

14. Shri Shanti Bhushan, learned counsel for the direct recruits respondents contended that the judgment of the Supreme Court in *Mervyn Continho and others v: Collector of Customs, Bombay and others* operates as constructive res-judicata and the question having been once decided is not open to readjudication. Shri P.P.Rao representing the Department took the stand that the decision in *Mervyn Continho's* case is a binding precedent. However, Shri Ramamurthi, learned counsel for the applicants argued vehemently that the decision in *Mervyn Continho's* case did not operate as constrictive res-judicata; nor is it a binding precedent. It was also common ground taken by counsel appearing for the government and direct recruit respondents that the subsequent decisions of the Supreme Court in regard to question of seniority determined with reference to the quota and rota system or the principle of continuous officiation or the length of service in a particular grade were distinguishable on facts which gave rise to those decisions and that the judgement in the case of *Mervyn Continho* having been given by a constitution bench of five judges of the Supreme Court was still valid today.

15. Explanation VI to Section 11 "Res judicata" of the Code of Civil Procedure reads as follows:-

"Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section be deemed to claim under the persons so litigating."

Order I, Rule 8(1) of the Code of Civil Procedure reads as follows:-

"(1) Where there are numerous persons having the same interest in one suit,-

- (a) one or more of such persons may, with the permission of the Court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested;
- (b) the Court may direct that one or more of such persons may sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested."

It will be seen from the above that where there are numerous persons having the same interest in one suit, one or more of such persons may, with the permission of the Court, sue or be sued.

In *Ahmad Adam Saith and others v. M.E. Makhri and others* (A.I.R. 1964 S.C. 107), the principle of constructive res judicata was considered at length and the Supreme Court made the following observations:-

"It is clear that S.11 read with its explanation VI leads to the result that a decree passed in suit instituted by persons to which explanation VI applies will bar further claims by persons interested in the same right in respect of which the prior suit had been instituted. Explanation VI thus illustrates one aspect of constructive res judicata. Where a representative suit is brought under S.92 and a decree is passed in such a suit, law assumes that all persons who have the same interest as the plaintiffs in the representative suit were represented by the said plaintiffs and, therefore, are constructively barred by res judicata from reagitating the matters directly and substantially in issue in the said earlier suit.

(17) A similar result follows if a suit is either brought or defended under O.I.R. 8. In that case, persons either suing or defending an action are doing so in a representative character, and so, the decree passed in such a suit binds all those whose interests were represented either by the plaintiffs or by the defendants. Thus, it is clear that in determining the question about the effect of a decree passed in a representative suit, it is essential to enquire which interests were represented by the plaintiffs or the defendants. If the decree was passed in a suit under S.92, it will become necessary to examine the plaint in order to decide in what character the plaintiffs had sued and what interests they had claimed. If a suit is brought under O.I.R.8, the same process will have to be adopted and if a suit is defended under O.I.R.8, the plea taken by the

defendants will have to be examined with a view to decide which interests the defendants purported to defend in common with others

17. The parties in Mervyn Continho's case were the Appraisers, both direct recruits and promotees, of the Bombay Custom House and no such permission of the Court as envisaged under Order I, Rule 8(1) of the Code of Civil Procedure appears to have been obtained. As such, the parties in that case cannot be considered to have represented the interests of Appraisers of other Customs Houses in the country. For constructive res judicata to be applicable, the parties to the suit should be the same or they should have been litigating in a representative capacity and the matters in issue should be the same. Whereas in the case of Mervyn Continho the parties were direct recruits and promotees Appraisers belonging to the cadre of Bombay Custom House and the issue raised was in regard to seniority between direct recruits and promotees of the cadre of Bombay Custom House, in the present case under our consideration, the parties are promotees and direct recruit Appraisers belonging to all the three Custom Houses and the issue raised is in regard to determination of seniority or eligibility for consideration for promotion on an all-India basis.

18. In the case of Mervyn Continho, the issue raised was in regard to determination of seniority between direct recruits and promotee Appraisers appointed to a particular cadre; in the present case; the question in one of determination of relative placement or seniority after amalgamating all the incumbents of three different cadres for the limited purpose of considering them for promotion to Group 'A' post. Their inter-se seniority in their respective cadres stands already determined. Again in the case of Mervyn Continho, the seniority was relevant with reference to promotion to Group 'B' posts in the same cadre, whereas in the present case the inter-se relative placement or seniority is sought to be determined with reference to promotion to Group 'A' posts, not included in either of the three cadres. The issues involved in the present case are thus quite distinct from these which were considered in the case of Mervyn Continho and the decision in the said case cannot operate as res judicata.

19. Now we have to consider as to what is the ratio decidendi in Mervyn Continho's case. As held by the Supreme Court in Regional Manager v. Pawan Kumar (A.I.R. 1976 S.C. 1766), "It is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar. One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts." (para 7).

20. In State of Orissa v. Sudhansu Sekhar Misra and others (A.I.R. 1968 S.C. 647), the Supreme Court held as follows:-

"..... A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. On this topic this is what Earl of Halsbury LC said in Quinn v. Leatham, 1901 AC 495.

"Now before discussing the case of Allen v. Flood, (1898) AO 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expression which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found.

The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical Code, whereas every lawyer must acknowledge that the law is not always logical at all." It is not a profitable task to extract a sentence here and there from a judgment and to build upon it."

21. Shri Shanti Bhushan, learned counsel for the respondents also contended that the law laid down by the Supreme Court in Mervyn Continho's case, heard by a bench of five judges, in determining seniority between direct recruits and promotee Appraisers, had held the filed and had been acted upon for the last so many years. In the face of the said judgement, any other principle of law enunciated by a smaller bench of the Supreme Court could not be applied in this case. In this connection, he referred to the following observations of the Supreme Court in Union of India v. K.S. Subramanian (A.I.R. 1976 S.C. 2433):-

" 12. We don not think that the difficulty before the High Court could be resolved by it by following what it considered to be view of a Division Bench of this court in two cases and by merely quoting the views expressed by larger Benches of this Court and then observing that these were insufficient for deciding the point before the High Court. It is true that, in each of the cases cited before the High Court, observations of this court occur in a context different from that of the case before us. But, we don not think that the High Court acted correctly in skirting the views expressed by larger benches of this Court in a manner in which it had done this. The proper course for a High Court, in such a case, is to try to find out and follow the opinions expressed by larger benches of this Court in preference to those expressed by smaller benches of the Court. That is the practice followed by this Court itself. The practice has now crystallized into a rule of law declared by this Court. "

He also relied on the observations of the Supreme Court in *M/s Ujagar Prints v. Union of India* (A.I.R. 1987 S.C. 874) as under:-

".... Judicial discipline requires that a Bench of two Judges should not disregard the decision of a Bench of three Judges but if the Bench of two Judges is inclined to disagree with what has been said by the Bench of three Judges on the ground that it does not represent the correct law on the subject, the case should be referred by the Bench of two Judges to a larger Bench."

22. It was further strongly contended by Shri Shanti Bhushan that what had been done over a long period of years in the matter of determining seniority of direct recruits vis-a-vis promotees operated as a promissory estoppel and the Department could not now adopt any other principle. He pointed out that a representation had been held out to the direct recruits that by virtue of their seniority, they would be earning promotion to Group 'A' posts within a certain span of time. They had joined the Service under this belief and this position could not now be altered to their disadvantage. This was bound to happen if instead of fixing their seniority by rotating the promotees with direct recruits in the ratio of 1:1 in the all-India Combined List, the Principle of continuous officiation of length of service was to be followed. Shri Ramamurthi, learned counsel for the applicants contested this position.

23. In *Union of India v. Godfrey Philips India Ltd.* (AIR 1986 S.C. 806), the Supreme Court had occasion to examine the scope of the doctrine of promissory estoppel as applicable against the Government and made the following observations:-

" 14. Of course we must make it clear, and that is also laid down in *Motilal Sugar Mills case* (AIR 1978 SC 621) (Supra), that there can be no promissory estoppel against the legislature in the exercise of its legislative functions nor can the Government or public authority be debarred by promissory estoppel from enforcing a statutory prohibition. It is equally true that promissory estoppel cannot be used to compel the Government or a public authority to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make. We may also point out that the doctrine of promissory estoppel being an equitable doctrine, it must yield when the equity so requires, if it can be shown by the Government or public authority that having regard to the facts as they have transpired, it would be inequitable to hold the Government or public authority to the promise or representation made by it, the Court would not raise an equity in favour of the person to whom the promise or representation is made and enforce the promise or representation against the Government or public authority. The doctrine of promissory estoppel would be displaced in such a case, because on the facts, equity would not require that the Government or public authority should be held bound by the promise or representation made by it..... "

(Para 14).

From the above, it is clear that promissory estoppel cannot be used to compel the Government to carry out representation or promise which is contrary to law. If the determination of seniority or relative placement of direct recruits and promotees in preparing the all-India Combined List on the principle of rotating them in the ratio of 1:1 is not warranted either by rule or law as would be evident from the discussion in the subsequent paragraphs of this judgement, the doctrine of promissory estoppel cannot be invoked.

24. In *Mervyn Continho's case*, the Supreme Court had no occasion to consider the Recruitment Rules of 1961 framed

under proviso to Article 309 of the Constitution. Even though the Rules had been referred to in the counter filed by the government, the Court took into consideration only the circulars issued by the Central Board of Excise and Customs in 1936, 1953 and 1955 and the O.M. issued by the Home Ministry in 1959 and proceeded on the assumption that the recruitment in fact had been made to the cadre of Appraisers in the Bombay Custom House in the ratio of 50 per cent for promotees and 50 per cent for direct recruits. In such circumstances, determination of seniority by rotational system as provided for in the circular of 1959 was held to be valid.

25. Para 6 of the Annexure entitled "GENERAL PRINCIPLES FOR DETERMINATION OF SENIORITY IN THE CENTRAL SERVICES" attached to O.M. No. 9/11/55-RPS, dated 22nd December, 1959 issued by the Ministry of Home Affairs, Government of India reads as follows:-

"The relative seniority of direct recruits and of promotees shall be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on the quotas of vacancies reserved for direct recruitment and promotion respectively in the Recruitment rules."

Thus, there is no difficulty in determining seniority on the principle of rotation where the Recruitment Rules provide for recruitment from two or more sources on the basis of a fixed quota and in actual practice, such recruitment has taken place on the basis of quota prescribed. We find that neither the Recruitment Rules of Appraisers as notified in 1961 provide for any fixed quota nor in practice the recruitment has taken place in fixed ratio or quota.

26. The Recruitment Rules earlier referred to, viz., Rule 4(c) merely provides that "the percentage of posts to be filled by direct recruitment by competitive examination or by selection otherwise than by competitive examination shall not be less than 50 per cent of the total cadre of Appraisers. The remaining posts may be filled by any other method mentioned in rule-3". What the rule provides is that the intake of direct recruits shall not be less than 50 per cent of the total cadre of Appraisers. It can be more than 50% also. this percentage is also related to the number of posts in the total cadre of Appraisers and does not refer to annual recruitment of persons to the cadre. Whereas para 6 of the Appendix to O.M. of 22nd December, 1959 refers to the relative seniority of direct recruits and Promotees being determined according to the rotation of vacancies between direct recruits and promotees based on the quotas of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules, rule 4(c) of the Customs appraisers' Service Group 'B' merely prescribes that direct recruitment to the Service shall not be less than 50% of the total cadre. It has been contended that appointment to the Service by way of direct recruitment and promotions had been so ensured that ratio of 50:50 between direct recruits and promotees was maintained. The figures of actual intake of direct recruits and promotees to the Service shows that this ratio was not adhered to in filling up vacancies of Appraisers from year to year, as would be obvious from the following figures:-

Year	Direct Recruitment	Promotee
1962	6	35
1963	5	16
1964	12	8
1965	35	4
1966	13	25
1967	3	7
1968	Nil	80
1969	27	13
1970	4	19
1971	10	15
1972	23	1
1974	9	6
1975	26	36
1976	17	5
1977	25	9
1978	10	3
1979	20	16
1980	31	11
1981	15	2
1982	12	8
1983	22	9
1984	19	-

It has been conceded in paragraph 6.7 (parawise comments) of the counter filed by the Department that during the years 1978 to 1984, 129 direct recruits were appointed whereas the number of promotions made on regular basis during this period was only 49. It has, however been pointed out that during the years 1962 to 1984, 334 posts of Appraisers were filled by direct recruitment as against 337 filled by promotion.

