

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 473/89 122
~~F. A. No.~~

DATE OF DECISION 26.3.1991

V. Narayanan & 3 others Applicant (s)

M/s K Sasikumar & CA Joy Advocate for the Applicant (s)

Versus

Collector of Central Excise, Respondent (s)
and Customs, Central Revenue Bldg.,
I.S. Press Road, Cochin. 18 & 19 others

Mr. P. Sankarankutty Nair, ACGSC Advocate for the Respondent (s)
(for res. 1 & 2)

CORAM:

The Hon'ble Mr. S. P. Mukerji - Vice Chairman

and

The Hon'ble Mr. A. V. Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*
4. To be circulated to all Benches of the Tribunal? *Yes*

JUDGEMENT

(Mr. A. V. Haridasan, Judicial Member)

The subject matter of this application is the dispute regarding inter-se seniority between the direct recruits and promotees in the cadre of Inspectors of Central Excise. The grievance of the applicants 4 in number is that, though they were directly recruited to the cadre of Inspectors of Central Excise on 17.11.80, persons promoted to that post from the cadre of Upper Division Clerks long after the date on which the applicants were appointed have been shown as senior to the applicants in the seniority list, Annexure-A1, according to the applicants following a wrong principle of seniority.

The persons who would be affected by grant of the relief

claimed in the application have been impleaded as respondents 3 to 19. The material facts of the case as averred in the application can be briefly stated as follows.

2. There are two channels for making appointment to the cadre of Inspectors of Central Excise, namely direct recruitment and promotion. Upper Division Clerks with 5 years regular service are entitled to be considered for promotion to the posts of Inspectors of Central Excise. After 1.8.72, the ratio between promotees and direct recruits is 3:1. According to the Office^e Memorandum of the Ministry of Home Affairs dated 22.12.59 (Annexure-A2) the relative seniority of direct recruits and promotees was to be determined according to the rotation of vacancies basing on the quota prescribed for direct recruitment and promotion. A roster was to be maintained, and the direct recruits and promotees were to be fitted in their respective slots. If for any reason either direct recruitment or promotions could not be affected to fill the ear-marked slots for each category, the practice was to keep the slots vacant and to fill the same as and when the recruitment is made. This resulted in an anomalous situation in which persons whether it be promotees or direct recruits who were fortunate enough to get accommodated in the slots being kept vacant in the roster of any earlier year even-though their appointment was on a far later date became seniors to persons who were appointed earlier than them in the post but unluckily accommodated in the later roster.

Various High Courts and Supreme Court in a catena of decisions held that this method of fixing inter-se seniority between promotees and direct recruits were illegal and arbitrary and violative of Article 14 and 16 of the Constitution of India. In the light of the decision of the Supreme Court and the High Courts, the Government of India issued an order dated 7.2.86(Annexure-A3) with a view to cure the defect in the method of reckoning seniority between direct recruits and promotees, as follows:

"This matter, which was also discussed in the National Council has been engaging the attention of the Government 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 become 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 forwarded 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."

But even after the issuance of Annexure-A3 order, on 10.6.86 the respondents issued a seniority list of Inspectors of Central Excise, Annexure-A4 in which they had ranked persons who were promoted to the cadre of Inspector of Central Excise after the date of recruitment of the applicants to that cadre namely 17.11.80, as seniors to the applicants. To quote certain examples, the first applicant who was appointed as Inspector of Central Excise on 17.11.80 was placed at Serial No.390, while Shri P Mohammed Kasim, the 16th respondent, though promoted to the post only on 3.10.1981 was assigned at Serial No.387. While the second applicant at Serial No.402, one C.K.Padmakumari who was appointed on 30.9.81 has been placed at Serial No.401. Several other persons who were appointed to the post of Inspectors of Central Excise after 17.11.80 were placed in the seniority list at Annexure-A4 above the applicants. The applicants submitted representations to the second respondent pointing out the irregularity and claiming proper placement in the seniority list. A copy of the representation submitted by the first applicant to the second respondent is at Annexure-A5. The claim of the first applicant for refixation of the seniority was turned down by Annexure-A6 order dated 20.11.86. The first applicant filed an appeal to the first respondent. Subsequently, the second respondent prepared and circulated another seniority list of Inspectors of Central Excise as on 1.1.89, on 28.2.89, a copy of this is Annexure-A1. In this seniority list also the respondents adopted the old

principle of fixation of seniority and did not follow the procedure laid down in the Annexure-A3 instructions as in paragraph 7 of Annexure-A3, it was mentioned as follows:


"These orders shall take effect from 1st March, 1986. Seniority already determined in accordance with the existing principles on the date of issue of these orders will not be reopened. In respect of vacancies for which recruitment action has already been taken, on the date of issue of these orders either by way of direct recruitment or promotion, seniority will continue to be determined in accordance with the principles in force prior to the issue of this OM."

