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CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A. NOS. 773/2004 & 144/2005

THURSDAY, THIS THE 4<sup>th</sup> DAY OF JANUARY, 2007

CORAM

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN  
HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER

O.A. 773/2004

Siney K. Mathew S/o N.V. Mathew  
Preventive Officer (Customs)  
Customs House, Kochi-682009  
Residings at Kuzhikandathil, Piravom PO  
Ernakulam District, PIN -686 664

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
- 4 The Commissioner of Customs  
Custom House  
Kochi-682009
- 5 Shri T.O Padmakshan  
Superintendent of customs (Preventive)  
Custom House  
Kochi-682 009
- 6 The Joint Commissioner of Customs(Establishment)  
Custom House,  
Kochi-682 009. .Respondents.

By Advocate Mr. TPM Ibrahim Khan, SCGSC for R. 1-4 & 6

O.A. No. 144/2005

- 1 Vijayan Pillai S/o Krishna Pillai  
Superintendent of Custom (Preventive)  
Customs House, Kochi-9  
residing at No. III/315-B  
Aashiana, Maradu,  
Kochi.
- 2 K.S. Bijumon S/o P.P. Krishna Pillai  
Superintendent of Customs (Preventive)  
Custom House, Kochi-9  
residing at 9/170-B Layam  
Manakachira, Nettoor  
Ernakulam. ....Applicants

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Vs

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Kochi-682009
- 5 Elsy Mathew  
Superintendent of Customs (Preventive)  
Custom House, Kochi-682 009
- 6 T.G.Benny Jose  
Superintendent of Customs (Preventive)  
Custom House, Kochi-682 009
- 7 T.M. Jacob.  
Superintendent of Customs (Preventive)  
Custom House, Kochi-682 009
- 8 K. Haridasan.  
Superintendent of Customs (Preventive)  
Custom House, Kochi-682 009

By Advocate Mr. TPM Ibrahim Khan, SCGSC for R 1-4

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicants in both the OAs are working in the Preventive Wing of the Customs Department and their prayer relates to the inter se seniority between them and the party respondents in the OAs and the consequent denial of consideration for promotion to the post of Superintendent (Customs), a Group B Gazetted post. Since the nature of relief asked for is the same, the OAs were heard together and are being disposed off by this common order.

2 The facts as set forth in the Application in both the OAs can be summarised as under:-

OA No. 773/2004

3 During the year 1995, 5 vacancies in the cadre of Preventive Officers(Customs) were reported to the Staff Selection Commission for direct recruitment and correspondingly 2 vacancies were set apart for promotion .The applicant and 2 others were selected and the applicant, the first among the three selected joined duty on 7.1.96. Against the vacancies meant for promotion one Sri T.K.Haridasan and another Sri O. Padamkshan were promoted initially on adhoc basis and later, on regular basis. Ever since his appointment, the applicant had been representing to assign his seniority in terms of the principles laid down in Government of India O.M No 35014/2/80 Estt (D) dated 7<sup>th</sup> February 1986 vide representations marked as Annexures A5 to A8. There was no

response to any of the representations. While so, the respondents published a seniority list of Preventive Officers as on 1.07.1995 communicated vide Circular dated 23.1.2004 marked as Annexure A-

