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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 16 OF 1994

Cuttack this the 9th day of December, 1994

Central Excise Executive
Officers' Association Applicants
and another

Vrs.

Union of India and others Respondents.

(FOR INSTRUCTIONS)

1. Whether it be referred to the reporters or
not? *yes*

2. Whether it be circulated to all the
Benches of the Central Administrative
Tribunal or not? *yes*

H. RAJENDRA PRASAD
(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

09 DEC 94.

D. P. HIREMATH
(D. P. HIREMATH)
VICE CHAIRMAN

91/1994

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

Original Application No.16 of 1994

Cuttack this the 9th day of December, 1994

CORAM :

THE HONOURABLE MR.D.P.HIREMATH, VICE CHAIRMAN
&
THE HONOURABLE MR.H.RAJENDRA PRASAD, MEMBER (ADMN)

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1. Central Excise Executive Officers Association, represented through its General Secretary, Sri Suryanarayan Mohapatra, Office of the Collector, Central Excise and Customs, Orissa, At/P.O-Bhubaneswar, Dist.Khurda.
 2. Sri Suryanarayan Mohapatra, Inspector of Central Excise, Office of the Collector, Central Excise, Orissa, Bhubaneswar

..... **Applicants.**

By the Advocates

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M/s Ashok Mohanty,
P.R.Dash, T.Rath,
D.Nayak, I.Sahoo,
L.Pangari & S.Udgata.

Vrs.

1. Union of India, represented by the Secretary, Ministry of Finance, Department of Revenue, Government of India, New Delhi.
 2. Central Board of Excise and Customs, represented through its Chairman, North Block, New Delhi-110 001

Respondents.

By the Advocate

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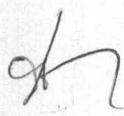
Mr. Akhaya Ku-Misra, A.S.C.

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ORDER

D.P.HIREMATH, VICE CHAIRMAN Officers of the Central Excise

Department have approached this Tribunal in this application through their Association with a prayer to quash the Government policy notified as per Annexure-1 making certain structural changes in deploying officers of the Customs and Central Excise Department to various Airports in the country by creating an 'Airpool'. The said policy was notified on 21.10.1993 directing that 75% shall be filled from the officers of the controlling Collectorates - Central Excise or Customs as the case may be, and 25% from other (outside) Custom Houses/Central Excise Collectorates. It also directs that selection of officers for the Airpool would be made for each cadre to the extent of quota available in each airport from among the zone of senior officers on the basis of C.C.Rs., their positive integrity, and on the basis of interview by a Committee consisting of the Principal Collector of the cadre. According to the petitioners, this quota of 25% would erode the prospects of officers of other Collectorates to be considered for posting as against the Airports in Delhi and Trivandrum. From this 25% to be filled up from amongst the outside Collectorates, Custom Houses have been allotted quotas and the Airports situated at Bombay, Calcutta and Madras are managed by the



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Customs Collectorates. Such a system under Annexure-1 would result in undue weightage being attached to the major Collectorates, namely, Bombay, Calcutta, Madras, Delhi and Cochin in exceeding from 75% quota and would result in a loss for other smaller Collectorates like Bhubaneswar for being considered as against 25% quota allotted to them and as such the principal Collectorates are gaining undue advantages as against 25% quota allotted to other Collectorates. The previous practice was to consider all officers of the outside Collectorates against 25% quota uniformly on the recommendations made by their respective Collectors. Now fixing of the number of posts available for each Collectorate on the basis of the strength of its officers will result in deprivation to the officers to be considered against the total number of posts of 25% and this would result in injustice and inequality in the case of smaller Collectorates. For instance, according to them, the Collectorate of Bhubaneswar whom the applicant association represents would be allotted only one post and all the officers serving in the cadre of Inspectors would only be considered as against one post. Thus the major Collectorates having a large number of officers would be getting an advantage

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of being considered against a large number of posts whereas smaller Collectorates would be confined to be considered against less number of posts. It is also contended that the major Collectorates because of their numerical strength of officers would be considered against more number of posts irrespective of their seniority and efficiency. There is also likelihood, under the new policy, of juniors getting selected to the Airpool overlooking the claims of the seniors. The method of selection now prescribed under Annexure-1 is likely to result in discrimination of senior officers being considered for the posts earmarked for Airpool on all India level and as such the policy is liable to be quashed. Thus the gist of the contention is that smaller Collectorates under the new policy would be getting a lesser quota whereas the larger Collectorates with larger numerical strength would be getting a higher quota.