In the Annexure-A1 seniority list, the applicants 1 to 4 were ranked 366, 376, 350, 344 respectively. But persons who were appointed to the post long after 17.11.80 have been given seniority over the applicants. The paragraph 7 of the OM dated 7.2.86 (Annexure-A3) making the order only prospective in operation thereby taking away from the applicants, the benefits of proper fixation of seniority is arbitrary and illegal and against the spirit of the judgement of the Supreme Court and High Courts, pursuant to which the OM itself has been issued by the Government. The cut off date of 1.3.86 denying the benefit of the persons who were appointed earlier and extending the benefit only on those appointed on and from that date is discriminatory illegal and violative of Articles 14 and 16 of the Constitution of India. In determining the inter-se seniority of members belonging to the same grade in the service, the rule of continuous officiation, length of service should be the ^{ordinarily} criterion. The impugned seniority list prepared against this principle of seniority accepted to be proper in various judicial pronouncements is illegal and unsustainable.

The Hyderabad Bench of the Central Administrative Tribunal has in OA 156/86 filed by some Inspectors of the Central Excise, as the applicants, held that the applicants therein were entitled to get the seniority revised in accordance with the principles laid down by the Supreme Court, which were accepted by the Government of India, Department of Personnel and Administrative Reforms OM No.35014/2/80 Estt. D dated 7.2.1986. Therefore, the applicants pray that the paragraph 7 in the OM dated 7.2.86, Annexure-A3 may be declared as arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India, and therefore unsustainable, that Annexure-A1 seniority list may be quashed, and that the respondents may be directed to determine the seniority of the applicants by issuing seniority in relation to others in the Annexure-A1 a revised seniority list, refixing their seniority list taking into account their date of appointment and continuous officiation in service in the grade of Inspectors and also in the light of Annexure-A3 order dated 7.2.1986.

3. Respondents 1, 2 and 20 were represented by the Central Government Standing Counsel. The other respondents though notified did not appear. A reply statement was filed on behalf of the respondents 1 and 2. In this reply statement, it has been contended that the seniority of the applicants and others who were appointed prior to 1.3.1986 has been fixed in the seniority list at Annexure-A4, though issued on 10.6.1986, after the issuance of Annexure-A3

...7/-



order dated 7.2.1986, following the principles contained in OM dated 22.12.59, because as per paragraph 7 of Annexure A3 regarding persons who were recruited prior to 1986, the principles that have to be followed in fixing seniority was those contained in the OM dated 22.12.59. It has been further contended that in Annexure-A1 seniority list, as on 1.1.1989 also the same procedure has been adopted, and that this is perfectly in accordance with the directions in Annexure-A3 order. It has further been contended that ~~as~~ ⁱⁿ this Tribunal has in the judgement in OA K-67/88 considered the same question and observed that the inter-se seniority of direct recruits and promotees is to be fixed in accordance with the quota laid down by the rules and seniority has to satisfy the test of equality of opportunity in the matter of service. Therefore, the respondents 1 and 2 contend that there is no merit in the application, and that the same is liable to be dismissed. The respondents 1, 2 and 20, though were given several opportunities to file additional reply statement after the amendment of the application, incorporating the prayer for declaration that paragraph 7 of Annexure-A3 order illegal and inoperative, they ^{did} ~~have~~ ^{not} file any additional reply statement.

4. We have carefully gone through the pleadings and documents produced, and have also heard the arguments of the counsel on either side.

5. The short question that arises for consideration in this application is, whether paragraph 7 in Annexure-A3 order, making the principles laid down in that order

inapplicable to persons already in service upto 1.3.1986 and applicable only to persons recruited ^{after} ~~from~~ that date is violative of Article 14 and 16 of the Constitution and therefore liable to be struck down. It is an undisputed fact that several persons appointed after 17.11.1980 on which date the applicants were recruited directly as Central Excise Inspectors have been placed higher in the seniority list at Annexure-A1 and A4. The reasons for this anomaly is that in their case seniority was fixed not on the basis of the date of entry into service or length of continuous officiation in the cadre but on the basis of rotation of quota. ^{Vacancies} The applicants have averred in the application that as 5 years ^{of} regular service in the cadre of U.D.C is required for promotion as Inspector of Central Excise, on the date on which the applicants were appointed by direct recruitment to that post the promotees had not become eligible for promotion, that was why they were promoted only subsequently and that placing the applicants below such persons in the seniority list is highly arbitrary and violative of Articles 14 and 16 of the Constitution of India. It has also been averred that it was with a view to avoid such ^{and} inequitable situation [^] ~~persuaded~~ by the various judgements of the Supreme Court and High Courts that the Government had issued Annexure-A3 memorandum wherein it has been provided that if adequate number of direct recruits or promotees do not become available in a particular year, rotation of quota for the purpose of determining seniority should take place only to the extent of availability of direct recruits or promotees, that

