

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.. NOs. 349/2000 & 156/2001

WEDNESDAY THIS THE 10th DAY OF JULY, 2002.

C O R A M

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

O.A.No. 349/2000

1. Anto David
Air Customs Superintendent (On deputation)
International Airport
Thiruvananthapuram.
Residing at "Thanal"
20/205, Konthuruthy road,
Thevara, Kochi-13.
2. E.C. Prince
Superintendent of Coustoms (Preventive)
Customs House,
Cochin-682 009
residing at 28/756
Mattalil Bhagavathi Temple Lane,
Kadavanthra,
Kochi-20.

Applicants

By Advocate Mr. K. P. Dandapani

vs.

1. Union of India redpresented by
its Secretary to Government
Ministry of Finance
Department of Revenue
New Delhi.
2. Central Board of Excise and Customs,
Represented by its Secretary
New Delhi.
3. The Commissioner of Customs
Customs House,
Cochin-9
4. The Joint Commissioner of Customs
Customs House,
Cochin-9
5. K.C.C. Raja
Superintendent of Customs (Preventive)
Customs House,
Cochin-9.

Respondents

By Advocate Mr. C. Rajendran, SCGSC for R 1-4
By Advocate Mr. S. Chandrasenan for R 5-8

O.A.No. 156/2001

A.M. Sidharthan
Superintendent of Customs
Customs House, Kochi-9.

Applicant

By Advocate Mr.N.N. Sugunapalan

Vs.

1. Union of India represented by
Secretary to Government
Ministry of Finance
Department of Revenue
New Delhi.
2. Central Board of Excise and Customs
represented by its Secretary
New Delhi.
3. Commissioner of Customs
Customs House,
Kochi-9
4. P.G. Naik
Superintendent of Customs
New Customs House,
Ballard Estate
Mumbai-400 038
5. S. Unnikrishna Pillai
Superintendent of Customs
New Customs House,
Ballard Estate
Mumbai-400 038
6. A.J. Fernandez
Superintendent of Customs
New Customs House,
Ballard Estate,
Mumbai-38
7. S.R.Vichare
Superintendent of Customs
New Customs House,
Ballard Estate,
Mumbai-38
8. A.C. Bawa
Superintendent of Customs
New Customs House,
Ballard Estate,
Mumbai-38
9. T.S Ramakrishnan.
Superintendent of Customs
New Customs House,
Ballard Estate,
Mumbai-38
10. ~~Deleted~~
11. A.D.George
Superintendent of Customs
New Customs House,
Ballard Estate,
Mumbai-38

12. K.Y. Arolker
Superintendent of Customs
New Customs House,
Ballard Estate,
Mumbai-38
13. R.K. Kulkarni
Superintendent of Customs
New Customs House,
Ballard Estate,
Mumbai-38
14. V.M. Apte
Superintendent of Customs
New Customs House,
Ballard Estate,
Bombay -38
15. Deleted
16. I.H. Khan
Superintendent of Customs
New Customs House,
Ballard Estate,
Bombay -38
17. P.S. Suvarna
Superintendent of Customs
New Customs House,
Ballard Estate,
Bombay-38
18. A.K. Natekal
Superintendent of Customs
New Customs House,
Ballard Estate,
Bombay-38
19. B.S. Bawisi
Superintendent of Customs
New Customs House,
Ballard Estate
Bombay-38.
20. A.J. Jatnani
Superintendent of Customs
New Customs House,
Ballard Estate,
Mumbai-38
21. Deleted
22. Deleted
- 23.. P.W. Kulkarni
Superintendent of Customs
New Customs House,
Ballard Estate,
Mumbai-38
24. Deleted

