

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 611/2009

Dated this the 12th day of November, 2010

CORAM

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER
HON'BLE DR. K.B. SURESH, JUDICIAL MEMBER

M. Chenchuraman S/o late V. Mani
Preventive Officer, Customs House
Kochi-682 009

(now on deputation as Intelligence Officer,
Directorate of Revenue Intelligence, Chennai)
Permanent Address: No. 10, MCR Nagar
Thirumurugan Nagar, Madhavaram
Chennai-600 060

Applicant

By Advocate Mr. T.C. Govindaswamy
Vs

- 1 Union of India represented by the
Secretary to the Government of India
Ministry of Finance, Department of Revenue
New Delhi.
- 2 The Central Board of Excise & Customs
New Delhi through its Secretary
- 3 The Chief Commissioner of Customs
Bangalore Zone, CR Building
Queens Road, Bangalore-560 001
- 4 The Commissioner of Customs
Customs House, Kochi-682 009

5 The Assistant Commissioner (Estt)
Office of the Commissioner of Customs
Custom House, Kochi-682 009

6 Shri M.V. Subramanian
Preventive Officer
Office of the Commissioner of Customs
Custom House, Cochin-682 009

7 Shri S.Biju
Preventive Officer
Office of the Commissioner of Customs
Custom House, Cochin-682 009

By Advocate Mr.Sunil Jacob Jose, SCGSC for R 1-5

The Application having been heard on 20.10.2010, the Tribunal delivered the following

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant who belongs to SC community and presently working as Intelligence Officer, Directorate of Revenue Intelligence, Chennai is aggrieved by the rejection of representations for refixation of seniority from the date of reporting of vacancies or from the date of publication of result by the Staff Selection Commission.

2 The applicant is a Preventive Officer under the Commissioner of Customs, Kochi in the pay band of Rs. 9300-34800 with a grade pay of Rs. 42,00/- According to the applicant he appeared in the examination conducted by the SSC on 28.4.1996. However, in terms of judgment of the Apex Court in Civil Appeal No. 4190 of 1995 in Radhey Shyam Singh Vs. Govt. of India the result of the written test was not published, the SSC conducted re-examination for the vacancies, subsequently interview

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was held and physical test was conducted on 25.8.2003 and he got appointed in February, 2004. The applicant was assigned seniority from the date of joining i.e. 11.2.2004. The respondents published seniority list as on 1.1.2005 (A-5) in which the applicant's name is shown at Sl. No. 97. According to the applicant going by the ratio of 1:3 between the promotees and direct recruits, his name ought to have been incorporated between Sl. Nos. 6 and 7 in A-5. All the persons from Sl. NO. 6 to Sl. No. 96 are persons appointed by promotion. Thereafter, in implementation of the directions of the Tribunal in O.A. 773/04 and connected cases, the respondents published A-9 seniority list fixing the seniority of direct recruits and promotees applying quota rota rule. The applicant was thereafter confirmed w.e.f. 11.2.2006 by office order dated 28.5.2007(A-11). Applicant submitted representations against his lower ranking in the seniority list which were rejected stating that the year of availability shall be the actual year of appointment. Hence he filed this O.A seeking higher seniority on the grounds that he is entitled to be placed against the vacancies of the year 1996 between Sl. NO. 1 and 2 in A-13, he was denied equal treatment on par with all those who were appointed as direct recruits prior to his appointment, the ratio of 1:3 applying quota rota rule, the delay in finalisation of the recruitment process initiated in 1995 was directly attributable to the respondents, therefore there is no justification in making the applicant suffer when his colleagues were assigned seniority in terms of A-14 and A-10

3 The respondents filed reply statement contending that the seniority of direct recruits will be in accordance with the availability of the candidates for appointment as per DOPT's instructions which were further clarified vide DOPT's OM dated 3.7.86 and 3.3.2008 according

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to which the year of availability shall be the actual year of appointment after declaration of results/selection and completion of pre-appointment formalities. These instructions have been followed in all appointments to the post of Inspectors made in the year 2004. They submitted that the applicant was adjusted against the one SSC vacancy reported in the year 2003. The appointment letter was issued to him on 21.1.2004. They submitted that the finalisation of the selection and publication of the select list etc. are done by the SSC and not by the CBEC or department.