4. In Annexure A-4, the applicant's name is shown at S.No.169 and the name of the 5<sup>th</sup> respondent Sri O. Padmakshan is shown at S.no1 among those who are working on ad hoc basis as on that date. Subsequently by a corrigendum issued on 29.1.2004 the applicant's name was deleted from Annexure A-4. The applicant submitted another representation date 7.2.2004 at Annexure A9, but there was no response to that also. While inter se seniority between the applicant and the 5<sup>th</sup> respondent remained still undetermined, the 5<sup>th</sup> respondent was promoted on adhoc basis as Supdt. of Customs (Preventive) by the Annexure A-10 order and later on regular basis vide Annexure A-11 order. Left with no other alternative, the applicant approached the Tribunal in OA 657/2004, inter alia praying for a declaration that the applicant is entitled to be placed above the 5th respondent in the list of Preventive officers. The OA was disposed off with the direction that the Annexure A-8 representation of the applicant shall be disposed off with reference to the rules and precedents on the subject. In purported compliance of these directions the 6<sup>th</sup> respondent has now issued Annexure A-13 rejecting the applicant's grievance. The applicant has submitted that he is entitled to be placed above the 5<sup>th</sup> respondent in the seniority of Preventive officers (customs) in terms of the decision of this Tribunal in OA No453/1996 and promotion of the 5<sup>th</sup> respondent

as Supdt. of Customs is arbitrary, discriminatory and contrary to law.

The reliefs prayed for are:-

- (a) Call for the records leading to the issue of Annexure A13 and quash the same;
- (b) Declare that the applicant is entitled to be placed above the 5<sup>th</sup> respondent in the seniority list of Preventive officers (customs) maintained by the 4<sup>th</sup> respondent and direct the respondents 1 to 4 accordingly;
- (c) Declare that the applicant is entitled to be considered for promotion as Superintendent of Customs (Preventive) in preference to the 5<sup>th</sup> respondent;
- (c) Call for the records leading to the issue of Annexures A10 and A11 and quash the same to the extent they include the 5<sup>th</sup> respondent and exclude the applicant;
- (d) Direct the respondents to consider the applicant for adhoc/regular promotion to the post of Superintendent of Customs, in preference to the 5<sup>th</sup> respondent and to grant him the consequential benefit of adhoc/regular promotion with effect from the dates of Annexures A10 and A11 with all consequential arrears of pay and allowances;
- (e) Award costs of and incidental to this application
- (f) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

OA 144/2005

4 During the year 1993, the two applicants were selected by the Staff Selection Commission under the direct recruitment quota and they were appointed against the vacancies reported for the year 1994 though they took over the actual duties of the post on 2.5.1995 and 20.4.95 respectively on account of delay in reporting the vacancies and also finalization of the recruitment process. In the seniority list published by the respondents at Annexure A-4, the 1<sup>st</sup> applicant's name is shown at Sno155 and the 2<sup>nd</sup> applicant's name at S.no154 and the Respondent 6 is at S.no151 and the respondents 7&8 are at S.nos152 &153 respectively. The 5<sup>th</sup> respondent was

later included in the List and was placed between S.Nos 150 & 151.

Though 14 vacancies were reported in 1994 not a single direct recruit was appointed for that year. The applicants had been requesting the authorities for assigning their seniority on the basis of the principles in the Annexure A1 memorandum. But their representations at Annexures A-5 to A-8 did not bring forth any response. In the meanwhile, Annexure A-4 was published and the respondents promoted respondents 6,7, and 8 as Superintendents (customs) by office order dated 30.6.2003, on ad hoc basis by the Annexure A-12 order dated 22.10.2003 and later regularized by an office order dated 30.6.2004. Subsequently the party respondents were granted the benefits of regular promotion with effect from 23.9.2002. The applicants' representations on their seniority have still not been decided and hence they have sought the following reliefs:-

- (a) Declare that the applicants are entitled to be placed after S1 Nos 150 and above the 5<sup>th</sup> respondent in annexure A4 seniority list of Preventive officers maintained by the 4<sup>th</sup> respondent and direct the respondent 1 to 4 accordingly.
- (b) Call for the record leading to the issue of Annexure A4 and quash the same to the extent it places the applicants at Snos 155 and 154 and also to the extent it places the respondents 5 to 8 above the applicants and direct the respondents to place the applicants between S.nos 150 and the 5<sup>th</sup> respondent and to grant the consequential benefits.
- (c) Declare that the applicants are entitled to be considered for promotion as Superintendent of Customs taking into consideration the seniority assigned to them in terms of the declaration in paragraph 8 (a) above.
- (d) Call for the records leading to the issue of Annexures A11 and A14 and quash the same to the extent they promote the respondents 5 to 8 in preference to the applicants.
- (e) Direct the respondents to consider the applicants for promotion as Superintendent of customs in preference to the respondents 5 to 8 and to

grant the consequential benefits including the arrears thereof.