25. N.C. Mangalani
Superintendent of Customs
New Customs House,
Ballard Estate,
Mumbai-38
26. K.R. Desai
Superintendent of Customs
New Customs House,
Ballard Estate,
Mumbai-38
27. M.A. AR. Antulay
Superintendent of Customs
New Customs House,
Ballard Estate,
Mumbai-38
28. B.C. Karanje
Superintendent of Customs
New Customs House,
Ballard Estate,
Mumbai-38
29. A.V. Sen
Superintendent of Customs
New Customs House,
Ballard Estate,
Mumbai-38
30. W.S. Borkar
Superintendent of Customs
New Customs House,
Ballard Estate,
Mumbai-38
31. S.R. Gaikwad
Superintendent of Customs
New Customs House,
Ballard Estate,
Mumbai-38
32. S.R. Dhabole
Superintendent of Customs
New Customs House,
Ballard Estate,
Mumbai-38
33. S.S. Pawar
Superintendent of Customs
New Customs House,
Ballard Estate,
Mumbai-38
34. V.Y. More
Superintendent of Customs
New Customs House,
Ballard Estate,
Mumbai-38
35. M. Sankara Rao
Superintendent of Customs
New Customs House,
Ballard Estate,
Mumbai-38

36. A.Lal
Superintendent of Customs
New Customs House,
Ballard Estate,
Mumbai-38
37. C.K. Thankappan
Superintendent of Customs
New Customs House,
Ballard Estate,
Mumbai-38
38. W. Samuel Varghese
Superintendent of Customs
New Customs House,
Ballard Estate,
Mumbai-38
39. M.N. Ramaswamy
Superintendent of Customs
New Customs House,
Ballard Estate,
Mumbai-38
40. N.K.Chellaram
Superintendent of Customs
New Customs House,
Ballard Estate,
Mumbai-38
41. G. Sivasubramaniam
Superintendent of Customs
New Customs House,
Ballard Estate,
Mumbai-38
42. P.N. Baharudeen
Superintendent of Customs
New Customs House,
Ballard Estate,
Mumbai-38
43. S.P. Mohammedkutty
Superintendent of Customs
New Customs House,
Ballard Estate,
Mumbai-38
44. R. Kaliamurthy
Superintendent of Customs
New Customs House,
Ballard Estate,
Mumbai-38
45. K.C. C. Raja
Superintendent of Customs (Retd)
No.9, Chithanya Apartments,
Ponothroad,
Kaloor.

Respondents

By Advocate Mr. M.r. Suresh for R 1-3
By Advocate Mr. Vellayani Sundararaju for R-37 & 38
By Advocate Mr. S. Chandrasehan for R-45

The Applications having been heard on 20.6.2002 this Tribunal delivered the following on **10.7.2002.**

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

As the issues involved in these two Original Applications were similar, they were heard together and are covered by this common order.

O.A. 349/2000

2. Applicants, two in number aggrieved by A-5 order dated 22.9.99 issued by the 4th respondent enclosing the revised seniority list of Preventive Officers as on 1.3.78 and A-6 circular dated 15.3.2000 enclosing therewith the revised seniority list of Superintendents of Customs (Preventive) as on 1.1.95 filed this Original Application seeking the following reliefs:

(i) Call for the records leading to the case

(ii) Declare that the issuance of Annexure A5 and A6 is totally arbitrary and illegal in so far as it revise the seniority of respondents 5 to 8 above the applicants.

(iii) Direct the respondents to issue notice to the applicants and afford them an opportunity to represent against the re-fixation of the seniority as contemplated Annexure A1 and A4 and to take a decision afresh in the matter.

(iv) To pass such other reliefs as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case

and

(v) Award costs.