4 We have heard learned counsel appearing on both sides and perused the records produced before us.

5 The short issue that comes up for consideration in this OA is whether the applicant is entitled to be assigned seniority from the year of availability or from the date of reporting of vacancy.

6 In AK. Subraman Vs. Union of India (1975) 1 SCC) the Apex Court while considering the fixation of seniority of direct recruit and promotee Assistant Engineers in the Central Engineering Service held:

(3) The quota rule will be enforced at the time of initial recruitment, in an officiating capacity, to the grade of Executive Engineer and not at the time of confirmation.

4 The quota rule will be enforced with reference to vacancies in all posts whether permanent or temporary included in the sanctioned strength of the cadre and the operation of the quota rule will not depend upon the availability or non-availability of Assistant Executive Engineers for appointment as Executive Engineers. The non-availability of Assistant Executive Engineers for recruitment to the grade of Executive Engineer will not postpone the regular recruitment of the Assistant Executive Engineers as Executive Engineers within their quota.

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In Pilla Sitaram Patrudu and Others Vs. Union of India and Others (1996 SCC (L&S) 1086) while considering the case of fixation of seniority of direct recruit whose appointment was delayed for no fault on his part but due to laches on the part of the department, the Apex Court held that the applicant is entitled to appointment according to the rules and is entitled to the ranking given to him in the select list.

In Balwant Singh Narwal and Others Vs. State of Haryana and Others (2008) 2 SCC (L&S) 586, the Supreme Court while considering the impact of delayed appointments, on the question of seniority held that the candidates recommended by the Commission are entitled to be appointed with the benefit of seniority from the date of their appointment.

In P. Mohan Reddy Vs. EAA Charles and Others (2001 SCC (L&S) 718) the Apex Court was considering determination of inter se seniority of the seniority of Direct Recruits and promotees- The Apex Court held that unless the rule amending the criteria is retrospective employees appointed prior to the amendment are nonetheless entitled to determination of seniority under the pre-amendment rules.

In OA.773/2004 and 144/2008, the Tribunal dealt with the inter se seniority of direct recruits and promotees. In that case after discussing the judgment of the Apex Court in Arvinder Singh Bains Vs. State of Punjab & Ors (JT 2006 (11) SC 553) Direct Recruit Class II Engineering Officers Association & State of Maharashtra, M. Subbareddy and another Vs. APSRTC and Ors, Prafullakumar Das and Others V. State of J & K, Ajith Kumar Rath V. State of Orissa and

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others and Gopal Bhimappa V. State of Karanataka and Ors and the order of this Tribunal in O.A. 733/04 the Tribunal held that it is mandatory to apply rota and quota rule in determining seniority when it is provided so in the Rules.

7 We notice that the applicant filed this O.A on 7.9.2009 has not challenged the DOPT's OM dated 3.7.1986 or its further clarification on 3.3.2008. In the OM dated 3.7.1986 certain provisions were made which is extracted below:

2.41 The relative seniority of direct recruits and of promotees shall be determined according to the rotation of vacancies between direct recruits and promotees, which shall be based on the quota of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules.

2.42 If adequate number of direct recruits does not become available in any particular year, rotation of quota for the purpose of determining seniority would take place only to the extent of the available direct recruits and the promotees."

In the OM dated 3.3.2008, the word "available" used in the above para was clarified as follows:

"..... It is hereby clarified that while the inter se seniority of direct recruits and promotees is to be fixed on the basis of the rotation of quota of vacancies, the year of availability, both in the case of direct recruits as well as the promotees, for the purpose of rotation and fixation of seniority shall be the actual year of appointment after declaration of results/selection and completion of pre-appointment formalities as prescribed. It is further clarified that when appointments against unfilled vacancies are made in subsequent year or years either by direct recruitment or promotion, the persons so appointed shall not get seniority of any earlier year (viz. Year of vacancy/panel or year in which recruitment process is initiated) but should get the seniority of the year in which they are appointed on substantive basis. The year of availability will be the vacancy year in which a candidate of the particular batch of selected direct recruits or an officer of the particular batch of promotees joins the post/service.