- (f) Award the cost of and incidental to this application,
- (g) Pass such other orders or directions as deemed just, fit and necessary to the facts and circumstances of the case.

5 The respondents have filed counters in both the OAs. As regards the inter-se seniority between the applicant and the 5<sup>th</sup> respondents in OA 773/04, it is submitted that in the year 1995, by applying the ratio of 3:1 out of the 7 vacancies, 5 vacancies were reported to Staff Selection Commission on 13.12.1995 and 2 vacancies (1 general and 1 SC) were available for regular promotion. The 5<sup>th</sup> respondent was regularized in the grade of Preventive officer w.e.f. 13.12.95 against the said regular promotion vacancy on the recommendation of the DPC held on 7.11.2002. The one SC vacancy was carried forward as there were no candidates available even in the extended zone of consideration. In the seniority list of Preventive officers published vide circular No.3 dated 23.01.2004 (Annexure A-4), the names of four officers including the applicant were inadvertently included as the seniority was to reflect the position as on 1.7.1995, the name of the applicant who was selected to the post of Preventive officer and joined the post only in 1996 was not to be included. Hence a corrigendum was issued. They also clarified that the promotion of Sri T.K Haridas was against the carried forward vacancy of the year 1994. Hence according to the respondents the fixing of seniority of the 5<sup>th</sup> respondent and the applicant in the grade of Preventive officers in the years 1995 and

1996 respectively is correct. As regards the reliance placed by the applicant on the judgement of the CAT in OA 453/96, it is submitted that the main thrust of that judgement was that the direct recruit officers who were selected for appointment against the vacancies reported in the years 1991-92 and 1992-93 but could not join due to the stay operating in the subject period should be given seniority as per their quota. In the case of the applicant there was no such delay as he was selected by the SSC only on 12.9.1996 and joined on 7.11.96 and therefore the said judgement does not apply to the circumstances of the applicant's case. The applicant filed a rejoinder pointing out that the contention of the respondents that the promotee viz: the 5<sup>th</sup> respondent was regularised for the year 1995 would prove that the applicant was recruited against the 1995 vacancies and the applicant's year of recruitment is 1995 and this fact is not in dispute.

6. The respondents filed an additional reply statement denying the aforesaid claim of the applicant that since the vacancies for the post of Preventive officer reported to the SSC was in the year 1995, the applicant's recruitment year is also 1995 is not acceptable.

7. In their counter filed in OA144/05, the respondents have taken pretty much the same stand that the inter se seniority between Direct recruits and promotees is determined in accordance with the principles laid down in Government of India OM No 22011/7/86 Estt (D) dated 3.7.1986 which clearly stipulates that the rotation of quotas for the purpose of determining seniority would take place only to the

extent of available direct recruits and promotees. The 5<sup>th</sup> respondent's seniority was refixed in order to implement the order of this tribunal setting aside her notional appointment and it was upheld by the Hon High Court.

8 The applicants in their rejoinder have contended that they were recommended for appointment for the vacancies reported for the year 1994-95, but due to the delay in processing the appointment orders they could join only on 3.5.1995 and 20.4.1995. But the respondents 6,7, and 8 who were working on adhoc basis as Preventive officers were regularized against the vacancies of the year 1994-95 violating the quota rota system. They have also submitted that the respondents have not clarified why the applicants cannot be granted seniority and the benefit of promotion as prayed for and their contentions are misleading.