2. The respondents have justified the new policy on the ground that the standard policy on the Airpool has been from the very beginning that 75% of the posts under the Airpool are to be drawn from the officials of the controlling Collectorate and 25% are to be drawn from the officials of outside Collectorates.

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There is no change in this policy. 25% at these Airports have been earmarked for officials belonging to the Central Excise Collectorate. The principle followed is that if the Airport happens to be controlled by the Customs Collectorate, 25% quota will be drawn from the Central Excise officials, and if the Airport happens to be controlled by the Central Excise Collectorate, 25% quota will be manned by officials of the said Customs Houses. This policy is uniformly applicable and, therefore, no injustice has been caused to Bhubaneswar Central Excise Collectorate. A particular Collectorate happens to be the controlling Collectorate for an international Airport itself cannot be a cause of injustice to the officials of the other Collectorates. The officials of Bhubaneswar Central Excise cannot compare their position with reference to the Central Excise Collectorate of Delhi and Trivandrum nor can they compare them with the officials of the Collectorate of Customs, Madras, Calcutta and Bombay. Out of the 40 Central Excise Collectorates all over the country, only two Central Excise Collectorate, namely, Delhi and Cochin happen to be the controlling Collectorates for two Airports, namely, the Indira Gandhi International Airport, Delhi and Trivandrum. Rest of the Central Excise Collectorates

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are not the controlling Collectorates for any international Airports. Bhubaneswar Collectorate has been given the same treatment as has been to other Central Excise Collectorates which are not the controlling Collectorates for any of the five international Airports. Under the earlier policy there was no specific apportionment of 25% quota meant for the outside Collectorate. It could have resulted in a situation where a particular Collectorate might not have any representation in the Airpool. It is the consideration of the fact that if a smaller Collectorate can have some representation in the Airpool, specific apportionment has been made and the basis of apportionment has been the sanctioned strength of the cadre in the Collectorate in the same ratio as that of Airpool strength at the Airports. This has been done to ensure an equitable distribution of Airpool posts to all Collectorates. The zone of consideration would constitute the senior officials of that Collectorate. This selection is administratively quite feasible. What is most important is that in the eventuality of non-selection, non-suitability or non-availability of officials from a particular Collectorate, unutilised quota can be used for the officials of the smaller Collectorate or any Collectorate of participating the cadre. Therefore, it may so happen, an officer of the Bhubaneswar Collectorate may be accommodated

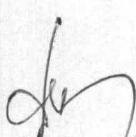
against a post though not meant for that Collectorate, in case the officials of other Collectorate are not available or selected.

3. These contentions extracted from paragraphs 9 to 11 of the counter highlight the object and principle behind evolving of this policy. The main grievance of the petitioner Association is that so far there was no such earmarking of quotas or proportionate representation in the earlier policy, but this has been evolved only in the present 1993 policy as per Annexure-1. This is unreasonable inasmuch as all the seniors in a particular smaller Central Excise Collectorate may not get the chance of serving in the Airport. It is necessary to note that the tenure in the 75% quota is only for one year for the officer selected for that pool, whereas the tenure of the officer selected in the 25% quota is two years. The policy is defended by the learned counsel for the respondents on the ground that the Central Government intended that all the Collectorates, big or small, should get representation and the lacuna in the earlier policy was that if seniority alone was a criterion, then some of the Collectorates may be left out. Naturally, according to him, the smaller Collectorate will have a lesser percentage of representation whereas the larger Collectorate will have a larger percentage of representation.

