

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Transferred Application No. 49 of 1987.
O.J.C. No. 1864 of 1985.

Date of decision: March 9, 1989.

1. Shri Bhaskar Mohan Upadhyay, aged about 48 years, son of Maguni Upadhyay, at present working as Superintendent, Central Excise & Customs, (Tech.), At/P.O./P.S./Munsifi and Dist. Sambalpur.
2. Shri Jagabandhu Das, aged about 52 years, son of late Lokenath Das, at present working as Superintendent (Vig.), Central Excise & Customs, Lewis Road, At/P.O./P.S./Munsifi Bhubaneswar, Dist. Puri.

... Petitioners.

Versus

1. Union of India, represented by the Secretary, Ministry of Finance, Department of Revenue, New Delhi-110001.
2. The Secretary, Central Board of Excise & Customs, Ministry of Finance, Department of Revenue, Government of India, Jeevan Deep Building, Parliament Street, New Delhi-110001.
3. The Collector, Central Excise & Customs, At/P.O./P.S./Munsifi-Bhubaneswar, Dist. Puri.
4. Sri Budhiram Acharya, aged about 39 years, at present working as Superintendent Group B, C/o the Collector, Central Excise & Customs, Bhubaneswar, Dist. Puri.
5. Shri Mahendra Chandra Sahoo, aged about 38 years, At present working as Superintendent Group B, C/o the Collector, Central Excise & Customs, Bhubaneswar, Dist. Puri.
6. Shri Brundaban Ch. Pattnaik, aged about 41 years, at present working as Superintendent Group B, C/o, the Collector, Central Excise & Customs, Bhubaneswar, Dist. Puri.
7. Shri Bairagi Charan Sahoo, aged about 35 years, at present working as Superintendent Group B, C/o the Collector, Central Excise & Customs, Bhubaneswar, Dist-Puri.

8. Shri Pandaba Charan Behera, aged about 36 years, at present working as Superintendent Group B, C/o. the Collector, Central Excise & Customs, Bhubaneswar, Dist. Puri.

9. Shri Dasarathi Pradhan, aged about 36 years, At present working as Superintendent Group B, C/o. the Collector, Central Excise & Customs, Bhubaneswar, Dist. Puri.

... Opposite Parties.

For the petitioners ... Mr. Antaryami Rath, Advocate.

For the opp. parties 1 to 3. Mr. A. B. Mishra, Sr. Standing Counsel (Central)
Mr. Tahali Dalai,
Addl. Standing Counsel (Central)

For the Opp. parties 4, 5,
and 8 & 9 . M/s. P. N. Mohapatra,
S. K. Patnaik, Advocates.

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.

2. To be referred to the Reporters or not ? Yes.

3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

C O R A M :

THE HON'BLE MR. B. R. PATEL, VICE-CHAIRMAN
A N D

THE HON'BLE MR. K. P. ACHARYA, MEMBER (JUDICIAL)

J U D G M E N T

K. P. ACHARYA, MEMBER (J) This case has been transferred under section 29 of the Administrative Tribunals Act, 1985, for disposal according to law.

2. Shortly stated, the case of the two petitioners

is that they are serving in the Central Excise & Customs Department at Bhubaneswar as Superintendent (Group B). The two petitioners have been promoted from the postsof Inspectors. The dispute is centred[✓]round the petitioners vis-a-vis the Opposite parties 4 to 9 relating to their inter se seniority. Further case of the petitioners is that the posts of Inspectors are to be filled up through three sources namely; 50 per cent from the grade of Sub-Inspectors, 25 per cent from the grade of Upper Division Clerks and 25 per cent by way of direct recruitment. It is maintained by the petitioners that petitioner No.1 was promoted vide order dated 9.8.1971 from the grade of Sub-Inspectors and the petitioner No.2 was promoted to the post of Inspector vide order dated 28.12.1971 from the grade of Upper Division Clerks. Further case of the petitioners is that Opposite parties 4, 5, 6, 7, 8 and 9 were appointed as direct recruits on 7.7.1972, 10.7.1972, 4.7.1972, 17.4.1973, 12.4.1973 and 12.4.1973 respectively. The grievance of the petitioners is that though they were promoted/appointed to the postsof Inspectors much earlier than the Opposite parties 4 to 9 yet the Opposite parties 4 to 9 have been shown as senior to the petitioners in the gradation list published in the year 1977. The petitioners had made representations to the appropriate authority and the seniority list pertaining to the year 1977 was revised and the revised seniority list was published as on 1.1.1979 vide Annexure-7A showing the above mentioned Opposite parties as juniors to the petitioners. Being aggrieved by this revised seniority list, the Opposite party No.7