They further clarified that cases of seniority already decided with reference to any other interpretation of the term "available" as contained in OM dated 3.7.1986 need not be reopened."

8 Therefore, as long as the instructions of the DOP&T cited above remain unchallenged, the relief prayed for the applicant cannot be granted. Accordingly the O.A. is dismissed. No costs.

Dated 12th November, 2010


DR. K.B. SURESH
JUDICIAL MEMBER


K. NOORJEHAN
ADMINISTRATIVE MEMBER

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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.611/2009

Monday this the *16th* day of November, 2015

C O R A M :

**HON'BLE Mr.JUSTICE N.K.BALAKRISHNAN, JUDICIAL MEMBER
HON'BLE MRS.P.GOPINATH, ADMINISTRATIVE MEMBER**

M.Chenchuraman
S/o late V Mani
Preventive Officer, Customs House
Kochi – 682 009
(Now on deputation as Intelligence Officer
Directorate of Revenue Intelligence, Chennai)
Permanent Address: No.10, M.C.R Nagar
Thirumurugan Nagar, Madhavaram
Chennai – 600 060

...Applicant

(By Advocate Mr.T.C.G Swamy)

V e r s u s

1. Union of India, represented by the
Secretary to the Government of India
Ministry of Finance, (Department of Revenue)
New Delhi
2. The Central Board of Excise & Customs
New Delhi – through its Secretary
3. The Chief Commissioner of Customs
Bangalore Zone, C.R.Building, Queens Road
Bangalore – 560 001
4. The Commissioner of Customs
Custom House, Kochi – 682 009
5. The Asst. Commissioner (Estt)
Office of the Commissioner of Customs
Custom House, Kochi – 682 009



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6. Shri.M. V.Subramanian
Preventive Officer
Office of the Commissioner of Customs
Custom House, Cochin – 682 009

7. Shri.S.Biju
Preventive Officer
Office of the Commissioner of Customs
Custom House, Cochin – 682 009 ... Respondents

(By Advocate Mr.N.Anilkumar, Sr.PCGC(R)(R1-5))

This Original Application having been heard on 7th October 2015 this Tribunal on 16.11.2015 day delivered the following :

ORDER

HON'BLE Mrs.P.GOPINATH, ADMINISTRATIVE MEMBER

This Original Application was earlier dismissed by this Tribunal and the matter was subsequently challenged before the High Court of Kerala in OP(CAT) 1320/2010. The High Court observed that the impugned order passed by the Tribunal has heavily relied on OM No.20011/1/2006-Estt.(D) dated 3rd March, 2008 and rejected the case of the petitioner on the basis that the OM was not challenged. The High Court also observed that in view of the Apex Court judgment in **Union of India v. N.R.Parmar (2012) 13 SCC 340** where the Apex Court had occasion to deal with the aforesaid OM dated 3/3/2008 and explained the scope of the said OM. Since the Tribunal did not have the benefit of adverting to the above judgment of the Apex Court, considering the nature of the controversy, the High Court averred that it is only appropriate that the case should be re-examined by the Tribunal



duly adverting to the principles laid down in the judgment of the Apex Court referred to above. The OP CAT filed in OA No.611/09 was remitted back to this Tribunal for re-consideration of the matter.

