

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

FREE COPY U/R 22

CF C.A.T. (PROCEDURE) RULE

OA Nos.391/94 & 524/94

Friday, this the 5th day of August, 1994

C O R A M

HON'BLE MR JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN
HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

....

OA No.391/94.

1. S. Subramaniam, Preventive Officer Grade I,
Customs House, Cochin-1.
2. Babu Ram, Air Customs Officer,
Trivandrum Inter National Air Port,
Trivandrum-8.
3. PV Bhaskaran, Air Customs Officer,
Trivandrum Inter National Air Port,
Trivandrum.
4. VK Arora, Preventive Officer,
Customs House, Cochin-9.

....Applicants

By Advocate Shri CS Rajan.

vs.

1. Collector of Customs, Customs House, Cochin-9.
2. PK Devaki, Preventive Officer Grade I,
Customs House, Cochin-9.
3. NS Divakaran Nair, Preventive Officer Grade I,
Customs House, Cochin-9.
4. PN Vijayan, Preventive Officer Grade I,
Customs House, Cochin-9.
5. C Haridas Menon, Preventive Officer Grade I,
Customs House, Cochin-9.
6. R Sudhakaran, Preventive Officer Grade I,
Customs House, Cochin-9.
7. PB Santhyavu, Preventive Officer Grade I,
Customs House, Cochin-9.
8. PV Sreedharan Nair, Preventive Officer Grade I,
Customs House, Cochin-9.
9. Mariamma Scaria, Preventive Officer Grade I,
Customs House, Cochin-9.
10. KP Prabhakaran, Preventive Officer Grade I,
Customs House, Cochin-9.

Central Administrative Tribunal
Cochin Bench
Court of Record
Cochin
Kerala
India

11. TK Kamalasan, Preventive Officer Grade I, Customs House, Cochin-9.
12. Alfred D'souza, Preventive Officer, Customs House, Cochin-9.
13. CC Jacob, Preventive Officer, Customs House, Cochin-9.
14. Hally Itty Ipe, Preventive Officer, Customs House, Cochin-9.

....Respondents

- R.1 by Shri C Kochunni Nair, Senior Central Govt Standing Counsel.
- R.4 to 7 by Advocate Shri MR Rajendran Nair.
- R.2 by Advocate Shri Vellayani Sundararaju.
- R.12 to 14 by Advocate Shri V Rajendran.

OA No.524/94

1. CK Chandran, Preventive Officer, Customs House, Cochin.
2. Safruddin Ahmed, Preventive Officer, Customs House, Cochin.
3. VK Purushothama Kaimal, Preventive Officer, Customs House, Cochin.

....Applicants

By Advocate Shri Poly Mathai.

Vs.

1. The Collector of Customs, Customs House, Cochin-9.
2. PK Devaki, Preventive Officer Grade I, Customs House, Cochin-9.
3. NS Divakaran Nair, Preventive Officer Grade I, Customs House, Cochin-9.
4. PN Vijayan, Preventive Officer Grade I, Customs House, Cochin-9.
5. C Haridas Menon, Preventive Officer Grade I, Customs House, Cochin-9.
6. R Sudhakaran, Preventive Officer Grade I, Customs House, Cochin-9.
7. PB Santhyavu, Preventive Officer Grade I, Customs House, Cochin-9.
8. PV Sreedharan Nair, Preventive Officer Grade I, Customs House, Cochin-9.
9. Mariamma Scaria, Preventive Officer Grade I, Customs House, Cochin-9.

contd.

10. KP Prabhakaran, Preventive Officer Grade I,
Customs House, Cochin-9.

11. TK Kamalasan, Preventive Officer Grade I,
Customs House, Cochin-9.

....Respondents

R.1 by Shri C Kochunni Nair, Senior Central Govt Standing Counsel.

R.2 by Advocate Shri Vellayani Sundararaju.

R.4 to 7 by Advocate Shri MR Rajendran Nair.

O R D E R

PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

Applicants in these two Original Applications pray to quash orders issued in office order No.23/94 dated 25.2.94 by the Collector of Customs, Custom House, Kochi, by which respondents 2 to 11, in each application have been placed above the applicants in the seniority list for Preventive Officers. The facts in both these applications and the prayers are identical and, therefore, the applications are disposed of by a common order.

2. The seniority list of Preventive Officers was being prepared in accordance with instructions contained in Ministry of Home Affairs OM No.9/11/55-RPS dated 22.12.59. There was a quota rule fixing the ratio of direct recruits and promotees. In 1979, recruitment rules were framed which prescribe the ratio of 3 direct recruits to one promotee. The procedure adopted till 1986 was for slots to be kept vacant against the quota of direct recruits or promotees not filled up in a particular year and these slots would be filled up subsequently when direct recruits or promotees became available through later examinations or selections. As long as the quota was being adhered to, this would not create any serious problem, but if the quota system broke down, then persons recruited or promoted much later would become senior to those who had been selected or promoted earlier by virtue of their filling up slots kept vacant for them in earlier years.

contd.

