

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 469 of 2006

Thursday, this the 13th day of September, 2007

C O R A M :

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

1. P.K. Jayarajan,
S/o. Late P.K. Madhavan,
Working as Superintendent of Central Excise,
Central Revenue Buildings, Mananchira, Kozhikode,
Residing at 'Thiruvathira', Chevayoor, Kozhikode - 17
2. G. Jayaprakash,
S/o. M. Gopinathan,
Working as Superintendent of Central Excise,
Office of the Commissioner of Central Excise,
ICE Bhavan, Press Road, Thiruvananthapuram,
Residing at "Prakasam", Pully Lane, Petta P.O.,
Thiruvananthapuram

... Applicants.

(By Advocate Mr.O.V. Radhakrishnan, Sr. with Antony Mukkath)

v e r s u s

1. Union of India, represented by its Secretary,
Ministry of Finance, Department of Revenue,
New Delhi.
2. Central Board of Excise and Customs,
Represented by its Chairman,
New Delhi.
3. Chief Commissioner of Central Excise and Customs,
Kerala Zone, Cochin.
4. Commissioner of Central Excise and Customs,
I.S. Press Road, Kochi - 18.
5. N.J. Sajive, Superintendent of Central Excise,
Calicut - 3 Range, Calicut.
6. K.U.Vinoba, Superintendent of Central Excise,
Kollam Division, Kollam.
7. N. Muraleedharan,
Superintendent of Central Excise,
Central Excise Division, Palakkad.

... Respondents.

[By Advocates Mr. TPM Ibrahim Khan, SCGSC (R1-4) and Mr. P. Ramakrishnan (R5-7)]

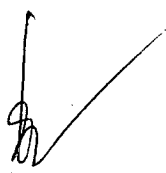
O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

Seniority is the bone of contention in this case.

2. The applicants herein were originally recruited as Inspector of Central Excise in the Madurai Collectorate and within 3 years they had been transferred (at request) to the Cochin Collectorate, where their seniority had been maintained, reckoning their services from their initial date of appointment in Madurai. This, according to the applicants, was in accordance with the provisions of para (i) and (ii) of Annexure A-3 Order dated 12-2-1958 which read as under:-

- (i) Transfers of staff within a period of three years of first appointment in the Department may be allowed without any loss of seniority.
- (ii) In the case of persons transferred after a period of three years of their first appointment in the Department the benefit of past service should be allowed upto the period of three years only, for the purpose of determining their seniority in the new charge e.g., an Upper Division clerk transferred after he has put in a service of 4 years may count only three years of his service for seniority.

3. On the basis of the above provisions, their seniority was fixed and the applicants were, accordingly, in their turn, promoted as Superintendents also.



4. Respondents 5 to 7 were appointed as Inspectors at Cochin Collectorate and they had been assigned their seniority from the dates of their initial appointment and accordingly, they were also promoted as Superintendents. According to various seniority list as well as promotion orders, the inter se seniority position and dates of appointment/promotion of the applicants and Respondents 5 to 7 are as under:-

Details	A1	A2	R5	R6	R7
Entry as in Inspector Madurai Coll'te	11/12/74	11/12/74	--	--	--
Entry as in Inspector Cochin Coll'te	17-11-76	23-11-77	25-08-75	25-08-75	26-11-79
Seniority (5-12-1994)	279	288	186	188	341
Seniority (27-08-99 list as of 80) A-14	244	245	285	286	427
Seniority (as per 4-7-2000 list) A-15	259	260	288	290	429
Promotion as Supdt	30-09-96	30-09-96	15-03-1993	15-03-1993	30-09-96
Seniority as Supdt	158	162	87	89	199
Seniority (Revised List)	75	76	102	104	201
Seniority (Latest)	36	37	51	53	155

5. It is pertinent to mention here that as the provisions of the order dated 12.2.1958 extracted above were ignored by the respondents, one Shri Damodar Singh of Patna Collectorate who was affected by the action of respondents in ignoring the said provisions, had filed OA No. 601/93 claiming the benefit of

seniority as per para (i) of Annexure A-3 order dated 12-2-1958 and the said OA was allowed vide order dated 20-07-1995 (Annexure A-11). The operative portion of the said order reads as under:-