3. The first applicant was appointed as Preventive Officer by direct appointment on 27.9.75 in the Customs House, Cochin and was confirmed in that grade on 1.12.77 and promoted as Superintendent of Customs (Preventive) on 1.8.91. The second applicant was appointed as Preventive Officer by direct recruitment on 25.9.75 and was confirmed in that grade

on 1.1.78 and was promoted as Superintendent of Customs (Preventive) on 2.4.92. According to them the 5th respondent who was working as Preventive Officer Grade-II at the Customs House, Bombay for about 11 years was transferred to Cochin at his request on 3.3.75 on loss of seniority. On the basis of A1 circular dated 12.5.58 issued by the Central Board of Excise and Customs the 5th respondent represented to the authorities concerned seeking benefit of three years of past service for the purpose of seniority in the Cochin Collectorate as his transfer was made prior to 20.5.80. On rejection of his claim, he filed OA NO. 1182/95 before this Tribunal. This Tribunal passed A-2 order dated 29.8.97. Applicants claimed that in this O.A., the applicants who would have been affected by the revision of seniority which was claimed through the O.A., were not made parties. Aggrieved by A2 order the applicants approached the Hon'ble High Court of Kerala by filing OP NO. 19602/97 seeking to stay and quash Annexure A2 order. In the meanwhile, while the OP was pending in the High Court of Kerala, the first respondent issued A3 letter dated 20.10.98 according to which the Boards decided suo moto to grant the benefits of clause-(i) and (ii) of 1958 circular to all similarly situated Group-C officers under the CEBC who were transferred before 20.5.80 to ensuring that all those who would be adversely affected were given due notice and their representations considered before revising their seniority. The Hon'ble High Court disposed of the O.P. by A-4 order dated 9.8.99 directing the third respondent herein to adopt and implement A3 order also in the case of the applicant as expeditiously as possible at any rate within a period of three months from the date of the judgment. The 4th respondent issued A5 order dated 22.9.99 along with the seniority list of Preventive Officers as on 1.3.78. By A6

circular dated 15.3.2000 the seniority list of Superintendents of Customs (Preventive) as on 1.1.95 was published on the basis of A5 seniority. Aggrieved by A5 and A6, applicants filed this O.A. alleging that A5 and A6 were arbitrary and illegal and had been issued in violation of rules and instructions contained in A3 and in violation of the principles of natural justice. It was also submitted that inspite of a specific direction in A4 judgment, the applicants were not given any notice before their seniority was revised.

4. Respondents 1 to 4 filed reply statement resisting the claim of the applicants. It was submitted that the applicants in OP No. 19602/97 were put on notice and it was only after they filed their representations, A5 order was passed. They specifically submitted that the submission of the applicants that the seniority of the applicants were altered without being given an opportunity of being heard was wrong and the O.A. was liable to be dismissed. The matter relating to fixation of seniority was examined by Hon'ble High Court of Kerala in OP NO. 1070/98 heard along with OP No. 15336/98 and 19602/97. OP No. 1070/98 was filed by the Department whereas OP 19602/97 was filed by the applicants in the present OA and OP No. 15336/98 was filed by Shri A.M. Sidharthan another Superintendent of Customs (Preventive), Cochin. The Hon'ble High Court of Kerala in its judgment did not direct the department to issue any fresh notice to the applicants. In fact the Hon'ble High Court directed this Department to implement the directions contained in Board's letter within three months. The applicants in their representations requested the Department to postpone from taking any decision till the disposal of the OP before the High Court. Therefore refixation had been done only after

the High Court delivered its judgment. While revising the seniority of Superintendents of Customs (Preventive) a review Departmental Promotion Committee was conducted according to the existing rules and after that Circular NO. 12/2000 dated 15.3.2000 was issued showing the revised seniority of Superintendents. All the aspects of the Board circulars and the judgments of the Supreme Court were carefully considered before refixing the seniority of the affected persons and the refixation of the seniority had been done after considering their objections. The question of unsettling of all settled matters ~~xxxx~~ did not arise in this case.