unfilled quota of vacancies would be carried forward and added to the corresponding quota of the next year and that the additional recruits selected against the carry forward vacancies of the previous year should be placed enblock below the last promotee or direct recruits as the case may be in the seniority list based on rotation of vacancy for that year. According to the applicants if qualified persons to be promoted to the post of Inspector of Central Excise were not available, at that time when the applicants were directly recruited to that cadre instead of leaving the posts of promotees vacant as directed in Annexure-A3, the vacancies in the quota of promotees should have been carried forward and that if that was done there would not have been any occasion for placing persons appointed by promotion to the post of Inspector of Central Excise after the appointment of the applicants above them. The respondents' contention is that, since Annexure-A3 has come into effect only from 1.3.1986 and as seniority of persons in service upto that date in the cadre is to be continued to be determined according to the existing guidelines contained in the OM dated 22.12.1959 at Annexure-A2, there is no merit in the case of the applicants and that no injustice has been caused to them in the matter of seniority in Annexure-A4 list. The learned counsel for the applicant argued that the paragraph 7 in the Annexure-A3 list making the principles laid down in the above memorandum applicable only in the case of persons appointed after 1.3.1986 is arbitrary and

violative of Articles 14 and 16 of the Constitution. A classification of officers into persons recruited prior to 1.3.1986 and after that date for the purpose of applying the correct seniority according to the learned counsel amounts to hostile discrimination. Even before the issuance of Annexure-A3, the Supreme Court has in a catena of decision indicated that where a quota has failed, it is improper to allow the rota rule of seniority to prevail. As early as in the year 1967 the Supreme Court has in D.R.Nim Vs. Union of India, AIR 1967 SC 1301 observed that continuous officiation in a cadre must be counted for seniority.

It has been observed as follows:

"....Where an officer has worked for a long period as in this case for nearly fifteen to twenty years in a post and had never been reverted it cannot be held that the Officer's continuous officiation was a mere temporary or local or stop gap arrangement even though the order of appointment may state so. In such circumstances the entire period of officiation has to be counted for seniority. Any other view would be arbitrary and violative of articles 14 and 16(1) of the Constitution because the temporary service in the post in question is not for a short period intended to meet some emergent or unforeseen circumstances."

In Janardhan Vs. Union of India, AIR 1983 SC 769 the Supreme Court has observed as follows:

"As quota rule was directly inter-related with the seniority rule, and once the quota rule gave way, the seniority became wholly otiose and ineffective. It is equally well-recognised that where the quota rule is linked with the seniority rule, if the first breaks down or is illegally not adhered to giving effect to the second would be unjust, inequitable and improper."

In GS Lamba Vs. Union of India, AIR 1985 SC 1019 the Supreme Court has enunciated the following principles:

"Where recruitment to a service or a cadre is from more than one source, the controlling

authority can prescribe quota for each course. It is equally correct that where the quota is prescribed, a rule of seniority by rotating the vacancies can be a valid rule for seniority. But as pointed out earlier, if the rule of seniority is inextricably intertwined with the quota rule and there is enormous deviation from the quota rule, it would be unjust, inequitable and unfair to give effect to the rota rule. In fact as held in O.P. Singla's case (AIR 1984 SC 1595) giving effect to the rota after noticing enormous departure from the quota rule would be violative of Article 14. Therefore, assuming that quota rule was mandatory in character, as pointed out earlier, its departure must permit rejection of rota rule as valid principle of seniority."

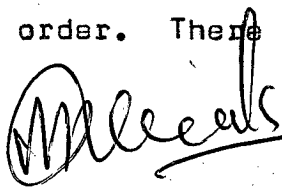
The Supreme Court has again in the same ruling held that:


"...giving effect to the rota rule after noticing the enormous departure from the quota rule would be violative of Articles 14 and 16, ruled that selection or recruitment of one year shall have precedence over selection or recruitment of the next year and this is what is known as service jurisprudence as seniority, according to continuous officiation in the cadre or the grade ... This is in tune with fair play and justice and ensures equality as mandated by Article 16."