"34. In the aforesaid circumstances, there can be no doubt that the Board's policy (Annexure-2) which clearly provides in its Clause I that transfers of staff within a period of three years of his first appointment in the department may be allowed without loss of seniority, was operative entitling the applicant to have the benefit of Clause I of the policy (Annexure-2). It is not disputed that the applicant was transferred within three years of his first appointment, the respondents were, therefore, not justified in refusing the relief of fixing his seniority by taking into account the service rendered by him in Jaipur Collectorate. The action of the respondents in ignoring the Board's policy (Annexure-2) and imposing loss of seniority as a result of his transfer, contrary to Clause I of (Annexure-2), is illegal, invalid and arbitrary. The undertaking given by the applicant that he would not claim seniority if transferred, could not be given effect to, being contrary of the Board's policy (Annexure-2), which was binding upon the respondents.

35. In the result, this application succeeds and is allowed. Accordingly, the respondents are directed to take into account the entire service rendered by the applicant right from the date of his initial appointment in Jaipur Collectorate upto date and accordingly make correction in the placing of the applicant in the seniority list of Inspectors as on 1.1.1992 (Annexure-7 corrected upto 1.4.1992) and after fixing his seniority above his juniors to consider his promotion to the rank of Superintendent, Central Excise, with effect from a date prior to the date the Inspector junior to him was so promoted. The direction, as aforesaid, shall be complied within a period of three months from the date of receipt of a copy of this order.

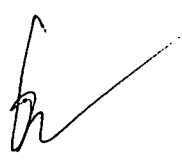
There shall, however, be no order as to costs."

6. Against the said order, SLP was filed by the official respondents, which, however, was, after grant of leave, dismissed vide order dated 31-03-1998 in CA No 6734/96 (Annexure A-12).

7. It was thereafter, that the Department had by Annexure A-13 order dated 20-10-1998 on the basis of the aforesaid decision, decided that the benefit of

Clause (i) and (ii) of 1958 circular (extracted above) be granted to all the similarly situated Group 'C' officers under CBEC who were transferred before 20-05-1980. It was as a result of the above decision that Annexure A-14 list dated 27-08-1999 came to be issued, whereby the names of the applicants were shown above the private respondents. By Annexure A-15 order dated 04-07-2000, the fact that provisions of para (i) and (ii) contained in Board's letter dated 12-02-1958 have been pressed into service in designing the seniority list at Annexure A-14 had been affirmed. By Annexure A-16 order dated 04-04-2002, the seniority list as circulated by Annexure A-14 was confirmed. Subsequent promotions were also based on such a seniority list.

8. Aggrieved by the above developments, the private respondents had filed OA No. 59/2003 and contended that the above order dated 27-10-1998 as well as other orders based on the same are all illegal. This O.A. Was however, dismissed as according to the Tribunal, the said order dated 27-10-1998 attained finality in view of the decision by the Apex Court in CA No. 6734/96 and also another judgment of the Apex Court in CA No. 1697/1988 as well as a decision by the Hon'ble High Court of Kerala in OP No. 1070/1998 S which reproduced the entire decision of the Apex Court in CA No. 6734/96. Aggrieved by the above dismissal of the OA, the party respondents moved the Hon'ble High Court in WP No. 30312/2005 and on the respondents having reviewed the entire matter in its order dated 25-03-2004 to withdraw the order dated 27-10-1998, this fact was brought to the notice of the Hon'ble High Court and the High Court had passed the following observations in its judgment dated 15-11-2005 :-

