

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No.59/2003

WEDNESDAY THIS THE 27TH DAY OF JULY, 2005

CORAM

HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR. N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. N.J.Sajive, Superintendent of Central Excise,
Calicut III Range,Calicut residing at Jose Villa,
P&T Quarters Road, East Hill, Calicut.
2. K.U.Vinoba, Superintendent of Central Excise,
Kollam Division, Kollam residing at Koladathu Veliyil,
Eruva East, Eruva PO, Kayamkulam, Kollam.
3. N.Muraleedharan, Superintendent of Central Excise,
(Preventive) Thrissur Division,
Thrissur residing at G.25, T.C.2/120
Ushus,Green Park Avenue, Peringavur PO
Thrissur.Applicants

(By Advocate Mr.P.Nandakumar)

V.

- 1 Union of India represented by the
Secretary to the Ministry of Finance,
Department of Revenue, New Delhi.
- 2 Central Board of Excise & Customs
represented by the Chairman,
New Delhi.
- 3 The Chief Commissioner,
Central Excise & Customs, Bangalore
Zone, Bangalore.



- 4 The Commissioner of Central Excise & Customs, I.S.Press Road, Cochin.
- 5 The Commissioner of Central Excise & Customs, Calicut.
- 6 P.K.Vijayakumar, Superintendent of Central Excise (Retired), Padikkal Kozhissery House, Alumpady, Post.Chavakkad,Thrissur Dist.
- 7 P.K.Jayarajan, Superintendent of Central Excise, Special Customs Preventive Unit, Thalassery.
- 8 G.Jayaprakash, Superintendent of Central Excise, Office of the Commissioner of Central Excise, Press Club Road, Thiruvananthapuram.
- 9 K.B.Muraleedharan,Superintendent of Central Excise, Service Tax Range, ICE Bhavan, Kathrikadavu,Cochin.
- 10 K.Prabhakaran,Superintendent of Central Excise, Office of the Commissioner of Central Excise, Press Club Road, Thiruvananthapuram.
- 11 M.Sudhakaran, Superintendent of Central Excise, Calicut Range IV, Kallai Heights, Calicut.
- 12 M.N.Narayanan,Superintendent of Central Excise, Office of the Commissioner of Central Excise, IS Press Road,Cochin.
- 13 Poomarathil Vijayan, Superintendent of Central Excise,Central Excise I Divisional Office, Palakkad.
- 14 T.S.Ananthanarayanan, Superintendent of Central Excise, Kalamassery Range, ICE Bhavan,Kathrikadavu,Cochin.
- 15 P.Vijayan,Superintendent of Central Excise, U.B.Centre,Air Cargo Complex, Sankhumugham,Thiruvananthapuram.



16 K.N.Mohandas,Superintendent of Central Excise,
Alappuzha Range, Alappuzha.

17 Koshy Philip. Superintendent of Central Excise,
Office of the Commissioner of Central Excise,
Press Club Road, Thiruvananthapuram.Respondents

(By Advocates 1. Mr.TPM Ibrahim Khan, SCGSC (for R.1-5)
2. Mr.K.M.Muhammed Kunhi (R.7,8, and 17)
3. Mr.CSG Nair (R.9,10,13,14 and 16)

The application having been heard on 7.6.2005, the Tribunal on
27.7.2005 delivered the following:

ORDER

HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

The applicants are direct recruit Inspectors under the Collectorate of Central Excise, Cochin. They were promoted as Superintendents of Central Excise with effect from 15.3.93 (applicants 1 and 2) and 30.9.96 (third applicant). A Review D.P.C. was held on 30.4.02 and the seniority/promotion of the applicants in the cadre of Superintendents, Central Excise were revised as per order dated 12.6.02 giving undue benefit to the inter-commissionerate transferee Inspectors like the respondents Nos. 6 to 17. Aggrieved by the said inaction the applicants have filed this O.A. seeking the following main reliefs.

