

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A No.1203/95 & O.A.No.77/96

Thursday this the 29th day of January, 1998.

CORAM:

M:

HON'BLE MR.JUSTICE K.M.AGARWAL, CHAIRMAN

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE MR.S.K.GHOSAL, ADMINISTRATIVE MEMBER

In O.A.1203/95

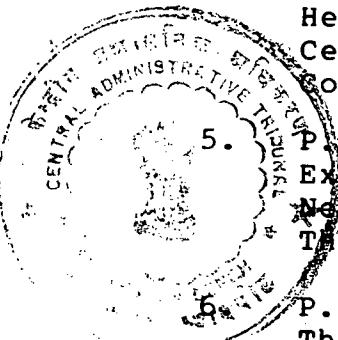
1. Mitraprasad.C.,
Intelligence Officer,
Directorate of Revenue Intelligence,
19/1069-A, Tali, Chalepuram,
Calicut- 673 002.
2. P.P.Mohanakumar,
Superintendent of Central Excise,
Manjeswaram Range,
Manjeswaram.
3. N.Vijayakumar,
Inspector of Central Excise,
Legal Section,
Central Excise Head Quarters Office,
Cochin-682 018.

..Applicants

(By Advocate Mr. K.Ramakumar)

vs.

1. Union of India represented by the Secretary,
Department of Revenue, North Block, New Delhi-1.
2. Chief Commissioner of Customs and Central Excise,
Madras -21.
3. Commissioner of Central Excise and Customs,
Cochin-18.
4. A.T.Thomas, Superintendent of Central Excise,
Head Quarter's Preventive Unit,
Central Revenue Buildings, I.S.Press Road,
Cochin-18.
5. P.G.Gopalakrishnan Unnithan, Superintendent of Central
Excise, Pothikkal Buildings,
Near K.S.R.T.V.C. Bus stand,
Thiruvalla-1.
6. P.V.Jose, Superintendent of Central Excise,
Thodupuzha Range,
Thodupuzha.



7. Rajan K.Zacharia,Superintendent of Central Excise, Kottayam I Range, Kottayam.
8. G.Dinesh Mallayya, Superintendent of Central Excise, Technical Division, Palakkad-1.
9. S.Gopalan, Superintendent of Central Excise, Central Excise III Range, Near A.K.G.Centre, Thiruvananthapuram.
10. V.S.Sankaranarayana Pillai, Superintendent of Central Excise, Special Customs Preventive Unit, Office of the Additional Collector of Customs & Central Excise, Near P.M.G.,Thiruvananthapuram.
11. P.S.Vijayakumar, Superintendent of Central Excise, Divisional Preventive Unit, Thiruvananthapuram.
12. M.V.Janardhanan, Superintendent of Central Excise, Special Customs Preventive, Kasargode.
13. V.S.Radhakrishnan Nair, Superintendent of Central Excise(Preventive),Quilon.
14. M.C.Pazhayakalam,Superintendent of Central Excise, Adjudication Section, Central Excise Headquarters Office, I.S.Press Road,Cochin-18.
15. Mohandas K.Chacko,Superintendent of Central Excise, C.R.Range,Tharakkandam Centre, Cochin-18.
16. E.Vidyasagaram, Superintendent of Central Excise, Trichur Preventive,Trichur.
17. C.K.Ramachandran, Superintendent of Central Excise, Special Customs Preventive, Calicut,Calicut. .
18. K.C.Sreekumar, Superintendent of Central Excise, Divisional Preventive Unit, Central Excise Divisional Office, Kannur-1.
19. N.J.Sanjeev,Superintendent of Central Excise, Head Quarters Preventive Unit, Central Revenue Bldg. I.S.Press Road, Cochin-18.
20. S.Raveendran Pillai, Superintendent of Central Excise, Kundara Range, Kundara.
21. K.U.Vinoba, Superintendent of Central Excise, Vigilance Section, I.S.Press Road, Cochin-18.
22. Joseph John, Superintendent of Central Excise, Special Customs Preventive Unit, Alleppey.
23. V.Sadanandan Nair, Superintendent of Central Excise, Divisional Preventive Unit, Central Excise Building, Mananthira, Calicut.
24. K.T.Joseph, Superintendent of Central Excise, Alleppey Range Office, Mullakkal, Alleppey.

