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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of order : 27.02.2002

O.A. No. 173/2001

Akshaya Kumar Derashri aged about 58 years son of Shri Ravi Shankar Ji Derashri, at present Additional Commissioner Customs, Jodhpur, resident of Custom Colony. Kuchaman Bungalow, Near Panch Batti, Ratanada, Jodhpur.

... Applicant.

cv e r s u s

1. The Union of India through Secretary to the Government of India, Department of Revenue, Ministry of Finance, North Block, New Delhi - 110 001.
2. The Chairman, Central Board of Exercise and Customs, North Block, New Delhi - 110 001.
3. Shri A.K. Prasad, Director (CX.7-PAC), Central Board of Excise and Customs, Jeevan Deep Building, Parliament Street, New Delhi - 110 001.
4. Shri H.K. Chaturvedi, Additional Commissioner (P&V), Central Excise Commissionerate, Calcutta-IV, 15/I, Strand Road, M.S. Building, Custom House, Calcutta - 700 001.
5. Shri C.P. Rao, Additional Commissioner (Airport), Custom House, 33, Rajaji Salai, Chennai - 600 001.

... Respondents.

Mr.M.R. Singhvi, Counsel for the applicant.

Mr. Ravi Bhansali, Counsel for the respondents Nos. 1 and 2.

None is present for respondents Nos. 3 to 5.

CORAM:

Hon'ble Mr. Justice O.P. Garg, Vice Chairman
Hon'ble Mr. A.P. Nagrath, Administrative Member

: O R D E R :

(Per Hon'ble Mr. Justice O.P. Garg)



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In the field of service jurisprudence, the disputes relating to seniority have acquired notoriety. In the present case, the dispute travelled more than once upto the Apex Court. The clear mandate dated 22.11.1996 of the Hon'ble Supreme Court in Writ Petition (C) No. 306 of 1988 - All India Federation of Central Excise Etc. vs. Union of India & Ors., has been misunderstood, misinterpreted and misapplied by the respondent department, giving rise to further litigation. With these preliminary observations, we proceed to narrate the wood cut profile of the case.

2. The applicant, Akshaya Kumar Derashri, who was initially recruited as Appraiser of Customs, was promoted as Assistant Collector (now re-designated as Assistant Commissioner) Group 'A' vide order dated 30.11.1979, copy of which is Annexure A/A1. He was subsequently promoted from Junior Time Scale (Grade VI) to the Senior Time Scale (Grade V) of the Indian Customs and Central Excise Service Group 'A' pursuant to the office order dated 25.10.1990, copy of which is Annexure A/2. In course of time, the applicant came to be further promoted as Deputy Commissioner of Customs and Central Excise (now re-designated as Joint Commissioner) in respect of which office order dated 23.05.1991 (Annexure A/3) was issued. Selection grade, i.e., Additional Commissioner's grade was also granted to the applicant with effect from 01.08.1997 vide order dated 27.08.1997, a copy of which is Annexure A/4. Presently, the applicant is working as Additional Commissioner Customs, Jodhpur.



3. By means of the present O.A. under Section 19 of the Administrative Tribunals Act, 1985, the applicant has challenged the validity of the seniority list dated 30.11.2000 (Annexure A/1) and has prayed that the respondents Nos. 1 and 2 be directed to assign him seniority at the appropriate place in the seniority list above the direct recruit Group 'A' officers of 1979, 1980, 1981,

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1982 and 1983 batches with all consequential benefits, including the consideration of his name for promotion to the grade of Commissioners on the basis of his claim for seniority over the direct recruits of the batches aforesaid.