5. Private respondents 5 to 8 filed separate reply statements.

6. Applicants filed rejoinder and official respondents filed additional reply statement.

O.A. 156/2001

7. In this Original Application the applicant was appointed as Lower Division Clerk on 13.12.65 in the Cochin Customs House. He was appointed as Preventive Officer Grade-I by office order No. 60/73 dated 10.7.93. He was promoted as Superintendent on 27.3.91 and had taken charge on 28.3.91. He claimed that he was senior to the party respondents who came to Cochin Customs House on inter-Commissionerate transfer. According to him in A1 seniority list of Preventive Officer Grade-I in the Cochin Collectorate as on 1.1.86 his name appeared at Sl. No. 49 and the party respondents were all far below him. The same was followed for giving promotion in 1991 also. In A2 seniority list as on 1.7.89 the applilcant's name appeared at

Sl. No. 49 and the party respondents were below him. None of the party respondents were transferred to Cochin customs House on administrative grounds. The inter-Collectorate transfer and fixing of seniority had been regularated by OM No. 9/11/55/RPS dated 22.12.59 issued by the Ministry of Home Affairs wherein these transferees after transfer would be ranked below the direct recruits in the seniority list of the transferred Unit/Collectorate. In 1978 one of the party respondents namely KCC Raja preferred a representation to the department requesting to give him the seniority and ranking taking into account his previous service rendered in the other Collectorate. The same was rejected by the Department by A3 order dated 7.4.81. The said Sri Raja filed OA NO. 945/93 claiming the benefit of 3 years of past service. The Tribunal directed the Department to consider his claim. The third respondent by proceedings dated 18.5.94 rejected the same which was challenged by Sri Raja in O.A. 1178/94. Again the Tribunal directed the Department to consider his claim. The third respondent by order dated 30.6.95 again rejected the claim. This was taken up by the said respondent in O.A. 1182/95. This Tribunal held that in inter-commissionerate transfer the junior to the applicant was settled to get the seniority counted and thereupon the OA was allowed upholding A-5 circular dated 12.2.58 and directed the respondents to refix the seniority within three months from the date of the order. The applicant moved a review application as he was not a party to the proceeding which was heard on 22.7.98 (M.A.276/98). The Tribunal held that the remedy of the applicant lay elsewhere as two OAs were pending at that time against A-4 order. The order of the Tribunal was challenged in the High Court of Kerala in O.P 15336/98 which was dismissed hold that the decision rendered by the Tribunal concerning the reckoning of service rendered by the

Inspectors of the Central Excise would be governed by earlier decisions rendered by the Patna Bench of this Tribunal and Hon'ble Supreme Court and therefore the petitioners plea that juniors could not be placed above him could not be acceded. The applicant sought to review the judgment in R.P. NO. 16/2000 which was pending consideration. The Department thereafter issued A6 memorandum asking him to cause as to why his seniority could not be shown at Sl. No. 44 in the category of Preventive Officers. The applicant submitted A-7 explanation dated 18.2.97 and the Commissioner of customs, Cochin issued A-8 proceedings dated 22.9.99. This was followed by the A-9 revised seniority list of Superintendents which was issued on the basis of A-8 wherein the applicant's seniority was shown at Sl. No. 13 and changing the promotion date from 27.3.91 to 4.7.91. The applicant's grievance was in refixing his date of promotion as 4.7.91. The applicant's date of promotion was 27.3.91 and the same could not be altered by various office orders and judgments. A-9 was a true copy of the Establishment circular No. 12/2000 dated 15.3.2000. Applicant filed A-10 objection dated 6.4.2000 objecting to the alteration of his date of promotion as Superintendent. He also challenged the jurisdiction of the Departmental Promotion Committee to alter the date of promotion as the DPC would have to consider the suitability of the candidates who were under consideration for promotion and there would be a date of meeting of the DPC and the list prepared would be acted upon by the Department for giving promotion. The applicant claimed that these dates could not be altered by any rules or regulations as the date of promotions naturally gave finality of the issue of promotion. A-11 was a copy of the order issued to him on 27.3.91. Aggrieved applicant filed this O.A. challenging A-6, A-7 and A-9. It was further submitted that the

