

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE OF DECISION 5-7-1990
.....

PRESENT

Hon'ble Shri N.V.Krishnan, Administrative Member
And
Hon'ble Shri N.Dharmadan, Judicial Member

ORIGINAL APPLICATIONS 765/89, 735/89
AND 213/90

1. O.A.765/89

1. Sunny Kuriakose
2. K.N.Gopalakrishnakurup
3. C.K.Dinakaran Applicants

Versus

1. Union of India represented
by Secretary, Ministry of Finance,
New Delhi.
2. The Collector of Central Excise,
Central Revenue Buildings,
Cochin.
3. The Deputy Collector (P&E),
O/o the Collector of Cen. Excise,
Cochin.
4. The Chairman, Central Board of
Excise & Customs,
New Delhi.
5. Gopinathan Nair (K.G.Nair)
D.C.S. Audit Section,
Cen. Excise Head Quarters,
Cochin.
6. M.A.S.Nair,
Central Excise Division,
Ernakulam.
7. G.V.Nair,
Tax Assistant,
Central Excise Headquarters,
Cochin.

8. K.N.R.Nair,
Tax Assistant,
O/o the Assistant Collector
of Cen. Excise,
Trivandrum Division.
9. P.Haridasan,
Inspector, Central Excise,
Kozhikode Division.
10. G.G.K.Pillai,
Tax Assistant,
O/o the Assistant Collector
of Cen. Excise,
Kottayam Division.
11. E.J.Thomas,
Tax Assistant,
Cen. Excise Headquarters,
Cochin.
12. Smt. Radha A.Nair,
Tax Assistant,
Cen. Excise Headquarters,
Cochin.
13. V.Samuel,
U.D.C.,
O/o the Assistant Collector
of Cen. Excise,
Kottayam Division.
14. Jayarajan
Tax Assistant,
Ernakulam I Division.
15. Smt. K.T.K.Santha,
Tax Assistant,
O/o Assistant Collector of
Cen. Excise,
Kozhikode Division.
16. Smt. P.V.Sujatha,
Tax Assistant,
O/o the Assistant Collector of
Cen. Excise,
Trichur Division.
17. C.S.Menon,
Tax Assistant,
Cen. Excise Headquarters,
Cochin.
18. Smt. Asha Rita V.Simcock,
Tax Assistant,
O/o Assistant Collector of
Cen. Excise,
Kozhikode Division.
19. K.P.Jose,
Tax Assistant,
O/o Assistant Collector of
Cen. Excise,
Ernakulam Division.

20. M.Unnikrishnan,
Tax Assistant,
O/o Assistant Collector of
Cen. Excise,
Kozhikode Division.
21. Krishna Murthy,
Tax Assistant,
O/o Assistant Collector of
Cen. Excise,
Trivandrum Division.
22. N.Harikumar,
Tax Assistant,
Cen. Excise, Headquarters,
Cochin.
23. Smt. Radhamoney S.Menon,
Tax Assistant,
Cen. Excise Headquarters,
Cochin.
24. K.T.Mathai,
U.D.C.,
Central Excise Headquarters,
Cochin.
25. Smt. Chinnamma Mathew,
Tax Assistant,
Cen. Excise Headquarters,
Cochin.
26. Smt. V.K.Pushpavally,
Tax Assistant,
O/o Assistant Collector of
Cen. Excise,
Ernakulam Division.
27. P.R.Raveendran,
Tax Assistant,
O/o Assistant Collector of
Cen. Excise,
Kozhikode Division.
28. M.C.Sivaraman,
Tax Assistant,
O/o the Assistant Collector of
Cen. Excise,
Trichur Division.
29. Smt. P.Mallika,
Tax Assistant,
Cen. Excise Headquarters,
Cochin.
30. Smt T.A.Tharamoni Devi,
Tax Assistant,
Cen. Excise, Ernakulam II
Division.

U

31. K.G. Joseph,
Tax Assistant,
Cen. Excise Headquarters,
Cochin.
32. M.G. Sasidharan,
Tax Assistant,
O/o the Assistant Collector
of Cen. Excise,
Kottayam Division.

... Respondents.

M/s M.R. Rajendran Nair
&
P.V. Asha

.. Counsel for the
Applicants

/Standing
Counsel

Mr. Kochunni Nair, Additional/ Counsel for R1-4
Mr. R. Rajasekharan Pillai .. Counsel for R11 & 21)
Mrs. Usha .. Counsel for R5, 23 & 25.
Mr. D.V. Radhakrishnan .. Counsel for R-16.