27. The above factual position shows that whereas there was **no annual recruitment or promotion in the fixed ratio 50:50** to the cadre of Appraisers, this ratio has been sought to be maintained over a period of more than two decades. The Service, as such, can be considered to be divided vertically into two parts one comprising the promotee Appraisers and the other direct recruit appraisers, who, more or less, hold equal number of posts as viewed over a long span of more than 20 years. When the recruitment rule itself is not based on a fixed quota of recruitment by way of promotion and direct intake and the actual recruitment has also not proceeded in any fixed ratio, even though the same might have been the intention of the Government determination of seniority on the basis on the rota principle cannot be held to be valid. This is neither warranted by the O.M. of 1959 nor by any decision of the Supreme Court. Even if it be assumed - which is not a fact in this case - that there was a quota system of recruitment, the same has obviously broken down and in such circumstances, the rotational system of seniority cannot be applied as held by the Supreme Court in so many cases.

28. The Supreme Court had occasion to distinguish the facts in the case of *Mervyn Continho v. Collector of Customs, Bombay* from the facts of the cases giving rise to rulings in a few other cases.

29. In *P.S. Mahal v. Union of India* (A.I.R. 1984 S.C. 1291), the Supreme Court made the following observations:-

"..... Where the quota rule is a statutory rule which has to be scrupulously observed, the vacancy which according to the quota rule is allocable to promotees from one source cannot be filled by a promotee from another source and if notwithstanding the quota rule, the vacancy is filled by a promotee from that other source, such promotion would be irregular and as pointed out above, the vacancy would continue to remain a vacancy liable to be filled by a promotee from the first mentioned source. It would not be strictly accurate to say that in such a case the vacancy is carried forward in the sense in which that expression has been used in *T. Devdasan v. Union of India* AIR 1964 SC 179. It was pointed out by this Court in *Mervyn Continho v. Collector of Customs, Bombay*, (1966) 3 SCR 600 : (AIR 1967 SC 52): "..... in the case of the carry forward rule certain quota is fixed annually for a certain class of persons and it is carried forward from year to year. This is very different from a case where a service is divided into two parts and there are two sources of recruitment, one of promotion and the other by direct recruitment. In such a case the whole cadre of a particular service is divided into two parts and there is no question of carrying anything forward from year to year in the matter of annual intake."

30. Again in *O.P. Singla v. Union of India* (AIR 1984 SC 1595), the following observations of the supreme Court are relevant:-

"24. This court has taken the view in many cases that whenever the rules provide for recruitment to a Service from different sources, there is no inherent infirmity in prescribing a quota for appointment of persons drawn from those sources and in working out the rule of quota by rotating the vacancies as between them in a stated proportion. (See for example, *Mervyn Continho v. Collector of Customs, Bombay*, (1966) 3 SCR 600: (AIR 1967 SC 52), *S.G. Jaisinghani v. Union of India*, (1967) 2 SCR 703 (AIR 1967 SC 1427), *Bishan Sarup Gupta v. Union of India*, (1975) 1 SCR 104: (AIR 1974 SC 1618), *A.K. Subraman v. Union of India*, (1975) 2 SCR 1979 : (AIR 1975 SC 483), *V.B. Badami v. State of Mysore*, (1976) 2 SCC 901: (AIR 1980 SC 1561) and *Paramjit Singh Sandhu v. Ram Rakha*, (1979) 3 SCR 584: (AIR 1979 SC 1073)

"25. However, instances are not unknown wherein though the provision of a rule or a section is not invalid, the manner in which that provision is implemented in practice leads to the creation of disparities between persons who, being similarly circumstanced, are entitled to equal treatment.."

31. In *N.K. Chauhan v. State of Gujarat* (AIR 1977 SC 251), the Supreme Court made the following observations:-

"32. We therefore reach the following conclusions:-

"1. The promotions of mamlatdars made by Government between 1960 and 1962 are saved by the 'as far as practicable' proviso and therefore valid. Here it falls to be noticed that in 1966 regular rules have been framed for promotees and direct recruits flowing into the pool of Deputy Collectors on the same quota basis but with a basic difference. The saving provision 'as far as practicable' has been deleted in the 1966 rules. The consequence bears upon seniority even if the year is treated as the unit for quota adjustment.

"2. If any promotions have been made in excess of the quota set apart from the mamlatdars after rules in 1966 were made, the direct recruits have a legitimate right to claim that the appointees in excess of the allocable ratio from among mamlatdars will have to be pushed down to later years when their promotions can be regularised by being absorbed in their lawful quota for these years. To simplify, by illustration, if 10 Deputy Collectors' substantive vacancies exist in 1967 but 8 promotees were appointed and two direct recruits alone were appointed and two direct recruits alone were secured, there is a clear transgression of the 50:50 rule. The redundancy of 3 hands from among promotees cannot claim to be regularly appointed on a permanent basis. For the time being they occupy the posts and the only official grade that can be extended to them is to absorb them in the subsequent vacancies allocable to promotees. This will have to be worked out down the line wherever there has been excessive representation of promotees in the annual intake. Shri Parekh counsel for the appellants has fairly conceded this position.

"3. The quota rule does not inevitably, invoke the application of the rota rule. The impact of this position is that if sufficient number of direct recruits have not been forthcoming in the years since 1960 to fill in the ratio due to them and those deficient vacancies have been filled up by promotees, later direct recruits cannot claim 'deemed' dates of appointment for seniority in service with effect from the time, according to the rota or turn, the direct recruits' vacancy arose. Seniority will depend on the length of continuous officiating service and cannot be upset by later arrivals from the open market save to the extent to which any excess promotees may have to be pushed down as indicated earlier.

"33. These formulations based on the commonsense understanding of the Resolution of 1959 have to be tested in the light of decided cases. After all, we live in a judicial system where earlier curial wisdom, unless competently over-ruled, binds the Court. The decisions cited before us start with the leading case in *Mervyn Continho v. Collector of Customs, Bombay*, (1966) 3 SCR 600 + (AIR 1967 SC 52) and closes with the last pronouncement in *Badami v. State of Mysore*, (1976) 1 SCR 815. This time-span has been dieta go zigzag but we see no difficulty in tracing a common thread of reasoning. However, there are divergences in the ratiocination between *Mervyn Continho* (Supra) and *Govind Dattatraya Kelkar v. Chief Controller of Imports and Exports*, (1967) 2 SCR 29 = (AIR 1967 SC 839) on the one hand and *S.G. Jaisinghani v. Union of India*, (1967) 2 SCR 703 = (AIR 1967 SC 1427), *Bishan Sarup Gupta v. Union of India*, (1975) Supp SCR 491 = (AIR 1972 SC 2627), *Union of India v. Bishan Sarup Gupta* (1975) 1 SCR 104 = (AIR 1974 SC 1618) and *A.K. Subraman v. Union of India*, (1975) 2 SCR 979 = (AIR 1975 SC 483) on the other, especially on the rota system and the year being regarded as a unit, that this Court may one day have to harmonize the discordance unless Government wakes up to the need for properly drafting its service rules so as to eliminate litigative waste of its servants' energies."

Their lordships of the Supreme Court summarised the conclusions in the above mentioned case in the following words:-

- “(a) : The quota system does not necessitate the adopting of the rotational rule in practical application. Many ways of working out 'Quota' prescription can be devised of which rota is certainly one.
- (b) While laying down a quota when filling up vacancies in a cadre from more than one source, it is open to Government, subject to tests under Article 16, to choose 'A year' or other period or the vacancy by vacancy basis to work out the quota among the sources. But one the Court is satisfied, examining for constitutionality the method proposed, that there is no invalidity, administrative technology may have free play in choosing one or others of the familiar processes of implementing the quota rule. We, as Judges, cannot strike down the particular scheme because it is unpalatable to forensic taste.
- (c) Seniority, normally, is measured by length of continuous, officiating service - the actual is easily accepted as the legal. This does not preclude a different prescription, constitutionality tests

being satisfied.....

32. Again in G.P. Doval and others v. Chief Secretary, Government of U.P. and others (1984) 4 Supreme Court Cases 329, the Supreme Court observed:

"Therefore, in the absence of any specific rule of seniority governing a cadre or a service, it is well-settled that length of continuous officiation will provide a more objective and fair rule of seniority." (Para 17).

Again their lordships observed in para 15 (Supra) -

"Now if there was no binding rule of seniority it is well-settled that length of continuous officiation prescribes a valid principle of seniority"

33. Once the two categories of Appraisers viz., promotees and direct recruits have been fused into one cadre of a particular Custom House and their inter-se seniority also determined on the rotational principle, it would be discriminatory to limit or enhance the prospects of promotion of any particular member of that cadre or class solely on the ground that he belongs to a particular category, namely, whether he is a direct recruit or promotee. In Mohd. Shujat Ali v. Union of India (A.I.R. 1974 S.C. 1631), the Supreme Court held "But where graduates and non-graduates are both regarded as fit and, therefore, eligible for promotion, it is difficult to see how, consistently with the claim for equal opportunity, any differentiation can be made between them by laying down a quota of promotion for each and giving preferential treatment to graduates over non-graduates in the matter of fixation of such quota." (Para 28)

34. While it would be perfectly valid to prescribe any higher qualification or quantum of experience for promotion to Group 'A' posts, it would be discriminatory any offending Articles 14 and 16 of the Constitution to prescribe that seniority or eligibility for promotion to the higher post of Group 'A' shall be determined with reference to the fact whether the incumbent is a direct recruit or a promotee and allocating him his position in the all-India list on such a consideration. All Appraisers from whichever source they have been appointed in their respective cadres, are to be considered on an equal footing for purposes of further promotion and their amalgamation into a common eligibility or seniority list prepared on all-India basis has to proceed on a just and fair principle which can be applied as a common denominator or parameter for determining their inter-se seniority or relative placement in such a common list.

35. An analysis of the all India combined list of Appraisers prepared after rotating direct recruits and promotees in the ratio of 1:1 and circulated with letter F.No.A 23011/1/86-AD.II(A), dated the 22nd May, 1986 would show that it has resulted in violent distortions of seniority of the incumbents with reference to their postings in their respective regional cadres. Applicants Nos. 1 and 2 were promoted on 6.6.1968 and 31.8.1968 respectively. Direct recruits appointed in 1976 and 1977 were placed against vacancies earmarked for them in 1968. Promotees of 1968 thus became junior to direct recruits of 1976 and 1977 in the combined all-India list. Applicant no. 1's name was shown at Sl. No. 156 in the Seniority list of appraisers in the Bombay Customs House and he was above direct recruit Appraisers shown at Sl.Nos. 157, 159, 161, 163, 165 and 167 in the said list of the Bombay Customs House. In the Combined Seniority List, these direct recruit Appraisers who were shown at Sl.No.157 (Shri M.P.Dixit), Sl.No.159 (Shri S.M.Rastogi), Sl.No.161 (Shri Gurlal Singh Sandhu), Sl.No. 163 (Shri Mohan Singh), Sl.No.165 (Shri Krishan Kumar) and Sl.No.167 (Shri M.M.Magotra) have been shown at Sl.No.420, Sl.No. 426, Sl.No.428, Sl.No.430, Sl.No.432 and Sl.No.434 respectively and Applicant No.1 has been brought down to Sl.No.435. These direct recruit Appraisers who were below Applicant No.1 in the Bombay Customs House Seniority List have been placed above him in the Combined All India Seniority List. Similarly one Shri W.F.Feegrade, a promotee Appraiser, who was promoted to the cadre of Appraisers on 9.7.68 and shown at Sl.No.24 in the seniority list of Calcutta Customs House, above Sl.No.27, 29, 31 and 33, has now been placed at Sl.No.441, in the Combined Seniority List and those shown at Sl.No.27 (Shri S.C.Paul) Sl.No.29 (Shri M.N.Dhar), Sl.No.31 (Shri Amarendra Jha) and Sl.No.33 (Shri V.B.Dhar) have been placed above him at Sl.No.418, 422, 424 and 436 respectively. Applicant No.3 was promoted in April, 1979 against a regular vacancy. His name is not included in the impugned seniority list, although his name figured at Sl.No.368 in the seniority list of the Bombay Custom House as on 1.1.1982. Direct recruits of 1984, however, find place in the impugned list. Thus the Combined Seniority or Eligibility List has caused violent departure from and distortions in the established seniority lists of promotee and direct recruit Appraisers in their respective cadres. Obviously this cannot be sustained on any ground.