made a representation to the Board of Central Excise & Customs and the Board rejected the representation by order dated 28.4.1980 vide Annexure.8. Reasons unknown to the petitioners, the original seniority list of 1977 was restored and again in the revised seniority list dated 27.11.1980 contained in Annexure-9 the petitioners were made juniors to the Opposite parties. Thereafter, the petitioners invoked the extraordinary jurisdiction of the Hon'ble High Court of Orissa by filing an application under Article 226 of the Constitution praying therein to quash the seniority list dated 27.11.1980 and to restore the seniority list dated 1.1.1979 contained in Annexure-7A. This formed subject matter of O.J.C.No.609 of 1981. Vide judgment dated 5.9.1984 the Hon'ble High Court directed reconsideration of the matter and give opportunity to the petitioners to file representations which stood rejected on 5.6.1985 vide Annexure-10. Being aggrieved by this order of rejection the petitioners again moved the Hon'ble High Court of Orissa by filing an application under Article 226 of the Constitution with a prayer to quash the impugned gradation list published under the authority of Collector, Central Excise & Customs (Opposite Party No.3) contained in Annexures-4, 4A, 4B, 4C, 9, 9A, 13, and 13A and to give a declaration that the petitioners are senior to the Opposite parties 4 to 9. This writ application formed subject matter of O.J.C.No.1864 of 1985 which has come on transfer to this Bench on operation of section 29 of the Administrative Tribunals Act, 1985.

3. In their counter, the Opposite parties maintained that the seniority of the petitioners vis-a-vis the Opposite parties 4 to 9 have been fixed strictly according to the instructions contained in Ministry of Home Affairs Office Memorandum dated 22.12.1959 contained in Annexure-5. No departure having been made from such instructions, the seniority of the petitioners vis-a-vis the Opposite parties 4 to 9 have been fixed without any illegality and without any deviation and therefore, the Opposite parties 4 to 9 are to be treated as seniors to both the petitioners and as such, the impugned seniority lists are not liable to be quashed - on the contrary, the case being devoid of merit is liable to be dismissed.

4. We have heard Mr. Antaryami Rath, learned counsel for the petitioners, Mr. Tahali Dalai, learned Additional Standing Counsel (Central) and Mr. S. K. Patnaik, learned counsel appearing for Opposite parties 4, 5, 8 and 9. The Opposite parties 6 & 7 though noticed have not entered appearance for reasons best known to them.

5. Before we deal with the contentions of the respective parties, the admitted case before us is that :

- (i) For filling up of posts of Inspectors recruitment is to be made through three sources namely, 50 per cent from the grade of Sub-Inspectors, 25 per cent from the grade of Upper Division Clerks and 25 per cent being direct recruits.
- (ii) A ban was imposed for taking direct recruits and this ban was effective till 23.7.1971.
- (iii) The petitioner No. 1 has been appointed/

promoted from the grade of Sub-Inspectors by order dated 9.8.1971 and the petitioner no.2 has been appointed/promoted from the grade of Upper Division Clerks vide order dated 28.12.1971.

(iv) The Opposite parties 4 to 9 have been appointed between 4.7.1972 and 12.4.1973 according to the dates mentioned in paragraph 2 above.

From the above mentioned admitted facts, undisputedly the petitioners have got the posts of Inspectors of Central Excise & Customs earlier than the dates on which the Opposite parties 4 to 9 were directly recruited. Very fairly and rightly there was no dispute at the Bar that while fixing seniority of different incumbents, their length of service shall be the basis or criteria for determination provided that there is no rule to the contrary. In the present case, admittedly there was no rule in existence except that there were instructions contained in Ministry of Home Affairs Office Memorandum dated 22.12.1959 (Annexure-5) over which learned Additional Standing Counsel (Central), Mr. Tahali Dalai and Mr. S. K. Patnaik, learned counsel for Opposite parties 4, 5, 8 & 9 strongly relied upon. The contention of learned Additional Standing Counsel (Central) and that of Mr. S. K. Patnaik was that paragraph 6 of the said memorandum contemplates that 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. It was therefore, vehemently contended by Mr.S.K. Patnaik that the concerned authorities while fixing inter se seniority of the petitioners and the Opposite parties 4 to 9 have kept in view the provisions contained in paragraph 6 and no departure having been made from those provisions, the petitioners should be made junior to the Opposite parties and they should be out of Court. This provision also contains serious infirmity. We have already indicated that admittedly by 1959 there were no recruitment rules and the recruitment Rules came into force by the notification published in the Gazette of India dated 2.6.1979 and therefore, it can be said without least hesitation that the Recruitment Rules came into force for the first time in 1979 that is much after the provisions contained in paragraph 6 of the Memorandum and appointment/promotion of the petitioners and that of the Opposite parties 4 to 9. Apart from this Office memorandum nothing else was placed before us to indicate that any other instructions were ever issued by the concerned Ministry laying down the guidelines for determining inter se seniority between the direct recruits and promotees. Such being the situation, there is no escape from the proposition that inter se seniority has to be determined on the basis of length of service. At the cost of repetition we may say that the length of service of the petitioners being admittedly more than the Opposite parties 4 to 9, the petitioners should be treated as senior to the Opposite parties 4 to 9. But, Mr.S.K.Patnaik, learned