applicant had specifically stated in A-10 the representation dated 6.4.2000 that the respondents who were juniors could be given only deemed dates of promotion for future purpose without changing the original date of promotion of the applicant. He produced A-12 corrigendum order dated 4.4.2000 and submitted that Annexure A-12 was issued just prior to Annexure A-10. Based on the earlier order the Central Board of Excise and Customs issued A-13 revised seniority list of Superintendents who were working in the Cochin Customs House. The applicant was shown at Sl. No. 6 in A-13. In All India seniority list held was at Sl. NO. 474 which was altered as 525A showing his date of promotion as 4.7.91 as against 27.3.91. The said proceedings on the face of it was inaccurate, incorrect and opposed to law. Respondents 4 to 44 had now superceded the applicant. Under such circumstances the applicant sought the reliefs mentioned above. According to the applicant if the date of promotion was correctly fixed applying the dictum in Damodar singh's case, the applicant would lose only 3 places and not 51 places. There was total misapplication or malapplication of the principle laid down by the Supreme Court. The period of service rendered by the juniors in various Collectorates prior to their transfer were not furnished to the applicant. Until and unless those dates were given and a chance was given to the applicant it could not be said that there was a fair opportunity given to the applicant.

8. Respondents filed reply statement resisting the claim of the applicants. It was submitted that A-9 and A-13 were the result of the outcome of the Hon'ble Supreme Court's order in SLP No. 6734/98 dated 31.3.98. In compliance with Hon'ble Supreme Court's judgment the Board issued direction in their R-1 letter dated 20.10.98. It was submitted that

since seniority of officials had already been fixed as Preventive Officers, after examining their objections, no further objections were called for since the seniority positions were already settled. The Hon'ble High Court in its judgment dated 9.8.99 also directed the Customs Collectorate to adopt and implement R-1 order dated 20.10.98. According to the existing instructions a Review DPC was convened for considering the promotion of Preventive Officers as Superintendents on the basis of the revised seniority list of Preventive Officers. The Review DPC had considered for promotion for the vacancies which existed for each period and gave promotion to officers according to the seniority-cum-fitness basis on the basis of the revised seniority of Preventive Officers and hence the applicant's date of appointment as Superintendent had to be changed and accordingly his seniority also changed. They further submitted that the impugned A-9 and A-13 orders are not arbitrary, illegal and discriminatory.

9. The 45th respondent filed separate reply statement. According to him the applicant did not have any legal claim that he should be given promotion from a particular date. Respondents 4 to 44 who had been shown as transferees to Cochin Customs House were not at all so. Respondent NO. 37 and 38 were direct recruits in the cadre of Preventive Officers in the vacancies set apart for Schedule Castes and Scheduled Tribes in the Cochin Customs House. Their placement in the seniority list could never be challenged since their position was fixed as per reservation roster. A2 was the seniority list of Preventive Officers in Cochin Customs House. Except respondents 36 and 37 none of the respondents shown in the OA appear in the seniority list. All the averments stated in the O.A. were contrary to facts.

So long as A-8 and R-45A were not challenged by this applicant the present O.A. was not maintainable. A-9 circular was issued on 15.3.2000. A-9 specifically state that representations if any should be addressed to the Joint Commissioner of Customs (P&V) on or before 30th March, 2000. Annexure A-11 is a promotion order of Preventive Officers issued on 27.3.1991. It was issued at a time when a seniority list, not properly constituted existed. The applicant could not claim that he would be eligible for the date of promotion as in A-11. A-13 is the direct consequence of the proper fixation of seniority to the officers who were transferred on inter-collectorate transfer. Many of such officers were denied their eligible 3 years service in their former collectorate while fixing up seniority. Applicant was enjoying an unmeritted placement in the seniority list in this regard. The O.A. was devoid of merit and was liable to be dismissed.