 "In view of the submission of the learned counsel for the petitioner that the orders challenged before the Tribunal are already withdrawn by the Department, this writ petition is disposed of taking

note of the fact that the orders challenged by the petitioners before the Central Administrative Tribunal are already withdrawn by the Central Government and the petitioners have no surviving grievance. In case the proceedings dated 25-03-2004 remain unchallenged and have become final the follow up action in the matter may be taken within three months from the date of receipt of a copy of this judgment. Since we are not deciding any of the questions raised by the petitioners and we are disposing of the writ petition only on the submission of the counsel for the petitioners that the orders challenged before the Tribunal are already superseded to by the Government of India we are not issuing notice to the contesting respondents. This writ petition is disposed of with the above observations"

9. It is the above said order dated 25-03-2004 that has been challenged before this Tribunal in this O.A. Another order challenged is order dated 9th July, 2004 which is a communication to the Commissioner of Central Excise and Customs, Cochin, in connection with a contempt matter No. 39/2004 in OA No. 946/2003 and Contempt petition No. 40/2004 in OA No. 858/2003.

10. The applicants have in para 4(xvii) of the OA submitted that in view of the fact that the Hon'ble High Court had disposed of the above writ petition without notice to the applicants, who were party respondents before the High Court, they could know about the judgment only during the first week of June, 2006.

11. Respondents have contested the OA. The version of the official respondents is as under:-

(a) The direction given to the respondents by the Hon'ble High Court of Kerala is to take follow up action pursuant to the issue of the impugned order dated 25-03-2004 in case it was not challenged. The applicants did not challenge the promotion orders of party Respondents which means that they had acquiesced to their seniority in Cochin Collectorate ever since they joined on inter-Collectorate transfer and made their claim for lost

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seniority only on the basis of A-13 order dated 27th October, 1998 which was in fact issued in inadvertence.

(b) The impugned orders were part of pleadings in the case of OA No. 59/2003 and hence the applicants cannot plead ignorance of the same.

(c) The impugned orders have not been hit by the provisions of Sec. 19 (4) of the A.T. Act, 1985 as held in the case of *Gokul Chand Barua vs Union of India* (1989) 9 ATC 579 at pp 582-83

(d) Inter unit/zone transfer is a concession available to the individuals to move to the place of choice but that cannot deprive the legitimate right of others of that transferred unit to lose their seniority or chances of promotion. It was with that view that while accommodating such inter unit transfer on request, bottom most seniority level has been prescribed.

(e) In fact the issue of seniority in the organization had been discussed by the Apex Court in many cases right from *Mervyn Coutinho vs Collector of Customs, Bombay* (AIR 1967) SC 52, *Union of India vs M. Ravi Varna* (1972) 1 SCC 379 and *Amrit Lal Berry vs CCE* (1975) 4 SCC 714 and the common thread of these decisions is that the general principles of seniority as laid down in instructions dated 22-12-1959 had been duly recognized (and it is under these instructions that bottom seniority has also been prescribed)

(f) Annexure A-9 clarificatory order clearly provides for an undertaking for loss of seniority in the parent unit while being considered for inter unit / Collectorate transfer on request.

(g) The decision in *APSRTC vs V. Veeraiah* 2000(3) ATJ 354 of the Apex Court also supports the case of the respondents.


12. The version of the Private respondents is as under:-

(a) The Hon'ble High Court of Kerala in its judgment in WP (c) No.

30312/05 (Annexure A 31) has clearly directed that in case the impugned instructions dated 25-03-2004 cancelling the instructions dated 20-10-1998 allowing three years seniority to Group C officers who had been allowed inter-Commissionerate transfers prior to 20-05-80 at their request remain unchallenged and have become final, follow up action should be taken with a period of three months. The said impugned instructions having remained unchallenged, the respondents have published the revised seniority list dated 20-02-2006 and the same had been circulated and objections invited, vide Annexure R-5(A). The applicants have not chosen to prefer any objections to the same. The respondents 5, 6 and 7 herein were directly recruited inspectors under the Cochin Collectorate and were promoted as Superintendents prior to the dates of promotion of the applicants and it was by giving undue seniority benefits to the applicants that such a promotion was further reviewed and order dated 12-06-2002 was passed which became detrimental to the interest of the answering respondents.