2. Applicant is a Preventive Officer under the Commissioner of Customs, Kochi in the pay band of Rs.9300-34800 with a grade pay of Rs.4,200/- . In this Original Application, the applicant is aggrieved by Memo F.No.545/54/2006 – Estt. Cus. Dated 04.09.2008, issued by the 5th respondent rejecting the applicant's request for fixation of his seniority in accordance with the rules in force on the subject. In accordance with the Recruitment Rules, as it stood, vacancies in the cadre of Preventive Officers (Customs) are to be filled in the ratio of 1:3, as between promotees and direct recruits. For the recruitment year 1996, six vacancies in the cadre of Preventive Officer (Customs) in the Customs Commissionerate, Cochin was reported for appointment under DR quota, which included 3 UR, 1 SC and 2 OBC. Accordingly, a notification was issued by the Staff Selection Commission during the later part of 1995 for these and other vacancies in the cadre of Inspectors of Central Excise, Inspectors of Income-tax, Assistant Enforcement Officers, Examiners etc. The examination was conducted on 28th April 1996 and the applicant participated in the same. However, on account of some irregularities in the examinations conducted, the results were not announced.



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3. After a long time, all those who appeared in the examination earlier, were asked to appear for re-examination, which was conducted on 13.06.1999. The final list of selected candidates was published by the Staff Selection Commission, in the Employment News on 5-11 January 2002. Even after the publication of results, the respondents did not issue appointment order to the applicant, who was selected against one S.C vacancy and was the only person allotted to the Cochin Customs Commissionerate as against the six vacancies originally notified. The applicant was finally appointed as a Preventive Officer, with effect from 11.02.2004. The applicant has since been continuing in the same post.

4. After the applicant joined the service of the respondents on 11.02.2004, the respondents published a seniority list of Preventive Officers as on 01.01.2005. The applicant's name is at Sl.No.97. It may also be seen that against a vacancy of the year 1996, one Shri.K.Muralidharan Nair stood promoted on regular basis, as a Preventive Officer with effect from 15.10.1996. In the circumstances, going by the ratio of 1:3 as between the promotees and direct recruits, the applicant's name ought to have been incorporated between Sl.Nos.6 and 7 in Annexure A-5. All the persons from Sl.No.6 to Sl.No.96 are persons appointed by promotion. Aggrieved by the Seniority so assigned to the applicant in Annexure A-5 seniority list, the applicant submitted a representation dated 11.02.2005, addressed to the 4th respondent. In purported implementation of the directions of this Tribunal

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in O.A No.773/04 and O.A No.114/05, the respondents published a seniority list of Preventive Officers as on 31.12.1995. In Annexure A-9, the seniority of promotees and direct recruits were fixed, applying the quota-rota rule, as provided for under the rules and instructions on the subject. In the light of the law declared by this Tribunal and the consequent implementation of the same, the applicant submitted another representation dated 11 July 07, addressed to the 4th respondent. There was no response to Annexure A-12, but, the respondents published another seniority list of Preventive Officers as on 01.01.2008. In Annexure A-13, the applicant's name is at Sl.No.90, against the requirement of being placed between Sl.No.1 and 2 Annexure A-13 also carries a recital that the same is subject to the decision of the Board on the representation submitted by the applicant in the matter of determination of his seniority.

5. By Annexure A-1 order dated 04.09.2008, the applicant's representations were rejected on the ground that according to DoP&T, the year of availability shall be the actual year of appointment after declaration of results/selection and completion of pre-appointment formalities as prescribed. The applicant submits that Annexure A-1 is against the law declared by the Apex Court in a series of judgments; it is also against Annexure A-10 decision of this Tribunal, which itself has relied upon the earlier decisions of this Tribunal, confirmed by the High Court of Kerala. Applicant's prayer is to be placed between Sl.No.1 and 2 in Annexure A-13



seniority list and to be granted the benefit of promotion in preference to his juniors, with all consequential benefits emanating there from.

