

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 86 of 2008

Friday, this the *11th* day of *February*, 2011

CORAM:

**HON'BLE MR. JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

G.N. Lakshmi Narayanan,
Preventive Officer,
Customs House, Cochin.

..... Applicant.

(By Advocate Mr. U. Balagangadharan)

v e r s u s

1. The Commissioner of Customs,
Cochin.
2. The Chief Commissioner of Customs &
Central Excise, Cochin.
3. Union of India, represented by its
Secretary, Ministry of Finance,
Department of Revenue, New Delhi.
4. Mr. P.G. Harding,
Preventive Officer, Customs House,
Kochi – in representative capacity of
others in the seniority list.
5. Shri K.P. Suresh Kumar,
Preventive Officer,
Customs House, Cochin.
6. Shri C.K. Gopi,
Preventive Officer,
Customs House, Cochin.
7. Shri A.X Vincent,
Preventive Officer,
Customs House, Cochin.
8. Shri V. Sasikumar,
Preventive Officer,
Customs House, Cochin.



9. Ms. U. Indira,
Preventive Officer,
Customs House, Cochin.
10. Shri N.G. Krishnamoorthy,
Preventive Officer,
Customs House, Cochin.
11. Shri P. Rajithkumar,
Preventive Officer,
Customs House, Cochin.
12. Ms. N. Laitha,
Preventive Officer,
Customs House, Cochin.
13. Shri S. Rajagopalan Nair,
Preventive Officer,
Customs House, Cochin.
14. Shri P.S. Sreekumar,
Preventive Officer,
Customs House, Cochin.
15. Ms. K.R. Sheela,
Preventive Officer,
Customs House, Cochin.
16. Mr. K. Sudesh Kumar,
Preventive Officer,
Customs House, Cochin.

(By Advocates : Mr. Sunil Jacob Jose, SCGSC for R1-3,
Mr. Mr. Shafik M.A. for R-4,
Mrs. Sumathi Dandapani (Sr.) with Ms. Laxmi
Rajan for R-8 & R-13)

The application having been heard 19.01.2001, this Tribunal
on //02-11... delivered the following :

ORDER

HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

Aggrieved by the improper placement in the seniority list of
Preventive Officer in the Custom House, Cochin, the applicant has filed
this O.A. for the following reliefs :



- (i) Call for the records leading to Annexure A-5 seniority list and quash the same to the extent it does not place the applicant between Sl.Nos. 52 and 53 therein and further quash Annexures A-9 and A-11 as unsustainable in the eye of law;
- (ii) Direct the first respondent to revise the promotion order at Annexure A-5 and to place the applicant between Sl. Nos. 52 and 53 therein;
- (iii) Declare that the applicant is entitled to be placed between Sl. Nos. 52 and 53 in Annexure A-4 order of promotion;
- (iv) Such other relief that the Hon'ble Tribunal deem fit in the facts and circumstances of the case.

2. The applicant joined the service as Lower Division Clerk on 22.09.1987 at Delhi. On inter Commissionerate transfer, he joined in the same capacity at Cochin on 11.09.1990. In 1996, he was promoted as Stenographer Grade III and later as Stenographer Grade II in the pay scale of Rs. 5000-8000 with effect from 29.08.2002. The post of Inspector (Preventive Officer) is filled by both direct recruitment and promotion from the feeder posts, like Tax Assistant, UDC, Stenographer Grade II and Stenographer Grade III with 5 years regular service. Upon being selected as Preventive Officer, he was given correct placement but was subsequently placed lower in the seniority list without notice and without justifiable reasons. The representation made by the applicant for giving correct placement in the seniority list was rejected by the authority. Hence the O.A.

3. The applicant submitted that when the Departmental Promotion Committee met in October, 2002, for considering candidatures for the post of Preventive Officers, he was holding the post of Stenographer Grade II.



The cut off date is fixed for determining the eligibility of a candidate. While making the ranking the incumbent with higher pay scale is to be ranked above the persons who are drawing lower pay scale as per Annexure A-3 instructions issued by the Department of Personnel and Training (DOPT). If the reasoning of the respondents in Annexures A-9 and A-11 is accepted, the pay of the applicant on promotion as Preventive Officer will have to be fixed with reference to notional pay that he would have received in the post of Stenographer Grade III negating the promotion as Stenographer Grade II. As per clarification issued by the DOPT vide O.M. No. 20011/1/88 dated 12.12.1988, those in the higher scales of pay will rank senior to those in the lower scale of pay in the feeder grades given the same grading. The impugned order at Annexure A-11 states that as on 01.01.2002, the cut off date, the applicant was not Stenographer Grade II. Hence, he is not entitled to be granted the benefit of Annexure A-3. If 01.01.2002 is taken as cut off date for determining the eligibility then the officers figuring at Sl.No. 57 onwards have not fulfilled the eligibility conditions laid down in the Recruitment Rules. The grievance of the applicant was rightly redressed as per Annexure A-7 placing him between S/Shri T.Pavithran and P.G. Harding. It was subsequently wrongly revised. Annexure A-5 seniority list should be revised by placing the applicant between 52 and 53.

