

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A.No.453/1996

Monday this the 28th day of June, 1999.

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE SHRI G.RAMAKRISHNAN, MEMBER(A)

1. Narayan Pudusseri,
Preventive Officer,
Customs House, Cochin-9.
2. Prasanth K.C.S.
Preventive Officer,
Customs House, Cochin-9.
3. George Mathew Pullatt,
Preventive Officer,
Customs House, Cochin-9.
4. Reji Kumar.G.
Preventive Officer,
Customs House, Cochin-9.
5. Ajith Kumar.N,
Preventive Officer,
Customs House, Cochin-9.
6. Ajith Krishnan.G
Preventive Officer,
Customs House, Cochin-9.
7. K.M.Syphudheen,
Preventive Officer,
Customs House, Cochin-9.
8. Maya Chandran,
Preventive Officer,
Customs House, Cochin-9.
9. Ranjith Santakumar,
Preventive Officer,
Customs House, Cochin-9.
10. V.Bhagavathi Subramaniam,
Preventive Officer,
Customs House, Cochin-9.

..Applicants

(By Advocate Mr.N.N.Sugunapalan)

vs.

1. Commissioner of Customs,
Customs House, Kochi.
2. Central Board of Excise & Customs,
New Delhi.
3. Staff Selection Commission,
Southern Region,
EUK Sampath Building,
2nd Floor, College Road,
Madras-6.

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4. Union of India,
represented by Secretary,
Ministry of Finance,
Department of Revenue,
New Delhi.

5. K.J.Mathew,
Preventive Officer,
Customs House, Kochi.

6. Mariamma Scaria,
Preventive Officer,
Customs House, Kochi.
(impleaded in the O.A. in a
representative capacity)

7. C.V.Thampi,
Tax Assistant,
Customs House, Cochin-9.

8. R.Prathap Kumar,
Tax Assistant,
Customs House, Cochin-9. ..Respondents

(By Advocate Mr.S.Radhakrishnan for R1-4)
Mrs. Sumathi Dandapani for R7 & 8)

This Application having been heard on 15.6.99, the Tribunal
on 28.6.99 delivered the following:

O R D E R

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

The matter relates to the inter se seniority of Preventive Officers of the Customs House, Cochin, directly recruited and promoted. The recruitment to the cadre of Preventive Officers in the Department of Customs is made by direct recruitment and promotion in the ratio 3:1. For every three direct recruitment, one promotion is made and the promotees placed below the direct recruits in the seniority list. The applicants are direct recruits. Applicants 1 to 8 were recruited by direct recruitment towards vacancies reported in the year 1991 and 1992 and applicants 9 and 10 were recruited towards vacancies reported in the year 1992-93. Due to the delay in processing the dossiers and issuing

appointment orders, the appointment of the applicants 1 to 8 was delayed and they could join the post on various dates in the month of March, 1992. In the meanwhile taking into account the vacancies of 1992, the quota reserved for promotion were filled up by regularising the promotees in the year 1991 itself. The 5th respondent, therefore, came to be regularised with effect from the year 1991. Similarly applicants 9 and 10 though were selected for the vacancies reported during 1992 -93, as there was an interim order of stay issued from the Tribunal in O.A.1162/92 and other cases filed by the promotee Preventive Officers, their appointments were delayed and they could join only on 1.10.93 and 11.10.93. In addition to the above, it is alleged that promotions were made in excess of the quota by taking into account the carried forward vacancies in direct recruitment and bunching of the promotees on the ground that direct recruits were not available. The method of fixing the seniority between direct recruits and promotees are to be made according to the instructions contained in the O.M. No.35014/2/80 Estt.(D) dated 7.2.1986. The Tribunal in its decision in O.A.No.1491/94 directed that the inter se seniority between promotees and direct recruits should be fixed in accordance with the principle set out in the O.M. dated 7.2.1986. In accordance with the directions contained in the above judgment, a draft seniority list of the Preventive Officers as on 1.7.1995 was published inviting objections(Annexure A5). The applicants made representations raising their objections. Copies of the representations made by the applicants are Annexures A6 to All. However the

applicants are aggrieved by the order passed by the 1st respondent disposing of their objections(Annexure A12) and assigning seniority position as the applicants have a grievance that their objections have not been properly considered . Aggrieved by that the third applicant made a representation (Annexure A13) which was disposed of by the order dated 18.1.1996(Annexure A14). Under these circumstances, the applicants have filed this application seeking to have the following reliefs:

- " i) Call for the records and quash Annexure A-12.
- ii) Direct the respondent No.1 to recast the seniority list of Preventive Officers in consonance with the direction in O.A.1491/94 and in accordance with Annexure-A4 OM.
- iii) Issue such other order or direction declaring that the number of Direct Recruitment vacancies reported in 1990 as one instead of 18, in the category of Preventive Officers and to refix the seniority of 1990-91 batch officers accordingly;
- iv) issue a writ or order or direction to the first respondent to assign the date of advice for selection for the applicants 1 to 8 and 9 and 10 in 91 and 92 respectively as the criterion for the purpose of seniority, ignoring the delay occasioned for actual appointment.
- v) Issue direction to the respondents to regularise the promotees of a particular reporting year, only along with the direct recruits selected against the vacancies of the same recruiting year.



- vi) to direct respondents not to use any arbitrary list other than official seniority list for all administrative purposes.
- vii) to declare that the ad-hoc promotees are not entitled to any service benefits such as seniority, increments or other benefits due to a regularised promotee.
- viii) to direct the respondents to report all the direct recruitment vacancies including all carried forward vacancies till date to Staff Selection Commission immediately and also promptly in future.
- ix) such other or further reliefs or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice."

2. On behalf of the respondents 1 to 4 a reply statement has been filed refuting the averments made in the application. Regularisation of promotion proportionate to the extent of direct recruitment including carried forward vacancies, have been sought to be justified on the ground that the rules do not prescribe that the carried forward vacancy in the direct recruitment quota should not be taken into account for deciding the number of vacancies to be filled by promotion. Further, it is contended that as far as the direct recruits are concerned, they could be given seniority only from the year of their joining duty in accordance with the O.M. dated 7.2.86 and therefore, the seniority assigned to them, is correct.

3. When the application came up for hearing, the learned counsel of the applicants submitted that the applicants

would confine their claim to the reliefs claimed at sub-paragraph iv and v of paragraph 8 and that the other issues need not be gone into. Therefore, we are confining our attention only to these issues. It is not disputed that the applicants 1 to 8 were directly recruited towards vacancies reported in the year 1991-92 and that applicants 9 and 10 were recruited towards vacancies reported in the year 1992-93 and that their joining were delayed owing to the delay in processing as also on account of the stay order issued by the Tribunal in O.A.No.1162/92 and connected cases. It has also come out from the submission of the learned counsel that ultimately the Original Application in which there was an interim stay order was dismissed. The respondents in their reply statement have contended that the applicants who were direct recruits, would be assigned placement in the seniority with effect from the date and year of their joining. In support of this position, the learned counsel of the respondents invited our attention to paragraphs 2 and 3 of O.M.No.35014/2/80-Estt(D) dated 7th February, 1986 which reads as follows:

" 2. While the above mentioned principle was working satisfactorily in cases where direct recruitment and promotion kept pace with each other and recruitment could also be made to the full extend of the quotas as prescribed, in cases where there was delay in direct recruitment or promotion, or where enough number of direct recruits or promotees did not become available, there was difficulty in determining seniority. In such cases, the practice followed at present is that the slots meant for direct recruits and promotees, which should not be filled up, were left vacant, and when direct recruits or promotees became available through later examinations or selections, such persons occupied the vacant slots, thereby became senior to persons who were already working in the grade on regular basis. In some cases, where there was shortfall in direct recruitment in two or more than consecutive years, this resulted in direct recruits of later years taking seniority over some of the promotees with fairly long years of regular service already to their credit. This matter had also come up for consideration in various Court cases both before

the High Courts and the Supreme Court and in several cases the relevant judgment had brought out the inappropriateness of direct recruits of later years becoming senior to promotees with long years of service.