36. The violent distortions in the relative placement of direct recruits and promotees in preparing the all-India

Combined List have been conceded by the Department. They have also accepted that the all-India list is in fact no seniority list. In this connection, submissions made by the Department in para 6.10 (para-wise comments) of their counter dated 23rd March, 1987 are relevant and are reproduced below:-

Para 6.10

It is submitted that all-India list of Appraisers published vide Department of Revenue letter dated 22.5.86 (Annexure-III to the application) is not strictly speaking a seniority list, as it does not follow the principle of seniority as contained in Ministry of Home Affairs O.M. dated 22.12.59 (annexure I-A to the application). For instance it is submitted that according to the principle contained in O.M. dated 22.12.59 all confirmed officers become enbloc senior to unconfirmed officers. This is not the case in the all-India list. I crave leave to refer to the seniority list of respective Custom House and the all India list of appraisers at the time of hearing of the application. It is also submitted that in the all-India list the inter-se seniority of Appraisers in particular cadre has not been maintained. Particularly in case of Appraisers belonging to Bombay Custom House cadre, promotee Appraisers who according to the Custom House seniority list were junior to some direct recruits belonging to that Custom House have gained in seniority by a number of places in the all-India list. On the other hand director recruits Appraisers belonging to Calcutta & Madras Custom Houses have gained in seniority vis-a-vis their senior promotee appraisers belonging to respective cadres in the all-India list of appraisers prepared in 1986. Had the all-India list been a seniority list, the inter-se seniority of direct recruits and promotees in a particular cadre had necessarily to be maintained....."

37. The All-India Combined List, which has been challenged is based on application of different principles on different dates. While on the one hand, it takes into consideration all the incumbents as were in service as on 15.9.70 whether direct recruits or promotees irrespective of the fact whether some of the incumbents had later on resigned or retired or are no longer alive and gives them their placement in the ratio of 1:1 on the basis of their source of appointment i.e., direct recruitment or promotion, on the other hand, if in a particular year promotions were much in excess of the direct recruitment, slots were reserved for direct recruits, who were given places against those slots even though appointed a number of years later than those who had been appointed earlier; lastly the circular dated 22nd May, 1986 also envisages that as from 1.3.1986 the inter-se placement of direct recruits and promotees will be determined in accordance with their continuous officiation or length of service as per provisions of the Department of Personnel and Training O.M.No. 35014/2/80-Estt(D) dated 7th February, 1986. Thus the all-India List is vitiated also on the ground not only of violent distortions but adoption of different principles for different periods which cannot but be held to be arbitrary.

38.. Another point raised in this case was that it was made clear in the orders of promotions in some cases that the promotions were made only as a stop-gap arrangement or temporary measure till direct recruits became available. however, as a matter of actual fact, these promotees were never reverted either when direct recruits became available or on any subsequent occasion. As such, denial of the benefit of length of continuous service for purposes of determining the relative position in the all-India Combined List, in the absence of any other valid rule, would be contrary to law.

39. The question in this is one of determining the inter-se relative placement or seniority of Appraisers of three cadres relating to three Custom Houses. After the recruitment of the posts of Appraisers whether by direct recruitment or promotion is long over and the inter-se seniority of the incumbents in the respective cadres has already been determined on the rotational principle, the application of the rotational principle a second time for determining seniority in the all-India Combined List of Eligibility is warranted neither by law nor by any rules. In the Indian Customs and Central Excise Service Group - a, 50% posts are filled by direct re-cruitment and 50% by way of promotion. The posts earmarked for promotion are allocated to three feeder Services, namely, Superintendents of Central Excise Group-B, 80%, appraisers 14% and Superintendents of Custom 6%. Thus, in the total cadre of Assistant Collectors of Customs and Central Excise, the intake by way of 'promotion' from the category of appraisers is 7%. For filling up the quota of promotions in the cadre of Assistant Collectors of Customs and Central Excise, the Appraisers whose seniority in their respective cadres of zonal Custom Houses stands already fixed on the basis of the rotational principle cannot be discriminated against in the matter of promotion on the ground of source of their entry into the service. This position has, in fact, been accepted in Mervyn Continho's case while considering the question of promotion to the post of Principle Appraiser, which was a Group 'B' post in the respective Custom Houses cadre. The Supreme Court in no uncertain terms held that there was no question of any quota being reserved for promotion for Appraisers recruited from two resources. They observed:-

"The source of recruitment of Principal Appraisers is one, namely, from the grade of appraisers. There is, therefore, no question of any quota being reserved from two sources in their cases. The rotational system cannot, therefore, apply when there is only one source of recruitment and not two sources of recruitment."

(Para 8)

In the present case 7% of the posts in the cadre of Assistant Collectors of Customs and Excise Group - A are to be filled up through one source only viz., promotion of Appraisers and, therefore, any principle which gives an undue advantage or weightage to a member of the Appraisers service with reference to his source of entry into the Appraisers Service cannot be sustained and is liable to be struck down. [The identity of a member of the Service with reference to his source of entry or mode of recruitment stands submerged and lost after his appointment to the Service and he becomes a member of one homogeneous group. The relative placement or inter-se seniority of members of three cadres for preparing eligibility list for Group - A has to be based, in the absence of any other valid Rules seniority, on the principle of continuous length of service in that grade.]

40. In the circumstances, the impugned Seniority List circulated with letter F.No.A23011/1/86-AD.II(A) dated 22nd May, 1986 is hereby quashed. Any promotions made to the posts of Assistant Collector of Customs and Excise Group-A on the basis of the said list are also set aside. Respondents No. 1 and 2 are directed to prepare a fresh All India combined List of Appraisers on the basis of continuous officiation of the incumbents in the post of Appraiser.

41. If the direct recruit respondents succeed in the L.P.A. filed by them against the judgment of the single Judge of the Madras High Court, the Government would no longer be under an obligation to prepare a combined list. Both parties (the applications and the Department) proceeded on the footing that a combined eligibility list of appraisers on an All-India basis has to be necessarily prepared. We express no opinion as to on what principle the combined eligibility list should be prepared in such a contingency. The application is accordingly allowed. There shall be no order as to costs.

Sd/-
(KUSHAL KUMAR)
MEMBER (A)
28.5.1987

Sd/-
(K. MADHAVA REDDY)
CHAIRMAN
28.5.1987

: CENTRAL EXCISE & CUSTOMS COLLECTORATE : VADODARA :

F.No.34/8/91-Estt.

Vadodara, the dt.13 .6.91.

To,

The Collector of Customs (Prev.) Gujarat, Ahmedabad/CH. Kandla.

The Collector of C. Ex. & Customs, Ahmedabad / Rajkot.

All Addl. Collrs./Dy. Collrs. of C. Ex. & Cus., Vadodara/A'bad./Rajkot Collectorate.

All Asstt. Collrs. of C. Ex. & Cus., Vadodara/A'bad./Rajkot.

The Dy. Director of Revenue Intelligence, Surat / Ahmedabad.

The C.A.O./P.A.O. of C. Ex. & Cus., Vadodara/Ahmedabad/Rajkot.

The Chemical Examiner of C. Ex. & Cus., Vadodara.

The Gen. Secy. Cl. III (Min.) Officers' Association.

All Section Head in Hdqrs. Office, Vadodara.

Sub:-Estt : Circulation of seniority list of INSPECTOR
of Central Excise and Customs : 1991 :

....

Enclosed please find herewith seniority list in respect of Inspector (corrected upto date) serving in the combined cadre of Vadodara/Ahmedabad/Rajkot Central Excise and Customs Coll'te., Customs House Kandla and Customs (Preventive) Ahmedabad Collectorate.

2/- The seniority of the officer has been arranged according to the existing orders and instructions on the subject.

3/- The particulars shown in the seniority list have been collected from the disposition statement received from Divisional Office and Chief Accounts Officer, In case of any dispute, doubt or error in this regard, a reference may please be made directly to the office mentioned in column No.8, from where necessary steps for taking further action will be initiated.

4/- The names of the officers have been arranged with reference to their appointment/promotion to their grade subject to the maintenance of their inter-se-seniority in the select panel drawn by the D.P.C. for promotee officer and the select list given by the Staff Selector Commission for direct recruits.

5/- It may please be ensured that the officers serving in your charge and whose names are appearing in the seniority list are belonging to Sch. Caste or Sch. Tribe but the entry to this effect remained to be shown by this office through oversight or otherwise against their name(s) should be immediately reported to this office without fail.

6/- Similarly the officers who actually do not belong to SC/ST but the entry to this effect has been made against their names such cases should also be reported to this office immediately.

7/- The list may please be circulated amongst all the officers concerned immediately and their signature obtained in taken of their having seen the seniority list.

8/- They should be informed that no representation will be entertained against the principle adopted in preparing the list, but they are entitled to file objection in regard to the factual error(s), if any, which have the effect of changing their inter-se-seniority position accorded to them in the list.

Please acknowledge the receipt.

: ATTESTED :

(Signature)
(H.C. PATEL) 13.6.91
ADMINISTRATIVE OFFICER (HQ)
C. EX. AND CUSTOMS, VADODARA.

SD/-
(T.H.K. Ghauri)
Additional Collector (P&V)
Central Excise and Customs,
Vadodara.

Encl:- As above.

(Signature)
Kaushikbhai V. Om
Advocate

569, Thenzawad
Raipur, Ahmedabad.
Phone 348257

Seniority list of Inspector of Vadrdara/Ahmedabad/Rajkot/C.H.Kandla
Central Excise & Customs Collectorate and Gujarat (Prev.) Coll'te.,
Ahmedabad as on 1.1.1991 and corrected up-to date.

Sr.No.	Name of the Officer and Educational qualification.	Date of Birth	Date of appointment in the Govt. services.	Date of appointment in the pre-sent grade.	Date of confirmation in the present grade.	Whether prob. period crossed or other-wise	Place of posting Direct recruit or Coll't promotee.	Whether	Remarks.
1.	2.	3.	4.	5.	6.	7.	8.	9.	10.
1.	S/Shri Mehta Pramodrai Bhagwandas (B.Sc.)	31.7.38	19.3.56	19.3.59	1.4.62	-	A'bad. Coll'te.	-	Under Suspension
2.	Desai Chandrakant Gulabbhai (SSC)	1.10.36	1.3.56	21.11.64	6.12.66	-	-	-	Supdt.
3.	Bhatt Mohanlal Laxwarlal (Fy.BA.)	21.5.34	8.3.56	31.12.65	7.12.66	-	-	-	Supdt
4.	Patel Babulal Kacharabhai (SSC)	15.2.34	27.4.56 (To retire on 29.2.92)	4.11.66	18.11.68	-	Baroda Dn.IV.	-	
5.	Kiri Clement Ramjibhai (SSC)	20.4.34	2.5.56	16.11.66	18.11.68	-	A'bad. Coll'te.	-	
6.	Mehta Keshavlal Dalpatram (SSC)	12.12.35	15.1.57	21.11.66	18.6.70	-	A'bad. Coll'te.	-	

25

1. 2. 3. 4. 5. 6. 7. 8. 9. 10. S/Shri

| | | | | | | | | | |
|------|--|----------|----------|---------|---------|---|-----------------|---|---------------------------------|
| 685. | Vyas Narendra Shantilal (BA) | 20.8.50 | 17.7.72 | 31.7.76 | 27.3.81 | - | Rajkot Coll'te. | - | |
| 686. | Kantrodia Vinodchandra Tribhovandas. (SSC) | 11.10.43 | 2.4.64 | 17.7.76 | 27.3.81 | - | Rajkot Coll'te. | - | |
| 687. | Gohil Nagirbhai Harkhabhai. (SSC) | 3.2.48 | 23.10.70 | 27.7.76 | 27.3.81 | - | Surat-II | - | <u>SCM.CASTE.</u> |
| 688. | Shah Jayprakash Laxmichand (B.Sc.) | 9.10.51 | 31.7.76 | 31.7.76 | 27.3.81 | - | A'bad Coll'te. | - | |
| 689. | Jethwani Pritam Nicholas. (BA) | 16.10.52 | 29.10.71 | 2.8.76 | 27.3.81 | - | Rajkot Coll'te. | - | |
| 690. | Dave Manubhai Nandulal (Fy.B.Com.) | 8.10.50 | 17.9.71 | 17.7.76 | 27.3.81 | - | Rajkot Coll'te. | - | |
| 691. | Sheth Ramniklal Jechand. (B.Com.) | 17.6.48 | 20.10.73 | 15.7.76 | 27.3.81 | - | Rajkot Coll'te. | - | |
| 692. | Naik Prakashchandra Chhotabhai. (M.Com.) | 20.7.50 | 7.1.74 | 1.8.76 | 27.3.81 | - | Surat-I | - | |
| 693. | Vaidya Bipinchandra Himatlal. (SSC). | 16.8.38 | 5.5.61 | 26.7.75 | 27.3.81 | - | Customs Bulsar. | - | |
| 694. | Bhagat Harishkumar Jaykrishna. (BA). | 1.6.53 | 10.1.78 | 10.1.78 | 27.3.81 | - | Baroda Coll'te. | - | Deputed to DAE, Baroda(22.4.89) |