25. K.J.Augustine,Superintendent of Central Excise, (Technical), I.S.Press Road, Cochin-18.
26. V.I.Anto, Superintendent of Central Excise, Appollo Range, Perambra, Chalakkudy.
27. U.V.Sethumadhavan, Superintendent of Central Excise, Kuttippuram Range, Kuttippuram.
28. P.Saifudeen, Superintendent of Central Excise, Special Customs Preventive, Kanjangad.
29. M.K.John
T.J.Bhavan, Nedumbaikkulam, Kundara P.O. Kollam.
30. T.V.Sasidharan, Superintendent of Central Excise, Manjeri Range, Manjeri.
31. P.Asokan, No.II, Superintendent of Central Excise, Special Customs Preventive Unit, Kodungalloor.
32. C.Thankaraja Nadar, Superintendent of Central Excise, Range Office, Near AKG Centre, Thiruvananthapuram.
33. Mannil Vijayan, Superintendent of Central Excise, Calicut II Range, Central Excise Buildings, Mananchirra, Calicut.
34. P.E.Bhaskaran, Superintendent of Central Excise, Kayamkulam Range, Kayamkulam.
35. V.K.Sivaraman, Superintendent of Central Excise, Kayamkulam Range, Kayamkulam.
36. K.Soman, Superintendent of Central Excise(Technical), Trivandrum II Range, Opposite A.K.G.Centre, Trivandrum.
37. A.K.Raghavan,Superintendent of Central Excise, Tellicherry Range, Tellicherry.
38. Cheriyam Koya, Superintendent of Central Excise, Review Cell, Head Quarters Office, C.R.Buildings, I.S.Press Road, Cochin-18.
39. A.R.Chandra Mohanan, Superintendent of Central Excise, (Technical) Office of the Assistant Collector of Central Excise, Near Uppelammoodu Bride, Vachiyoor, Thiruvananthapuram.
40. S.Subramanian, Superintendent of Central Excise, Kanjikode Range, Parakkode-1.
41. V.Unnikrishnan, Superintendent of Central Excise, I.S.Press Road, Cochin-18.
42. K.R.Damodaran, Superintendent of Central Excise, Range-I,Central Excise Divisional Office, Trichur.
43. A.K.Gopinarayanan, Superintendent of Central Excise, Palghat Range, Palghat.
44. Abraham Thomas, Superintendent of Central Excise, Ambalamugal Range, Hotel Prasth Buildings, Thripunithura.



45. T.T.P.Mohammed Azeem, Superintendent of Central Excise, Palghat-I Range, Palghat.
46. T.Gopalakrishnan, Superintendent of Central Excise, Customs Policy Section, Central Excise Head Quarters, Office, C.R.Buildings, I.S Press Road, Cochin-18.
47. K.K.Johny, Superintendent of Central Excise, Preventive, Moovattupuzha.
48. N.Sasidharan, Superintendent of Central Excise, Internal Audit, Central Excise Head Quarters Office, C.R.Buildings, I.S.Press Road, Cochin-18.
49. T.Ayyappan,Superintendent of Central Excise, Trichur-III Range, Trichur.
50. P.K.Mathew Panicker, Superintendant of Central Excise, Central Excise II Range, Sakthan Thampuram Nagar, Trichur-680001.
51. K.M.Jayaram, Superintendant of Central Excise, Ernakulam I Range, Sudha's Building, ~~Banerji Road~~, Cochin-18.
52. K.V.Kurian,Superintendant of Central Excise, Ottappalam Range, Ottappalam.
53. Narayanan Egden, Superintendant of Central Excise, Central Excise II Range, Dibba Complex, V.H.Road, Palakkad-628001.
54. K.M.Abdul Gafoor Khan(On promotion to Superintendent of Central Excise)Air Customs Officer, Sahar International Airport, Sahar, Bombay.
55. V.V.Manoharan, Superintendant of Central Excise, (Technical), Central Excise Divisional Office, Cannanore.
56. K.M.Jayaram, Superintendant, Central Excise and Customs, Kochi-18.

By Advocate Mr.T.P.M.Ibrahim Khan for R.1 to 3)
(By Advocates Mr. P.Ramakrishnan for R.19 & 33,Mr.K.Sasikumar for R.22 & 41 and Mr.N.N.Sugunapalan for R.56)

In Q.A.No.77/96

L.Soma Lal,
Inspector of Central Excise,
Internal Audit, Party No.IV,
Trivandrum Zone,
Office of the Additional Commissioner of
Customs & Central Excise,
P.M.G.Junction, Trivandrum.