9 In the additional reply statement the respondents have contended that there was no delay on their part in issuing the appointment orders after the receipt of the recommendations of the SSC and the due procedures of issue of offer, conduct of physical endurance test etc had to be followed. The respondents 6,7 and 8 were continuing as Preventive officers since 1987 itself and hence were regularized in the year 1994. The qualifying service for promotion from the grade of Preventive Officer to the grade of Supdt. is 8 years. One year relaxation in qualifying service for promotion to the grade of Supdt. was granted as a onetime affair and the party respondents 6,7 and 8 who were eligible for this relaxation were

promoted w.e.f.23.09.2002, the date when their juniors were promoted. The applicants are not entitled to get any such reliefs.

10 We heard Sri T.C.G Swamy Learned Counsel for the applicants and the Learned SCGSC for the respondents. The main plank of the applicants' arguments in both the OAs is that they are entitled to be placed above the private respondents in the list of Preventive officers and while the question of their *inter se* seniority remained undetermined, promotions to the higher cadres have been given to the party respondents which is contrary to law and discriminatory. Sri Swamy maintained that principle of determination of seniority between Direct recruits and promotees has been settled by the Supreme court in various judgements holding that rota and quota should be observed in determining seniority where the same is provided under the Rules and this Tribunal had in OA 453/1996 underlined the same principle. It has been further fortified by a recent judgement of the Apex Court in JT 2006 (11) SC 553, in Arvinder Singh Bains v State of Punjab & Ors.

11 On the respondent's side the same arguments as in the counters filed were advanced.

12 We have gone through the pleadings and the judgements referred to.

13 Though the challenge in the OAs revolves round the denial of promotion to the post of Superintendent (Customs), a Gr B Gazetted post in the Department, the real question to be decided is what is the basis for determination of *inter se* seniority between the

applicant in the first OA who is a Direct recruit and the 5th respondent who is a promotee? Similarly in OA 144/05 also, the dispute centres round the inter se seniority between the applicants and the 5<sup>th</sup> and 8<sup>th</sup> respondents.

14 The larger question of inter se seniority between direct recruits and promotees is no longer res integra as it has been settled by the Apex court through various legal pronouncements over a period of time, the most significant among them being, the oft quoted judgements in Direct Recruit class II Engineering Officers association v. state of Maharashtra, M.Subbareddy and Another V. APSRTC and Ors, Prafulla Kumar Das and Others V. State of J & K, Ajith Kumar Rath V. State of Orissa and Others. In the context of the respondent Department of Customs in this case, the very same issue was agitated earlier by Preventive Officers who were direct recruits like the present applicants before this Tribunal in OA 453 of 1996. The applicants therein were recruited towards vacancies reported in the years 1991-92 and 1992-93, but for various reasons their appointments were delayed and they could join duty only in the subsequent years i.e 1992 and 1993. In the meanwhile, the private respondents came to be promoted in their vacancies in the same year in which the vacancies were reported. The respondents had then contended that as far as direct recruits are concerned, they could be given seniority only from the year of their joining duty in accordance with the instructions in Govt of India OM No.35014/2/80-Estt(D) dated 7<sup>th</sup> February,1986 particularly para 3 thereof which

reads thus-

"This matter which was also discussed in the National council has been engaging the attention of the government for some time and it has been decided that in future while the principle of rotation of quotas will still be followed for determining the interse seniority of Direct recruits and promotees, the present practice of keeping vacant slots for being filled up by direct recruits of later years by giving them unintended seniority over promotees who are already in position would be dispensed with. Thus, if adequate number of direct recruits do not become available in any particular year, rotation of quotas for purpose of determining seniority would take place only to the extent of the available direct recruits and promotees. In other words, to the extent direct recruits are not available, the promotees will be bunched together at the bottom of the seniority list below the last position up to which it is possible to determine seniority, on the basis of rotation of quotas with reference to the actual number of direct recruits who become available. The unfilled direct recruitment quota vacancies would however be carried forward and added to the corresponding direct recruitment vacancies of the next year and to subsequent years where necessary for taking action for direct recruitment for the total number according to the usual practice. Thereafter in that year while seniority will be determined between direct recruits and promotees to the extent of the number of vacancies for direct recruits and promotees as determined according to the quota for that year, the additional direct recruits selected against the carried forward vacancies of the previous year would be placed enbloc below the last promotee (or direct recruit as the case may be) in the seniority list based on the rotation of vacancies for that year. The same principle holds good in determining seniority in the event of carry forward, if any, of direct recruitment or promotion quota vacancies (as the case may be) in subsequent years."