65

.....75/-

| 1. | 2. | 3. | 4. | 5. | 6. | 7. | 8. | 9. | 10. |
|------|--|---------|----------|----------|---------|----|--------------------|----|-----|
| | S/Shri. | | | | | | | | |
| 695. | Yakmi Madan Mohan
(BA) | 1.10.49 | 20.12.75 | 11.1.78 | 27.3.81 | - | Rajkot
Coll'te. | - | |
| 696. | Sharma Munsilal
Bhupat (BA) | 1.10.47 | 12.1.78 | 12.1.78 | 27.3.81 | - | A'bad.
Coll'te. | - | |
| 697. | Ahluwalia Sukhatansingh
Pritamsingh. (SSC) | 19.5.39 | 18.3.63 | 17.7.76 | 27.3.81 | - | Vapi-II | - | |
| 698. | Sharma Devendrakumar
Vinodchandra. (M.Sc.) | 1.10.55 | 16.1.78 | 16.1.78 | 27.3.81 | - | Rajkot
Coll'te. | - | |
| 699. | Verma Brijesh Kumar
(Kulshreshta Brijesh-
kumar Prambahadur (MA) | 1.1.50 | 11.1.78 | 11.1.78 | 27.3.81 | - | Rajkot
Coll'te. | - | |
| 700. | Rathod Ramanbhai
Narandas. (B.Sc.) | 1.3.51 | 7.1.78 | 7.1.78 | 27.3.81 | - | A'bad.
Coll'te. | - | |
| 701. | Thakkar Bansilal
Ranchhodas. (SSC) | 3.4.44 | 26.2.65 | 19.7.76 | 27.3.81 | - | Baroda
Divn.IV | - | |
| 702. | Dave Rameshchandra
Kanaiyalal. (B.Com.) | 8.9.48 | 9.4.74 | 12.1.78 | 27.3.81 | - | Rajkot
Coll'te. | - | |
| 703. | Kaptan Sanatkumar
Purshottambhai (BA) | 1.6.46 | 12.2.65 | 31.12.77 | 27.3.81 | - | Baroda
Divn.IV. | - | |
| 704. | Kalolia Babubhai
Jagannath | 29.7.46 | 16.2.65 | 16.8.76 | 27.3.81 | - | C.H.Kandla | - | |

...76/-

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.....76/-

1. 2. 3. 4. 5. 6. 7. 8. 9. 10.

S/Shri.

| | | | | | | | | | |
|------|---|---------|----------|----------|---------|---|--------------------|---|--|
| 705. | Menta Rajeshkumar
Sumantray (M.Sc.) | 9.10.53 | 5.1.78 | 5.1.78 | 27.3.81 | - | A'bad.
Coll'te. | - | |
| 706. | Desai Pankaj
Shantilal (B.Sc.) | 7.1.53 | 17.1.78 | 17.1.78 | 27.3.81 | - | Customs
Bulsar. | - | |
| 707. | Maru Naran Kalabhai
(BA) | 21.3.48 | 3.7.70 | 12.1.78 | 27.3.81 | - | Rajkot
Coll'te. | - | <u>SCH. CASTE.</u> |
| 708. | Gohel Govindbhai
Bhikhabhai. (BA) | 3.8.49 | 11.1.78 | 11.1.78 | 27.3.81 | - | A'bad.
Coll'te. | - | <u>SCH. CASTE.</u> |
| 709. | Makwana Madha
Ukabhai. (BA) | 1.6.48 | 2.8.76 | 12.1.78 | 27.3.81 | - | Rajkot
Coll'te. | - | <u>SCH. CASTE.</u> |
| 710. | Shaikh Sahabuddin
Gulamahamed. (BA) | 1.9.50 | 24.4.71 | 17.7.76 | 27.3.81 | - | Customs
Surat. | - | <u>SCH. CASTE.</u> |
| 711. | Chaunan Khannabhai
Jethabhai (BA) | 1.6.50 | 23.10.70 | 10.1.76 | 27.3.81 | - | A'bad.
Coll'te. | - | <u>SCH. CASTE.</u> |
| 712. | Patel Rameshbhai
Babarbhai (3.Com.) | 9.11.53 | 21.11.79 | 21.11.79 | 1.4.82 | - | - | - | <u>SCH. TRIBE.</u>
Supdt. |
| 713. | Vasava Manubhai
Motibhai. (Ba.Ll.B.) | 1.6.50 | 15.11.79 | 15.11.79 | 1.4.82 | - | - | - | <u>SCH. TRIBE.</u>
Supdt. |
| 714. | Patel Baldev
Maganlal. (SSC) | 1.4.44 | 26.8.64 | 12.7.73 | 1.4.82 | - | A'bad.
Coll'te. | - | <u>SCH. CASTE.</u>
Sen.fixed vide
E.O.No.112/90
Dt.21.3.90. |

.....77/-

| 1. | 2. | 3. | 4. | 5. | 6. | 7. | 8. | 9. | 10. |
|------|--|----------|---------|---------|--------|----|--------------------|----|-----------------------------|
| | S/Shri. | | | | | | | | |
| 715. | Jadav Govindbhai
Ratnabhai. (SSC) | 23.7.45 | 5.1.68 | 17.7.76 | 1.4.82 | - | A'bad.
Coll'te. | - | <u>SCH. CASTE</u> |
| 716. | Bhatt Dilipkumar
Anirudh (B.Sc.) | 26.9.50 | 23.2.76 | 23.2.76 | 1.4.82 | - | A'bad.
Coll'te. | - | |
| 717. | Rana Vindoray
Manilal. (SSC) | 27.2.47 | 30.9.65 | 17.7.76 | 1.4.82 | - | Surat
Dn.I | - | |
| 718. | Sheth. Pradipkumar
Suryakant (B.Sc.) | 28.1.51 | 18.8.75 | 5.6.78 | 1.4.82 | - | Baroda
Divn.II. | - | |
| 719. | Patel Mahesh
Khodidas (B.Sc.) | 12.1.55 | 9.11.78 | 9.11.78 | 1.4.82 | - | A'bad.
Coll'te. | - | |
| 720. | Rishwadkar Vishvas
Vansantree (B.Sc.) | 1.7.52 | 16.8.78 | 16.8.78 | 1.4.82 | - | A'bad.
Coll'te. | - | |
| 721. | Rajput Lochansingh
Dipsingh. | 1.3.53 | 16.8.78 | 16.8.78 | 1.4.82 | - | A'bad.
Coll'te. | - | |
| 722. | Unnikrishnan K. (BA) | 10.11.52 | 25.3.72 | 2.8.76 | 1.4.82 | - | C.H. Kandla | - | |
| 723. | Macwan Manharikumar
Natanayal (B.Sc.) | 10.3.52 | 9.11.78 | 9.11.78 | 1.4.82 | - | Rajkot
Coll'te. | - | Resigned w.e.f.
11.7.90. |
| 724. | Sharma Pradipkumar
Banwarilal (BA). | 10.9.53 | 12.5.79 | 12.5.79 | 1.4.82 | - | A'bad.
Coll'te. | - | ... |

...78/-

| 1. | 2. | 3. | 4. | 5. | 6. | 7. | 8. | 9. | 10. |
|--------|---------------------------------------|---------|----------|---------|---------|----|-----------------|----|---|
| S/Shri | | | | | | | | | |
| 725. | Parmar Thakorbai Govindbhai. (SSC) | 5.9.46 | 24.5.69 | 17.7.76 | 1.4.82. | - | Customs Bulsar. | - | <u>SCH. CASTE.</u> |
| 726. | Momin Mohmedhusin Gulambhai (B.Com.) | 3.3.48 | 23.12.67 | 31.7.76 | 4.4.82 | - | A'bad. Coll'te. | - | |
| 727. | Kundal Balwantrao Jagannath. (SSC) | 13.3.39 | 1.7.60 | 27.8.76 | 4.4.82 | - | Rajkot Coll'te. | - | |
| 728. | Naithani Ashok Mohan (B.Sc.) | 13.1.56 | 6.4.79 | 6.4.79 | 4.4.82 | - | A'bad. Coll'te. | - | |
| 729. | Rawaria Zile Singh P. (B.Sc.) | 13.6.52 | 1.6.72 | 6.4.79 | 4.4.82 | - | A'bad. Coll'te. | - | |
| 730. | Makwana Keshubhai Karsanbhai (Sy.BA) | 5.5.38 | 30.5.56 | 20.7.76 | 4.4.82 | - | A'bad. Coll'te. | - | <u>SCH. CASTE.</u> |
| 731. | Pandey Manishankar Krishnadev. (MA) | 1.9.52. | 20.3.79 | 20.3.79 | 4.4.82 | - | Baroda Coll'te. | - | Deputed to DRI, Vapi. (20.4.89) |
| 732. | A.D. Thomas (SSLC) | 1.5.48 | 26.5.69 | 31.7.76 | 4.4.82 | - | A'bad. Coll'te. | - | Seniority fixed vide DC(P&E) Baroda dt. 2.8.88. |
| 733. | Anthony Joseph Vidyakaran. (BA) | 30.1.53 | 23.3.79 | 23.3.79 | 4.4.82 | - | A'bad. Coll'te. | - | |
| 734. | Shukla Saileshkumar Chhotalal (M.Sc.) | 18.3.53 | 23.3.79 | 23.3.79 | 4.4.82 | - | Rajkot Coll'te. | - | |

...79/-

53
4

1. 2. 3. 4. 5. 6. 7. 8. 9. 10.
S/Shri.30/-

| | | | | | | | | |
|------|---|----------|---------|----------|--------|---|-----------------|---|
| 745. | Palan Hasmukhlal Chandrakant. (SSC) | 23.8.49 | 9.5.69 | 30.12.76 | 4.4.82 | - | Rajkot Coll'te. | - |
| 746. | Botham Mukesh Mangilal (B.Com.) | 17.6.56 | 16.8.79 | 16.8.79 | 4.4.82 | - | A'bad. Coll'te. | - |
| 747. | Bais Pradipsingh Bharatsingh. (B.Com.) | 29.0.55 | 4.9.79 | 4.9.79 | 4.4.82 | - | Rajkot Coll'te. | - |
| 748. | Gaurushani Surendra Thavardas. (B.Sc.) | 25.12.54 | 16.8.79 | 16.8.79 | 4.4.82 | - | A'bad. Coll'te. | - |
| 749. | Pathak Hariyadan Nakhirilal (SSC) | 10.6.48 | 20.5.69 | 28.12.76 | 4.4.82 | - | Hdgrs. Baroda. | - |
| 750. | Sheth Bharat Krishnakant (B.Com.) | 21.4.57 | 16.8.79 | 16.8.79 | 4.4.82 | - | Baroda-I | - |
| 751. | Bhatt Subhashchandra Yogendra. (B.Com.) | 22.8.56 | 13.8.79 | 13.8.79 | 4.4.82 | - | Surat-I | - |
| 752. | Jadeja Raghuvir Prabhatsingh. (B.Com.) | 14.11.55 | 19.8.79 | 19.8.79 | 4.4.82 | - | A'bad. Coll'te. | - |
| 753. | Trivadi Mahendrakumar Bhagwanji (SSC) | 14.2.49 | 15.5.69 | 20.12.76 | 4.4.82 | - | Rajkot Coll'te. | - |
| 754. | Thapodiyal Deyram Mayaram (BA) | 10.10.56 | 17.8.79 | 17.8.79 | 4.4.82 | - | A'bad. Coll'te. | - |

....81/-

54

.....31/-

1. 2. 3. 4. 5. 6. 7. 8. 9. 10.
S/Shri.

| | | | | | | | | |
|------|--|----------|---------|----------|--------|---|--------------------|---------------|
| 755. | Mehta Kartik Vipin
(B.Com.) | 21.11.56 | 16.8.79 | 16.5.79 | 4.4.82 | - | Surat-II | - |
| 756. | Bhatt Yogesh
Shantukumar (B.Sc.) | 2.7.55 | 17.8.79 | 17.8.79 | 4.4.82 | - | A'bad.
Coll'te. | - |
| 757. | Kishnani Vasudev
Pribhadas. (SSC) | 11.8.49 | 15.7.69 | 29.12.76 | 4.4.82 | - | Baroda
Dn.IV. | - |
| 758. | Parmar Somchand
Khushalbai (SSC) | 1.6.49 | 17.7.69 | 30.12.76 | 4.4.82 | - | A'bad.
Coll'te. | - SCH. CASIE. |
| 759. | Rufus Rockey (BA) | 7.11.56 | 1.9.79 | 1.9.79 | 4.4.82 | - | Surat-I | - |
| 760. | Raithathe Rajendrakumar
Shantilal. (B.Com.) | 6.10.56 | 30.8.79 | 30.8.79 | 4.4.82 | - | Rajkot
Coll'te. | - |
| 761. | Valvani Gyan
Vishumal. (SSC) | 10.6.48 | 23.7.69 | 31.12.76 | 4.4.82 | - | Rajkot
Coll'te. | - |
| 762. | Palkar Pradip
Raosaheb. (MA) | 23.6.57 | 30.8.79 | 30.8.79 | 4.4.82 | - | Hdqs.
Baroda. | - |
| 763. | Karanjgaokar Laxman
Vasudev. (BA) | 15.12.56 | 31.8.79 | 31.8.79 | 4.4.82 | - | Hdqs.
Baroda | - |
| 764. | Sawant Ramesh Nanurao
(BA) | 16.1.55 | 30.8.79 | 30.8.79 | 4.4.82 | - | A'bad.
Coll'te. | - |
| 765. | Khatril Ishwarlal
Dashrathlal. (SSC) | 31.3.49 | 18.9.69 | 18.10.77 | 4.4.82 | - | A'bad.
Coll'te. | - |

.....82/-

Assistant Collector C. Ex. Jn. IV.
24-8/9, Estt AHMEDABAD

dated 10/10/91

To,
Shri. I. D. Khatni. Insp.
Hk IV. C. Ex. Jn. IV
Ahmedabad.