2. T.Balachandran,
Inspector of Central Excise,
Udyogamandal II Range,
Tharakandam Building, IVth Floor,
Cochin-682018.

3. Johny George,
Inspector of Central Excise,
Air Cargo Complex,
Trivandrum.

..Applicants

(By Advocate Mrs. Sumathi Dandapani)

vs.

1. Union of India,
represented by Secretary,
Ministry of Finance, Department of Revenue,
New Delhi.

2. The Secretary,
Central Board of Customs & Excise,
New Delhi.

3. The Chief Commissioner of Customs & Central Excise,
South Zone, Madras.

4. The Commissioner of Central Excise & Customs,
Central Revenue Buildings,
Cochin-682 018.

5. The Chairman,
Departmental Promotion Committee, Excise & Customs,
Madras -600 008.

6. Shri M.Rayeez,
Superintendent of Central Excise, Manjeshwar Range.

7. Shri V.Balachandran,
Superintendent of Central Excise,
Ernakulam II Division.

8. Shri L.K.Harikrishnan,
Superintendent of Central Excise, Ottapalam Range.

9. Shri N.Vijayakumar,
Superintendent of Central Excise,
Customs Intelligence & Investigation Unit,
Central Revenue Buildings,
I.S.Press Road, Ernakulam.

10. Shri John Mathew,
Superintendent of Central Excise,
Ettumanoor Range.

11. Shri N.M.G.Prasad,
Superintendent of Central Excise, Trichur Divn.

12. Shri P.V.Paul,
Superintendent of Central Excise,
Headquarters office, Training Cell,
Central Revenue Buildings,
I.S.Press Road, Cochin-682 018.

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13. Shri B.A.Fernandez,
Superintendent of Central Excise,
Trivandrum I Range.

14. Shri M.G.Mohanrajan,
Superintendent of Central Excise,
Ernakulam II Division.

15. Shri Philip Thomas,
Superintendent of Central Excise,
Ernakulam II Division.

16. Shri N.K.Suresh,
Superintendent of Central Excise,
Udyogamandal II Range.

17. Shri K.Prabhakaran,
Superintendent of Central Excise,
Internal Audit,Central Revenue Buildings,
I.S.Press Road, Ernakulam.

18. Shri K.B.Muralidharan,
Superintendent of Central Excise,
Internal Audit, Central Revenue Buildings,
I.S.Press Road, Ernakulam.

19. Shri Raju M.Koshy,
Superintendent of Central Excise,
Cofeposa,
Central Revenue Buildings,
I.S.Press Road, Ernakulam.

20. Secretary to Government of India,
Ministry of Personnel, Public Grievances and Pension,
North Block, New Delhi. .. Respondents

(By Advocate Mr.S.Radhakrishnan, ACGSC for R1-5 & 20)

(By Advocate Mr.Pulikod Abubacker for R17 & 19)

The Application having been heard on 2.1.1998, the Tribunal on 29.1.98 delivered the following:

O R D E R

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

This Full Bench has been constituted by the Hon'ble Chairman pursuant to the reference order passed by the Division Bench consisting of Hon'ble Shri P.V.Venkatakrishnan, Administrative Member and Hon'ble Shri A.M.Sivadas, Judicial Member in O.A. No.1203/95 and O.A.No.77/96.

2. According to the guidelines issued by the Government of India, Department of Personnel & Training regarding the procedure to be followed by Departmental Promotion Committee ('DPC' for short) for preparation of panel for promotion to selection posts after grading the officers as 'Outstanding', 'Very Good' and 'Good' those who were assessed 'Outstanding' were to be placed enbloc above those assessed 'Very Good' and those who were assessed 'Very Good', above those who were assessed as 'Good'. Within each category of 'Outstanding', 'Very Good' or 'Good' the placement in the panel was to be on the basis of the seniority of the officials in the lower grade. While so, the Government of India, Department of Personnel and Training issued O.M.No.22011/5/86-Est(D) dated 10.4.1989 containing revised guidelines to be followed by the DPCs. While the old procedure of placing 'Outstanding' above 'Very Good' and 'Very Good' above 'Good' was retained in respect of promotion by selection to or within Group A posts, for promotion to Group C, B and A posts upto and excluding the level in the pay scale of Rs.3700-5000, those who obtained the 'benchmark' of 'Good' and above 'Good' on assessment of the Confidential Reports were to be included in the panel and in the select list they were to be placed in the order of their seniority in the feeder category without reference to the overall grading obtained by each one of them, according to paragraph 6.3.1 of the O.M. dated 10.4.1989. When promotions were made adopting the