2. O.A. 735/89

1. K.N. Gopalakrishna Kurup
2. T.C. Rajakumaran

... Applicants

Vs.

1. Union of India rep. by
Secretary, Min. of Finance,
New Delhi.
2. Collector of Cen. Excise,
Cochin.
3. E.J. Thomas,
Tax Assistant,
Cen. Excise Collectorate,
Cochin.
4. K. Krishnamoorthy,
Tax Assistant,
O/o Assistant Collector of
Cen. Excise,
Trivandrum Division.

... Respondents

Mr. M.R. Rajendran Nair

.. Counsel for the
Applicants.

/Standing
Counsel

Mr. C. Kochunni Nair, Additional/
Mr. R. Rajasekharan Pillai

.. Counsel for R1&2
.. Counsel for R3&4

3. O.A. 213/90

M.C.Sivaraman

...

Applicant

Vs.

1. Union of India rep. by
Secretary, Min. of Finance.
2. The Collector of Cen. Excise,
Cochin.
3. Deputy Collector (P&E)
Central Excise Collectorate,
Cochin.
4. The Chairman,
Central Board of Excise & Customs,
New Delhi.
5. C.S.Menon,
Tax Assistant,
Cen. Excise, Ernakulam Division,
Cochin.
6. K.P.Jose,
Tax Assistant,
Cen. Excise Headquarters,
Cochin.
7. K.Krishnamoorthy,
Tax Assistant,
Central Excise,
Trivandrum Division.
8. Radhamani S.Menon,
Tax Assistant,
Cen. Excise Hqrs.,
Cochin.
9. Chinnamma Mathew,
Tax Assistant,
Central Excise Hqrs.
Cochin.

... Respondents

M/s. M.R.Rajendran Nair &
P.V.Asha

.. Counsel for the
Applicant

/Additional
Standing Counsel

Mr. C.Kochunni Nair, /
M/s Sukumar & Usha
Mr. R.Rajasekharan Pillai

.. Counsel for R1-4
.. Counsel for R8-9
.. Counsel for R-7.

O R D E R

(Shri N.V. Krishnan, Administrative Member)

The question that falls for consideration in these cases is how should the seniority of Upper Division Clerks (UDCs, for short) transferred from other Collectorates, on compassionate grounds, to the Collectorate of Central Excise, Cochin be fixed among the UDCs of that Collectorate in the light of the instructions issued by the Central Board of Excise & Customs on this subject, in exercise of the powers conferred on it in this behalf by the Recruitment Rules. The applicants contend that they should be assigned a place below all the UDCs - direct recruits ^{and} ~~or~~ promotees - working at the time of their induction. The Union of India and the transferees contend that they should be placed below only the last direct recruit, who had taken over charge before they joined in Cochin, in the posts kept vacant for direct recruits ^{but} ~~and~~ above all the promotees who are shown below such last direct recruit.

2. This issue is raised in all the cases listed above, wherein the validity of the seniority list of UDCs of the Collectorate of Central Excise, Cochin, as on 1st January, 1989 (Annexure I in OA 765/89) is questioned. Hence, these cases were heard together.

3.1 The facts in the first case (O.A.765/89) which was argued in detail may be first noticed. The three applicants are directly recruited UDCs of the year 1984. A seniority list of the UDCs in the Cochin Collectorate (i.e. the first respondent's office) as on 1.1.85 was published on 9.8.85 (Annexure-III). The three applicants were assigned therein places at Sl. Nos. 129, 127 and 137 respectively. The inter-Collectorate transferees (ICT, for short) impleaded in this application, including both surplus staff transferees and compassionate ground transferees (SST/UDCs and CGT/UDCs, for short, respectively) (i.e. Respondents 5, 6, 7, 8, 10, 12, 13, 17, 19, 21, 23 & 25) have all been assigned places at Sl. No.151 and thereafter, i.e. junior to the applicants.

3.2 The relative inter se seniority position continued to be the same in the Annexure-IV seniority list showing the position as on 1.1.86.

3.3. However, in the seniority list as on 1.1.89 (published vide the impugned memorandum dated 8.3.89 at Annexure-I), this position has been reversed allegedly, without any valid reasons. In this impugned seniority list, while the applicants have been assigned places at Sl. No.s 102, 100 and 110 respectively, the

the ICT-UDCs who have been impleaded are all shown as their seniors, their places being between Sl.No.66 and Sl.No.94.