Sub: Estt :- Fixation of Seniority of Inspectors
Representation of Shri I. D. Khatni. Insp.

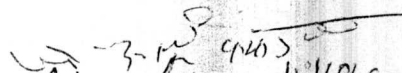
Please refer to your representation dated 8/7/91,
addressed to the Collector, C. Ex. Vadodra.

2. In this connection it is to inform you that
the matter has been referred to the ministry by
the Additional Collector (C. Ex.) Vadodra for further
guidelines & clarifications and on the receipt of same
your case will be examined.

Kad
Dhaph.
15/10/91


Kaushikbhai V. Oza
Advocate

569, Dharamd
Rajpur, Ahmedabad.
Phone 348257


Adm. Officer 10/10/91
C. Ex. Jn. IV.
Ahmedabad.

From :
I. D. Khatri,
Insp. , C. Ex. , A. R. IV, Dn. IV,
Ahmedabad.

Dated 16. 10. 1991.

To,
The Collector,
C. Ex. , Vadodara.

(through proper channel).

Respected Sir,

ESTT. : FIXATION OF SENIORITY OF INSPECTORS :
REPRESENTATION OF SHRI I. D. KHATRI, INSPR. :
.....

Kindly refer to my representation dated 8th July, 1991
on the above subject.

The Administrative Officer, Central Excise, Hdqrs., A'bad
vide his letter No. II/34-12/91-Estt. dated 13.9.91 has
informed that the matter has been referred to Ministry
for further guidelines/clarification for fixation of
seniority.

It is, therefore, requested that the clarification if any,
received from the Ministry, may be intimated and the
issue may please be decided at an early date.

Yours, faithfully,

I. D. Khatri
16/10
(I. D. KHATRI).

Kausikbhai V. Ozga
Kausikbhai V. Ozga

Advocate.

369, Thane Road
Raipur, Ahmedabad.
Phone 348257

From :
I.D. Khatri,
Inspr., C. Ex., A.R. IV,
Divn. IV, Ahmedabad.

Ahmedabad, dated 5th March, 1992.

To,
The Collector,
Central Excise,
Vadodara.

(Through: Proper Channel).

Sir,

Sub. : Estt : Fixation of seniority of Inspectors :
Representation of Shri I.D. Khatri, Insp. :

Please refer to my representation dated 8th July,
1991 on the above subject and reminder thereon dated
16.10.91.

2. It is requested that the clarifications, if
any, received from the Ministry may be intimated to
me and the issue may please be finalised at the
earliest.

Yours faithfully,

(I.D. KHATRI).

6/3/92
Boide
Kausikbhai V. Oza

Advocate

569, Thane Road
Raipur, Ahmedabad.
Phone 348257

From :
I.D.Khatri,
Inspector of C.Ex.,
A.R.IV, Dn.IV, A'bad.

Dated 20.6.92.

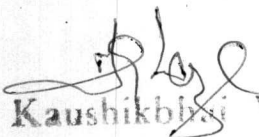
To,
The Collector of C.Ex.,
Vadodara (Through proper channel).

Sir,

Subject : Estt. : Fixation of seniority of
Inspectors - Representation of
Shri I.D. Khatri, Inspector. :
.....

Please refer to my representation dated
8th July, 1991 on the above subject and reminders
thereon dated 16.10.91 and 05.03.92.


2. It is requested that the clarifications,
if any, received from the Ministry may please be
intimated to me and the issue may please be
finalised at the earliest.


Kaushikbhai V. Oza

Advocate

369, Dharmabad
Raipur, Ammedabad.
Phone 348257

Yours faithfully,


(I. D. Khatri).

63

From :
I.D. KHATRI,
Inspector of C.Ex.,
Tech. Br., Hdqrs.,
Ahmedabad.

Dated : 9.2.93.

To,
The Collector,
Central Excise,
Vadodara. (Through proper channel).

Sir,

ESTT. : FIXATION OF SENIORITY OF INSPECTORS -
REPRESENTATION OF SHRI I.D. KHATRI, INSPECTOR.:
....

Please refer to my representation dated 8th July, 91
on the above subject and reminders thereon dated
16.10.91 and 5.3.92 and 20.6.92.

2. Clarification, if any, received in the matter from
the Ministry may please be intimated and the issue may
please be decided at the earliest.

Yours faithfully,

(I.D. KHATRI).

Kaushikbhai V. Oza

Advocate

569, Thangwadi
Raipur, Ahmedabad.
Phone 348257

65
From :
I.D. Khatri,
Inspector of C.Ex.(Tech),
HdQRS. Office, Ahmedabad.

Ahmedabad, dated 5th July, 1993.

To,
The Collector,
Central Excise & Customs,
Vadodara (Through : Proper channel).

Sir,
Sub. : Estt. : Fixation of seniority of Inspectors :
Representation from Shri I.D. Khatri, Inspr. :
....

Please refer to my representation dated 8.7.91 and
reminders thereon dated 16.10.91, 5.3.92, 20.6.92 and
9.2.93.

2. Clarifications, if any, received in the matter
from the Ministry may please be intimated and the issue
may please be decided early.

Yours faithfully,

le (I.D. KHATRI).


Kaushikbhai V. Oza

Advocate

569, Thengwad,
Raipur, Ahmedabad.
Phone 348257

MA/st/684/94

MA/ 17 195

In

OA/ 593 193

MR. I. D. Khatai

— MR. K. V. Oze (Adv.)

v/s

C. O. 1. 8 Oee.

— MR. Alvi Kuleshi (Adv.)

— Joining as Respondent

~~DO/ 17.1.95~~

Printed order
A. H. No. 414 of 94

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

O.A./TA/MA/PA/CA No. 383 / 94 in 04/593/93

MR. I. D. Kholei
APPLICANT (S)

MR. ~~N. K. Joshi~~ K. V. Joshi
COUNSEL

VERSUS

U. O. 1-2 021
RESPONDENT (S)

MR. Akil Keshavn
COUNSEL

| Date | Office Report | ORDERS |
|----------------------------------|---------------|--------|
| | Early Hearing | |
| <div>20</div> <div>22-7-94</div> | | |

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH, AHMEDABAD.

MISCELLANEOUS APPLICATION NO. 383 /1994. IN
ORIGINAL APPLICATION NO. 593/93.

1. Ishwarlal Dashrathlal Khatri ... Appellant

V/s.

1. The Secretary,
Central Board of Excise &
Customs, Ministry of
Finance, Department of
Revenue, New Delhi.
2. The Collector,
Central Excise and Customs,
Central Excise Building,
Race Course, Vadodara..390005.
3. The Additional Collector,
Central Excise and Customs (P&V),
Customs House, Near All India
Radio, Navrangpura,
Ahmedabad-380009.

... Respondents.

I, Ishwarlal Dashrathlal Khatri hereby request you to kindly take up the matter for admission, I filed the application on 24-7-93. The number allotted was 434/93 which has been renumbered as 593/93. Thereafter, I have heard nothing in the matter. ~~in~~ The respondents do not seem to have filed any reply in the matter. Recently, the promotion orders from Inspectors (Class-III) to Superintendents (Class-II) have been issued. If my application is considered, I may come within consideration zone, for promotion and thereby I may get the monetary benefits. I, therefore, humbly pray to your Lordship as under :-

- (1) The application may kindly be admitted and matter may kindly be heard finally.
- (2) Appropriate reliefs may kindly be granted.

(I.D. KHATRI)
Signature of the applicant.

...2/-

filed by Mr. N.Y. 029
 Learned Advocate for Penitents
 with second set & N.Y. 029
 copies copy set 73d, set 73rd
 other side under 73rd to set

By Registrar C.A.T.U.
Attest Secy

I send to
a copy to the
respondent.
A.K. Q.
15/7/94

: V E R I F I C A T I O N :
- - - - -

I, Ishwarlal Dashrathlal Khatri, the appellant
do hereby declare that what is stated above is true to
the best of my information and belief.

Verified today the 15th day of July, 1994.

Place : Ahmedabad.

Date : 15/7/1994.

Ishwarlal
(I. D. KHATRI)
Signature of the appellant.

Filed by Shri K.V. Oza, Advocate, Ahmedabad.

Submitted,

Application has been scrutinized and found
to be in order. May be placed for orders before

Hon'ble Bench,

cecelaf

O
MIL-2
SCT 14/7/94

DEPT
on leave

22/7 map 10

MA 353/94
22/7/94

(X)

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

ORIGINAL APPLICATION NO. 593 OF 1993

Shri I.D.Khatri

...Applicant

V/s.

The Secretary,
Central Board of Excise and
Customs, New Delhi & Others.

...Respondents

Written Reply on behalf of
the respondents.

I, JOYKUMARI CHANDER working as Deputy Collector(P&V)
with respondent No. 2 herein, do hereby state
in reply to the above application as under:

1. That I have perused the relevant papers
and files pertaining to the above application and
I am conversant with the facts of the case and I am
authorised to file this reply on behalf of all the
respondents.

2. At the outset I say and submit that the
application is misconceived, untenable and requires
to be rejected.

3. At the outset I say and submit that no
part of the application shall be deemed to have
been admitted by the respondents unless specifically
stated so herein. All the statements, averments
and allegations contained in the application shall
be deemed to have been denied by respondents unless
specifically admitted by me herein.

4. At the outset I further say and submit that
the application is hopelessly barred by law of
limitation, delay and laches. I say that the
applicant has not made out any ground for permitting

Presented by
Mr. Akil Kureshi

(2+0=2) Adv
21/7/94

Copy served to learned advocate for respondent with second set.
Copy served to respondent & other side.

21/7/94 By Registrar C.A.T.U.
A'bad Bench

Received
21/7/94
IVKAR
Advocate

him to approach this Honourable Tribunal at such a belated stage. I say and submit that question involved in the application is regarding seniority of the applicant vis-a-vis the other persons. If the application is allowed, the same would adversely affect large number of other persons, who are not parties before this Honourable Tribunal. On this ground also, the application is required to be rejected. I say that the applicant has approached this Honourable Tribunal at much belated stage without explaining the delay. The said delay is not required to be condoned in light of the facts that no ground is made out and that the issue pertains to seniority and persons who are likely to be affected by the decision in the application are not parties before this Hon'ble Tribunal.

5. The applicant was appointed as Lower Division Clerk in the year 1969. He was promoted to the grade of Upper Division Clerk and as Inspector in the year 1977. His seniority in the grade of Inspector was fixed as per Office Memorandum No. 9/11/55-RPS dated 22.12.1959 issued by the Government of India, Ministry of Home Affairs. He was confirmed in the grade of Inspector with effect from 4.4.1982 alongwith his immediate junior/senior in the grade of Inspector.

6. In O.A. the applicant has made a demand that his seniority in the grade of Inspector should be fixed in accordance with the provisions of O.M.No. 35015/2/80-Estt.(D) dated 7.2.86, as given to Shri V.Narayanan by CAT Ernakulam Bench vide its judgement dated 26.3.91. It is submitted that prior to issue of O.M. dated 7.2.86 the seniority of Direct Recruit Vis-a-Vis promotees was

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3.

