

In the Central Administrative Tribunal  
Calcutta Bench

OA 900/96

DF- 3-3-03

Present : Hon'ble Mr.S.Biswas, Member(A)  
Hon'ble Mr.A. Sathath Khan, Member(J)

Tapan Kumar Roy, son of Late Sudhir Kumar Roy, working for gain as Inspector, Central Excise now attached to the Office of Commissioner, Central Excise, Bolpur, District - Birbhum

...Applicant

-Vs-

1) Union of India, service through the Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi -110 001

2) The Chairman, Central Board of Excise and Customs, Government of India, North Block, New Delhi-110 001

3) The Commissioner, Central Excise, Calcutta II, 15/1, Strand Road, M.S. Building, Calcutta-700 001

4) The Additional Commissioner, Central Excise (P&V), Calcutta II, 15/1, Strand Road, M.S. Building, Calcutta-700 001

5) The Commissioner, Central Excise, Bolpur, Municipal Complex, Bhubandanga, P.O. Bolpur, Dist. Birbhum

6) Sumit Basu, Inspector of Central Excise; now attached to the office of the Asstt. Commissioner, Central Excise, Export & Refund Branch, 4 K.S. Roy Road, Calcutta -700 001

7) Ved Prakash Sha, Inspector, Central Excise, now attached to the office of Central Excise, Howrah-West Division, 25, Princep Street, Calcutta-69

8) Samir Chattopadhyay, Inspector of Central Excise and Customs, Changrabandha Land Customs Station, P.O. Changrabandha, Dist. Coochbehar, West Bengal

...Respondents

For the applicant : Mr.T. Sarkar

For the respondents : Mr M.S. Banerjee, (Offl.respondents)

ORDER

Mr.S. Biswas, Member(A) :

Under this application the petitioner has sought the following reliefs :

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That the applicant was appointed as Inspector on 10-11-81, but the respondents 6,7 and 8, who were recruited and joined after 10-11-81 have been shown as senior to the applicant. Therefore, a direction be issued to the respondents to refix the seniority of him by way of necessary correction of the three Gradation Lists of 1988, 1991 and 1993 with reference to the date of recruitment of the applicant as Inspector of Central Excise.

2. In this connection, ~~we~~ have heard the rival parties and gone through the case records including the law points involved. The learned counsel for the applicant has shown <sup>that</sup> by virtue of order dated 28-10-81 (Annexure A1 to the OA), eight Stenographers and UDCs were promoted to the grade of Inspectors in the scale of Rs425-800/- and accordingly he had assumed charge on 10-11-81. In the seniority list for Inspectors which was published on 31-3-88, respondents 6,7 and 8 who are admittedly direct recruits and joined on 16-11-81, 30-10-82 and 6-1-83 respectively have been shown as seniors to the applicant. Contesting this ~~standing~~ illegal supersession, the applicant made a representation to the respondent authorities (Annexure A2 to the OA) and he was informed by respondent No.4 by a letter dated 8-4-92 that his seniority in the grade of Inspector was fixed consequent <sup>to</sup> his promotion to the grade of Inspector in the year 1981 according to the rotation of vacancies between the direct recruits and the promotees which

S. B. *[Signature]*

is based on the quota of vacancies <sup>17095</sup> reserved for direct recruitment and promotion.

3. The applicant's in his representation dated 5-7-91 further alleged that in respect of another seniority list which was published on 31-3-88 giving the combined cadre of different Commissionerates his seniority was similarly down graded. The applicant then took up the matter with the Chairman, Central Board of Customs (Respondent No.2) vide his letter dated 3-11-92. Similar prayer was also made in his representations addressed to Respondents 3 and 4 on 6-2-95 and 23-11-95.

4. The representation to respondent No.2 was statedly rejected vide letter dated 8-4-92. Thereafter an appeal was made to the Chairman. All these led to the present OA.

5. Having considered the submissions made by both the sides, it appears that the applicant was promoted to officiate as Inspector of Central Excise in ordinary grade on 28-10-81, stating therein that the applicant would be on probation for a period of 2 years. No other condition or adhoc was spelt in the said order.

6. The respondents have disputed the claim stating that it is true that the applicant was promoted in October, 1981, but the respondents 6,7 and 8 were recruited against direct recruitment quota and they joined on 16-11-81, 30-10-82 and 6-1-83 respectively and they were to be assigned seniority according to direct recruit quota.

was assigned in the ratio of 3:1 for the posts of the promoted and direct recruits as per the ratio fixed in Ministry of Home Affairs OM dated 22-12-59 and further clarified vide Memorandum dated 7-2-86 of the Ministry of Personnel, Public Grievances and Pension. Such other seniority lists published prior to the years 1981, 1982 and 1983 were not challenged. It is submitted that his representation was turned down on 8-4-92, but the present OA has been filed long thereafter i.e. on 25-7-96. Therefore the same is time barred.

8. We have considered the fact that vide order dated 7-2-86 the DOPT had clearly laid down the ratio <sup>for</sup> to be observed for determining seniority of direct recruits vis-a-vis promoted officers, according to the quota of the respective years. It is not the case of the applicant that these three respondents are not direct recruits having claimed seniority on the direct recruit quota posts for the respective years when they were also recruited and the seniority was accordingly assigned as illustrated in the said instruction. It was also spelt in para 5 of the said circular as under :

" With a view to curbing any tendency of under-reporting/suppressing the vacancies to be notified to the concerned authorities for direct recruitment, it is clarified that promotees will be treated as regular only to the extent to which direct recruitment vacancies are reported to the recruiting authorities on the basis of the quotas prescribed in the relevant recruitment rules. Excess promotees, if any, exceeding the share falling to the promotion quota based on the corresponding figure, notified for direct recruitment would be treated only as ad-hoc promotees."

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9. In other words, where the share to the direct recruit is filled by excess promotees, the imbalance is to be set right by treating such promotions as ad-hoc, though in this case promoted officers were not assigned any ad-hoc status in the order itself. The applicant never challenged this order of DOPT.

10. Hon'ble Supreme Court in the case of Keshav Ch. Joshi V. Union of India (1992 Supp (1) SCC 272) also held that appointment of promotee in excess of quota was violative of rules and could not account for the purpose of seniority. Where promoted officers are holding any post as a stop gap arrangement because of administrative exigency even if appointments are made to the same it cannot be said to be a post held from out of the quota available for the promoted officer and the seniority is required to be fixed in terms of the roster and ratio of DR to promotee. The applicant has not been able to make his case, stating that the post to which he was promoted was a promoted quota post.

11. The applicant did not impugn this order of DOPT also at any stage and therefore, we are not able to hold that the applicant has made any case challenging the fixation of seniority of direct recruits who were assigned seniority from direct recruit quota posts after applying the rotation as illustrated in the said order. In view of the foregoing observations, we do not find any merit in the OA and accordingly the same is dismissed. No costs.

  
(A. Sathath Khan)  
Member (J)

  
( S. Biswas)  
Member (A)