4. In the historical retrospect, the facts as set out are that in 1979 when the applicant was promoted, promotions from Group 'B' to Group 'A' were made on the basis of the principle of 'Quota Rota', which was fixed by the administrative instructions issued by the Central Government from time to time. The method of filling up of the vacancies on the basis of 'quota rota' was challenged by the direct recruit Appraisers in Civil Writ Petition No. 4532-33 of 1978 before Hon'ble the Supreme Court, which disposed them of by order dated 23.09.1987 by observing that "the promotions now in dispute would also be looked into with reference to the Rules and redispensed of in accordance with law". The Indian Customs and Central Excise Service Group 'A' Rules, 1987 came into being, which inter alia, applied to the persons who were appointed to the service after 15.08.1959 and before the commencement of these Rules. The Rules stipulate that 50% of the vacancies shall be filled by direct recruits and 50% by promotees. The determination of the inter se seniority was to be made with reference to the provisions of Rule 18(2)(b) which lays down that the seniority of the officers in Group 'B' feeder categories of service for eligibility for promotion to Group 'A' shall be determined on the basis of their regular length of service in their respective Group 'B' categories, subject to the condition that the inter se seniority in each feeder category of service shall be maintained. In its judgement dated 08.05.1996 in the case of **Gaya Baksh Yadav vs. Union of India & Ors.**, JT (1996) 5 SC page 118, the Apex Court has held that for determining inter se seniority between direct recruit Appraisers and promotee Appraisers,



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the length of service alone will be the criteria. Subsequently, in its judgement dated 22.11.1996 in the case of All India Federation of Central Excise Etc. vs. Union of India & Ors. (Civil Writ Petition No. 306/1988), the Apex Court issued the following directions:

" As stated above, we find that the above modified proposal is just, fair and equitable and accordingly we direct the Union of India to amend the impugned Rules so far as Group 'A' is concerned. Review all post-1979 ad hoc promotions to the post of Senior Superintendent/Assistant Collector in the promotee quota in the light of the present proposal, re-determine the respective placement of the promotee officers in the combined Group 'A' seniority list and regularise the posts of ad hoc promotions.

In Group 'A' service of the Customs and Excise Department, 50% of the cadre strength are filled by direct recruitment through Union Public Service Commission and the balance 50% are filled through promotion from Group 'B' cadres. Group 'B' officers when promoted to Group 'A' Service, obviously have no right to occupy more than 50% of their prescribed quota. It would, therefore, be incumbent upon the Government to re-arrange or regularise the seniority list in Group 'A' Service keeping the inter se quota of the direct recruits and promotees intact and should not allow either to get any promotion in excess of their quota. The ad hoc promotions given to Group 'B' officers in Group 'A' service, pursuant to interim orders of this Court, would not, therefore, have any effect or prejudice the interest on rights of the direct recruits of Group 'A' Service while re-arranging the seniority in Group 'A' service as indicated in the judgement. It would, therefore, be of necessity that the Government should re-arrange their inter se seniority and promotions of the respective direct recruits and promotees within their quota and consequential promotions in further higher services. Their seniority be arranged accordingly."



Pursuant to the above directions, the Government of India, Ministry of Finance, Department of Revenue, New Delhi, issued a letter dated 24.03.2000 (Annxure A/7) and circulated and updated an integrated seniority list of Assistant Commissioners comprising of direct recruits and promotee officers promoted to the grade of Assistant Commissioners upto the year 1979. The name of the applicant did not find place in the said integrated seniority list though, according to him, he was promoted in the year 1979. The applicant consequently made repeated representations, copies of which are Annexures A/8 to

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5. The Government of India, Ministry of Finance, Department of Revenue, New Delhi, circulated a final and updated part integrated seniority list of Assistant Commissioners comprising of direct recruits and promotee officers promoted to the grade of Assistant Commissioner (JTS) upto 1979 through letter dated 29.09.2000 (Annexure A/13). The applicant immediately made a representation (Annexure A/14) as his name had not been included in the said seniority list circulated on 29.09.2000, though his name should have been shown in the seniority list before the direct recruits of 1979 and should have been assigned proper place in the seniority list. In pursuance of Hon'ble Supreme Court's decision dated 22.11.1996, the Government of India, Ministry of Finance, Department of Revenue issued a notification No. 30/2000 dated 21.11.2000 (Annexure A/15). By virtue of this notification, promotions of Group 'B' officers were regularised from 1980 onwards. On 30.11.2000, the Government of India circulated an integrated seniority list (Annexure A/1) of the Assistant Commissioners (JTS) comprising of direct recruits and promotee officers promoted to the grade of Assistant Commissioners (JTS) upto 1996-97. The name of the applicant in the said seniority list has been shown at serial No. 512 treating him as promotee of 1979 (below some of the direct recruits of 1983) though according to the decision of the Apex Court dated 22.11.1996, he is entitled to be assigned seniority above the direct recruits of 1979 and subsequent batches. The impugned seniority list dated 30.11.2000 is, it is pleaded by the applicant, against the mandate of the Hon'ble Supreme Court and has the effect of subjecting him to glaring and hostile discrimination. The applicant again made a representation dated 22.12.2000 (Annexure A/16), but without any response.