10. Applicant filed separate rejoinder to the replies filed by the respondents 1 to 3 and 45.

11. Official respondents filed additional reply statement and applicant filed additional rejoinder to additional reply statement.

12. Heard learned counsel for the parties.

13. Shri N.N. Sugunapalan, learned counsel for the applicants in both the OAs. xxxxx xxxxxxxxxxxxxxxx took us through the factual aspects and submitted that as the Review Petition filed against the judgment of the Hon'ble High Court of Kerala was pending, he was not seeking any relief against the 5th respondent in O.A. 349/2000. He submitted that the

grievance of the applicants in O.A. 349/2000 was that they had not been given an opportunity to state their case before the impugned orders A-5 and A-6 were issued and the case of the applicant in OA No. 156/2001 was that the applicant's date of appointment to the cadre of Superintendent was changed without affording him an opportunity to state his case against the revision.

14. Shri C. Rajendran, SCGSC and Mr. M.R. Suresh, learned counsel for the official respondents in the two OAs respectively Shri Rajendran, SCGSC and Shri M.R. Suresh took us through the reply statements and reiterated the points made therein. Shri Chandrasenan learned counsel for respondents 5 to 8 in O.A. 349/2000 submitted that even though the counsel for the applicants submitted that the applicants had no grievance against respondent No. 5 in that O.A. (R-45 in O.A. 156/2001), the intention of filing this OA was only to delay the benefits which had been obtained by the 5th respondent after prolonged litigation. These OAs had been filed with the ulterior motive of protracting the implementation of A3 Board orders and the execution of the orders in O.A. 1182/95 of this Tribunal. The seniority of the applicants and respondents had already been settled and made clear when A3 order was issued and A3 was not being challenged. As long as A3 order was not being challenged the applicants did not have any cause of action to challenge A-5 order in O.A. 349/2000. Similarly the applicant in OA 156/2001 could not have a cause of action as long as he had not challenged Ext. 45-A (Annexure A3 in OA NO. 349/2000). Annexure A6 circular was a copy of the memo dated 3.2.99 issued by the 3rd respondent to the applicant in the matter of revising the seniority of Superintendents of Customs. It was open to the applicant to give representations if any.

The grounds advanced by the applicant were totally unsustainable. Annexure A-5 was issued after issuing notice to all concerned and after considering their objections. The Hon'ble High Court directed to implement A3 order of the second respondent. The Review petitions said to have been filed by the applicants had not yet come up for admission. As regards the applicant in O.A. 156/2001 it was submitted that since A-9 was issued in accordance with R-45 the Board was perfectly justified in issuing A-13, All India seniority list of Superintendents of Customs as on 4.11.97. Hence R-45 stands without challenging the consequential re-fixation namely A-9 and A-13 were perfectly in order. In Annexure A-8 the respondent No. 45 was shown at Sl.No. 47 in the seniority list of Preventive Officers as on 1.3.78. The applicant in O.A. 156/2001 was at Sl.NO. 63. Therefore when the DPC considered the Preventive Officers for promotion to the post of Superintendent, a person who was placed at Sl. NO. 47 had to be assigned a vacancy that arose in accordance with his ranking in the seniority list. When vacancies were given in this order the 45th respondent was promoted in the vacancy that arose on 27.3.91. This will be clear from A-9 and the 45th respondent is at Sl. NO. 47 in that seniority list. He had been given legitimate placement in accordance with the seniority as would be seen from A-8.

15. We have given careful consideration to the submissions made by the learned counsel for the parties and the pleadings and have perused the documents brought on record.

16. From a perusal of the documents brought on record and consideration of the submissions made by the learned counsel for the applicants we find that the applicants in these two

O.As. have not challenged A-3 order dated 20.10.98 issued by the Government of India. What had been laid down in this order is the same as laid down by this Tribunal in O.A. NO. 1182/95. The applicants' Review Applications before this Tribunal as well as their OPs in the Hon'ble High Court of Kerala did not succeed. In fact the Hon'ble High Court of Kerala directed the Department to implement the directions contained in A-3 order within three months of the date of the date of judgment.

