

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NOS 687/95 AND 764/96
Cuttack this the day of April/2003

CORAM,

THE HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI M.R. MOHANTY, MEMBER (JUDICIAL)
...

IN O.A. NO 687/95

Sudar Seth, aged about 42 years, S/o. Parakhita Seth,
at present working as Inspector, in the Office of the
Commissioner, Central Excise and Customs, Central
Revenue Building, Rajaswa Bihar, Bhubaneswar-751 004,
District - Khurda

... Applicant

By the Advocates

M/s. B.S. Tripathy

-VERSUS-

1. Union of India represented by its Secretary, Ministry of Finance, North Block, New Delhi
2. Central Board of Excise and Customs represented by its Chairman, North Block, New Delhi
3. Principal Collector of Central Excise and Customs, East Zone, 15/1, Strand Road, Customs House, Calcutta-700001
4. Collector, Central Excise & Customs, Central Revenue Building, Rajaswa Bihar, Bhubaneswar-751004, Dist- Khurda
5. Deputy Commissioner (P&V), Central Excise and Customs, Central Revenue Building, Rajaswa Bihar, Bhubaneswar-751 004, Dist- Khurda
6. Pranakishore Mohanty, Superintendent of Excise, Hirakud Range, Hirakud, Dist- Sambalpur
7. Sujit Kumar Sen, Inspector of Central Excise and Customs, O/o. the Commissioner of Central Excise & Customs, Central Revenue Building, Rajaswa Bihar, Bhubaneswar-751 004
8. Tara Prasad Pattanaik, Inspector of Central Excise and Customs, Central Rev. Building, Rajaswabihar, Bhubaneswar-751 004
9. Ramakanta Das, Inspector of Central Excise and Customs, Kalunga Range, P.O. Vedavyas Chhak, District- Sundargarh
10. Prayas Chandra Mohapatra, Inspector of Central Excise and Customs, Jayashree Chemicals, At/PO/Dist- Ganjam

11. Puru Chottam Pani, Inspector of Central Excise and Customs, Office of the Commissioner of Central Excise and Customs, Central Revenue Building, Rajaswa Bihar, Bhubaneswar-751 004
12. Chitramian Sastri, Inspector of Central Excise and Customs, Office of the Commissioner of Central Excise and Customs, Central Revenue Building, Rajaswa Bihar, Bhubaneswar-751 004
13. Bhubaneswar Sahu, Inspector of Central Excise and Customs, Jeypore Range, Jeypore, District-Koraput
14. Santosh Kumar Mishra, Inspector of Central Excise and Customs, Office of the Commissioner of Central Excise and Customs, Central Revenue Building, Rajaswa Vihar, Bhubaneswar-751 004
15. Nikunja Bihari Mohanty, Inspector of Central Excise and Customs, Office of the Commissioner, Central Excise and Customs, Central Revenue Building, Rajaswa Vihar, Bhubaneswar-751 004
16. Lokanath Mishra, Inspector of Central Excise and Customs, Office of the Commissioner of Central Excise and Customs, Central Revenue Building, Rajaswa Vihar, Bhubaneswar-751 004
17. Ajaya Kishore Bal, Inspector of Central Excise and Customs, Office of the Commissioner, Central Revenue Building, Rajaswa Vihar, Bhubaneswar-751 004
18. Arunendu Dutta, Inspector of Central Excise and Customs, FACOM, At/PO-Randia, District-Bhadrak
19. J. Kamalwar Rao, Inspector of Central Excise and Customs, Office of the Commissioner, Central Excise and Customs, Central Revenue Building, Rajaswa Bihar, Bhubaneswar-04
20. V. Ratnakar Rao, Inspector of Central Excise and Customs, Office of the Commissioner of Central Excise and Customs, Central Revenue Building, Rajaswa Bihar, Bhubaneswar-4
21. Tapan Kumar Nayak, Inspector of Central Excise and Customs, Office of the Commissioner of Central Excise and Customs, Central Revenue Building, Rajaswa Vihar, Bhubaneswar-751 004

...