6 Respondents submit that the applicant had appeared for the written examination for Inspectors conducted by SSC on 28.4.1996 but the result was not published and the candidates who appeared for this exam were asked to reappear again on 13.06.1999 on all India basis for the vacancies declared in 1995 as per the Supreme Court judgment in the case of Radhey Shyam vs. Union of India (C.A No.4190/1995 dated 09.12.1996). Applicant has been assigned seniority by the department from the date of joining i.e. the year 2004. Applicant has claimed that his seniority is to be fixed in the year 1997 as candidate from the same examination who joined Income Tax, was assigned seniority from that year. Applicant has been assigned seniority according to the instructions in DOP&T OM No.22011/7/86-Estt(D) dated 3.7.86. The concept of antedated seniority with reference to vacancy year or any other method has been done away with the aforesaid OM. Accordingly, the seniority of direct recruits will be in accordance with the availability of the candidates for appointment. The said instructions have further been clarified vide O.M No.20011/1/2006-Estt (D) dated 3.3.2008, wherein it is mentioned that the year of availability shall be the actual year of appointment after declaration of results/selection and completion of pre-employment formalities. The DoP&T's instructions of 1986 and 2008 have accordingly been followed in all appointments through



the SSC, to the post of Inspectors.

7. The applicant was adjusted against the one SC vacancy reported to the Staff Selection Commission in the year 2003. Hence, the averments of applicant regarding the number and details of vacancies and reporting year is not correct. The appointment letter was issued to him on 21.01.2004 by the office of the Commissioner of Customs, Cochin immediately on receipt of Dossiers from the Chief Commissioner of Customs, Bangalore on 08.01.2004. The applicant's ground of influence of Ministerial staff Association is incorrect and denied. It is submitted that as per DoP&T's O.M No.22011/7/1986- Estt(D) dated 3.7.86 and O.M No.2001/1/2006-Estt (D) dated 3.3.2008, the year of availability shall be actual year of appointment after declaration of results/selection and completion of pre-appointment formalities as prescribed. Hence, the applicant's request for re-fixation of seniority from the date of reporting of vacancies or from the date of publication of result by the Staff Selection Commission is baseless as it will unsettle the settled position.

9. Heard the counsel for applicant and respondents and perused the written submissions made.

10. The issues raised in this Original Application is a covered matter in O.A 453/96 of the Ernakulam Bench, O.A No.1478/2014 of Hyderabad

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Bench, O.A 741 & 692/2013 of the Bombay Bench. The Ernakulam Bench in O.A No.453/96 filed by Direct Recruit Preventive Officers, a post which had a direct recruitment and promotee quota, as early as June 1999 had ordered that the respondent should assign seniority to applicants taking into account the year for which the vacancies were reported and not with effect from the date of their joining in service.

11. O.A No.1478/2014 was filed by Inspectors (Preventive Officers) who joined service after 03.03.2008 wherein the Bench held that the judgment of the Apex Court in N.R Parmar's case (2012) 13 SCC 340 does not indicate anything to show that it will have prospective application only as discussed in the judgment of the Bombay Bench of the Tribunal in O.A 741 & 692/2013. The Bench directed that the benefits of the Apex Court decision in Parmar's case be extended to the applicants.

12. In O.A 741/2013 and 692/2013 the applicants were direct recruit Inspectors who were selected vide advertisement issued in year 2003, 2004, 2005 and 2006. The recruitment process lasted for 2 to 3 years before applicants were appointed. The post had as above a quota of direct recruitment and promotee. The Bombay Bench of the Tribunal directed the respondents to revise the seniority list of Inspectors by following the judgment rendered by the Apex Court in Parmar's case referred above and by ignoring clause 5(b) of the DoP&T OM of 4.3.2014 and place the



applicants according to the recruitment year i.e, the year in which the recruitment process was initiated by notifying the vacancies to be filled up, although it may take a couple of years to complete the said selection process.