revised guidelines from the post of Inspector of Central Excise to that of Superintendent of Central Excise in Kerala one Sri C.S.Gopalakrishnan Nair, Inspector of Central Excise filed O.A.No.146 of 1990 before the Ernakulam Bench of the Central Administrative Tribunal challenging the promotion as also the validity of provisions contained in paragraph 6.3.1 of the guidelines in O.M. dated 10.4.1989 on the ground that the impugned provisions downgraded the selection post to a non selection post, which was opposed to public interest and that it was opposed to the Fundamental Rights of Equality enshrined in Article 14 and 16 of the Constitution. The Division Bench which heard the Original Application after a survey of the judicial pronouncements of the Apex Court and of various High Courts on the principles for guidance in making promotion to selection posts held the impugned clause in the guidelines dated 10.4.1989, which reads as follows:



""They will be arranged in the order of their inter se seniority in the lower category without reference to the overall grading obtained by each of them provided that each one of them has an overall grading equal to or better than the bench-mark of 'Good'.", as unconstitutional.

3. The Special Leave Petition filed by the Union of India against the decision in C.S.Gopalakrishnan Nair vs. Union of India and 23 others was dismissed by the Hon'ble Supreme Court after hearing the counsel on either side by order dated 3.9.91. However, the Bombay

Bench of the Tribunal in O.A.No.167/90 decided on 12.9.1994 held that the guidelines dated 10.4.89 apply to the post upto the level of Rs.3700-5000 and that as the guidelines envisaged that officers to be arranged in the order of their inter se seniority provided each one of them had an overall grading equal to or better than the benchmark of 'Good' and as the applicant had an overall grading of 'Good', the promotion of respondent No.4 in that case who was junior on the ground that he had been assessed as 'Very Good' was clearly in violation of the guidelines and therefore disposed of the O.A. directing the respondents to consider the applicant therein for promotion with effect from the date on which the 4th respondent was promoted and to give him the consequential benefits including fixation of pay and arrears etc, if promoted.

4. The applicants in O.A.No.77/96 before the Ernakulam Bench alleging that in view of the decision of the Bombay Bench of the Tribunal in O.A.No.167/90 which did not follow the decision of the Ernakulam Bench in C.S.Gopalakrishnan Nair vs. Union of India and 23 others, the principle laid down in that case has to be declared as per incuriam prayed for a direction to the Chairman, Departmental Promotion Committee, Excise and Customs, Madras to reconsider the question of promotion of the applicants and respondents afresh strictly in accordance with the instructions contained in paragraph 6.3.1 of the Memorandum dated 10.4.89 and for other consequential benefits. The applicants in O.A. No.1203/95 on the other hand have prayed that the



principle laid down in the ruling of the Ernakulam Bench in O.A.No.146/90 may be directed to be followed correctly. The Division Bench after hearing the arguments in both these O.As observed as follows:

"4. This decision of the Bombay Bench of the Tribunal in O.A.167/90, therefore, is in conflict with the decision of the Ernakulam Bench of the Tribunal in O.A.146/90. The decision of the Bombay Bench proceeds on the basis that the officers who are promoted will be arranged in the order of their inter se seniority in the lower category without reference to the overall grading obtained by each of them provided that each one of them has an overall grading equal to or better than the bench mark of 'Good' as laid down in paragraph 6.3.1 of the O.M. dated 10.4.1989. That portion of the O.M. had been struck down the Ernakulam Bench of the Tribunal in O.A 146/90 as unconstitutional even prior to the decision rendered by the Bombay Bench of the Tribunal.

5. The conflict between these two decisions, both of which are Division Bench decisions, has to be essentially resolved before a decision can be rendered in the two OAs before us. "



It is thus that the Division Bench referred the matter to the Hon'ble Chairman requesting that a Full Bench be constituted for resolving the question:

"Whether the clause in Para 6.3.1 of the O.M. dated 10.4.1989 extracted above is unconstitutional as decided by the Ernakulam Bench of the Tribunal."