15 After examining the provisions of the above OM, the Tribunal came to the following conclusion, that the interpretation given by the respondents to the provision of the OM was not correct.

"As the process of recruitment for the notified vacancies was successfully carried out and the applicants were selected for appointment to the vacancies reported for the relevant years, they should be given seniority according to their quota for respective years in terms of the principles laid down in the O.M dated 7.2.86., the non availability of direct recruits will arise only if no direct recruitment was made during the period and the direct recruitment vacancies were carried forward. Such a contingency had not arisen in this case.4. In the light of what is stated above, we dispose of this application directing the first respondents to assign seniority to the applicants taking into account the year for which the vacancies were reported and not with effect from the date of their joining in service."

16 The judgement was upheld by the Hon. High court of Kerala in O.P No.216/2000 vide order dated 25<sup>th</sup> September 2002.

17 It is seen from the above mentioned facts that main question which came to be considered and arising in this Application also is whether seniority could be linked to the year of vacancy and not as per the roster points. The following judgements of the Apex court more or less endorsed the view that seniority could not be linked to the year of vacancy.

- i) Ajit Kumar Rath v. State of Orissa, (JT 1999 (8) SC 578)
- ii) Suraj Prakash Gupta ors v. State of J&K & Ors. (JT 2000 (5)SC 413)
- iii) Dr Chandra Prakash & Ors v. State of U.P, (JT 2002 (3) SC 492)

18 The Learned counsel for the applicant contended in his argument that the Hon'ble Supreme Court has gone into this question in detail in a recent case reported in JT 2006 (11) SC 553 of Arvinder Singh Bains Vs. State of Punjab & Ors wherein the point for consideration before the Supreme court was whether under the Punjab Civil service Executive Branch Class II rules 1976, seniority dates back to the date of joining service or is to be determined in terms of the roster principle in the context of State notifying vacancies in 1980, the vacancies for the years 1978-82 being filled in 1986, promotee candidates being brought in prior to actual appointment of direct recruits and the appellant a direct recruit

seeking seniority over promoted officers contending that delay on the part of the government to appoint direct recruit candidates cannot deprive him of seniority above promoted candidates.

19 After considering all the earlier judgements including the three mentioned above it has been held that it is mandatory to apply rota and quota in determining seniority when it is provided so in the Rules. The court relied strongly on the earlier judgement in Gonal Bhimappa v State of Karnataka & ors in which it was observed that "the scheme in force relating to the services for fixing inter se seniority takes into account the filling up of vacancies in the service from the two sources on the basis of the quota and therefore fixation of inter se seniority in the gradation list has to be worked out on the basis of quota." The Supreme court came to the following conclusions :-

"The action of the authorities is based on the misinterpretation of the provisions of Rule 21 of 1976 Rules and is therefore liable to be set aside. The action of the authorities is also contrary to the Register prescribed for the purpose of appointment to the PCS. The mandate of the roster is that unless his appointment is in the order prescribed under Rule 18, the appointment is invalid. Consequently the order of appointment must be deemed to be the order prescribed in Rule 18 of the 1976 rules. The action of the respondents in determining the seniority list without reference to the order consequence of appointment is wholly unsustainable in law and is liable to be set aside. This apart, the term order of appointment is also being misinterpreted by the authorities and is being confined to individual order of appointment issued to individual members of service whereas the term of appointment only refers to the order/consequence prescribed under Rule 18. Further, from a perusal of Rule 21 it would be manifestly clear that if it is to be interpreted in the manner in which it is presently being done namely, to determine the seniority on the basis of the order of appointment i.e. the date on which the order of appointment is issued, the same must necessarily relate to the inter se seniority of individual sources of recruitment. This procedure was adopted in preparing the seniority list confined to Register B. Action of the authorities in determining the seniority of all the members of the PCS(EB) with reference to their dates of appointment and not with reference to the order by which they were required to be appointed under Rule 21 of 1976 rules and is liable to be set aside.