- i) to call for the records leading to Annexures.A10,A.14,A16 and 17 and quash the same.
- ii) to declare Annexure.A.1 order has been superseded by Annexures.A3 and A5 and that the Inter Commissionerate transferees like respondents 6 to 17 are liable to be placed as the junior most in the entry level on the date of joining in Cochin Commissionerate as done in Annexure.A.7



iii) to declare that the inter commissionerate transferees like respondents 6 to 17 were not similarly situated Group C officers as eligible persons entitled for the benefits under Annexure.A.10

iv) to direct respondents 1 to 5 to restore the original seniority to the applicants and other similarly situated persons in accordance with Annexure.A7 as Superintendents.

v) to direct the respondents in the alternative to adhere to the procedure of creation of supernumerary posts in order to accommodate respondents 6 to 17 and other inter commissionerate transferees without affecting the seniority of the applicants and similarly situated persons.

vi) to issue such other orders or directions as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

2. The Board of Central Excise issued instructions on 12.2.1958 (A.1) with regard to the transfers of non-gazetted staff from one charge to another within the same department. As per that transfers of staff within a period of three years of first appointment in the department can be allowed with loss of seniority and in the case of persons transferred after a period of three years of their first appointment in the department the benefit of past service could be allowed up to three years only for the purpose of determining seniority in the new charge. The Ministry issued an O.M. dated 22.12.59 (A2) and decided to adopt this principle. The Cochin Commissionerate as per Annexure A3 dated 27.8.71 adopted the same. The case of the applicants is that in Annexure.A3 it is made clear that this will be regulated in accordance with A2. As per A2 it is made clear that inter-commissionerate transfers are not effected by any other orders. Annexure.A2 governs the filed. Inter-commissionerate transferees will be placed below all officers appointed regularly to the



grade in the respective commissionerate. Inter-commissionerate transferees on request were placed in the lowest cadre from time to time. Seniority lists were finalized (A6) and the applicants including Respondents 6 to 17 were subsequently promoted as Superintendents and the seniority list (A7) was published. One Damodar Singh came on inter-commissionerate transfer filed OA 601/93 before the Patna Bench of the Tribunal claiming seniority over others in the transferred commissionerate on the basis of A.1 order dated 12.2.58. His claim was allowed only on the reason that the Government/Department failed to produce any subsequent policy decision in supersession of Board's A1 order. A.8 is the order in the O.A 602/93. Civil Appeal was filed as 6734/96 before the Hon'ble Supreme Court of India, which was dismissed on the reason that the Government was not able to produce any material to indicate that the said policy was in vogue and the employee was transferred on his own request. A.9 is the copy of the order of the Hon'ble Supreme Court. The Office Memorandum dated 22.12.59 was very much in force and superseded in Annexure A.1 order which was not brought to the notice of either before the CAT, Patna Bench or Hon'ble Supreme Court of India. Purported exercise of implementation of the said orders suo motu decision of the Board was taken and was granted the benefit of clause (i) and (ii) of the order dated 12.2.58 of all similarly situated Group C officials (A.10) and went to a further extent of issuing a direction for application of the rules to all

Commissionerate though in Damodar Singh's case there was no general decision and the dictum was applicable to his own case and the said order is virtually affecting the valuable rights of several persons. Cochin Commissionerate sought to revise the said seniority list of Inspectors as on 20.5.80 including those retired/expired etc(A.11). Objections were given by affected persons contending that the inter-commissionerate transferees on requests have a right only to be placed below a direct recruit/promotees in the transferred commissionerate and also that Annexure A.1 order dated 12.2.58 is highly discriminatory and arbitrary. Fresh objection A12 was given. Copies of objections of second applicant is A13. A15 is a representation given by the effected person of the Bangalore Commissionerate. Review DPC was held on 30.4.02 and the date of promotions were revised for all promotions made from 1989 to 1996 and the claim of the applicants and others were rejected without showing any reason (A16). The Kerala Unit of All India Federation of Central Excise Gazetted Executive Officers also made representations and the 4th respondent vide order dated 12.6.02 (A17) granted inter commissionerate transferees unmerited placing in the seniority list. The applicants submitted detailed representations to the Government. A copy of the representation submitted by the 1st applicant is A.18.