5. We have heard the learned counsel for all the parties.

6. It is a fact beyond dispute that the Division Bench of this Tribunal in O.A.146/90 declared the following clause in paragraph 6.3.1 of the O.M. dated 10.4.89 :

"They will be arranged in the order of their inter se seniority in the lower category without reference to the overall grading obtained by each of them provided that each one of them has an overall grading equal to or better than the bench-mark of 'Good'.", as unconstitutional.

It is also evident from Annexure-A7 in O.A.77/96 (copy of the order of the Hon'ble Supreme Court) that the Special Leave Petition filed against the order of the Ernakulam Bench of the Tribunal in O.A.146/90 was dismissed by the Court by order dated 3.9.91 after hearing the counsel on either side. As the clause referred to above in paragraph 6.3.1 of the O.M. dated 10.4.89 has been declared unconstitutional by the Division Bench of the Tribunal which is a forum competent to do so and as the order has been upheld by the Hon'ble Supreme Court, the offending clause in the Memorandum which has been set aside has no legal validity and has to be treated as non est. A reading of the order of the Bombay Bench in O.A.167/90, copy of which is Annexure-A10, clearly shows that the decision of the Ernakulam Bench of the Tribunal in O.A.146/90 which was confirmed by the Hon'ble Supreme Court was not brought to the notice of the Bench. It was



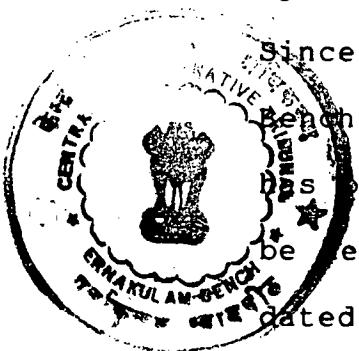
therefore, thinking that the clause referred to above in paragraph 6.3.1 of the O.M. dated 10.4.89 was still valid and operative, that the Bombay Bench of the Tribunal held that the officers who had obtained the benchmark 'Good' and above should be placed in the select list in the order of their *inter se* seniority in the lower category without reference to the overall grading obtained by each one of them. The decision of the Bombay Bench in O.A.167/90 was therefore rendered *per incuriam*. It cannot be said that the decision of the Bombay Bench in O.A.167/90 is in conflict with the decision of the Ernakulam Bench of the Tribunal in O.A.146/90 because the Bombay Bench had not considered the question of constitutional validity of the relevant clause in paragraph 6.3.1 of the O.M. dated 10.4.89 whereas the Ernakulam Bench had specifically considered the constitutional validity of the clause and struck it down finding it unconstitutional. If the Bombay Bench had also considered the question of constitutionality of the clause and had taken a different view it could be said that there is a conflict between the rulings of the Ernakulam Bench and that of the Bombay Bench. Such a situation does not exist. The Division Bench which passed the order of reference in these cases has not found itself in disagreement with the view taken by the Ernakulam Bench in O.A.146/90, that the clause in paragraph 6.3.1 of the O.M. dated 10.4.89 is unconstitutional. The



reference has been made only because the Division Bench felt that there was a conflict of views between the Ernakulam Bench as it held in O.A.146/90 and the Bombay Bench in its decision in O.A.167/90.

7. The Ernakulam Bench in O.A.146/90 had examined the constitutional validity of the relevant clause of the Memorandum in question in the light of the case law on the point and declared the clause unconstitutional giving sound reasons. The striking down of the clause by the Ernakulam Bench has been upheld by the Hon'ble Supreme Court. Consistency is one of the most important attributes of judicial process as is enshrined in the doctrine of stare decisis. The decision of the Bombay Bench in O.A.167/90 decided on 12.9.1994 was rendered per incuriam as the fact that the clause in paragraph 6.3.1 of the Memorandum dated 10.4.89 was struck down by the Ernakulam Bench in O.A. 146/90 was not brought to its notice. Therefore there is no reason for us to reconsider whether the clause in paragraph 6.3.1 of the O.M. dated 10.4.89 is unconstitutional as decided by the Ernakulam Bench of the Tribunal in O.A.146/90.