Respondents

By the Advocates

Mr. A. K. Bose
 M/s. A. K. Mishra
 J. Sengupta
 D. K. Panda
 P. R. J. Dash
 G. Sinha

IN O.A. 764/96

1. Ajaya Kumar Dalabehera
2. Pravar Naik,

Both are at present working as Inspectors
in the Office of the Commissioner, Central
Excise & Customs, Central Revenue Building,
Rajaswa Vihar, Bhubaneswar-751 004,
District-Khurda

... Applicants

By the Advocates

M/s.B.S.Tripathy
M.K.Rath

VERSUS

1. Union of India represented by its Secretary, Ministry of Finance, North Block, New Delhi
2. Central Board of Excise & Customs, represented by its Chairman, North Block, New Delhi
3. Principal Collector of Central Excise and Customs, East Zone, 15/1, Strand Road, Customs House, Calcutta-700 001
4. Collector, Central Excise & Customs, Central Revenue Building, Rajaswa Vihar, Bhubaneswar-751004, Dist-Khurda
5. Deputy Commissioner(P&V) Central Excise & Customs, Central Revenue Building, Rajaswa Vihar, Bhubaneswar-751004, Dist-Khurda
6. Pran Kishore Mohanty, Superintendent of Excise, Hirakud Range, At/PO-Hirakud, Dist-Sambalpur
7. Sujit Kumar Sen, Inspector of Central Excise & Customs, Office of the Commissioner of Central Excise & Customs, Central Revenue Building, Rajaswa Vihar, Bhubaneswar-4, Dist-Khurda
8. Tara Prasad Pattanaik, Inspector of Central Excise & Customs, Central Revenue Building, Rajaswa Vihar, PO-Bhubaneswar-751004, Dist-Khurda
9. Ramakanta Das, Inspector of Central Excise & Customs, Kalunga Range, PO-Vedavyas Chhak, Dist-Sundergarh
10. Prayas Chandra Mohapatra, Inspector of Central Excise and Customs, Jayashree Chemicals, At/PO/Dist-Ganjam
11. Purushottam Pani, Inspector of Central Excise & Customs, Office of the Commissioner of Central Excise & Customs, Central Revenue Building, Rajaswa Bihar, Bhubaneswar-4, Dist-Khurda
12. Chittaranjan Sastri, Inspector of Central Excise & Customs, Office of the Commr. of Central Excise & Customs, Central Revenue Building, Rajaswa Vihar, Bhubaneswar-751004, Dist-Khurda
13. Bhubaneswar Sahu, Inspector of Central Excise & Customs, Jeypore Range, At/PO-Jeypore, Dist-Koraput

14. Santosh Kumar Mishra, Inspector of Central Excise & Customs, Office of the Commissioner of Central Excise & Customs, Central Revenue Building, Rajaswa Vihar, Bhubaneswar-751004, Dist. Khurda
15. Narunja Bihari Mohanty, Inspector of Central Excise and Customs, Office of the Commr. of Central Excise and Customs, Central Revenue Building, Rajaswa Vihar, Bhubaneswar-751004, District. Khurda
16. Lokanath Mishra, Inspector of Central Excise & Customs, Office of the Commissioner of Central Excise & Customs, Central Revenue Building, Rajaswa Vihar, Bhubaneswar-4, Dist. Khurda
17. Ajaya Kishore Bal, Inspector of Central Excise & Customs, Office of the Commissioner, Central Excise & Customs, Central Revenue Building, Rajaswa Vihar, Bhubaneswar-4 Dist. Khurda
18. Arghendu Dutta, Inspector of Central Excise & Customs, F&OR, At/PO-Randhia, Dist. Bhadrak
19. J. Jameswar Rao, Inspector of Central Excise & Customs
20. V. Ratnakar Rao, Inspector of Central Excise & Customs,
21. Tapan Kumar Nayak, Inspector of Central Excise & Customs,
22. Sumanta Chandra Haribhakta Behera, Inspector of Central Excise & Customs
23. Sanjharshan Sethi, Inspector of Central Excise & Customs

Sl. Nos. 19 to 23 are care of Office of the Commissioner of Central Excise & Customs, Central Revenue Building, Rajaswa Vihar, Bhubaneswar-751 004, Dist - Khurda

...

Respondents

By the Advocates

Mr. A.K. Bose
M/s. A.K. Mishra
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G. Sinha

O R D E R

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MR. B. N. S. M. VICE-CHAIRMAN: Since in both the above mentioned Original Applications the point in issue arises out of the common cause of action, this common order will govern both the cases. For the sake reference, we deal with O.A. 687/95 even though we have heard the learned counsel appearing for the parties in both the cases separately.