3. The respondents 1 to 5, 7,8 and 17, 9,10,13,14 and 16 were filed separate reply statements contending that the Central Board of Revenue had issued order dated 12.2.58 permitting transfer of non gazetted staff



from one charge to another at their request subject to certain conditions prescribed in A.1 which was superseded by another order of Central Board of Excise and Customs issued on 20.5.1980 (Annexure R.14(A) and the conditions prescribed were entirely different from those of order dated 12.2.58. By virtue of this order the Board delegated the powers of inter-commissionerate transfer to concerned Commissioners. Damodar Singh, an Inspector of Patna Central Excise obtained an order from Central Administrative Tribunal, Patna Bench in OA 601/93 to the effect that inasmuch as the Board's order dated 12.2.58 was superseded only on 20.5.1980 those who were transferred prior to that were governed by the conditions prescribed in 12.2.58 order. The SLP was dismissed and the order of the Central Administrative Tribunal was upheld and the benefits were extended to those similarly situated employees. Vide A.10 dated 20.10.98 the second respondent decided that the other clauses in A1 cannot be implemented due to passage of time. The Bombay Bench of the Tribunal in OA 511/86 considered a similar matter and directed the department to grant the benefit of A.1 order although an undertaking contrary to the conditions mentioned in A1 was obtained from the applicant at the time of his transfer. The order was upheld by the Hon'ble Supreme Court (Annexure.R.14C). Provisional Seniority List was issued and after hearing the objections a final seniority list was issued on 4.7.2000 (A12). The applicants did not raise any objection. Representation was submitted which was replied. Decision to grant the



consequential benefit to the concerned including the party respondents was taken by the 4th respondent for almost another year. One Shri C.S.Gopalakrishnan Nair retired Superintendent had filed OA 408/2001 and another person by name Shri K..P.Chacko filed OA 474/2001 getting consequential benefits on the basis of A.12 and vide Annexure.R.14(D) this court disposed of the OAs directing to grant the benefit. The order in OAs was challenged before the High Court in OP 16010/02 but the High Court upheld the orders of the Tribunal in both the cases and directed the petitioners therein to implement the order of the Tribunal within five months (Annexure.R.14E). In its judgment dated 9.8.99 the High Court directed the Commissioner of Customs to implement the Annexure A.10 order (Annexure.A14F) A review D.P.C. was conducted on 30.4.02 and Annexure A.17 was published. The party respondents were given due position on the basis of Annexure.A12. Annexure.A2 order is the general principles for determining the seniority in the central services. This has nothing to do with the inter commissionerate/inter circle/inter division transfers ie., transfer of persons from one charge to another working in the same Department, for which each Ministry/Department has made its own orders/instructions. Nowhere it is stated that A.1 order was superseded by A3. A.1 stipulate decision in governing inter commissionerate transfer and A3 is governing general principles of seniority. On account of passage of time notional seniority was granted to all those who took inter commissionerate transfer prior to 20.5.80 as



per clauses (i) and(ii) of Annexure.A1. Annexure.A.10 was issued on the basis of the finding of the Hon'ble Supreme Court. In A1 order those who took inter commissionerate transfer prior to 20.5.80 are governed by the conditions laid down in A.1. An additional reply statement was also filed by Respondents, 9,10, 13, 14 and 16 producing Annexure.R.14(H) order, a clarification issued by the first respondent to the order dated 12.2.1958 which are applicable to transferees from one Customs House to another in the Customs House.

4. The applicant has filed a rejoinder contending that the first respondent reviewed the entire matter and has decided to withdraw Annexure A.10 order by order dated 25.3.2004 (Annexure.R.1) which stipulate that the decision of the Board will apply to all pending cases. Therefore the seniority given subsequent to A10 should be reviewed and the applicants' seniority be restored. They have also produced Annexure A19 rule prescribing the principle of seniority and revision thereof. Further they have produced Annexure.A.20 contending that A.10 order is no more in existence.

5. We have heard Shri P.Nandakumar, learned counsel for the applicant and Shri TPM Ibrahim Khan, SCGSC (for R.1to 5), K.M.Mohammed Kunhi (for R.7,8 and 17) and Shri C.S.G. Nair (for R.9,10,13,14 and 16). We have given due consideration to the arguments advanced and materials placed on record.

A handwritten signature or mark, appearing to be a stylized 'L' or a similar character, located at the bottom left of the page.