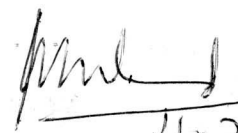
being determined in accordance with the provisions of O.M. dated 22.12.59 which provides that vacancies of Direct Recruit quota which could not be filled up in a particular year are to be kept vacant. These vacancies are filled up by Direct Recruit in subsequent years. This principal was replaced vide Department of Personnel and Training Office Memorandum dated 7.2.86. The applicant was promoted to the grade of Inspector in the year 1977. His seniority was fixed in accordance with Office Memorandum dated 22.12.59. The Office Memorandum dated 7.2.86 was made operative only from 1.3.86 with prospective effect. The applicant was promoted as Inspector earlier than 1.3.86, so the provisions of Office Memorandum dated 7.2.86 are not applicable in his case. All old cases prior to 1.3.86 are to be regulated in accordance with the Office Memorandum dated 22.12.59. The case of Shri Narayanan for fixation of seniority as per Office Memorandum dated 7.2.86 was in the pursuance of CAT directions. This case has no universal applicability. Seniority of the applicant can not be fixed as per the decision given in the case of Shri Narayanan. The seniority of the applicant which was determined in terms of O.M. dated 22.12.59 is correct and does not require to be reopen. His seniority can not be fixed as per judgement dated 26.3.91 in C.A. No. 473/89 by CAT Ernakulam Bench. As per the O.M. dated 22.12.59 the Direct Recruit of 1978 and 1979 were placed with promotees of 1977 according to the quota fixed between direct recruit and promotees.

7. It is submitted that the Ministry of Personnel Public Grievances and Pensions, Department of Personnel and Training vide their Office Memorandum F.No. 26011/6/90-Estt. dated 4.11.1992 have now decided that the seniority of a person regularly appointed to a post according to rule would now be determined by the order of merit indicated at the time of initial appointment and not according to the date of his confirmation. The Ministry has also directed that these orders shall take effect from the date of issuance of this Office Memorandum i.e. from 4.11.1992. The seniority already determined according to the existing principle prior to the issuance of these orders will not be reopened. This has been issued in view of the judgement delivered by the Hon'ble Supreme Court of India on 2.5.1990 (JT-1990(2) SC 264) in the case of Class-II Direct Recruits Engineering Officers Association Vs. State of Maharashtra. In view of the above, the seniority of the applicant which was determined in terms of the Ministry's aforesaid Office Memorandum dated 22.12.1959 is correct and is not required to be reopened in terms of Ministry's Office Memorandum dated 4.11.1992 (copy at Annexure R1 hereto).

8. In view of what has been stated above, the application is totally misconceived, untenable and requires to be rejected. I further say that the applicant is not entitled to any relief either interim or final.

Vadodara

Dt. \ .7.1994


 11.7.94
 (JOY KUMARI CHANDER)
 Deputy Collector (P&V)
 Central Excise and Customs,
Vadodara.

11

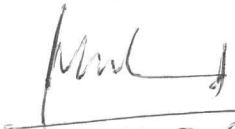
5.

V E R I F I C A T I O N

I, JOY KUMARI CHANDER working as Deputy Collector(P&V) do hereby verify and state that what is stated above is true to my knowledge, information and belief and I believe the same to be true. I have not suppressed any material facts.

Vadodara,

Dated 11th July, 1994.


11.7.94
(JOY KUMARI CHANDER)
Deputy Collector(P&V)
Central Excise and Customs,
Vadodara.

Maistis27lay

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD

T.A.M.A.R.A.C.A. No. 525 194 in 04/593/93

MR. I. D. Khotel
APPLICANT (S)

MR. K. V. Oza
COUNSEL

VERSUS

U. O. I. 2 022
RESPONDENT (S)

MR. Aki Kerephs
COUNSEL

| DATE | OFFICE REPORT | ORDER |
|--------------------|---------------|-------|
| Joining as Respd/c | | |
| | | |
| | | |

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL BENCH,
AHMEDABAD.

MISCELLANEOUS APPLICATION NO. 525/1994. IN ORIGINAL
APPLICATION NO. 593/93.

1. Ishwarlal Dashrathlal Khatri .. Appellant
- V/s.
1. The Secretary,
Central Board of Excise & Customs,
Ministry of Finance, Department of
Revenue, New Delhi.
2. The Collector,
Central Excise and Customs,
Central Excise Building,
Race Course, Vadodara-390005.
3. The Additional Collector,
Central Excise and Customs (P&V),
Customs House, Near All India Radio,
Navrangpura,
AHMEDABAD-380 009. .. Respondents

I, I.D. Khatri (Ishwarlal Dashrathlal Khatri) hereby request the Hon'ble Bench to kindly allow me to join the persons whose names are as per the enclosed list. The persons whose names are listed in the enclosed list have been shown as Senior to me in the Seniority List. In the original application, the names of such persons were not shown as parties - respondents due to fact that it was bonafide belief that the issue of fixing the correct seniority of mine is with the Department and myself and the persons concerned have entered the Department later to me. Since their interest are also affected. I may be permitted to join these persons as parties in the present matter and oblige. On permission being granted I will pay the requisite process fee.

For this act of kindness, I as in duty bound shall ever

pay.

(I. D. KHATRI)
Signature of the Applicant.

Filed by Mr. K V 029
Learned Advocate for Petitioners
with second set & N12 spare
copies copy served/col served to
other side

22/9/94
Registrar C.A.T.(B)
Ahmed Bench

....2/-

: 2 :

: VERIFICATION :
=====

I, Ishwarlal Dashrathlal Khatri, the appellant
do hereby declare that what is stated above is true to
the best of my information and belief.

Verified today the 22nd day of September, 1994.

Place : Ahmedabad.

Date : /9/1994.



(I. D. KHATRI)

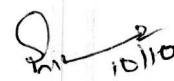
Signature of the appellant.

Filed by Shri K.V.Oza, Advocate, Ahmedabad.

Submitted.

Application has been scrutinized and found
to be in order. May be placed before Hon'ble Bench
for necessary order.

order


10/10
SOCS


(10/10/94)
SOCS

MA/ST/615/94

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD

O/A.T/A.M.A.R.A.C/A. No. 75 ⁹⁵
(96) in 04/593/93

MR. I. D. Khandel
APPLICANT (S)

MR. K. V. Oza
COUNSEL

VERSUS

U.O. / a oer.
RESPONDENT (S)

MR. Alok Khandel
COUNSEL

| DATE | OFFICE REPORT | ORDER |
|------|---------------|-------|
| | Restraction. | |

DO
12.1.95

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL BENCH
AHMEDABAD.

MISCELLANEOUS APPLICATION NO. 75 / 94⁹⁵ IN ORIGINAL
APPLICATION NO. 593/93(93)

.....

1. Ishwarlal Dashrathlal Khatri Appellant.
v/s.
1. The Secretary,
Central Board of Excise and Customs,
Ministry of Finance, Deptt. of Revenue,
New Delhi.
2. The Collector,
Central Excise & Customs,
Central Excise Building,
Race Course, Vadodara.
3. The Additional Collector,
Central Excise and Customs (P & V),
Customs House, Near All India Radio,
Navrangpura, Ahmedabad-380 009. Respondents.

I, I.D. Khatri (Ishwarlal Dashrathlal Khatri) hereby request the Hon'ble Bench to kindly restore my original application mentioned above disposed off on 24.10.94 for default of non-appearance on the following grounds :

(1) The matter was heard on 22.7.94 on the basis of Misc. Application No. 383/94. At that time, a request was made to your Lordship to permit to join the officers as parties in the application. Accordingly, Miscellaneous application was filed on 22.9.94. The process was under compliance. As such, I was under bonafide impression that the matter would not be called out suddenly. The matter was called out on 24.10.94.

(2) I may mention that my Advocate was busy with hearing at New Delhi on 24.10.94 in one of the Customs Case. The copy of the intimation of hearing at New Delhi on 24.10.94 is enclosed herewith for your Lordship's kind perusal. Thus the request for restoration is genuine one and needs sympathetic consideration.

(3) The application for restoration is made within thirty (30) days in terms of Rule 15 of the CAT(Procedure)Rules, 1987.

For this act of kindness, I as in duty bound shall ever pray.

(I.D. Khatri)
Signature of appellant.

Filed by Mr. K.V. 929
Learned Advocate for Petitioner
with second set &
copies copy served/not served
other side

21.11.94
Registrar C.A.T.

Received copy
R.K. Lamer
date to
Amit K. Keshi
21/11/94

: 2 :

VERIFICATION.

I, Ishwarlal Dashrath-lal Khatri, the appellant do hereby declare that what is stated above is true to the best of my information and belief.

Verified to day 21st day of November, 1994.

Place : Ahmedabad.
Dated : 21.11.94

Ishwarlal
(I.D. KHATRI),
Signature of the appellant.

Filed by Shri K.V. Oza, Advocate, Ahmedabad.

Submitted.

Application has been scrutinized and not found in order. Order dtd 24¹⁰/₉₄ not filed. ~~CA~~ ~~has not seen~~ dismissed for default. ~~MA/525/94~~ MA/525/94 has been disposed off on 24¹⁰/₉₄. This MA for restoration is wrongly submitted.

accepted
22.11.94

SOCS *22/11/94*
22/11/94
SOCS

REGISTERED N.O.
 JUDICIAL OFFICE, DISTRICT & COLLECTOR (CONTROL) APPELLATE TRIBUNAL, WEST
 BOMBAY NO. 1, B.K. ROAD, BOMBAY, W. 400 001.

SOUTH REGIONAL BENCH

C/S/758/94NRB vs C/329/94NRB

DATE: 19.9.94

Sh. Jayanti Lal Gadhara Das Modi

APPELLANT

Vs

CC, N.O. Delhi

RESPONDENT

RESPONDENT

Sh. Jayanti Lal Gadhara Das Modi,
 Maliwas, Vadi Road, Dresa, Gujarat.

CCF New Delhi.

You are hereby informed that the hearing of the above matter
 which was fixed for.. 14.9.94 has been adjourned to.. 24.10.94
 at 10.30 A.M. No further adjournment will be given.

By Order

K
 (S.K. SHIVASTAVA)
 Asstt. Registrar.

To:-

Sh. K.V. (2a, 569, Hengawada, Raipur(Ahmedabad).

Sh K.V. (2a, 569, Hengawada, Raipur(Ahmedabad).

For copy.

Asstt. Registrar.

Please quote this office reference No. Bench concerned and the
 name of hearing mentioned above in your future correspondence.

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL BENCH
AHMEDABAD.

MISCELLANEOUS APPLICATION NO. 17 / 94⁹⁵ IN ORIGINAL
APPLICATION NO. 593/93

1. Ishwarlal Dashrathlal Khatri Appellant.

V/s.

1. The Secretary,
Central Board of Excise & Customs
Ministry of Finance, Deptt. of
Revenue, New Delhi.

2. The Collector,
Central Excise & Customs,
Central Excise Building,
Race Course, Vadodara.

3. The Additional Collector,
Central Excise and Customs (P&V),
Customs House, Near All India Radio,
Navrangpura, Ahmedabad-380 009. Respondent.

The MA/525/94 in O.I./593/93 had come up for consideration on 24/10/94 and order was passed to the effect that Mr. K.V.Oza is not present. The list mentioned in M.A. is not enclosed.

In the above connection, I have to submit before Your Lordship that my advocate was busy with hearing of Customs matter at New Delhi and as such he could not remain present. The list of the officers along with copies of application No. CA/593/93 was ready for submission. On hearing from the registry that the matter is ~~is~~ disposed off for non-appearance on 24/10/94, MA615/94 was filed before the Hon'ble Bench for restoration and reconsideration of the request of granting permission for joining the parties on 21/11/94. I, therefore, pray to Your Lordship to consider my genuine request for permitting me to join, the officers who have been placed senior to me as parties and oblige, in the interest of justice.

For this act of kindness, I, as in duty bound, shall ever pray.

Filed by Mr. K. A. Oza
Learned Advocate for Petitioners
with second set of copies
copies sent to other side
other side

(I. D. KHADKE)

By Registrar C.A.T.O.
A'bad Bench

: 2 :

" VERIFICATION "

I, Ishwarlal Dashrathlal Khatri, the appellant
do hereby declare that what is stated above is true
to the best of my information and belief.

Verified today 12th day of December, 1994.

Place : Ahmedabad.

Dated : 12/12/94.



(I. D. KHATRI)
SIGNATURE OF THE
APPELLANT.

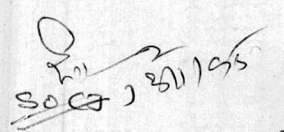
Filed by Shri K. V. Oza, Advocate, Ahmedabad.

Submitted.

Application has been scrutinized and found in order.

May be placed before Hon'ble Bench for necessary order.

ccedat
03.01.95


SOCT 13/1/95
05/1/95
DR (J)

LIST OF OFFICERS WHO ARE SENIOR TO THE APPLICANT AND
WHO ARE TO BE JOINTED AS RESPONDENTS.