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2. Challenging the illegal and arbitrary action of the Respondents-Department, who have circulated the provisional seniority list of Inspectors as on 1.1.1992 under Annexure-3 placing him below private respondents 6 to 21, Shri Sudan Seth (applicant) working as Inspector in the Office of the Commissioner, Central Excise & Customs, C.R. Building, Bhubaneswar, has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 for redressal of his grievances.

3. In short, the case of the applicant is that he was appointed as Inspector of Central Excise & Customs on 28.6.1977. On 6.11.1980, Respondent No.4 circulated a seniority list showing name of the applicant vis-a-vis Res. 6 to 21 at Sl. Nos. 98 and 102 to 114 and 116 to 118 respectively, thereby notifying that Res. 6 to 21 are junior to him. In fact where as Res. 6 to 21 were appointed with effect from 9.12.1977 the applicant was appointed on 28.6.1977. But the Respondents-Department, on 24.8.1995 circulated a seniority list wherein applicant's position was shown at Sl. No.61 vis-a-vis Private Respondents 6 to 21 at Sl. Nos.39 and 41 to 55 respectively. Being aggrieved by the said seniority list (Annexure-A/3) the applicant filed a representation dated 20.10.1995 (Annexure-4) to Respondent No.5, but the same did not yield any fruitful result. The applicant has further submitted that as he belongs to Scheduled Caste community, in terms of letter bearing No. 23020/19/91-Ad III A dated 18.6.1992, the

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candidates belonging to SC/ST who were appointed in 1975 of the same panel should rank senior to those who joined in 1976. This benefit having not been extended to him, the applicant, alleging that Res. 6 to 21 have been wrongfully assigned seniority above him, has approached this Tribunal praying for quashing Annexures-3 and 4 and to direct the Respondents-Department to declare him senior to Respondents 6 to 21.

4. Respondents-Department have controverted the allegations made by the applicant by filing a counter. Private Res. 6, 14 and 21 having entered appearance opposed the prayer of the applicant by filing separate counters. Respondents-Department have opposed the prayer of the applicant on the following grounds.

- 1) The applicant could not have challenged the validity of the seniority list published on 24.3.1995 without challenging the seniority list published in the years 1979 and 1981. They have stressed that as the applicant could not challenge the seniority list of 1979 and 1981, in the year 1995, it has been a clever move by him to raise objection against the seniority list circulated in August/94. The fact of the matter, according to them, is that on 6.11.1980, a draft seniority list was circulated inviting objections if any, for issuance of the final seniority list. After its circulation and on examination of objections received, revised/final seniority list was issued on 1.7.1981. In this revised seniority list and the seniority list issued afterwards, the seniority position of the applicant has always been shown below that of Res. 6 to 21 and that no objection was ever received by them from the applicant. Firstly, that the applicant having not raised any objection at any point of time, his attempt to question the seniority list at this stage is not only belated but is not maintainable either in law or in fact. Secondly, that the applicant as well as

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Res. 6 to 21 are of direct recruits of the year 1977 and their seniority position was determined on the basis of the merit list drawn on the basis of the examination which they passed. Thirdly, that the seniority of all the officers including that of the applicant and Res. 6 to 21 has been fixed in terms of proviso to Para-4 of the Ministry of Home Affairs O.M. No.9/11/55-RPS dated 22.12.1959 "For persons recruited initially on temporary basis and confirmed subsequently by a separate order other than that of appointment, the seniority shall be determined by the order of confirmation. Finally, that the applicant ^{cannot} make much of the fact that he had joined earlier than Res. 6 to 21, because, he was confirmed later to Res. 6 to 21, as is adduced under Annexure-3.

It is on these pleas the Respondents-Department have submitted that the application being devoid of merit is liable to be dismissed in limine.