58. We have also referred to the decisions rendered by this court. This court said that rota and quota must necessarily be reflected in the seniority list and any seniority list prepared in violation of rota and quota is bound to be negated. The action of the respondents in determining the seniority is clearly in total disregard of rota-quota prescribed in Rule 18 of the 1976 Rules. The action is therefore clearly contrary to the law laid down by this court."

20 In the instant case in accordance with the Recruitment Rules, vacancies in the cadre of Preventive officers are to be filled in the ratio of 1:3 as between promotees and direct recruits. During the year 1995, five vacancies in the cadre of Preventive Officers were reported to the Staff Selection Commission for direct recruitment. In the result there were two vacancies meant for promotion. The applicant and two others were recruited for appointment against three vacancies, the applicant being first among the three joined on 7.11.96. Against the two promotee vacancies, one Sri T.K.Haridas and Sri T.O Padmanabhan were promoted initially on adhoc basis. Hence according to the applicant, the order of seniority should have been as shown below.

Sri T.K Haridas	Promotion
Sri Sinoy K. Mathew	DR (applicant)
Sri J. Rajesh Kumar	DR
Sri Shajahan	DR
Sri T.O Padmakshan	Promotion

21 The respondents have stated that Sri T.K Haridas was regularized against the carried forward vacancy of 1994 with effect from 26.4.95 and the fifth respondent T.O.Padmakshan was

regularized from 13.12.95 against the regular promotion vacancy and the second vacancy being SC vacancy was carried forward. They also contend that the applicant joined duty only on 7.11.96, therefore the promotees who were regularized in 1995 have to rank senior to him. The question therefore is the same as agitated in the Supreme court case quoted above namely, whether the applicant's seniority would date back to the vacancy year 1995 in which the vacancies were reported to the SSC or to the date of joining and if the latter is taken that would in effect mean that the rota/quota would not be observed in the year 1995 as there were no direct recruits available that year. This would be clearly in violation of the principle enunciated in the above judgement that quota/rota should be followed in determining the seniority, when the Rules prescribed so.

22. Similarly in OA144, the rival contentions are, according to the applicants, in 1994, not a single direct recruit was appointed though 14 vacancies were reported in that year and the applicants joined duties on 2.5.95 and 20.4.95 though the recruitment had commenced in 1994. The party respondents (promotees) are shown in the seniority list published by the respondents as on 1.7.95. The respondents have submitted that the private respondents were continuing on adhoc basis since 1987 and were regularized against vacancies of 1994 reported to the SSC. This would be contrary to the law and the directions of this court that it could not be considered that no direct recruitment had taken place in the year

1994. The law in this regard has been clearly set out in the judgement of the Apex Court in its following observation:-

"Direct recruits can never be senior to promotees if the date of appointment is made the sole criterion for determining seniority as their process of selection is always lengthier than promotees. Only to rule out any discrimination and arbitrariness, the roster under Rule 18, has been prescribed which has to be read with rule 21 in determining seniority. Making the date of joining as the basis for determining the seniority would have led to discretion in the hands of Government and there would have been a possibility of misuse. It is mandatory to apply rota and quota in determining seniority when it is provided so in Rules."