3. Learned counsel for second respondent, forcefully argued with facts and figures that quota system had not been observed in the Department, and that, in such circumstances, as laid down in several decisions of the Supreme Court, seniority should be fixed on the basis of length of regular service, and if continuous and followed by absorption, adhoc service would also count for seniority.

4. It is seen that the cadre of Preventive Officers has been subject to many changes and restructuring with the result that the quota system was not followed in the Department. Under these circumstances, as stated in The Direct Recruit Class II Engineering Officers' Association and others vs. State of Maharashtra and others,

AIR 1990 SC 1607 at page 1627:

"If it becomes impossible to adhere to the existing quota rule, it should be substituted by an appropriate rule to meet the needs of the situation. In case, however, the quota rule is not followed continuously for a number of years because it was impossible to do so the inference is irresistible that the quota rule had broken down....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 the appointment, the appointees should not be pushed down below the appointees from the other source inducted in the service at a later date....The quota for recruitment from the different sources may be prescribed by executive instructions, if the rules are silent on the subject...If the quota rule is prescribed by an executive instruction, and is not followed continuously for a number of years, the inference is that the executive instruction has ceased to remain operative."

In such cases, the Supreme Court has directed that (para 44):

"Once an incumbent is appointed to a post according

to rule, his seniority has to be counted from the date of his appointment...If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted."

5. However, Government of India took note of the problems arising out of the break down of the quota rule and after considering the various decisions of the High Courts and Supreme Court in this regard, they revised the general principles for determining the seniority and issued orders in OM No.35014/2/80-Estt(D) dated 7.2.86. Under these orders, in each year the vacancies would be filled up by direct recruits and promotees according to the quota ratio and the availability of direct recruits and promotees. The correctness of this exercise would depend on the correctness of the reporting of the vacancy position to the Staff Selection Commission. The applicants in OA 524/94 have raised a specific contention that such reporting was not done correctly. In any case, vacancies which remained unfilled would be carried forward and added to the corresponding vacancies of the next year or subsequent years. The number of promotees in a year whose seniority is fixed inter se according to the ratio would be decided by the actual number of direct recruits appointed in that year by applying the ratio to this number. To the extent direct recruits are not available, promotees corresponding to the unfilled direct recruit vacancies will be bunched together at the bottom of the seniority list in that year below the last position upto which it was possible to determine seniority on the basis of the quota with reference to the actual number of direct recruits selected. Any promotion in excess of the quota for the year would only be a promotion on adhoc basis without any seniority being allotted. By this procedure, promotees, other than adhoc promotees, would be promoted against the vacancy decided by the quota, the principle being that they would be given seniority in the year in which they have been appointed, but inter se, if they do not have

a corresponding direct recruit selected, they would be kept at the bottom of the list for the year. This also would ensure that a promotee or direct recruit of a subsequent year would not be able to get seniority above any one in the previous year.

6. The orders of the Government of India dated 7.2.86 came into effect from 1.3.86. In fact, the order was not only prospective, but was made prospective from a future date. It was also mentioned in the order specifically that:

"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 AA Calton vs. The Director of Education and another, AIR 1983 SC 1143 at page 1145, the Supreme Court stated:

"It is true that the Legislature may pass laws with retrospective effect subject to the recognised constitutional limitations. But it is equally well settled that no retrospective effect should be given to any statutory provision so as to impair or take away an existing right, unless the statute either expressly or by necessary implication directs that it should have such retrospective effect."

However, it is seen that the Tribunal, in OA 473/89, struck down the provisions by which the orders were made prospective.

7. Second respondent filed an Original Application No.1041/92 praying for a revision of her seniority taking into account various orders of the Government of India regarding reservation for Scheduled Castes and Scheduled Tribes and the orders dated 7.2.86. This OA

was disposed of on 29.9.93 with a direction to the Collector of Customs, Custom House, Kochi, to pass appropriate orders, if necessary with notice to others who will be affected by the order to be passed and with opportunity of oral hearing to the applicant, if she so desired. A time of four months was given for taking a final decision in the matter. Since no orders were passed, Second respondent (applicant in OA 1041/92) filed a petition for contempt in CP(C) 32/94 and notice was issued to Collector of Customs, Kochi, to be present in person or through an authorised representative on 7.3.94. Before that date, the impugned orders in these applications, dated 25.2.94 were issued.