5. Private Respondents (Res. 6, 14 and 21) in their counters have stated that the applicant and the Res. 6 to 21 were appointed as Inspectors (OG) of the Central Excise and Customs during the year 1977 when 55 direct recruits Inspectors were appointed on the basis of written and ^{oral} tests. Out of these 55 Inspectors, 24 belong to reserved category (SC/ST) and the rest 31 belong to unreserved category. They have further stated that there was thus excess recruitment of Inspectors belonging to unreserved category, which happened on account of incorrect determination of the reserved vacancies to be filled by direct recruitment during the year 1977, by the Collectorate. However, they have stated that it was due to certain wrong notion of the appointing authority that letters of appointment were issued earlier to the applicant by following the roster point available

for General/SC/ST candidates, without observing the normal procedure for appointment on the basis of the order of the merit list prepared by the Selection Board and as a result, the candidates belonging to reserved category could join earlier. They however, pointed out that in accordance with Govt. of India, Ministry of Home Affairs (D.P. & A.R.) O.M. No.9/23/71-Est.(D) dated 6.6.1970, the candidates, who joined within six months of the offer of appointment sent to them would have their seniority fixed under the seniority rules applicable to the service concerned to which they are appointed without any depression of seniority.

6. We have heard Shri B.S.Tripathy, the learned counsel for the applicant, Shri A.K.Bose, the learned Senior Standing Counsel for the Respondents-Department and Shri A.K.Mishra, the learned counsel appearing on behalf of the Respondents 6, 14 & 21, and perused the materials available on record. During oral submission, Shri Bose submitted and it is also the averment of the Respondents-Department that the principles under which the seniority of officers has been fixed were notified to all concerned (Annexure-A (Paras-4, 5 & 6) and the applicant having not challenged the said principles, his prayer is liable to be rejected. We have given our anxious thoughts to the arguments advanced at the Bar. The only point to be decided in this case is whether the applicant should be allowed to challenge the seniority list circulated on 24.8.1995 when the seniority position as indicated therein was ^{for the time} first circulated in the year

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it is to be seen
1979; and if that was permitted, whether the seniority
of the applicant has been fixed according to correct
principle for determining seniority, as laid down for
the purpose. We have very carefully gone through the
averments made by the applicant in this O.A., but
nowhere, we found any clue as to why he had not raised
this question, which he is now raising, in the year
1979. ^{basis of the} In fact on the direction of this Tribunal issued
on 28.11.1995 (at the time of admission of this O.A.)
Respondent No.5 had disposed of the representation
dated 30.10.1995 submitted by the applicant on the
seniority issue. Res. No.5 vide his order dated 8.12.1995
(Annexure-C) by giving out a detailed reason had rejected
the plea of the applicant for revision of his seniority
on the ground that his seniority position has remained
same since 1979 and this position had been repeated by
the Respondents-Department by publishing seniority list
dated 1.1.1992. We also ^{See} from Paras 2, 3 and 4 of the
letter at Annexure-2 that the principles to determine
seniority and on the basis of which the seniority list
under circulation had been prepared were clearly spelt
out. They had clearly referred to the principles to
determine seniority of direct recruits as provided under
Rule-4 of the Government of India O.M. at Annexure-B,
which stipulates that seniority of direct recruit
Inspectors is to be determined with reference to the
date of confirmation in the grade and not according to
the date of joining the service. During oral argument,
the learned counsel for the applicant submitted that he

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was not in disagreement that Rule-4 of the Govt. of India O.M. at Annexure-B ^{lays down} the correct principle for fixing seniority among the direct recruits. As the basic principle of fixing seniority is not in dispute, there should be no difficulty in resolving the matter once for all. We also hold that the applicant cannot assail the seniority list circulated in August, 1995, after having accepted his seniority position, as circulated through the seniority list, issued from time to time since 1979. Further that the principle of inter se seniority between the applicant and Res. 6 to 21 having been determined in terms of Rules-4 of Govt. of India O.M. (Annexure-B) and Govt. of India, Ministry of Home Affairs O.M. dated 22.12.1959, there should be no further dispute in this respect between the applicant and Res. 6 to 21 for the reason that Res. 6 to 21 were confirmed earlier than the applicant.

7. Having regard to the above facts and circumstances of the case and the rule position governing the principles of determining seniority among the direct recruits of the same batch, we hold that both the Original Applications (O.A.Nos. 67/95 and 764/96) being devoid of merit, are liable to be rejected. Order accordingly. No costs.

Sd/- M. V. MOHANTY
Member (Jual)

Sd/- B. N. SOM
Vice-Chairman

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