13. Rejoinder and additional reply projecting the respective contentions have also been exchanged.

14. Learned Senior Counsel for the applicants argued that the applicants in this OA were not put to notice while passing the Annexure A-31 judgment as could be seen from para 3 of the said judgment. It was only in the first week of June, 2006 that for the first time the impugned order dated 25th March, 2004 at Annexure A-22 came to the notice of the applicant. In fact the contention of the applicants' counsel in this regard cannot be accepted as even in the order dated 27-07-2005 (Annexure A-26) there is a reference to the said order dated



25.03.2004. It was that order, in respect of which follow up action was directed to be taken vide High Court judgment in Annexure A-31 (against the order of this tribunal in OA 59/03). Now a look at the said order dated 25-03-2004 is very much essential at this juncture and the same is reproduced below:

"F.No.A23024/8/2003-Ad.III-A
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise and Customs

New Delhi, the 25th March, 2004

To:

All Chief Commissioner of Customs,
All Chief Commissioner of Central Excise,
All Commissioner of Central Excise,
All Commissioner of Customs,
All Director General/Directors

Subject: Inter-Commissionerate transfers and withdrawal of
Board's instructions F.No.23024/4/94-Ad.III-A, dated
20/10/98 – reg.

Sir/Madam,

Please refer to Ministry's instructions F.No. 23024/4/94-Ad.III-A dated 20.10.98 which granted benefit of three years' seniority to group 'C' officers who had been allowed inter-Commissionerate transfers prior to 20.05.80 at their own request.

2. The Board has reviewed the entire matter and has decided to withdraw the aforesaid instruction F.No. 23024/4/94-Ad.III-A, dated 20.10.98. This decision of the Board will apply to all pending cases where benefit of seniority of three years is claimed by the officers who were transferred from one Commissionerate to another before 20.05.1980.

3. These instructions are being issued with the approval of Chairman, Central Board of Excise and Customs and the receipt of these instructions may please be acknowledged.

Yours faithfully,

Sd/-


(S.K. THAKUR)

Under Secretary to the Government of India "



15. The idea of issuing the aforesaid order is evidently, not to disturb the weightage in seniority if already granted. The words, ***"This decision of the Board will apply to all pending cases where benefit of seniority of three years is claimed by the Officers who were transferred from one Commissionerate to another Commissionerate before 20-05-1980"*** completely restrict the applicability of the impugned order to the cases which were not already decided. The decision must, in all expectation, be based on the law laid down by the Apex Court in the Constitution Bench Judgment in the case of ***Direct Recruit Class II Engineering Officers' Assn. v. State of Maharashtra, (1990) 2 SCC 715***, wherein the Apex Court has held, "It is not in the interest of the Service to unsettle a settled position every now and then."

16. Thus, in so far as the applicants are concerned, it is to be seen whether their case falls within the ambit of the provisions of the afore said orders or they have the benefit of the exemption from the provisions by virtue of the aforesaid stipulation. In other words, it is to be seen whether the case of the applicants for seniority was 'pending' as on 25-03-2004. The answer is an emphatic 'NO'. For, Annexure A-15 seniority list is the one which reflects the latest seniority in the grade of inspectors as on 25-10-1980 and the same reflects the seniority position as indicated in the tabular statement above. The applicants were the beneficiaries of the seniority they had earned in the previous collectorate. This seniority was acted upon in considering the promotion for the higher post of Superintendents and admittedly, vide Annexure A-19, the dates of promotion of the applicants to the said grade had been advanced, as reflected in the last column vide Serial No. 75 and 76. Thus, even if the order dated 25-03-2004 had been pressed into service and acted upon, the same cannot affect the seniority position already granted to the applicants as early as in 2000 and acted upon in