3. This matter, which was also discussed in the National Council has been engaging the attention of the Govt. for quite some time and it has been decided that in future, while the principle of rotation of quotas will still be followed for determining the inter-se seniority of direct recruits and promotees, the present practice of keeping vacant slots for being filled up by direct recruits of later years, thereby giving them unintended seniority over promotees who are already in position, would be dispensed with. Thus, if adequate number of direct recruits do not become available in any particular year, rotation of quotas for purpose of determining seniority would take place only to the extent of the available direct recruits and the promotees. In other words, to the extent direct recruits are not available, the promotees will be bunched together at the bottom of the seniority list, below the last position upto which it is possible to determine seniority, on the basis of rotation of quotas with reference to the actual number of direct recruits who became available. The unfilled direct recruitment quota vacancies would however, be carried forward and added to the corresponding direct recruitment vacancies of the next year (and to subsequent years where necessary) for taking action for direct recruitment for the total number according to the usual practice. Thereafter, in that year while seniority will be determined between direct recruits and promotees, to the extent of the number of vacancies for direct recruits and promotees as determined according to the quota for that year, the additional direct recruits selected against the carried forward vacancies of the previous year would be placed en-bloc below the last promotee (or direct recruit as the case may be) in the seniority list based on the rotation of vacancies for that year. The same principle holds good in determining seniority in the event of carry forward, if any, of direct recruitment or promotion quota vacancies (as the case may be) in the subsequent years."

(emphasis added)

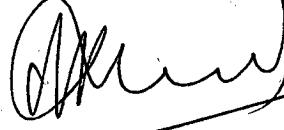
Relying on the portion underlined, the learned counsel of the respondents argued that though the vacancies were notified in 1991-92 and 1992-93, owing to the delay in the process and the stay order of the Tribunal, the applicants came to be appointed belatedly the bunching of the promotees and placing the applicants below them, was perfectly in order.

We do not agree. It cannot be said that the applicants were not available and that the year of joining should be the criterion for assigning seniority. As the process of recruitment for the notified vacancies was successfully carried out and the applicants were selected for appointment to the vacancies reported for the relevant years, they should be given seniority according to their quota of the respective year in terms of the principle laid down in the O.M. dated 7.2.86. The non-availability of direct recruits would arise only if no direct recruitment was made during the period and the direct recruitment vacancies were carried forward. Such a contingency has not arisen in this case.

4. In the light of what is stated above, we dispose of this application directing the first respondent to assign seniority to the applicants taking into account the year for which the vacancies were reported and not with effect from the date of their joining in service. The official respondents are directed to revise the seniority of the applicants as directed above and to issue orders accordingly within a period of three months from the date of receipt of a copy of this order. There is no order as to costs.



G. RAMAKRISHNAN
MEMBER(A)



A. V. HARIDASAN
VICE CHAIRMAN

List of Annexures referred to in the Order:

1. Annexure A5 True copy of the notice issued by the first respondent along with the draft seniority list dated 16.8.1995.
2. Annexure A6 True copy of the objection filed by the 1st applicant to the 1st respondent dated 1.9.95.
3. Annexure A7 True copy of the objection filed by the 2nd applicant to the 1st respondent dated 31.8.95.
4. Annexure A8 True copy of the objection filed by the 3rd applicant to the 1st respondent dated 4.9.1995.
5. Annexure A9 True copy of the objection filed by the 4th applicant to the 1st respondent dated 31.8.1995.
6. Annexure A10 True copy of the objection filed by the 9th applicant to the 1st respondent dated 31.8.1995.
7. Annexure A11 True copy of the objection filed by the 10th applicant to the 1st respondent dated 25.8.1995.
8. Annexure A12 True copy of the office order No.172/95 dated 17.11.1995 along with the final seniority list of Preventive Officers issued by the 1st respondent.
9. Annexure A13 True copy of the representation submitted by the 3rd applicant to the 1st respondent.
10. Annexure A14 True copy of the memo No.C 16/78/94-CUS dated 18.1.1996 issued by the 1st respondent to the 3rd applicant.