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4. This policy was assailed before the Ernakulam Bench of the Kerala State in O.A.Nos.2242 of 1993 and other connected cases, and by the judgment rendered on 28.6.1994, the Division Bench of the Central Administrative Tribunal, Ernakulam Bench ruled that the Government of India are well within their rights to reconstitute the Air Customs Pool in the manner in which they have done. This is a matter of policy and it is entirely within the realm of administrative action. It is for the respondents to fill up vacancies in accordance with rules. In the opinion of the Bench, there is no infringement of legal right of the applicants in this exercise and, therefore, the Tribunal cannot interfere with the decisions of the type challenged.

5. The learned counsel for the applicant wants us to differ from the view taken by the Ernakulam Bench. According to him, the classification and the percentage fixed are unreasonable and hence infringe Articles 14 and 16 of the Constitution. Any executive order which is passed in the absence of any statutory rule should also stand the test of reasonableness. There can be no controversy over this position. Merely on the ground that it is administrative order the



Tribunal cannot refuse to apply the well established rule of reasonableness. In the case of A.L.Kalra v. The Project and Equipment Corporation of India Ltd. (AIR 1984 SC 1361) the Supreme Court pointed out that legislative action follows a legislative policy and the legislative policy might not be judicially reviewable, but while giving concrete shape to the legislative policy in the form of a statute, if the law violates any of the fundamental rights including Article 14, the same is void to the extent as provided in Article 13. If the law is void being in violation of any of the fundamental rights set out in Part III of the Constitution, it cannot be shielded on the ground that it enacts a legislative policy. Wisdom of the legislative policy may not be open to judicial review but when the wisdom takes the concrete form of law, the same must stand the test of being in tune with the fundamental rights and if it trenches upon any of the fundamental rights, it is void as ordained by Article 13. Article 14 strikes at arbitrariness in executive/administrative action because any action that is arbitrary must necessarily involve the negation of equality. One need not confine the denial of equality to a comparative evaluation between two persons to arrive at a conclusion of discriminatory treatment. An action per se arbitrary itself denies equality of

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protection by law. The object to be achieved by this policy is made manifestly clear as is stated at paragraph 5 of the assailed policy produced at Annexure-1. It says :

"In the eventuality of some posts falling into the quota of one Collectorate cannot be filled up due to non-suitability/non-availability/non-selection of Officers from that Collectorate, these posts can be filled up from Officers of Collectorates having very small quotas, or from any other participating Cadres, subject to the same selection process."

At paragraph 6 of the counter the respondents say :

"...the respondents humbly submit that the rationale behind Collectorate-wise appointment is to ensure representation of officials from each and every Collectorate coming under the criteria in proportion to their strength in the Collectorate. There has been no discrimination in respect of officials of Bhubaneswar Collectorate as the same criterion has been followed in fixing their quota."

It is also stated in the counter, as already pointed out, that the policy seeks to avoid a situation where a particular Collectorate might not have ~~made~~ ^{gained} any representation in the Airpool. The policy seeks to protect the interests of small Collectorates like Bhubaneswar as the Bhubaneswar Collectorate would be entitled to the percentage quota fixed for it. If the seniority alone is the criterion among all the officers of the Central Excise Collectorates,

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then many a time small Collectorates may not get any representation at all. Under the assailed policy seniority inter se in one Collectorate together with suitability and fitness to be considered for the pool would certainly give representation to the Collectorate. We are not in a position to hold that there is any vested right for the officers in a particular Collectorate to go on deputation. It is for a short tenure and the policy intends to give representation to all the Collectorates. After expiry of two years the officer will go back to his parent Department. In our view, the quota now fixed sufficiently protects the interests of the officers of the petitioner Association and hence cannot be considered as unreasonable or discriminatory. We are in respectful agreement with the view taken by the Ernakulam Bench.

The application fails and is dismissed.

No order as to costs.

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T. Gopalakumar
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MEMBER (ADMINISTRATIVE)

09 DEC 94.

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S. S. Srinivasan
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VICE-CHAIRMAN

A.N.Nayak/P.S.