2002 as discussed above. The cancellation of earlier order dated 20-10-1998 would affect only such of those transferred inspectors whose cases were hanging fire. When the writ petition came for consideration, obviously, the private respondents having been satisfied with the issue of order dated 25-03-2004 had made their submission on the basis of which the Hon'ble High Court had passed the Annexure A-31 judgment. Thus, if follow up action has to be taken in the wake of the impugned order at Annexure A-22 not having been challenged, the same shall not in any way affect the seniority and promotion thereof already gained by the applicants. The respondents have no doubt prepared a seniority list wherein none had been given the three years seniority benefit in respect of the inter unit/zone transferees and the same is of course provisional as contained in para 3 of the said order. The learned senior counsel rightly referred to a latest judgement dated 27th March 2007 in WP (C) No. 7945 of 2006 (S) at Annexure MA-1, the said order reads as under:-


"In all these cases the Central Excise and Customs Department is questioning the order of the Central Administrative Tribunal under Article 227 of the Constitution of India. The applicants before the Tribunal were appointed in the Department and working outside the Kerala State. They opted for a transfer to Cochin. As per order of the Central Board of Revenue dated 12.2.1958, they are entitled to get such transfer without loss of seniority. Conditions in 1958 order were changed only by another order issued by the 3rd petitioner on 20.05.1980. Several employees were transferred before 20.5.1980 but the Department insisted that their earlier service cannot be considered for promotion as they are transferred to the new station at their request. Various Benches of the Central Administrative Tribunal including Bombay, Patna Benches held that the order dated 20.05.1980 is not applicable to employees transferred to the Commissionerate before 20.05.1980. With regard to a decision from Patna High Court the matter went up to the Supreme Court. Hon'ble Supreme Court dismissed the appeal filed by the Department as the practice from the year 1958 was to count the entire seniority for promotion etc. despite the transfer is on request. The above order of the Supreme Court was dated 31.3.1998. Thereafter Government issued order dated 20.10.1998 (Annexure A1) and Board issued General circular dated 25.3.2004 (Annexure R(c)) that the Board has reviewed the entire matter and decided to give the benefit to all the persons who are transferred before

20.5.1980 from one Commissionerate to another Commissionerate. But subsequently the above order was withdrawn by Annexure R1(e). The contention of the Department was that since the above orders were withdrawn those transferees who got transfer before 20.05.1980 are also bound by order dated 20.5.1980. Tribunal correctly decided that even before the issuance of the 1998 order (Annexure A1), various Tribunals held that on inter State transfers seniority will not be lost in view of the order which was implemented from 1958 onwards. The above view was upheld by the Apex Court. Annexure A1 was issued in implementation of the Apex Court judgement. Hence withdrawal of the order which was issued subsequent to the Apex Court judgement are of no consequence. Department cannot overrule the Supreme Court judgement which is final. Consequently so long as transfers are effected before 20.5.1980 and the applicants were transferred to Cochin Collectorate much before 20.5.1980 their entire service has to be calculated. The same view was taken by a Division Bench of this Court in O.P. Nos. 16010 and 27856 of 2002 dated 25.11.2002. In the above circumstances, the orders passed by the C.A.T. in O.A. Nos. 22/2005 and 25/2005 needs no interference."

17. The case of the applicant squarely falls in that category which receives the protection by the Judgment of the Apex Court and earlier order dated 20-10-1998. In view of the above, there is absolutely no scope for revising the seniority of the applicants to their detriment on the basis of order dated 25-03-2004 and 9th July, 2004, impugned in this OA. It is immaterial that the seniority list circulated on 20-02-2006 was not challenged by the applicants.

18. Though a catena of decisions were cited by the learned senior counsel for the applicants, in view of the discussions as contained in the preceding paragraphs, there is no need to refer to them.

19. In view of the above the OA is allowed to the extent that whatever action be taken by the respondents in cancellation of the earlier order dated 20-10-1998 (Annexure A-13) the same shall not affect the seniority of the applicants in their grade as Inspectors and consequent promotion granted to them as



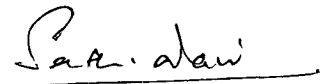
superintendents vide Annexure A-19 order dated 12-06-2002. The seniority list circulated on 20-02-2006, if made final, shall keep in view this order qua the applicants herein.

20. Under the above circumstances, there shall be no orders as to costs.

(Dated, the 13th September, 2007)



Dr. K B S RAJAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

cvr.