23 Apart from the enunciation of this general principle by the Supreme court, in Aravinder Singh Bains' case, the principle of seniority in the cadre of Preventive officers had come up for consideration as stated earlier, before this Tribunal in OA 453/96 decided on 28.6.99 and the conclusions of this Tribunal have been extracted in para 15 supra. It was held that it was not a case where direct recruitment had not taken place at all and vacancies carried forward, but the selection process had actually been conducted, but appointments came to be made in the subsequent year. The respondents have taken a contention that the main thrust of the judgement was on the delay that had occurred due to stay etc in permitting the applicants to join as POs and the extraordinary circumstances found by the Tribunal in the OA 453/96 were not present in these OAs for claiming the same benefit. This argument is not correct as seen from the order, the facts and circumstances are pretty much the same in these cases too. In OA 453/96, the delay was one year and appointments were made in the

subsequent year, the process of examination including the examinations having taken place in the previous year. In the Bains' case, despite a much longer delay of 4-6 years, the court has directed observance of the quota/rota rule in seniority. Hence in these cases the delay being only one year, the appointments having spilled over to the next year only, there is no difficulty for the respondents to go by the rota rule in seniority, also the promotees were regularized against specific earmarked vacancies in the same year. Hence there is no excuse for the respondents to deviate from the principle already laid down by the Tribunal for determining the seniority in the same cadre of Preventive officers.

24 We find that the seniority list at A4 is as on 1.4.95. It contains only the names of the applicants in OA144 and the applicants in OA 733/04 have been deleted on the ground that they were not in position on that date. A perusal of the list shows that the respondents have implemented the judgement of this Tribunal in OA453?96 only up to the 1993 vacancies. As regards the years 1994 & 1995, only the number of vacancies have been shown along with the names of persons and their dates of joining. The name of the 5<sup>th</sup> respondent in OA733/04 is shown in a separate list of adhoc promotees. The names are thus not indicated in the order of seniority. We have also seen the DPC proceedings. It is seen therefrom that the same list had been followed by the DPC and the 5<sup>th</sup> respondent has been picked up from the separate list of adhoc

promotees as mentioned above. It is evident that the seniority list followed by the DPC was incomplete and had not been finalized by a due process. The respondents should have finalised the seniority subsequent to the year 1993 and published an up-to-date seniority list and should not have taken recourse to further promotions to the posts of Superintendents without finalizing the seniority of the applicants thus throwing open the doors of litigation. The principles of seniority have already been settled by our order in OA 453/96 relying on GOI O.M dated 7.2.1986. No change in the Government of India's policy has been brought to our notice. It is now further fortified by the judgement of the Hon Supreme court in Arvinder Singh Bains case. Therefore we do not see any need to adjudicate the legal position in this regard afresh. We express our respectful agreement with the order in OA 453/96 and the determination of inter-se seniority between the direct recruits and promotees as directed therein. These principles cannot change from year to year, the respondents have to follow the same principles for subsequent years also. Seniority has to be settled first before resorting to promotions. Hence without venturing into an exercise for determining the respective placements of the applicants and the party respondents in these cases, we would only direct that the respondents finalise the seniority in the cadre of Preventive officers from 1994 onwards following the same principle as laid down in our order in OA 453/96 and the law laid down by the Hon Supreme court in the case of Arvinder Singh Bains. Once the seniority is

determined in accordance with the above, promotions can be effected to the higher posts on the basis of such seniority.

25 In the result, we direct the respondents to prepare the seniority list of Preventive Officers(Customs) from 1994 onwards in accordance with the directions in OA 453/96 and finalise the same after following the procedure of inviting objections and giving notice to all those affected within a period of four months from the date of this order. The promotions/regularizations effected already will continue on a provisional basis only till then and if after finalization of the seniority as proposed above , the applicants gain seniority above the respondents they shall be eligible for retrospective promotions and consequential benefits as per Rules .

26 OAs are disposed off accordingly.

Dated 4- 1-2007

DR. K.B.S. RAJAN  
JUDICIAL MEMBER

kmn

SATHI NAIR  
VICE CHAIRMAN