13. The Bombay Bench in O.A 741 and 692 of 2013 analysed in detail the Apex Court judgment in **Union of India v. N.R.Parmar** (2012) 13 SCC 340 wherein the Apex Court had held that issuance of advertisement is crucial to determine the seniority of direct recruits and the provisions of DoP&T OM dated 07.02.1986 and 3.07.1986 have to be followed. The OM dated 3.3.2008 was declared irrelevant for determining the seniority of direct recruit and promotee officers. The Bench also observed that it has been specifically held in Parmar's case that the direct recruits have to be interspersed with promotee officers of the same recruitment year in which the promotee officers were appointed although the direct recruits may have actually been appointed and joined in subsequent years. In para 22.1(b) the Apex Court held:

“22.1(b) It is not necessary that the direct recruits for vacancies of a particular recruitment year, should join within the recruitment year (during which the vacancies had arisen) itself. As such, the date of joining would not be a relevant factor for determining the seniority of direct recruits. It would suffice if action has been initiated for direct recruit vacancies, within the recruitment year in which the vacancies had become available. This is so, because delay in administrative action, if any, could not deprive an individual of his due seniority. As such initiation of

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action for recruitment within the recruitment year would be sufficient to assign seniority to the concerned appointees in terms of the "rotation of quotas" principle, so as to arrange them with other appointees (from the alternate source), for vacancies of the same recruitment year.

23.1 The logic and the process of reasoning, emerging from the O.N dated 2.2.2000 as is apparent to us, is being analysed below:-

- (a) If the process of recruitment has been initiated during the recruitment year (in which the vacancies have arisen) itself, even if the examination for the said recruitment is held in a subsequent year, and the result is declared in a year later (than the one in which the examination was held) and the selected candidates joined in a further later year (than the one in which the result was declared), the selected candidates will be entitled to be assigned seniority, with reference to the recruitment year (in which the requisition of vacancies was made). The logic and reasoning for the aforesaid conclusion/expressed in the ON dated 2.2.2000 is, if the process of direct recruitment is initiated in the recruitment year itself, the selected candidate(s) cannot be blamed for the administrative delay, in completing the process of selection.
- (b) The words "initiation of action for recruitment" and the words "initiation of recruitment process" were explained to mean, the date of sending the requisition to the recruiting authority."

14. The Apex Court also held that O.M dated 03.03.2008 must be deemed to be non-est to the extent that the same is in derogation of earlier O.Ms



dated 07.02.1986 and 03.07.1986 and has to be ignored/omitted to the extent that the same is in derogation of these earlier O.Ms. Based on the above observation of the Apex Court in **Parmar's Case**, the Bombay Bench drew the conclusion that so far as the issue of determination of seniority between direct recruits and promotee officers appointed in any department is concerned, post the **Parmar** judgment, the same is strictly governed by the provisions of OM dated 07.02.1986 and 03.07.1986 by following the rota quota principle and direct recruits are to be inter-spaced with the promotee officers at appropriate slots in the seniority list in reference to their recruitment year, which is nothing but the year in which the recruitment process was initiated by notifying the vacancies to be filled, although it may take a couple of years to complete the said selection process. Date of joining by the direct recruits subsequently in pursuance thereof, is immaterial for determining their seniority vis-a-vis the promotee officers.

15 Based on the above precedent of the Apex Court in the **Parmar's Case** and the Bombay Bench judgement supra the respondents are directed to revise the seniority list suitably so as to interspace the direct recruit applicant with the promotee officers at appropriate slots on the basis of their recruitment year and not on the basis of the date when they have actually joined service.

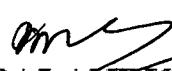
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16. The Bombay Bench also considered the retrospective application of the Parmar's judgment by stating that every judgment rendered by the Hon'ble Supreme Court is the law of the land and it is always retrospective in operation unless it is specifically directed by the Court itself in the judgment that the decision will have prospective application only. There is nothing in the judgment in Parmar's case which intends that the judgement should have only prospective application. The Bench also observed that the judgment is in rem i.e, applicable to all similarly situated and not in personnem i.e, applicable to the parties involved therein only.

17. The respondents are directed to notionally assign and fix the seniority of the applicant with reference to date of initiation of the process of recruitment and in terms of the rotation of quota principle and operate the revised seniority list when promotions are effected to the next promotion post.



(P.GOPINATH)
ADMINISTRATIVE MEMBER



(N.K.BALAKRISHNAN)
JUDICIAL MEMBER

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