MA 393/94 in OA 503/93

| Sr.
No. | Sr.No.as per Seniority
list 1991. | Name | Present posting. |
|------------|--------------------------------------|---|------------------|
| 1. | 692 | Naik Prakashchandra
Chhotabhai (M.Com.). | Surat. - I |
| 2. | 694 | Bhagat Harishkumar
Jaykrishna. | Baroda Coll'te. |
| 3. | 695 | Yakmi Madan Mohan | Rajkot Coll'te. |
| 4. | 696 | Sharma Munsilal Bhupat | A'bad Coll'te. |
| 5. | 698 | Sharma Devendrakumar
Vinodchandra. | Rajkot Coll'te. |
| 6. | 699 | Verma Brijesh Kumar
(Kishorashtha Brijesh-
shkumar Prambahadur. | Rajkot Coll'te. |
| 7. | 700 | Rathod Ramanbhai
Narandas. | A'bad Coll'te. |
| 8. | 702 | Dave Rameshchandra
Kanialal. | Rajkot Coll'te |
| 9. | 703 | Kaplan Sanatkumar P. | Baroda Din.IV. |
| 10. | 705 | Mehta Rajeshkumar S. | A'bad Coll'te. |
| 11. | 706 | Desai Pankaj S. | Customs Bulsar. |
| 12. | 707 | Maru Naran K. | Rajkot Coll'te. |
| 13. | 708 | Gohel Govindbhai B. | A'bad Coll'te. |
| 14. | 709 | Makwana Madha U. | Rajkot Coll'te. |
| 15. | 712 | Patel Rameshbhai B. | A'bad Coll'te. |
| 16. | 713 | Vasava Manubhai M. | - do - |
| 17. | 718 | Sheth Pradipkumar S. | Baroda Coll'te. |
| 18. | 719 | Patel Mahesh K. | A'bad Coll'te. |
| 19. | 720 | Rishwadkar Vishwas V. | - do - |
| 20. | 721 | Rajput Lochansinh D. | - do - |
| 21. | 723 | Macwan Manharkumar N. | Rajkot Coll'te. |
| 22. | 724 | Sharma Pradipkumar B. | A'bad Coll'te. |
| 23. | 728 | Naithani Ashok N. | - do - |
| 24. | 729 | Rawariya Zileasingh P. | - do - |
| 25. | 731 | Pandey Manishankar K. | Baroda Coll'te. |
| 26. | 733 | Anthony Josaph V. | A'bad Coll'te. |
| 27. | 734 | Shukla Shaileshkumar C. | Rajkot Coll'te. |
| 28. | 735 | Parihar Awadhraj Singh | Baroda Coll'te. |
| 29. | 737 | Mathew Choithirakunnil
I. | Rajkot Coll'te. |
| 30. | 739 | Tulsi Ranjan Das | Rajkot Coll'te. |
| 31. | 740 | Fortunate Alex Gomes | A'bad Coll'te. |
| 32. | 741 | Parmar Jivram H. | - do - |
| 33. | 742 | Rajgopal Ramaswamy | - do - |
| 34. | 743 | Ajay D. Paribar | Baroda Coll'te. |
| 35. | 744 | Shah Mahendra P. | A'bad. Coll'te. |

: 2 :

| <u>Sr. No.</u> | <u>Sr.No.as per seniority list 1991.</u> | <u>N a m e</u> | <u>Present posting</u> |
|----------------|--|------------------------------------|------------------------|
| 36. | 746 | Botham Mukesh M. | Ahmedabad Coll'te. |
| 37. | 747 | Bice Pradipsingh B. | Rajkot Coll'te. |
| 38. | 748 | Gaurushani Surendra T. | Ahmedabad Coll'te. |
| 39. | 750 | Shankar Sheth Bharat K. | Baroda Coll'te. |
| 40. | 751 | Bhatt Subhashchandra Y. | Surat Coll'te. |
| 41. | 752 | Jadeja Raghuvir P. | A'bad Coll'te. |
| 42. | 754 | Thapoliyal Dayaram M. | A'bad Coll'te. |
| 43. | 755 | Mehta Kartik V. | Surat Coll'te. |
| 44. | 756 | Bhat Yogesh S. | A'bad Coll'te. |
| 45. | 759 | Rufus Rockey | Surat Coll'te. |
| 46. | 760 | Raithatha Rajendrakumar S. | Rajkot Coll'te. |
| 47. | 762 | Palkar Pradip R. | Baroda Coll'te. |
| 48. | 763 | Karanjgaokar Laxman V. | - do - |
| 49. | 764 | Savant Ramesh N. | Ahmedabad Coll'te. |

Place : Ahmedabad.

Date: 22/7/94.

(K. V. OZA)
ADVOCATE

22/7/94

C.C. CANAL

REGISTERED N.O.

CUSTOMS, EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL, WEST
BLOCK NO.2, R.K. PURAM, N.E. DELHI-110066.

NORTH REGIONAL BENCH

C/S/759/94MB in C/329/94MB

DATED. 19.9.94.

Ref:-

Sh. Jayanti Lal Giridar Das Modi

APPELLANT

Vs

Ct. D. Delhi.

RESPONDENT

APPELLANT

RESPONDENT

Sh. Jayanti Lal Giridar Das Modi,
Malinas, Vadi Road, Deesa, Gujarat.

CCF New Delhi.

You are hereby informed that the hearing of the above matter
which was fixed for... 14.9.94 has been adjourned to... 24.10.94
at 10 A.M. No further adjournment will be given.

By Order,

(S.K. SRIVASTAVA)
Asstt. Registrar.


Copy to:-

Sh. K.V. Oza,

Advocate/Constt.

Sh. K.V. Oza, 569, Mangewada, Raipur (Ahmedabad).

Office copy.


Asstt. Registrar.

Please quote this office reference No. bench concerned and the
date of hearing mentioned above in your future correspondence.

28/9/94

MA/SHS7/95

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD

~~O.A./T.A./M.A./B.A./C.A.~~ No. 105/95 in 04/593/93

MR. I. D. Kachari

APPLICANT (S)

MR. K. V. Qaz

COUNSEL

VERSUS

U.O.-1-2 del.

RESPONDENT (S)

MR. AKI Kureshi

COUNSEL

| DATE | OFFICE REPORT | ORDER |
|------|--|-------|
| | <p>Compliance of
Order
Amendment</p> | |

DO
14-2-95

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH : AHMEDABAD :

MISCELLANEOUS APPLICATION NO. 105 /1995. IN ORIGINAL
APPLICATION NO. 593/93 :

.....

1. Ishwarlal Dashrathlal Khatri ... Appellant.
v/s.
1. The Secretary,
Central Board of Excise & Customs,
Ministry of Finance, Deptt. of Rev.,
New Delhi.
2. The Collector,
Central Excise and Customs,
Central Excise Building,
Race Course, Vadodara.
3. The Additional Collector,
Central Excise and Customs (P&V),
Customs House, Near All India Radio,
Navrangpura, Ahmedabad 380 009. ... Respondents.

I, I.D. Khatri, hereby request the Hon'ble Bench to amend the order passed on 17.1.95 to the effect that request for joining the parties as respondents was sympathetically considered and allowed. As per the order the total numbers of respondents came to 52, out of the 49 parties mentioned in the list annexed to the M.A., the 7 persons got the promotion as Superintendent of Central Excise. In view of this, the total number of respondents parties will be 45. Necessary orders for making this correction may kindly be issued. Further in view of this the date for returnable notice which is fixed on 14.2.1995 may kindly be extended.

For this act of kindness, I, as in duty bound, shall ever pray.

(I.D. KHATRI).

VERIFICATION.

I, Ishwarlal Dashrathlal Khatri, the appellant do hereby declare that what is stated above is true to the best of my ~~know~~ information and belief.

Verified to day 24th day of January, 1995.

Place : Ahmedabad.
Dated 24.1.1995.

(I.D. KHATRI),
Signature of the appellant.

Filed by Shri K.V. Oza, Advocate, Ahmedabad.

N.K. Oza
Adv.
25/1/95

Received
COPY
R. K. Lamen
Clerk to
Adv. K. V. Oza
25/1/95

Filed by Mr. N. K. Oza,
Advocate
25/1/95
2nd copy served/not served
other side

By Registrar C.A.T. Ahmedabad
25/1/95

RECEIVED THE HON. MR. JUSTICE ...
...
...
...

Submitted ...

Application has been scrutinized and found in
order. May be placed before Hon'ble Bench for necessary

order.

checked
03-02-95

[Signature]
S.C.J.


3/2/95
D.C.J.

LIST OF OFFICERS WHO ARE SENIOR TO THE APPLICANT BUT
ARE PROMOTED AND ARE NOT JOINED AS RESPONDENTS.

| Sr.
No. | Sr.No.
as per Seniority
list 1991. | N A M E | Present
posting. |
|------------|--|---------------------------|---------------------|
| 7. | 700 | Rathod Ramanbhai Narandas | A'bad Coll'te. |
| 12. | 707 | Maru Naran K. | Rajkot Coll'te. |
| 13. | 708 | Gohel Govindbhai B. | A'bad Coll'te. |
| 14. | 709 | Makwana Madha U. | Rajkot Coll'te. |
| 24. | 729 | Rawariya Zilesingh P. | A'bad Coll'te |
| 30. | 739 | Tulsi Ranjan Das | Rajkot Coll'te |
| 32 | 741 | Parmar Jivram H. | A'bad Coll'te |

Place : Ahmedabad.

Date : 9/2/1995.


(K. V. Oza)
ADVOCATE

88

From: K.V.Oza,
Advocate,
On behalf of Shri I.D.Khatri,
569, Thengawada, Raipur,
Ahmedabad.

Date: 17-4-95.

TO: The Deputy Registrar,
Central Administrative Tribunal,
Bench at Ahmedabad.

Sir,

Sub: Furnishing the list of the Officers with addresses
in pursuance of the order of Hon'ble Bench on 24-3-95.

....

As per the notice put on the Board, the copy of the O.A.No. 593/93 sent to the respondent officers who happen to have placed above the applicant have been received back as unserved due to their postings changed. The Hon'ble Bench ordered that the correct addresses be furnished and the returned copies of the O.A.No. 593/93 will be transmitted to the said respondent-officers. In view of the above order, We enclose the list showing the names and addresses of the respondents. We are willing to pay the process charges payable for this. We, therefore, request you to do needful in the matter and oblige.

Encl: List in duplicate.

Yours Faithfully,

(K.V.Oza)
Advocate
For Shri I.D.Khatri.

Copy/Receivable/Returned with 24-3-95
Filed by Mr. K.V. Oza
Learned advocate for petitioner
Respondent with 24-3-95
Copy sorted/24/3/95

17/4/95 ✓ By Registrar C.A.T.
A.D. Ahmedabad

| <u>Sr. No. as per Cause List.</u> | <u>Name of Respondent with Fresh Address.</u> |
|-----------------------------------|--|
| 4. | Shri Prakash Chandra Chhotabhai.
C/o. & through the Collector of
Central Excise, Surat. |
| 13. | Shri Pankaj S. Desai.
C/o. & through the Collector of
Central Excise, Surat. |
| 31. | Shri Mahendra P. Shah.
C/o. & through the Collector of
Central Excise & Customs, A'bad.
Kalpana Complex, Opp. memnagar
Fire Station, Navrangpura, A'bad. |
| 36. | Shri Subhaschandra Y. Bhatt.
C/o. & through the Collector of
C.Ex., Surat. |
| 39. | Shri Kartik V. Mehta.
C/o. & through Collr. of C.Ex.,
Surat. |
| 41. | Shri Rufus Rockey.
C/o. & through the Collr.
C.Ex., Principal Collr. Unit,
Race Course, Vadodara. |

Filed by Shri K. V. Oza, Advocate, Ahmedabad.

no. (32/95)
86-10-795

87
Reply/Rejoinder/Written Statement
Filed by Mr. M. K. B.
learned advocate for petitioner/
Respondent with second set.
Copy served/not served & other etc

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL BENCH
AHMEDABAD.

10/7/95 By Registrar C.A.T.
A'bad Bench

ORIGINAL APPLICATION NO. 593/93.

21/4/95
21.5.95

1. Ishwarlal Dashrathlal Khatri. Appellant.

V/S.

1. The Secretary,
Central Board of Excise & Customs
Ministry of Finance,
Deptt. of Revenue,
New Delhi.

2. The Collector,
Central Excise & Customs,
Central Excise Bldg.,
Race Course,
Vadodara-390 005.

3. The Additional Collector,
Central Excise & Customs,
Customs House,
Nr. All India Radio,
Navrangpura,
Ahmedabad-380 009.

4. & Others Respondents.

Sub:- Written rejoinder by the Appellant.