8. Respondents are justifying the impugned orders. In their reply, they have stated:

"The IIInd respondent was considered in the Departmental Promotion Committee convened on (in) 1986 against a regular vacancy which arose for promotees during 1982. It is respectfully submitted that Smt PK Devaki had fulfilled all the essential requirements of the rule for the purpose of regularisation. The vacancy position for the year 1982 was furnished to the Departmental Promotion Committee and on the basis of the Departmental Promotion Committee findings only Smt PK Devaki had been regularised against a vacancy which arose for promotees within the quota...The 4 applicants (OA 524/94) were appointed as Preventive Officer in this Custom House with effect from 25.8.1986, 26.5.1987 and 9.4.1986 respectively. Hence, they are eligible for seniority from their date of entry in this Custom House according to their rank in the selection panel furnished by the Staff Selection Commission only and not from the date of accrual of the vacancies...As per the Departmental Promotion Committee held during 1986, the IIInd respondent namely, Smt PK Devaki was selected against a regular vacancy which arose within the quota for promotees

during 1982. Since Smt PK Devaki was selected during 1982, there is no doubt that her seniors that is the respondents 3 to 11 who were promoted earlier than her were regularised against regular vacancies which arose for promotees within the quota prior to the year 1982. Hence, the seniority given to the respondents 2 to 11 are fully justified and legally valid."

9. However, applicants made a plea that though they were issued notices dated 11.2.94 as directed by this Tribunal in OA 1041/92, they received the notices on different dates after 11.2.94 and were asked to give their responses before 22.2.94. In some cases, the time given was as short as four days. Applicants had requested the Collector of Customs for more time to reply to the notice. Apparently, the Collector of Customs, who was under notice in a Contempt Petition felt that if the additional time requested for was granted, he would not be able to meet the dead-line fixed. In his reply (OA 524/94) he has stated:

"In order to issue a formal order in compliance with the direction of Hon'ble Tribunal the 1st respondent by notice dated 11.2.1994..."

(Emphasis supplied)

This indicates that the Collector of Customs was giving greater importance to passing orders quickly than in complying with the requirement of natural justice affording adequate opportunity to applicants to show cause against the proposed impugned orders. We would note in this connection, that the orders of this Tribunal in OA 1041/92 dated 29.9.93 had granted four months' time to comply with the orders, which lapsed on 28.1.94. The Collector of Customs issued notices to the applicants only on 11.2.94 after a Contempt Petition was filed. Some of the applicants submit that they received the notice only on 16.2.94. Having taken an inordinately long time

for this preliminary issue of notices, it would be unfair to grant the applicants only ten days or less to respond to the notice. The Collector of Customs in his reply has stated:

"To comply with the Hon'ble Central Administrative Tribunal's direction, the 1st respondent had to examine the documents related to her (Smt PK Devaki) promotion...Immediately after the receipt of the judgement the 1st respondent took earnest efforts to trace out the records from 1964 onwards. It is respectfully submitted that Smt PK Devaki had raised issues relating to her seniority in various cadres from her date of appointment that is from 1964 onwards. It was, therefore, necessary to locate and examine records, the (?) pertaining to promotions, recruitments etc., from the year 1964 onwards which involved considerable time. After verification of all the relevant records, the Recruitment Rules for Preventive Officer and the government guidelines for promotion..."

When such is the nature of the matter covered by notice and first respondent himself felt the need for a long period of time to process the case, it would be a denial of reasonable opportunity to grant applicants only ten days in the notice, but in actual fact much less time, to give an effective reply setting out their case. We are, therefore, forced to conclude that adequate opportunity has not been given to applicants in these Original Applications to show cause against the proposal to revise their seniority and giving respondents 2 to 11 seniority above them. On this short ground, the impugned orders dated 25.2.94 are liable to be quashed. We accordingly do so.

10. In view of the long delay already suffered in this case and since some of the respondents have staked a claim for further promotion based on the revised seniority ordered in the impugned orders, we would like to set out a time table for completing further

action in these cases. First respondent will issue notices to the applicants and others who are likely to be affected by the orders dated 25.2.94 (the impugned order now quashed) before 25.8.94 giving a time of one month for them to file objections against the proposed revision of seniority. Applicants and others who wish to raise objections, will give their replies to the first respondent on or before 23.9.94. Thereafter, first respondent will pass final orders before 14.10.94. In the final orders, the first respondent will specifically discuss the points raised by applicants and others who object to the proposed orders, in detail. For this purpose, he may group the objections into categories such as direct recruits who are juniors to second respondent, promotees who are seniors to second respondent, but whose seniority is also proposed to be revised as a consequence of the seniority of second respondent being revised, etc. First respondent will also specifically state in his final orders, the vacancy position in each year, the number of vacancies allotted to direct recruits and the number of vacancies allotted to promotees, the number of vacancies for direct recruits reported to the Staff Selection Commission, the number of vacancies filled up by direct recruits in that year and the number of promotees who are eligible to be shown against vacancies in that year. The seniority list as recast following the orders to be issued, should give the names of the direct recruits and promotees fitted against the vacancies in each year.

11. Applications are disposed of as above. No costs.

Dated the 5th August, 1994.

Sd/-

PV VENKATAKRISHNAN
ADMINISTRATIVE MEMBER

Sd/-

CHETTUR SANKARAN NAIR (J)
VICE CHAIRMAN

12. 8. 94
Date
Copy
Mam
Deputy Registrar

R. 12/81/94