17. That apart, we find the official respondents had issued notice to the applicants pursuant to A3 orders of the Govt. of India dated 20.10.98 by R-5(A) memo dated 3.2.99. We also note that representations were submitted by the applicants in both the OAs as could be seen from A-8 in O.A. 156/2001 and A5 in O.A. 349/2000. In the light of this factual position, we do not find any substance in the plea of the applicants in O.A. 349/2000 that they had not been given any opportunity to represent their case. Regarding the ground advanced by them that pursuant to the order of the Hon'ble High Court of Kerala in OP NO. 19602/97 they had not been given an opportunity to explain their case, we note that the operative portion of A4 judgment of the Hon'ble High Court of Kerala as follows:

4. Now, the counsel on both sides submit that notwithstanding the judgment rendered in this case, Ext. RI(L) produced by the 1st respondent is applicable to all the petitioners in these writ petitions. That means, the Commissioner has to refix the seniority of the petitioners in these cases in view of the direction given in Ext. RI(L). Therefore, we direct the Commissioner of Customs, Cochin to adopt and implement the ext. RI(L) order also in the case of the petitioners as expeditiously as possible, at any rate, within a period of three months from today. The Original Petitions are disposed of as above.

From the above it is very clear that the Hon'ble High Court has not directed to issue any fresh notice after rendering of the judgment dated 9.8.99. Further we are of the view that if the applicants wanted to say any thing more than what they had said against the revision of seniority they should have, on their own, filed further representations. Having not done anything after A-4 judgment of the Hon'ble High Court of Kerala dated 9.8.99, their plea that they had not been given any opportunity to represent has no force. Thus, we do not find any merit in the plea of the applicants in O.A. No. 349/2000 for the reliefs sought for by them. Accordingly, we are of the considered view that the said OA is liable to be dismissed.

18. Now coming to OA No. 156/2001 the applicant herein had assailed the change in his date of promotion as Superintendent on the ground that the same had been done without giving him any opportunity to represent his case. Here again we find as already stated, that the applicant is not challenging R-45A order dated 20.10.98 of the Govt. of India. This would mean that he had accepted his revised position in the seniority list of Preventive Officers. From a perusal of the pleadings we find that the promotion and seniority list of Preventive Officers is done/maintained Collectorate-wise. With the revision of seniority of Preventive Officers, promotion to the post of Superintendent could be done only with a review DPC and this has been done by the official respondents. We also find considerable force in the submissions made by the 45th respondent that the applicant had wrongly submitted that the private respondents 1 to 44 had been transferred to Cochin. This is a factually incorrect statement which had been admitted by the applicant. In any case as long as R-45A is not challenged by the

applicant, Preventive Officers who had been transferred on inter-collectorate transfer would get the benefit of the actual service rendered in the previous Collectorate subject to a maximum of three years for the purpose of seniority. Each of the Collectorate/Commissionerate has to revise the seniority lists of Preventive Officers. On the basis of the revised position in the seniority list of Preventive Officers, the review DPC has to prepare revised panels of Superintendents. Such an exercise only will enable the respondents to decide the dates on which the respective Preventive Officer would become eligible for promotion as Superintendent and prepare the correct seniority list of Superintendents. From A-13 we find that this is what had been done. In this view of the matter, we find no force in the claim of the applicant that his date of promotion could not be changed. He can only get the position which he is due as per the review DPC. His plea that if his date of promotion as Superintendent had not been changed so many Superintendents of other Collectorate would not have superseded him has no force as he cannot get the position to which he is not entitled to.

19. In the result, we find no merit in the claim of the applicant and hold that the Original Application is liable to be dismissed.