I, Ishwarlal D. Khatri, the appellant file the re-joinder to the reply filed on behalf of the respondent No.1,2, & 3 on 11/7/94 and received by the appellant on 21/7/94 as under:-

(1) As stated in Para 2 of the above re-joinder, it is stated that the application is misconceived, untenable and rejectable, the applicant's grievance is that the Inspectors whose date of recruitment is later than 25/5/77 i.e. the date on which I was promoted from Upper Division Clerk to Inspector, have been placed senior to me. The judgement of Central Administrative Tribunal in O.A. No.473/89 was given on 24/3/91. The judgement dealt with the same facts which I am facing. In other words, the Inspectors who were recruited after my promotion have been placed senior to me. The judgement has taken into account all aspects i.e. dealing with all the circulars issued by Government since 22/12/59 and Hon'ble Bench came to the conclusion that seniority given to the later entrance in the Department is not just and proper.

P.T.O.

I serve
the copy
to the
respondents.
Atk. 21/7/95

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(a) I have filed my representation on 8/7/91 to the Collector of Central Excise, Baroda. I was replied on 10/10/91 that the matter was referred to Ministry by the Additional Collector (P & V), Vadodara for further guidelines and clarification and on the receipt of same your case will be examined. Thereafter, I did not receive any reply. Since its reply was received, I reminded the Collector vide letter No. Nil dated 16/10/91, 5/3/92, 20/6/92, 9/2/93 and 5/7/93. In view of this position, I filed O.A. No. 593/93, on 24/7/93 before the Hon'ble Bench.

(b) Thus Your Lordships will be pleased to observe that the application made for the settlement of my grievance is not at all mis-conceived.

(c) Since the application is filed immediately on receipt of the judgement, the application is tenable in Law. As the application filed by the department before Hon'ble Supreme Court against the said judgement of CAT Enarkulam in O.A. No. 473/89 has been dismissed on 12/9/91, the said judgement has become final. Therefore the O.A. No. 593/93 filed by me is not rejectable.

2. So far Para 4 of the reply is concerned, it is stated that the application is barred by limitation and the Inspectors who are senior to me are not joined as respondents. As a result large number of persons will be adversely affected and on this count the application may be rejected.

(a) Your Lordship's attention is invited to Section 20 of Administrative Tribunal Act, 1985. The Sub-section (b) is reproduced below for ease of reference :-

" Where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired". The Time limit is within one year. The first representation was made on 8/7/91 and subsequently reminders were issued from time to time and the last reminder was issued on 6/7/93. Apprehending that the Department will, without settling grievance, prolong the matter, I approached the Hon'ble Tribunal within one year from the date of last reminder. Thus there is no delay whatsoever. However the matter stands admitted.

(b) Hon'ble Bench was pleased to decide my M.A. 525/94, dated 22/9/94 and permitted me to join the Inspectors who are senior to me as respondents. Accordingly the Title cause list was amended with due approval of Hon'ble Bench.

(c) In view of the submissions made above, Your Lordship will please, observe that the application having been filed in

P.T.O.

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time and admitted and the Inspectors have been joined as respondents, the application is not liable for rejection as contended in the said para.

3. So far the contention in Para 6 of the reply is concerned, the same contention was taken by the respondents before Hon'ble Bench at Enarkulam. The contention of the respondents was rejected by the Bench saying that it is violative of Articles 14 & 16 of Constitution. There cannot be any cut of date i.e. 1/3/86. Prospective application of such principles enunciated by the Govt. is highly improper and arbitrary of Judgement of Enarkulam Bench).

4. So far contention taken at para 7 of the reply, the same is not applicable in the instant case in as much as the question involved in the appeal is " can the Inspectors who are recruited after my the promotion be senior to me ? " It is not my case that my seniority should be counted from the date of appointment and not from the date of confirmation. The reply filed by the respondent to this extent is confusing, misleading, and irrelevant to the facts involved.

5. I submit the copies of circulars, instructions or the telex message issued by the Government (Marked as Annexure 'A', 'B' & 'C') after dismissal of their appeal/application filed before the Hon'ble Supreme Court against the judgement of Hon'ble Enarkulam Bench.

6. The decision given by the Hon'ble CEGAT, Special Bench 'D', New Delhi in the case of Pioma Industries V/S. Collector of C.Ex. A'bad (1995 (77) ELT 424 (T)) wherein it is held that the Court is entitled to, may, owes a judicial obligation to take notice of the events subsequent to the filing of the suit and is duty bound to mould its decree (relief) according to the subsequent events. This is being done by the Court with a view to do complete justice between the parties. No authority is required to be cited for this proposition because, to our mind, this proposition is too deeply entrenched in our corpus juris to require any support from any authority as such. However, if any authority is at all to be cited, the case of P.Venkateswarlu v. Motor & General Traders, supra, is in hand wherein it is said by their lordships of the Apex Court that "If a fact, arising after the list has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it can not be blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fairplay is violated, with a view to promote substantial justice..... We affirm the proposition that for making the right or remedy claimed by the party just meaningful as also legally and factually in accord with the current realities, the court can, and in many cases must take cautious cognisance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed."

P.T.O.

90

7. Except the Central Government, no other respondents have filed the reply to the O.A., given to them.

In view of this position and in view of the submission made above, I pray as under :-

- (1) Hon'ble Bench may, please, allow the application.
- (2) Hon'ble Bench may, please, order to Department to place me in proper and respective place in the seniority above the persons who have been recruited after me.
- (3) I am now coming within consideration zone for promotion. As such I request for the early decision in the matter.

Ob. Gh.
8/7/95
Signature of the applicant.

: V E R I F I C A T I O N :
- - - - -

I, Ishwarlal Dashrathlal Khatri, the appellant do hereby declare what is stated above is true to the best of my information and belief.

Verified to day 8th day of July 1995.

Place: Ahmedabad.

Date : 8 /7/1995.

Ob. Gh.
8/7/95
Signature of the Appellant.

Filed by Shri K. V. Oza, Advocate, Ahmedabad.

*Presented
today i.e. 8/7/95
N.K.M.
Rev.*

DMA467
CDA929

Annexure - C1
a1

SENT ON 29-OCT-1991 13:55 HRS

NR 1/474/29 GR 60
FROM R K MITRA FINREV NEW DELHI
TO T R RADHAKRISHNAN CENEXCISE COCHIN

=====

F NO.A-23024/12/91-AD III A (.) REF MINISTRYS TELEX OF
EVEN NO.DATED 25.9.91 REGARDING CAT ERNAKULAM ~~BAC~~+BENCH
JUDGEMENT DATED 26.3.91 IN OA NO.473/89, FILED BY
V NARAYANAN (.) MATTER EXAMINED IN CONSULTATION WITH
DEPARTMENT OF PERSONNEL AND TRAINING (.) IMPLEMENT CAT JUDGEMENT
UNDER INTIMATION TO THE MINISTRY(.)

=====

III 1245
SDBYCS

DELIVERED ON 29-OCT-1991 17:40 HRS

Amme Xerox -1C/

TELEX

Q2

FROM : R.K. MITRA FINREV NEW DELHI

TO : T.R. RADHAKRISHNAN GENEXCISE COCHIN

F.NO.A.23024/12/91-AD.III.A. (.) REF YOUR TELEX C.
NO.II/MISC/37/89-LEGAL DT. 8.7.1991 REG FILING OF
SLP IN THE SUPREME COURT AGAINST CAT ERNAKULAM BENCH
) JUDGEMENT DT. 26.3.1991 IN O.A. NO. 473/89 FILED BY
V. K. K. K. & ORS (.) THE SUPREME COURT
DISMISSED THE SLP VIDE THEIR JUDGMENT DT. 12.9.1991 (.)
COPY OF SLP AND INTIMATION OF CAS IN THIS REGARD BEING
SENT WITH POST COPY (.)

N.T.B.T.

NEW DELHI, the
25th Sept., 1991

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

✓ Post copy to:- Shri T.R. Radhakrishnan,
Collector of Central Excise, Cochin.

Encl.: As above.

(R.K. MITRA)
UNDER SECRETARY TO THE GOVT. OF INDIA.

// copy //

Annexure B

93

Government of India
Ministry of Law and Justice
Department of Legal Affairs
Central Agency Section

.....

Most Immediate
Court Case

122, Lawyers' Chambers,
Supreme Court Compound,
New Delhi.

No.2318/91 /Union/CAS

Dated the September, 12, 1991.

Under Secretary,
Ministry of Finance,
Department of Revenue,
New Delhi.

Subject: IA No. 1 of 1991 in SLP (Civil) No. of 1991 -
Union of India Vs. V. Narayana & ors.

Reference: Yours letter No.A.23024/12/91-Ad.III dated 7.6.1991

Sir,

The above matter came up for consideration today.
After hearing the Court was pleased to dismiss the Petition.

Yours faithfully,

Sd/

(C.V. SUBBA RAO)
Additional Govt. Advocate.

K.O. SHETH
~~XXXXXX~~

President

S. S. GADKARI

Genl. Secretary

Annexure

Recognised in October 1955 *au*

Tel. 323260
324979 (C.R.)

Gujarat Central Excise Executive Officers' Association HDQRS. BARODA.

For Corres. Room No. 616 Central Excise Building, Race Course, BARODA-390 005

Ref. 1/93-94.

Date : 21.1.94.

To
The Secretary General,
All India Federation of CEEOs.
BOMBAY.

Sir,

Subject:-Resolution /points sponsored by Gujarat Central Excise
Executive Officers' Association: Hdqrs. Baroda. -Meeting
to be held on 21.1.94/22.1.94.

...

Point No. 1:- Seniority of Inspectors in all over India should be in
accordance with the existing instructions.-

✓
The seniority should be maintained in accordance with
the Board's instructions by the Cadre Controlling authority.
It is pointed out here that the Boards have issued instru-
ction in the month of July, 1986 and in the said instruction
vide para 7 the implementation of the said guidelines for
maintaining the seniority is made w.e.f. the stipulated
date 1. Against this order, officers of Central Excise
have gone in CAT, ~~xxxxxx~~ Ernakulam. The Hon'able
CAT have struck out the stipulated date and the benefit
is to be given even before the issue of the said order.
It is also learnt that the Deptt. have made SLP against the
said CAT's judgement, but at admission stage the same have
been dismissed by the Supreme Court. Accordingly, ~~to~~
Cochin Collectorate, ~~xxxxseniorityxxxxxxbexxxxxxrecasted~~
have recasted the seniority list in accordance with the
order issued by the Board in the year 1986. In other
Collectorate, the same is not implemented. Therefore,
Chairman, is requested to take up this matter with the
Board for uniformity of the instructions issued in all
Collectorates.

Point No. 2:- Power's for construction of building and quarters may be
delegated to Regional authority like Principal Collector-
The said point was discussed in the the year 1993- Jaipur
Meeting but not pursued.

Point No. 3:- Powers to be delegated to the Collector for purchase of
staff Quarters/Guest houses as per the requirement as a on
time measure to clear the back log.

~~Point No. 4:-~~

...2/-

~~SECRET~~
~~CONFIDENTIAL~~
~~SECRET~~
K.O. SHETH,

~~XXXXXXXXXXXX~~

President

S. S. GADKARI

Gen. Secretary

Recognised in October 1955

323260

Tel. 324979 (C.R.)

Gujarat Central Excise Executive Officers' Association HDQRS. BARODA.

For Corres. Room No. 616 Central Excise Building, Race Course, BARODA-390 005

Ref.

.....2v.....

Date : - - -

) Point No.4:- Inspectors in Technical and Stat. Sections in Hdqrs./ Divnl. Offices should be withdrawn.


Point No.5:- Vigilance inquiry is created due to Audit Objections.
In Ahmedabad Collectorate in many cases, Vigilance/ Depttl. proceedings is created due to audit objections raised by Audit Party even the party have paid duty, the explanations are being called for from the concerned in-charge officers. Therefore, chairman is requested to take up the matter with the Board for struck down the instructions issued earlier.

Point No.6:- Before the creation of New Collectorate staff of all lower formation may be created first and for this, power's may be delegated to the Principal Collector.

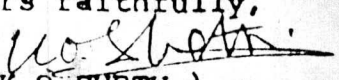
Point No.7:- Removal of Muster Roll/ Attendance Register:

In the last K FEC meeting at Jaipur this point was discussed and decision was taken that the point may be settled at t level of Federating Units. The Collectors approach is negative, ~~in which~~ when there is no provision for in O.P.M. for Muster for Executive Officers. A.I.F. should take up the matter with the Board directly.

With regards.


(S.S. Gadkari.)
Gen. Secretary.

Yours faithfully,


(K.O. SHETH.)
President.