Since the said clause was struck down by the Division Bench which is competent to do so and as that decision has been upheld by the Hon'ble Supreme Court it has to be held that the clause in paragraph 6.3.1 of the O.M. dated 10.4.89, extracted in the referral order, is unconstitutional as has been declared by the Ernakulam



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Bench. The point referred is answered accordingly.

8. As the point referred has been answered, the records of the cases may be transmitted to the Division Bench for disposal of the applications on merits.

Dated the 29th January, 1993.

Sd/-
S.K.GHOSAL
ADMINISTRATIVE MEMBER

Sd/-
A.V.HARIDASAN
VICE CHAIRMAN

Sd/-
K.M.AGARWAL(J)
CHAIRMAN

CERTIFIED TRUE COPY

Date 4.2.98

Deputy Registrar

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CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A. No. 77 of 1996.

Monday this the 8th day of June 1998.

CORAM:

HON'BLE MR. P.V. VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

1. L. Soma Lal,
Inspector of Central Excise,
Internal Audit, Party No.IV,
Trivandrum Zone,
Office of the Additional Commissioner
of Customs & Central Excise,
P.M.G. Junction, Trivandrum,
residing at 'Shalom', House No.26,
Manyaduvila Road, Nanthancode,
Trivandrum.
2. T. Balachandran, S/o C.G.Nair,
Inspector of Central Excise,
Udyogamandal II Range,
Tharakandam Building, IVth Floor,
Cochin-682 018, residing at
Nambiakurupath, Valanjambalam,
Cochin - 682 016.
3. Johny George, Inspector of
Central Excise, Air Cargo Complex,
Trivandrum, residing at T.C.9/2477,
Judge Lane, Sasthamangalam,
Trivandrum.

.. Applicants.

(By Advocate Smt. Sumathi Dandapani)

Vs.

1. Union of India
represented by Secretary,
Ministry of Finance,
Department of Revenue,
New Delhi.
2. The Secretary,
Central Board of Customs & Excise,
New Delhi.
3. The Chief Commissioner of Customs &
Central Excise, South Zone,
Madras.
4. The Commissioner of Central Excise &
Customs, Central Revenue Buildings,
Cochin-682 018.

5. The Chairman,
Departmental Promotion Committee,
Excise & Customs,
Madras - 600 008.
6. Shri M. Rayeez,
Superintendent of Central Excise,
Manjeshwar Range.
7. Shri V. Balachandran,
Superintendent of Central Excise,
Ernakulam II Division.
8. Shri L.K. Harikrishnan,
Superintendent of Central Excise,
Ottapalam Range.
9. Shri N. Vijayakumar,
Superintendent of Central Excise,
Customs Intelligence &
Investigation Unit,
Central Revenue Buildings,
I.S. Press Road, Ernakulam.
10. Shri Jose Mathew,
Superintendent of Central Excise,
Ettumanoor Range.
11. Shri N.M.G. Prasad,
Superintendent of Central Excise,
Trichur Division.
12. Shri P.V. Paul,
Superintendent of Central Excise,
Headquarters Office, Training Cell,
Central Revenue Buildings,
I.S. Press Road, Cochin-682 018.
13. Shri B.A. Fernandez,
Superintendent of Central Excise,
Trivandrum I Range.
14. Shri M.G. Mohanrajan,
Superintendent of Central Excise,
Ernakulam II Division.
15. Shri Philip Thomas,
Superintendent of Central Excise,
Ernakulam II Division.
16. Shri N.K. Suresh,
Superintendent of Central Excise,
Udyogamandal II Range.

17. Shri K. Prabhakaran, Superintendent of Central Excise, Internal Audit, Central Revenue Buildings, I.S. Press Road, Ernakulam.
18. Shri K.B. Muralidharan, Superintendent of Central Excise, Internal Audit, Central Revenue Buildings, I.S. Press Road, Ernakulam.
19. Shri Raju M. Koshy, Superintendent of Central Excise, Cofeposa, Central Revenue Buildings, I.S. Press Road, Ernakulam.
20. Secretary to Government of India, Department-Ministry of Personnel, Public Grievances and Pension, North Block, New Delhi. , Respondents

(By Advocate Shri S. Radhakrishnan, ACGSC(For R.1-5 and 20)

O R D E R

HON'BLE MR. P.V. VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

Applicants are Inspectors of Central Excise coming under the Cochin Commissionerate. Their promotion to the post of Superintendents, Central Excise was originally governed inter-alia by paragraph 6.3.1 of the Annexure-A.8 guidelines. The Tribunal in O.A. 146/90 struck down the portion of paragraph 6.3.1(i) by which it was directed that persons promoted will be arranged in the order of their inter-se-seniority in the lower category without reference to the over all grading obtained by each of them provided each one of them has an over all grading equal to or better than the bench mark of 'good'.