6. The learned counsel for the applicant submitted that A.10 circular cannot override A2 Ministry of Home Affairs order dated 22.12.1959 and O.M. dated 3.7.86 and A.10 circular has no validity in the eye of law. It is the employees' right to get the seniority determined as per rule in force at the time of his recruitment. The counsel for the respondents on the other hand persuasively argued that in the order of Central Board issued on 20.5.80 (Annexure.R.14(A) and the conditions prescribed therein were entirely different from those of 1958 order. Since the Commissioner found that there was a mistake against general declaration of the Hon'ble Supreme Court which forced the second respondent to issue A.10 order which cannot be faulted.

7. The challenge is the validity of Annexure.A.10 order dated 20th October, 1998 counting the past service rendered by the officials by the inter-commissionerate transferees and the review of the seniority fixed as per Annexure.A.10, for better elucidation, relevant portion of A.10 is reproduced.

"Subject: Implementation of CAT,Patna Bench's Judgment dated 20.7.1995 in OA No.601/93 filed by Shri Damodar Singh – regarding.

"I am directed to say that the question of granting benefits of clause (i) and (ii) of this Ministry's OM No.6/97/57-Ad.IIIA dated 12.2.1958 to the non-gazetted staff in CBEC who took inter commissionerate transfer before 20.5.80 was under dispute in CAT Patna Bench, CAT Patna Bench in its judgment dated 20.7.1995 (OA No.601/93 Shri Damodar Singh) has held that the benefit of clause (i) of the OM of 1958 may be given to Shri Damodar Singh while fixing his seniorities on his inter commissionerate transfer from Jaipur to Patna in the year 1978. Hon'ble Supreme Court has also upheld the judgment of CAT Patna Bench vide its judgment dated 31.3.98 in SLP



No.6734/96. Consequent upon the judgment of Hon'ble Supreme Court it has been decided by the Board suo moto that to avoid further litigation/reprsentations, the benefit of clause (i) and (ii) of 1958 circuakr (copy enclosed) may be grantede to all the similarly situated Group C officers under CBEC who were transferred before 20.5.1980. While implementing the decision and revising the seniority of the employees who have undergone inter commissionerate transfer before 20.5.1980, it may be ensured that all those who are adversely affected should be given a due notice and their representations should be considered before revising their seniority. (emphasis supplied).

The party respondents are the inter commissionerate transferees and were transferred to Cochin Central Excise Commissionerate on request during 1970s. Annexure.A1 order dated 12.2.1958 was issued by the Board of Revenue permitting transfer of non-gazetted staff from one charge to another with some conditions. This was superseded by another order dated 20.5.1980.(Annexure.R.14A) and the conditions were different. The fact remains that since 1970 the inter commissionerate transfers were permitted on certain conditions, similar to those in the order Annexure.R.14A. One Damodar Singh filed OA 601/93 before the C.A.T. Patna Bench, contending that A.1 was superseded only in 1980 and those who transferred prior to 1980 were governed by Annexure.A.1. This was challenged S.L.P No.673 of 1996 which was dismissed. It is profitable to quote the finding of the Tribunal, the relevant portion of which are as follows:

"4. A policy decision of the Board of Central Excise and Customs on the subject of transfer of non-gazetted staff from one charge to the another within the same department under the Board was issued as per Board's No.6/97/57-Adm.IIIA dated 12th February, 1958 (Annexure.2 to the application) in supersession of their letter F.No.18/62/56-Ad.VII/IX dated the 29th December, 1956. According

h

to clause (i) of the said policy decision of the Board (Annexure.2.) transfers of non-gazetted staff within a period of three years on first appointment in the department was allowed without any loss of seniority. Clause (ii) of the said policy provided that in the cases of persons transferred after a period of three years of their first appointment in the Department, the benefit of past service should be allowed upon to the period of three years only for the purpose of determining their seniority in the new charge.

Xxx xxx xxx xxxx xxxx

The applicant after joining at Patna Collectorate on 12.10.1978 made a representation in November, 1978 to the Secretary, Central Board of Excise & Customs, Ministry of Finance against the condition attached to his transfer to the effect that he will be treated as a fresh entrant to the cadre of Inspector (O.G) in the Patna Collectorate and his seniority will be fixed below the last temporary Inspector in the Patna Collectorate on the basis of a policy decision of the department dated 12.10.1958 (Annexure.2) which envisages that the transfer of staff within a period of three years of first appointment in the department may be allowed without any loss of seniority. The respondents have disputed having received any such representation.

