

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
CALCUTTA

No.O.A.1118 of 1997
O.A.1119 of 1997
O.A.1393 of 1997

Date 03/8/07

Present : Hon'ble Dr. A.R. Basu, Administrative Member

Hon'ble Dr. D.K. Sahu, Judicial Member

O.A.No.1118 of 1997 - Sarbani Prasad Mukherjee & Others

O.A.No.1119 of 1997 - Amal Kumar Chatterjee & Others

O.A.No.1393 of 1997 - Asish Bhusan Bhandari & Others

.....Applicants

- V E R S U S -

1. Union of India service through the Secretary, Ministry of Finance, Deptt. of Revenue, New Delhi
2. Central Board of Excise & Customs, service through the Secretary, New Delhi
3. The Chief Commissioner of Customs, Customs House, 15/1, Strand Road, Calcutta -1
4. The Commissioner of Customs, Customs House, 15/1, Strand Road, Calcutta – 1

.....Respondents

For the applicants : Mr. S.K. Dutta, counsel

For the respondents : Mr. M.S. Banerjee, counsel (in O.A.No.1118 and 1119 of 1997)
Ms. U. Sanyal, counsel (in O.A.1393 of 1997)

ORDER

Per Dr. D.K. Sahu, Judicial Member

All the above three original applications involve same questions of law and facts.

Accordingly common hearing has been made and as such a common order has been passed.

2. The applicants of the three cases have been recruited as Preventive Officers Gr.II of Customs and Excise Department of Government of India within the period from 1957

to 1964 inclusive of one, Md. Habibul Haque. Posts of Preventive Officer Gr.II was upgraded to Gr.-I in phased manner. The applicants have been appointed in Grade-I cadre in accordance with their seniority. But Md. Haque was superseded for the pendency of a departmental proceeding. He moved the High Court of Calcutta for redress. A bench of a single judge allowed his application in C.R.No.5543/1977 and directed to fix inter se seniority in accordance with the date of his appointment on 1.10.1964, vide Annexure 'D' relevant operative part of the order. That order has been appealed against before a Division Bench of the High Court who set aside the same. Thereafter Md. Haque filed an appeal before the Supreme Court who in Civil Appeal No.3997/1983 set aside the order of the Division Bench of the High Court and directed for adjustment of Md. Haque in Preventive Officer, Grade -I with effect from 29th February, 1968. The applicants being appointed prior to Md. Haque in Grade-II cadre made representations claiming seniority over Md. Haque and accordingly to revise the seniority list. But those have been rejected.

3. The applicants have thus filed these applications. Their basic prayer is to quash the order of rejection dated 9.9.1997(Annexure 'S' to O.A.1118/1997) and to extend to them the benefit of the order passed by the Single Bench of the Hon'ble Calcutta High Court, thereby they pray to refix their seniority in accordance with their dates of entry to Gr.II cadre and to keep them above Md. Haque in the higher cadres and to grant the benefits consequential to fixation of their seniority.

4. Respondents submit that seniority of Md. Habibul Haque was fixed in accordance with the Supreme Court's order, and that the applicants were parties before the Division Bench of Hon'ble Calcutta High Court, so also before the Supreme Court, but there is no direction of the Supreme Court in favour of the applicants.

5. The main question for consideration is, as to what should be the position of the applicants in the seniority/gradation list in accordance with the judgments referred to above. Md. Haque has not been made a party in the proceedings. At the stake of repetition, the applicants contend that Md. Haque joined service on 1.10.1964 and they having joined prior to him, should be placed above him in the seniority list. The matter

having been considered by the Supreme Court, we have less to do with except to follow the direction/findings of the Supreme Court.

6. The Single Judge, Calcutta High Court in C.R.No.5543/1977[Annexure 'D' to O.A.1118/1997) filed by Md. Haque had directed :-

" Respondents are directed to determine the petitioner's seniority in accordance with law. It is made clear that the petitioner's inter-se seniority in the P.O.Gr.I cadre would be considered on and from the date he joined service i.e. 1.10.1964. The consequential benefits, if any, following the determination of the petitioner's seniority would follow."

The Supreme Court in Civil Appeal No.3997 of 1983 (supra) [Annexure 'K' of O.A.1118/1997] held :-

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"But for the removal of the applicant from service, he would have been entitled to be considered for fitment in the grade of Preventive Officers, Grade I when his juniormost officer, namely, Sarup Kumar Ghosh was considered and promoted w.e.f. February 29, 1968. The High Court fell in error in considering that there was a punishment imposed upon the appellant in the order dated August 9, 1973. It is seen that the punishment imposed was only reduction of scale of pay for one year with cumulative effect. That does not have the effect of educating his seniority nor would it be punishment of reduction of seniority of any placement which the appellant would be entitled to hold in the order of seniority. Under those circumstances, we are of the view that *the appellant is entitled to be adjusted in the cadre of Preventive Officers, Grade I w.e.f. February, 29, 1968, the date on which his immediate junior was considered and was given fitment as preventive officer, Grade-I.*

The appeal is accordingly allowed. The order of the Division Bench is set aside and that of the Single Judge is confirmed. The applicant is entitled to all the consequential benefits."

7. By the doctrine of merger the order of lower court stands merged with that of the higher court. Thus the order of the High Court inclusive of the single judge bench stands merged with that of the Supreme Court. Accordingly the finding and direction of the Apex Court has to be carried out. The Apex Court has made a specific observation to adjust Md. Haque in the cadre of Preventive Officer Gr.I with effect from February 29, 1968, the date on which immediate junior to him, namely, Swarup Kumar Ghosh was given fitment as Preventive Officer Gr.I. So, the direction of the single judge relating to fixation of seniority of Md. Haque is no more to be considered. In view of the observation/direction of the Supreme Court for fitment and fixation of seniority as

Preventive Officer Gr.I of Md. Haque the question of date of his entry as Preventive Officer, Gr.II cadre is no more open for consideration.

8. No observations has been made by the Supreme Court about fitment of the applicants in Grade -I cadre. Accordingly the applicants who were appointed/promoted as Preventive Officer Gr.I(one) on or before 29.2.1968 and were above Swarup Kumar Ghosh on that date in that cadre of Preventive Officer Grade-I(one), shall be placed above Md. Haque in that cadre.

9. The respondent authorities are, therefore, directed, if it is not done, to place the applicants in the seniority/gradation list of Preventive Officers Gr.I(one) as held above, accordingly recast the seniority list of such Grade-I(one) cadre, if it is not so done and grant them all consequential benefits as per rules and instructions. This exercise be completed within 4 months from receipt of this order. The applications are accordingly disposed of. No order as to cost.

MEMBER(J)

MEMBER(A)

- (a) SI No of the Appn.....
- (b) Name of the applicant.....
- (c) Dt. of presentation of application for copy.....
- (d) No. of pages
- (e) Copying fee charged/
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- (f) Dt. of preparation of copy.....
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