4. The respondents contested the O.A. In their reply statement, they submitted that the applicant was considered for promotion to the grade of Preventive Officer on the basis of his qualifying service rendered in the grade of Stenographer Grade III. The applicant was working as



Stenographer Grade II at the time of considering him for promotion. But he has not fulfilled the eligibility service of 5 years in the grade of Stenographer Grade II. The applicant was promoted as Stenographer Grade II with effect from 29.08.2002. As such he was not in the higher pay scale as on 01.01.2002 which was the crucial date for eligibility for promotion as Preventive Officer. In the above circumstances, the applicant is not entitled to get any of the reliefs sought for in this O.A.

5. We have heard extensively the counsel for the applicant, the official respondents and the party respondents and carefully examined the materials on record.

6. The contention of the applicant is that though his eligibility to be considered for the post of Preventive Officer was determined taking his status as Stenographer Grade III, at the time of ranking on account of numerous posts in the feeder cadre, his status as Stenographer Grade II was to be considered. The Annexure A-12 clarification dated 27.10.2005 of DOPT states: *"It is clarified that the crucial date is only a fixed reference date or a cut off date on which the eligibility of officers in the feeder grade in terms of the provisions of the relevant Recruitment Rules, e.g., educational qualification, eligibility service, etc., is to be checked before they are considered for inclusion in the eligibility list for reference to the DPC."* The crucial date is not to be applied in the case of eligible officers who retire in the vacancy year. In certain other cases, the eligibility of the officers as on the date of meeting of the DPC can be considered by the DPC for promotion. Again, as per O.M. No. 20011/1/88 dated 12.12.1988,



"among the persons in the feeder grades given the same grading, those in the higher scale of pay will rank senior to those in the lower scale of pay".

Therefore, as per rules, the applicant who was in the pay scale of Rs. 5000-8000 in the post of Stenographer Grade II was entitled to be placed in the seniority list of Inspectors (Preventive Officers) above UDC, Steno III and Tax Assistant, whose scales of pay were lower to the one held by the applicant.

7. Further, the record shows that the DPC considered the applicant as Stenographer Grade II at the time of selection in October, 2002 and the respondents rightly placed him between S/Shri T.Pavithran and P.G. Harding. Legally, there is no justification for the respondents to revise downwards the position of the applicant in the seniority list holding that his eligibility was to be reckoned as on 01.01.2002 while at the same time, reckoning the eligibility of other 18 officers as on the date of meeting of the DPC. The respondents cannot approbate and reprobate at the same time. The rejection of the representation of the applicant for restoration of his position in the seniority list vide order dated 28.05.2007 on the ground that he was considered for promotion to the post of Inspector (Preventive Officer) on the basis of the qualifying service rendered in the grade of Stenographer Grade III is factually wrong and legally untenable because the DPC had considered him as Stenographer Grade II at the time of selection and because as per rules, Stenographer Grade II or Grade III with 5 years regular service is eligible for consideration for promotion as Inspector (Preventive Officer). The crucial date of 01.01.2002 is only for the purpose of determining the eligibility. The scale of pay is a crucial



factor for ranking in the seniority list as per DOPT O.M. dated 12.12.1988. For this reason, the rejection of the 2nd representation made by the applicant vide order dated 05.11.2007 is patently wrong.

8. In the result, the O.A. succeeds. It is declared that the applicant is entitled to be placed between Sl. Nos. 52 and 53 in the Annexure A-5 seniority list. Consequently, Annexure A-5 seniority list is quashed and set aside to the extent it does not place the applicant between Sl. Nos. 52 and 53 therein. The orders at Annexure A-9 dated 28.05.2007 and Annexure A-11 dated 05.11.2007 are also quashed and set aside. The 1st respondent is directed to revise the seniority list at Annexure A-5 and place the applicant between Sl. Nos. 52 and 53 therein. Appropriate orders should be issued within a period of 2 months from the date of receipt of a copy of this order.

9. No order as to costs.

(Dated, the 11th February, 2011)



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

cvr.