Xxxx xxxx xxx xxxxx xxxx

The learned counsel for the applicant has also brought to our notice a recent decision of the Ernakulam Bench of CAT in the case of KCC Raja Vs. Union of India and others (OA No.1178 of 1994 dated 9.3.95). The relevant para 2 of the order is as follows:

"Applicant has produced A.10 letter dated 1.10.1992 from which we are able to understand that the benefit of past service could be allowed to persons who have made their application for inter-collectorate transfer before 20.5.1980. Applicant had made his request for inter collectorate transfer before 20.5.1980. It should normally follow that the applicant is also eligible for the benefit granted to the person referred to in A.10 letter. In the circumstances, we find that there is a preponderance of evidence to show that in 1975, the 12.2.1958 order was still in force. If the 1958 order had been cancelled before 1975 and had been restored after 1975 but before 1980, the pleadings give no indication of such changes in the rules.

Xxxx xxxx xxx xxxx

We are also of the opinion that the policy laid down by the Board in the Circular Annexure.2. Dated 12.2.1958, in respect of transfer of non-gazetted staff had not become inoperative the time when the applicant was transferred

h

from Jaipur Collectorate to Patna Collectorate by order (Annexure.3A) in September, 1978 against imposition of the condition of loss of seniority (Annexure.3A) consequent upon his transfer, from Jaipur Collectorate to Patna Collectorate in September, 1978. The respondent departmental authorities were bound to follow the policy decision of the Board Annexure.2 which had the force of law. The respondents failed to produce any subsequent policy decision in supersession of the policy decision, Annexure.2 and were also not able to plead and prove the actual subsequent policy, if any, in replacement of the policy contained in Annexure.A2. Vague references made by the respondents to certain letters and messages forming part of inter departmental communication are wholly insufficient and inadequate to warrant any inference of replacing of policy (Annexure.2) by any subsequent policy of the Board. On the contrary from Annexure.15 dated 30.9.1992 placed on record by the applicant, it is clear that Government of India has itself directed that the benefit of Annexure.2 cannot be denied to the persons who requested for inter-collectorate transfer before 20.5.1980."

xxxxxxxxx xxx xxx xxx

In the result, the 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 up to date and accordingly make correction in the placing of the applicant in the seniority list of Inspectors as on 1.1.92 (Annexure.7 corrected up to 1.4.92) and after fixing his seniority above his juniors to consider his promotion to the rank of Superintendent, Central Excise and if found fit, to promote him as 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."

8. This was challenged in the above SLP which was dismissed by a short order declaring that "The appellant has not been able to produce any material to indicate that the said policy was not invoked when the respondent was transferred pursuant to his request. In that view of the matter there is no infirmity with the impugned order of the Tribunal. This



"accordingly dismissed". On the strength of the above decisions A.10 is issued extending the benefit to all those similarly situated employees. New Bombay Bench of the Tribunal in OA No.51/86 directed the department to grant the same benefit as per Annexure.A.1. This was upheld by Supreme Court in Civil Appeal No.1697/1988 (R.14(A). The contention of the respondents is that A.10 circular is not legally enforceable. Since it was issued ignoring Annexure.A2 O.M dated 22.12.1959 read with OM dated 3.7.1986 and contended that A.10 cannot have an overriding effect and A.1 order dated 12.2.58 can no longer be said to be subsisting in the light of Annexure.A.3 circular dated 27.8.71. We have given due consideration for Annexure.A.1, A2 and other circulars mentioned above. The relevant portion of A3 is reproduced as under

"I am directed to refer to the Board's letter F.No.8/3/59-Ad.III A dated 19.10.59 and to say that the Board have had under consideration for some time past, the question of adopting the revised principles of seniority envisaged in the Ministry of Home Affairs OM No.9/11/55-RPS dated 22.12.59 read with OM No.9/45/60-Estt.(D) dated 20.4.61 and OM No.9/7/63-Estt.(D) dated 9.1.64 (copies enclosed) for determination of seniority of persons appointed to various non-gazetted posts and services in the Central Excise, Customs and Narcotics Department and other offices under the Board,. In supersession all previous orders on the subject, it has now been decided that in so far as the non-gazetted staff in the Central Excise Customs and Narcotics Departments and other subordinate offices are concerned, the seniority of persons appointed to various posts and services after receipt of these orders should be regulated in accordance with the Ministry of Home Affairs OM's referred to above."