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DETAILS OF THE APPLICATION:-

(1) Particulars of Orders against which the application is made:-

The Seniority List of the officers in the Grade of Indian Customs and Central Excise Services Group 'A' circulated under Government of India, Ministry of Finance, Department of Revenue, New Delhi's letter F.No.A-32012/8/2000-Ad.II dated 30th November, 2000, a copy of which is filed herewith and is marked as **Annexure-A**.

(2) Jurisdiction:- The applicant declares that the subject matter of the Seniority List Dated 30.11.2000 against which he wants redressal is within the jurisdiction of this Hon'ble Tribunal.

(3) Limitation:- The applicant declares that this application is being filed within the limitation period prescribed under section 21 of the Administrative Tribunal Act 1985.

(4) Brief Fact of the Case:-


MAY IT PLEASE YOUR HONOUR

The applicant respectfully submits as under:-

(a) That the applicant was initially recruited as Appraiser of Customs on 18.12.1965 on the basis of IAS etc. examination, 1964.

(b) That the applicant was promoted as Assistant Collector (now re-designated as Assistant Commissioner) Group 'A' vide Order No.185/79 dated 30.11.1979, a photocopy of which is filed herewith and is marked as **Annexure-'A-I'**.

(c) That the applicant was subsequently promoted from Junior Time Scale (Grade VI) to the Senior Time Scale (Grade V) of the Indian Customs and Central Excise Service Group 'A' vide Annexure-

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II of Office Order No.185/90 dated 25 October 1990, a copy thereof is filed herewith and is marked as **Annexure – 'A II'**.

(d) That the applicant was further promoted as Deputy Commissioner of Customs and Central Excise (now re-designated as Joint Commissioner) vide Office Order No.175/1991 dated 23 May, 1991, a copy of which is filed herewith and is marked as **Annexure – 'A III'**.

(e) That thereafter the applicant was granted Selection Grade (Additional Commissioners' Grade) with effect from 1.8.1997 vide Notification No.13/1997 dated 27th August, 1997, a copy of which is filed herewith and is marked as **Annexure- 'A IV'**.

(f) That in 1979, when the applicant was promoted, promotions from Group 'B' to Group 'A' were made on the basis of Principle of 'Quota Rota' which was fixed by the Government under Administrative instructions/circulars/office Memoranda issued from time to time.

(g) That the manner of filling up the vacancies on the basis of 'Quota Rota' principle was challenged by a group of direct recruit Appraisers in writ petition (Civil No.4532-33/78) in the Hon'ble Supreme Court.

(h) The petitions were disposed of by the Hon'ble Supreme Court on 23.9.1987, by observing, "the promotions now in dispute would also be looked into with reference to the Rules and re-disposed of in accordance with the law". The above observations are incorporated in

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the Supreme Court's judgement dated 22.11.1996 which is annexed as **Annexure 'A-V'**.

(i) That in the meantime, the Indian Customs and Central Excise Service Group 'A' Rules 1987(hereinafter referred to as the Rules) were framed. The copy of the Rule is filed and annexed as **Annexure 'A-VI'**.

(j) That the Rules interalia apply to persons who were appointed to the service after the 15th August, 1959 and before the commencement of these Rules.

(k) That the Rules stipulate that 50% of the vacancies shall be filled by direct recruits and 50% by promotees.

(l) That Rule 18(2)(b) lays down that the seniority of the officers in Group 'B' feeder categories of service for eligibility for promotion to Group 'A' shall be determined on the basis of their regular length of service in their respective Group 'B' categories, subject to the condition that the inter-se seniority in each feeder category of service shall be maintained.

(m) That inspite the clear judgement of the Supreme Court in Writ Petition (Civil No.4532-33/78 that the promotions will be looked into with reference of the Rules, the benefit of the judgement was not given to the applicant.