2. When this application came up for consideration, the matter was referred to a Full Bench to decide whether the Clause in para 6.3.1 of A-8 extracted above is unconstitutional as decided in O.A. 146/90. The Full Bench of the Tribunal decided that the part of the paragraph 6.3.1 of A-8 was correctly decided as unconstitutional. The position

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therefore, is that that portion of paragraph 6.3.1 was non-existent. The Cochin Commissionerate followed the decision of the Tribunal and promoted respondents 6 to 19 on the basis that the struck down portion of the paragraph 6.3.1 was non-existent. Other Commissionerates, however, in the department continued to make promotions on the basis that the struck down portion of the paragraph referred to above continued to govern promotions. Applicants are aggrieved by the promotions of respondents 6 to 19 and submit that the Commissionerate in Cochin following a different procedure for promotions from that of the other Commissionerates in the department is discriminatory. Applicants also submit that the department considered the situation which arose subsequent to the decision of the Tribunal in O.A. 146/90 and on the basis of the observation of the Tribunal in M.A. 233/96 that uniformity is necessary in matters like conditions of service, issued M.A.-1 orders dated 27.3.97 by which the position as it stood before the Tribunal struck down part of paragraph 6.3.1 was restored but only with effect from 15.4.97.

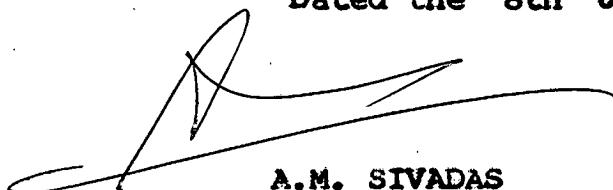
3. Applicants contend that they ought to have been promoted and ranked in accordance with the Bench mark rule as it stood prior to O.A. 146/90 and as it now stands from 15.4.97 onwards but because the order M.A.-1 was not retrospective, they have been deprived of the promotions and seniority which they would have otherwise got and which their colleagues in the other Commissionerates continued to enjoy all along.

4. Respondents department submit that they considered the entire issue and modified the rules but such modification could only be made with prospective effect, so that, persons already promoted are not adversely affected by the modification of the rules.

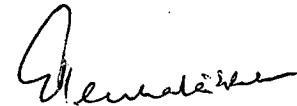
5. It is seen that the legal position is that after the date of the Tribunal's decision in O.A. 146/90 and till 15.4.97 promotions can be made only on the basis that the part of the rule in paragraph 6.3.1 which has been struck down was not in existence and the respondents 9 to 19 have been promoted on that basis. Their promotion is, therefore, in order, Though the respondents-department have restored the position as it stood prior to O.A. 146/90 they have done so with effect from 15.4.97 only. It is not for the Tribunal to make a prospective rule retrospective. At the same time applicants have a grievance that they have been affected adversely, because when they were due for promotion, the Cochin Commissionerate followed a rule different from that of the other Commissionerates and they would have been given correct seniority and promotion if the department had followed a uniform procedure throughout the country including the Cochin Commissionerate. We consider that it is for the departmental respondents to look into this grievance of the applicants. Applicants may submit representations to the first respondent within one month. If they do so, the first respondent shall consider their representations and pass appropriate speaking orders within four months from the date of their receipt.

6. Application is disposed of as aforesaid. No costs.

Dated the 8th June 1998.



A.M. SIVADAS
JUDICIAL MEMBER



P.V. VENKATAKRISHNAN
ADMINISTRATIVE MEMBER

LIST OF ANNEXURES

1. Annexure A8: Relevant extract (Pages A-281 tp A-292) of guidelines pertaining to promotion of Central Board of Excise and Customs Digest, November 1989, Volume III, No.11, referred to in the Original Application, issued by 2nd respondent.
2. Annexure MA-I: Office Memorandum No.22011/5/91-Estt.(O) dated 27.3.1997 issued by the Director (Estt.) for Ministry of Personnel.

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