20. In the light of the detailed analysis given in the foregoing paragraphs, we dismiss the Original Applications No. 349/2000 and 156/2001. In the circumstances we leave the parties to bear their respective costs.

Dated the 10th July, 2002.

Sd/-
K.V.SACHIDANANDAN
JUDICIAL MEMBER

Sd/-
G.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

APPENDIX

Applicants' Annexures

O.A. No. 349/2000

- A1 True copy of the Circular NO. 6/97/57-Admn.III dated 12.2.58 issued by the CEEC
- A2 True copy of the order in OA 1182/95 of this Tribunal dated 29.8.97
- A3 True copy of the letter No.1F No. A 23024-AD III (CA) dated 20.10.98 issued from the office of the first respondent.
- A4 True copy of the judgment in OP NO. 19602/97 dated 9.8.99 of the High Court of Kerala
- A5 True copy of the order NO. 109/99 dated 22.9.99 along with revised seniority list of Preventive Officers as on 1.3.78 issued by the 4th respondent.
- A5A True copy of the OM NO. S45/16/99-Estt. cus. dated 3.2.99.
- A6 True copy of the Establishent Circular NO. 12/2000 dated 15.3.2000 as well as revised seniority list of Supdts. of Customs (Preventive) as on 1.1.95 issued by the 4th respondent.

Respondents' Annexures

- R1A Photo copy of the notice F.No. 23024/4/94-AD.III (A) dated 20.10.98
- R1B Photo copy of the Memo No. S45/16/99-Estt. Cus dated 3.2.99.
- R1C Photo copy of the representation dated 18.2.99 issued by Supdt. of Customs (Anto David)
- R1D Photo copy of the representation dated 18.2.99 issued by Supdt. of Customs (EC Prince)

O.A.156/2001

Applicant's Annexures

- A1 True copy of the seniority list issued by the 3rd respondent's office dated 23.1.86
- A2 True copy of the seniority list issued by the 3rd respondent's office dated 1.7.89
- A3 True copy of the Memo dated 7.4.8d1 issued by the 3rd respondent's Office NO. S.45/206/80 Est. Cus
- A4 True copy of the order passed by CAT dated 28.8.97 in OA 1182/95
- A5 True copy of circular No. 6/97/67-Admn.III-A dated 12.2.58 issued by the 2nd respondent's office.

- A6 True copy of the Memo No. S45/16/99-Estt. Cus dated 3.2.99 issued by the 3rd respondent's office to the applicant.
- A7 True copy of the representation dated 18.2.99 submitted by the applicant to 3rd respondent.
- A8 True copy of the order NO. 109/99 dated 22.9.99 issued by the 3rd respondent's office.
- Aa9 True copy of Establishment circular No. 12/2000 dated 15.3.2000 issued by the 3rd respondent.
- A-10 True copy of the objections dated 6.4.2000 submitted by the applicant before the 3rd respondent.
- A-11 True copy of the promotion order No. 42/91 dated 27.3.91 issued by the 3rd respondent's office.
- A-12 True copy of the corrigendum order NO. S45/16/99-Estt. cus dated 4.4.2000 issued by the 3rd respondent's office.
- A-13 True copy of revised seniority list No., f No. A-23011/1-A/94-Ad.II(A) (Pt.d) issued by the 2nd respondent dated 17.1.2001

Respondents' Annexures

- R1 True copy of the No. 23024/4/94-Ao 111A dated 2.10.98 issued by Govt. of India Ministry of Finance, Deptt. of Revenue
- R-45A True copy of the order NO. A-23024/4/94-Ad.III(A) dated 20.10.98 issued by the 1st respondent.
- R-45(B) True copy of the common judgment dt. 19.8.99 before the HOn'ble High Court of Kerala.
- R45(c) True copy of the order dated 24.10.2000 before the Tribunal.

CERTIFIED TRUE COPY

Date

Deputy Registrar