(n) In the meantime, the Supreme High Court in its judgement dated 8.5.96 in the case of Gaya Baksh Yadav V/s Union of India and others JT (1996) 5 SC 118, held that for determining inter-se seniority

between direct recruit Appraisers and promotee Appraisers, length of service alone will be the criteria.

(o) That the Hon'ble Supreme Court in its judgement dated 22nd November, 1996 delivered in the case of All India Federation of Central Excise etc. V/s Union of India and others (Writ Petition © No.306/1988 ETC, directed the Union of India to review all post-1979 Adhoc promotions to the post of Senior Superintendent/Assistant Collector in the promotee quota, re-determine the respective placement of the promotee officers in the combined Group 'A' seniority and regularise accordingly the posts of Adhoc promotions. The Supreme Court observed that Adhoc promotions given to Group 'B' officers in Group 'A' services pursuant to interim orders of this court would not have any effect or prejudice the interest or the rights of the direct recruits of Group 'A' officers. A photocopy of the judgement dated 22nd November, 1996 is marked as **Annexure 'A-V'**.

(p) That according to the Hon'ble Supreme Court judgement dated 22nd November, 1996, the following conclusions emerge:

- ✓(i) The promotions made whether on adhoc or regular basis till 1979 cannot be disturbed or altered in any circumstances.
- ✓(ii) The placement of promotee officers promoted upto 1979 cannot be re-determined.
- ✓(iii) The promotions made upto 1979 whether on ad-hoc or regular basis are required to be treated as regular.

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✓(iv) Re-determination of placement is required to be done only in respect of post 1979 adhoc promotions and not in respect of adhoc promotions made upto 1979.

(v) The officers promoted upto 1979 are required to be interpolated with direct recruits of 1979 batch or earlier batches.

(vi) Seniority of Promotees vis-à-vis Direct recruits is required to be redetermined only in respect of such adhoc promotees who were promoted from Group 'B' to Group 'A' in pursuance of any interim order of the Supreme Court and is not required to be redetermined in respect of those promotee officers who were not promoted from Group 'B' to Group 'A' in pursuance of any interim order of the Hon'ble Supreme Court.

(q) That the Government of India, Ministry of Finance, Department of Revenue, New Delhi issued a letter F.No.A-32012/3/2000-Ad.II dated 24th March, 2000 and circulated an updated and integrated seniority list of Assistant Commissioner comprising of direct recruit and promotee officers promoted to the grade of Assistant Commissioner upto 1979. The letter F.No.A-32012/3/2000-Ad.II dated 24th March, 2000 and the enclosed seniority list is filed herewith and is marked as **Annexure 'A-VII'**.

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6. In substance, the case of the applicant is that in view of the decision of the Apex Court dated 22.11.96, his promotion which has taken place on 30.11.1979 as Assistant Collector (now re-designated as Assistant Commissioner) Group 'A' shall be deemed to be regular from the said date and it was for this reason that his name did not figure in the notification dated 21.11.2000 and in view of the directions of the Apex Court quoted above, all the direct recruits of 1979 and subsequent batches were to rank junior to him.

7. The respondents Nos. 1 and 2 have filed a joint reply. It is admitted that the applicant, who was appointed as Custom Appraiser, was promoted as Assistant Collector of Customs & Central Excise (JTS), now re-designated as Assistant Commissioner, on purely ad hoc basis with effect from 30.11.1979; that Hon'ble Supreme Court in its decision dated 22.11.1996 has directed that "all posts" of 1979 ad hoc promotions to the grade of Assistant Commissioner may be reviewed by apportioning promotee quota vacancies in the ratio of 6:1:2 among the feeder grades, namely, Superintendents of Central Excise, Superintendents of Customs (Preventive) and Custom Appraisers. Thus, all the appointments made to the grade of Assistant Commissioner by promotion till 31.12.79, whether regular or ad hoc, were to be treated as regular and were to be interpolated with direct recruit officers of IC&CES in the ratio of 1:1 in terms of MHA's O.M. dated 22.12.1959; that the upto date integrated seniority list of officers of IC&CES appointed till 1996-97 was prepared after taking into account the directions of Hon'ble Supreme Court; that the applicant who had been treated to have been promoted on regular basis with effect from 30.11.1979, i.e., from the date of his ad hoc promotion to the grade of Assistant Collector (JTS) has been assigned seniority in terms of O.M. dated 22.12.1959.