9. On going through A2 the relevant portion of which is quoted below which deals with the general principles of determination of seniority in the Central Services.

"General principles for determination of seniority in the Central Services.

Annexure to Govt. of India, Ministry of Home Affairs, OM No.9-11/55,RPS dated the 22nd December, 1959.

XXX XXX XXX XXX

(iii) Where a person is appointed by transfer in accordance with a provision in the recruitment rules providing for such a transfer in the event of non-availability of a suitable candidate by direct recruiting or promotion, such transferee shall be grouped with direct recruits or promotees, as the case may be before the purpose of para 6 above. He shall be ranked below all direct recruits or promotees, as the case may be selected on the same occasion"

From the above document it is clear that it deals with those appointed in a department on transfer from other department of Central Government or State Government and not about those transferred from one unit to another unit within the same department and the said OM also deals with the fixation of seniority of all those persons appointed in a post through various channels of recruitment ie., direct recruits, promotees and transferees. Therefore, we are of the view that A2 and A3 does not pertain to those transferred from one unit to another unit of the same department. On a close scrutiny it cannot be said that A1 was cancelled or superseded by Annexure.A2 and Annexure.R.14A governs the field. The Tribunal also confirmed this preposition that A1 was superseded by Annexure.R.14A order. That declaration is sought to be implemented by

Annexure A.10 order. The applicant had quoted certain Supreme Court rulings reported in

(a) AIR 1976 SC 1766 (Regional Manager Vs. Pawn Kumari Dube and

(b) AIR 1972 SC 670 Union of India and others Vs. M.Ravi Varma and others.

and

© AIR 2001 SC 1210 P.Mohan Reddy Vs. EAA Charles etc. and canvassed for the position that the employees have the right to get the seniority determined as per rules, opinion based on limited facts cannot be considered as judicial opinion etc. We are in respectful agreement with the general principles and dictum laid down in the said judgments. But the facts given in this case are entirely different. By virtue of the decision of the Tribunal and the decision of the Supreme Court on the same subject and same issue quoted supra, it has reached a finality which is binding on this Tribunal. This Tribunal in OA 208/2001 dated 1st January, 2002 has considered all these aspects in detail in the case of C.S.Gopalakrishnan Nair Vs. Commissioner of central Excise (A14D) which was confirmed by the Hon'ble High Court in OP No.16010/2002S dated 25.11.2002. That case also is identical and therefore we are in respectful agreement with the same. Besides this matter was dealt in detail by the Hon'ble High Court in OP No.1070/1998S in the case of Union of India and others Vs. KCC Raja wherein the order of the Supreme Court in Civil Appeal No.6734/1996 was quoted, the operative portion of which is reproduced as under:

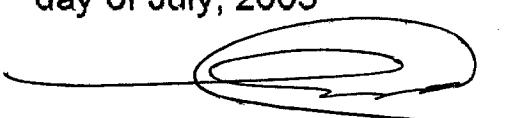


"The respondent's seniority was determined taking into fact that at Patna he should be treated to be the junior most of the date his prayer for transfer was allowed and he joined at Patna. Challenging the same seniority the respondent had initially filed a representation to the Central Board but the representation having been rejected he had approached the Central Administrative Tribunal. The Tribunal by the impugned judgment has come to the conclusion that in view of the policy of the Central Government in the year 1958 the respondent's seniority has to be determined taking the entire service period and not on the basis of the transfer which was made at his request. The appellant has not been able to produce any material to indicate that the said policy was not in vogue when the respondent was transferred pursuance to his request. In that view of the matter we see no infirmity with the impugned order of the Tribunal. This appeal is accordingly dismissed."

10. Since the matter has been reached a finality by the order of the Apex Court and the Hon'ble High Court of Kerala on the subject, we are of the considered view that the applicant has not made out a case and any reopening of the said issue will unsettle the settled position declared by the Apex Court. In the circumstances the OA does not merit and is to be dismissed. Accordingly the OA is dismissed. No costs.

Dated the 27th day of July, 2005


N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER


K.V.SACHIDANANDAN
JUDICIAL MEMBER

S.