16

counsel appearing for Opposite Parties 4,5,8 & 9 vehemently urged before us that due to the laches on the part of the petitioners especially their indolence in approaching the Court at the earliest possible opportunity, the petition should be dismissed on the ground of limitation. Mr. Patnaik submitted that even though the grievance of the petitioners formed subject matter of the writ application yet the petitioners should have come to the Court within three years from the date on which first seniority list was published in the year 1973 - (Annexure-R/2). The petitioners having remained quiet, their grievance should not be entertained at this belated stage especially after lapse of three years. In support of his contention Mr. Patnaik relied upon a judgment reported in 1987 (2)SLR 149 (Satyanarain Sinha v. Union of India and others). This is a judgment delivered by the Central Administrative Tribunal, Patna Bench. The judgment of the Patna Bench arises out of a suit received by the Tribunal on transfer under section 29 of the Administrative Tribunals Act, 1985. The matter under consideration by the Patna Bench being a suit, specific period of limitation has been prescribed in the Statute itself. The Courts have no escape and cannot proceed beyond the statutory period of limitation prescribed under the Statute. Therefore, rightly the Hon'ble Judges of the Patna Bench held that Article 52 of the Limitation Act not having been complied, the suit was barred by limitation and in such circumstances we are of opinion that this judgment has no application to the facts of the present case. Mr. Patnaik next relied upon a judgment

16

of the Hon'ble Supreme Court reported in AIR 1986 SC 2086 (K.R.Mudgal and others v. R.P.Singh and others). Mr.Patnaik emphatically urged before us by relying upon the observations of Their Lordships in paragraphs 7 and 10 of the judgment in which it has been observed by Their Lordships that the appellants before Their Lordships came to the High Court 18 years after the first draft seniority list was published and therefore ,Their Lordships were of the view that due to such laches on the part of the appellants, the case deserved to be dismissed and accordingly it was dismissed. It was contended by Mr.Patnaik that the petitioners in the present case having slept over the matter soon after the publication of the seniority list in the year 1973 (Annexure-R/2), the judgment of the Hon'ble Supreme Court applies in full force to the facts of the present case . We cannot persuade ourselves to accept the contention of Mr.Patnaik because from the admitted datas furnished to us it appears that since the seniority list was published in the year 1977 showing the petitioners to be junior to the Opposite parties, the petitioners represented to the appropriate authority and the revised seniority list vide Annexure -7/A dated 1.1.1979 was published showing the petitioners as seniors to the Opposite parties. For reasons unknown to the petitioners since that seniority list was amended and the original seniority list was restored showing the petitioners as juniors to the Opposite parties, the petitioners invoked the extraordinary jurisdiction of the Hon'ble High Court by filing an application which formed subject matter of O.J.C.

No.609 of 1981 which was disposed of and the representations of the petitioners in compliance with the directions of the High Court was rejected. The petitioners immediately came up before the Hon'ble High Court by filing another application which formed subject matter of the present case. The representation was rejected on 5.6.1985 and the present writ application was filed on 19.8.1985. From the above, we cannot find any delay to have been caused by the petitioners. Mr. Patnaik submitted that even if delay has not occasioned before filing of O.J.C. No.609 of 1981 and the present O.J.C. yet considerable delay occurring in 1973 to 1977 would sufficiently indicate the laches on the part of the petitioners. In case, the above submission of Mr. Patnaik is correct that there were laches on the part of the petitioners between 1973 and 1977 yet the same having been condoned by the Hon'ble High Court of Orissa in entertaining the writ application i.e. O.J.C. No.609 of 1981 it no longer remains open to sit over the judgment of the High Court of Orissa and hold that there was delay or laches on the part of the petitioners. In the circumstances stated above, we are of opinion that there is no merit in the aforesaid contention of Mr. Patnaik and the observations of the Hon'ble Supreme Court have no application to the peculiar facts and circumstances of the present case.

6. In view of the discussions made above and keeping in view the length of service of the petitioners vis-a-vis the Opposite parties 4 to 9, we hold that the petitioners are seniors to Opposite parties 4 to 9 and accordingly

19 19
the seniority list of the petitioners be revised and the revised seniority list be published. We do hereby quash the seniority lists contained in Annexures-4, 4A, 4B, 4C, 9, 9A, 13 and 13 A and Annexure-R/2.

7. Thus, this application stands allowed leaving the parties to bear their own costs.

Ch. 9.3.89
9.3.89
Member (Judicial)

B.R. PATEL, VICE-CHAIRMAN,

9 agree.

R. Patel
9.3.89
Vice-Chairman

Central Administrative Tribunal
Cuttack Bench, Cuttack
March 9, 1989/Sarangi.