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8. Heard Shri M.R. Singhvi, learned counsel for the applicant and Shri Ravi Bhansali, learned counsel appearing for the respondents Nos. 1 and 2. The private respondents Nos. 3 to 5 who have been duly served, have not put in appearance.

9. It is an indubitable fact that the seniority of the applicant and other promoted officers is to be determined in the light of the directions/mandate of Hon'ble the Supreme Court contained in the decision dated 22.11.1996 in the case of All India Federation of Central Excise Etc. (supra). The relevant directions have already been quoted above. The respondents have maintained that the impugned seniority list has been prepared pursuant to the directions of Hon'ble the Supreme Court in the case aforesaid. The applicant has repelled this position by taking the stand that since his promotion admittedly stood regularised with effect from 30.11.1979, he could not be interpolated in the matter of seniority with the direct recruits of 1979 and the subsequent batches. It is well demonstrated from the impugned seniority list dated 30.11.2000 (Annexure A/1) that the direct recruits of 1979, 1980, 1981, 1982 and some of them of the batch of 1983 are ranking senior to the applicant. Shri M.R. Singhvi, learned counsel for the applicant urged that the placement of the applicant in the seniority list by interpolating him with the direct recruits of the aforesaid batches is clearly in the teeth of the directions of Hon'ble Supreme Court, particularly keeping in view the fact that the respondents have admitted the position that the promotion of the applicant with effect from 30.11.1979 stood regularised. Shri M.R. Singhvi further urged that the departmental authorities have given preference to the Office Memorandum dated 22.12.1959 in total disregard of the directions of the Apex Court, which they have obviously



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misconstrued.

10. We have given our thoughtful consideration to the rival contentions of the parties and have scanned the directions of the Apex Court quoted above in Para No. 4. There can be no quarrel about emerging conclusions. What we understand is that Hon'ble Supreme Court had directed -

(i) that the promotions made whether on ad hoc or regular basis till 1979 cannot be disturbed or altered in any circumstances and such promotions are to be treated as regular;

(ii) that the placement or seniority of the promotee officers promoted upto the year 1979 cannot be redetermined, as the redetermination or placement was required to be done only in respect of post-1979 ad hoc promotions made under the interim orders of the Court.



(iii) The incumbents who could ~~not~~ get promotion upto 31st December, 1979, may be on ad hoc basis, and whose promotion stood regularised from the date of the ad hoc promotion were not to be interpolated with the post-1979 direct recruits, i.e., recruited on or after 01.01.1980, as the promotee officers were to rank senior, en bloc, to all the post-1979 direct recruits.

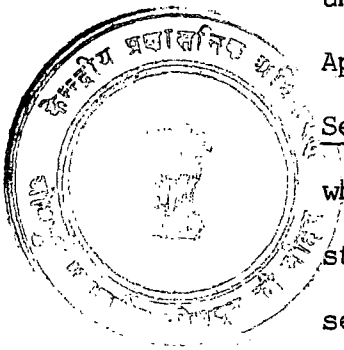
11. The question of seniority of an incumbent who was appointed or promoted on ad hoc basis came to be considered by Hon'ble the Supreme Court in a catena of decisions. In the case of Direct Recruit Class-II Engineering Officers' Association and Ors. vs. State of Maharashtra and Ors., AIR 1990 SC page 1607, it was held that if the initial appointment is not made by following the