It is taking note of the principles enunciated in the above decisions that Annexure-A3 was issued by the Government. Even before the issuance of Annexure-A3 in the judgement referred to above the Supreme Court has held that if there has been deviation from the ~~quota~~ ^{rota} rule, then to that extent rota rule of seniority should not be applied and the proper rule of seniority to be applied in such cases is the date of entry and continuous officiation in the cadre. So giving a cut off date as 1.3.1986 and making the principles of seniority properly formulated in the light of the decisions of the Supreme Court applicable only to persons recruited after that date, is highly improper and arbitrary. It does not stand the test of reasonableness in classification.

Therefore, we have no hesitation in striking down paragraph 7 of the memorandum dated 7.2.1986 at Annexure-A3 as irrational and violative of Articles 14 and 16 of the Constitution. It naturally follows that the fixing of the seniority in the case of the applicants basing on the Annexure-A-2 memorandum dated 22.12.1959 is irregular and improper.

6. In the conspectus of facts and circumstances, we allow the application, declare the paragraph 7 of the OM of the Government of India, Ministry of Personnel, Public Grievances and Pensions dated 7.2.1986 at Annexure-A3 null and void and set aside the impugned seniority list Annexure-A1 and A4 and direct the respondents 1, 2 & 20 to recast the seniority of the applicants and other persons in the cadre on the basis of the principles laid down in the remaining part of Annexure-A3 OM. Action as directed above should be completed within a period of three months from the date of communication of this order. There is no order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER


(S.P. MUKERJI)
VICE CHAIRMAN

26.3.1991

R.A. No. 35/91

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Placed below is a Review Petition filed by Shri C.S. Gopalakrishnan

Third party

(Applicant/Respondents in

Main

DA /TA No. 473/89) seeking a review of the order dated 26.3.91
passed by this Tribunal in the above noted case.

2. Unless ordered otherwise by the Bench concerned, a review petition shall be disposed of by circulation where the Bench may either reject petition or direct notice to be issued to the opposite party.

3. A Review petition is, therefore, submitted for orders of the Bench consisting of Hon'ble Shri S.P. Mukherjee, VC.

A.V. Haridasan Member J-2

which pronounced the Order sought to be reviewed.

21/6 The counsel for this RA has also filed an AP for early
posting of this RA. which may please be seen at P/A.

PS to Hon'ble Member J-2

26 21/6/91

28.6.91

SPM&AVH

R.A.No.35/91

Mr.Ramakumar-for the petitioner in RA.
Mr.PSK Nair-ACGSC.

Heard the learned counsel for the Review Applicant on the M.P. 696/91 for condonation of delay and M.P.697/91 for stay. In the interest of justice we direct that notices on M.P.696/91 and 697/91 be issued to the original applicant directing him to file reply within two weeks with a copy to the other parties.

Shri Sankarankutty Nair takes notice of the RA and M.P.s on behalf of original respondents 1&2. List for further directions before this Bench on 24.7.91.

28.6.91

24.7.91

SPM & AVH

Mr.Ramachandran Nair-for the petitioner
Mr. Sankarankutty Nair
Mr.Sasikumar

At the request of the learned counsel for the petitioner(MP), list for further directions on 7.8.91.

24.7.9

7.8.91

SPM&AVH

Mr.Ramachandran Nair-for applicant.
Mr.TA Rajan-rep.Sankarankutty Nair.
None for the other parties.

On request of the learned counsel for the original respondents, list for further directions on 12th September, '91.

7.8.91

SPM&AvH

12.9.91

Mr. Ramachandran Nair-for Review Applicant
Mr. Sankarankutty Nair.ACGSC
Mr. Joy-for Sasikumar


Heard the learned counsel for both the parties in this Review Application. The Review Applicant was not a party to the O.A.473/89 decided on 26.3.1991. His grievance is that by the recasting of the Seniority List, he will be adversely affected.

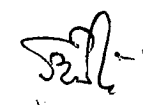
The learned counsel for the respondents Shri Sankarankutty Nair, ACGSC clarified that in finalising the Seniority List in accordance with the direction of this Tribunal, ^athe tentative Seniority List will be prepared and circulated to all concerned inviting representations if any and on the basis of the decisions taken on the representations if any, ^{then}only the Seniority List ^{will} be finalised.

In view of this assurance given by the learned counsel for the respondents (ACGSC), there is no ground for the apprehension expressed by the Review Applicant. In any case there is no force in the Review Application and the same is rejected.

The Review Applicant will ⁱⁿ any case ^{be} at liberty to challenge the finalised Seniority List before appropriate legal forum in accordance with law.

M.P.696/91, and M.P.Dy.No.7416/91 are disposed of.


(A.V. Haridasan)
Judicial Member


(S.P. Mukerji)
Vice Chairman

12.9.91

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m. m. s.