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procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his services in accordance with the rules, the period of officiating service will be counted. In the same decision, it was further observed that where the quota rule has broken down and the appointments are made from one source in excess of the quota but are made after following the procedure prescribed by the rules for appointment, the appointees should not be pushed down below the appointees from the other source inducted in the service at a later date. In an earlier decision in the case of Narender Chadha and Others vs. Union of India and Ors., (1986) 2 SCC page 157, the Apex Court ruled that where certain persons have been allowed to function on higher posts for a substantial number of years with due deliberation it would be certainly unjust to hold that they have no sort of claim to such posts and could be reverted unceremoniously or treated as persons not belonging to the Service at all, particularly where the Government is endowed with the power to relax the rules to avoid unjust results. A reference was also made to the decision of the Apex Court in the case of K.S. Reddy and Ors. vs. Principal Secretary to Government of A.P. and Ors., 2001 AIR SCW 2508, in which factum of promotion in excess of quota as provided under statutory rules was protected by the High Court. It was a case inter se seniority of direct recruits and promotees. The Apex Court held that such protection means that their seniority inter se also will not be disturbed in any manner. The expression 'ad hoc', 'stop-gap' and 'fortuitous' which are in frequent use in service jurisprudence came to be interpreted by Hon'ble Apex Court in the case of Rudra Kumar Sain and Ors. vs. Union of India and Ors., AIR 2000 SC page 2808, and it was observed that the meaning to be assigned to these terms while interpreting provisions of a Service Rule will depend on the provisions of that Rule and the context in and the purpose for



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which the expressions are used. The meaning of any of these terms in the context of computation of inter se seniority of officers holding cadre post will depend on the facts and circumstances in which the appointment came to be made.

12. In the present case, in view of the directions of Hon'ble the Supreme Court in All India Federation of Central Excise Etc. vs. Union of India and Ors. (Writ Petition (C) No. 306 of 1988 Etc.), the applicant has been treated to have been regularly promoted with effect from 30.11.1979. This is the date which would determine his seniority. His seniority was not dependent on the 'quota rota' rule which had obviously broken down on account of the promotions in excess. With a view to adjust the equities and balance the rights of parties and taking into consideration the fact that the seniority of the persons promoted upto the year 1979, should remain undisturbed, the Apex Court made a stark distinction between the promotees upto 1979 and direct recruits of post-1979 batches. On the face of the specific directions, i.e., the mandate of the Apex Court, which is binding on all in view of the provisions of Article 141 of the Constitution of India, the respondents were not justified in giving effect to Office Memorandum dated 22.12.1959 by rotating the promotees of 1979 with the batches of direct recruits post-1979 batches. The Office Memorandum dated 22.12.1959 cannot get precedence over the categoric directions of the Apex Court. The placement/seniority of the promotees upto the year 1979 was beyond the pale of challenge and could not be fluctuated on joining of the direct recruits of post-1979 batches.



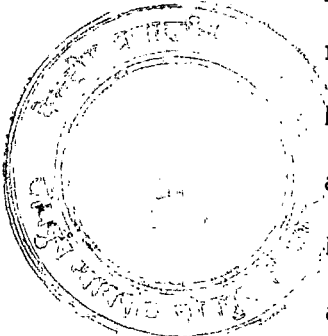
13. In the result, we find that the applicant, whose ad hoc promotion to the post of Assistant Collector (now redesignated as Assistant Commissioner) Group 'A' stood regularised with effect

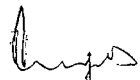
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from 30.11.1979 and was to be treated senior to the post-1979 batches of the direct recruits, could not be rotated or interpolated for redetermining the seniority. He was to rank senior to all the post-1979 direct recruits. We can simply express our lamentation that the various representations made by the applicant did not receive due consideration and they remained unattended to. The placement of the applicant in the impugned seniority list dated 30.11.2000 at serial No. 512 is illegal and in contravention of the clear directions of Hon'ble the Supreme Court dated 22.11.96 issued in the case of All India Federation of Central Excise Etc. vs. Union of India and Ors.

14. For the reasons stated above, we find that the grievance of the applicant is well merited. We allow the O.A. and direct that the applicant shall be assigned seniority at the appropriate position and shall be placed in the seniority list above the direct recruits Group 'A' officers of 1979, ~~1980~~, 1980, 1981, 1982 and 1983 batches. The integrated seniority list dated 30.11.2000 shall accordingly stand modified in so far as the applicant is concerned. He shall ^{be} further entitled to all consequential benefits which may accrue to him as a result of the above modification in the seniority list. No order as to costs.




(A.P. Nagrath)
Adm. Member


(Justice O.P. Garg)
Vice Chairman

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