3.4 As the revised impugned seniority as on 1.1.89 (Annexure-I) is claimed to be based on the letter/OM dated 20.5.80 (Annexure-V), 23.11.81 (Ann.VI) and 3rd March, 1989 (Ann. VII), the applicants want the Ann.I, V, VI & VII to be quashed and be given seniority shown as in Ann.III and IV.

4. Respondents 1 to 4 are the government respondents. They have filed a reply. Respondent 5, a SST-UDC and Respondent 23 and 25, two CGT-UDCs, have filed a joint reply. Similarly, Respondent 11, a promotee and Respondent 21, a SST-UDC have also filed a reply. All these respondents contend that the places assigned to the ICT-UDCs in the seniority list as on 1.1.89 (i.e. Ann.I) are absolutely correct and are based on the principle that ^{Collectorate} inter/transferees should be assigned the slots reserved for direct recruits which are vacant and they should be placed below the last direct recruit.

5. Respondents 16 & 28, both promotees, have also filed replies. They endorse the stand taken by the applicants, as they too have similar grievances against

the ICT-UDCs and, they also seek relief in the process, by demanding places above some of the ICT-UDCs.

6. . It is admitted that the appointment of UDCs is governed by the Central Excise and Land Customs Department Grade 'C' Posts Recruitment Rules, 1979--Rules, for short,-- which have been exhibited by the 5th respondent as Exbt. R-5(c). The normal method of recruitment is 50% by direct recruitment and 50% by promotion, failing which by direct recruitment. This establishes the principle quota/rota/of promotion and seniority in this case. Rule 5 contains certain special provisions. In view of its importance, this rule, to the extent it is relevant, is reproduced below.

"5(1). Special provisions regarding collectorates-

Each Collectorate shall have its own separate cadre, unless otherwise prescribed by the Central Board of Excise and Customs.

(2) Notwithstanding anything contained in sub rule (1) the Central Board of Excise and Customs may--

(a) x x x xxxx xxxxx

(b) if it considers to be necessary or expedient on compassionate grounds, order that a post in a Collectorate of Central Excise and Land Customs which is to be filled

u

by direct recruitment under these rules, should be filled by transfer or deputation of a person holding the same or comparable or higher post from any other Collectorate of Central Excise or any Department or office under the Central Board of Excise and Customs, subject to such conditions as it may specify having regard to the circumstances of the case." (emphasis ours)

7. It is agreed that it is in pursuance of the special powers given in rule 5(2)(b) that inter-collectorate transfers of UDCs are made and the impugned circulars, Annexures V, VI and VII spelling out the principles for determining the seniority/are issued.
As the issues arising in this case require^a detailed consideration of these circulars, we proceed to examine them.

/as conditions
for such transfer

8. Annexure-V dated 20th May, 1980 is from the Central Board of Excise & Customs to all Collectorates. It is stated therein that the Group 'C' officers and posted transferred from one Collectorate/to another on compassionate grounds will be subject to the conditions mentioned therein. The conditions stipulated in para 2(ii) and 2(vi) being important are reproduced below.

"2(ii). the transferee will not be entitled to count the service rendered by him in the former

ll

Collectorate for the purpose of seniority in the new charge. In other words, he will be treated as a new entrant in the Collectorate to which he is transferred and will be placed at the bottom of the list of the temporary employees of the concerned cadre in the new charge;

xxxx

xxxx

xxx

(vi) such transfers can be effected only in the post filled by direct recruitments."
(emphasis ours)

9. A clarification (Annexure-VI) was issued on 23.11.81. After stating that the seniority of ICT is to be fixed on the basis of the Annexure-V circular, ^{was} it ~~is~~ clarified as follows:

(sic-be?)
"In other words, his seniority is to be taken into account from the date he joins the recipient Department not from the date of issue of transfer order. The persons whose names figure in the recruitment panel which is in operation at the material time, but who are not in position when an officer joins on inter-collectorate/inter-departmental transfer, will be placed below the transferred officer in the seniority list." (emphasis ours)

10. Lastly, there is the Annexure-VII clarification dated 3rd March, 1987. After referring to the two earlier letters (i.e. Ann. V and Ann. VI) the following clarification was issued:

"It is hereby clarified that the transferred official would be assigned seniority in the recipient Collectorate as the junior most direct recruit. However, if a panel for direct recruitment is in operation at the time of transfer, and if some persons from the panel have already been appointed, the transferred official will be given seniority

with effect from the date of his appointment in that Collectorate, subject to the condition that if some persons senior in the select panel happen to join subsequently, they will be entitled to seniority above the transferred officer, having regard to their position in the Select panel vis a vis their juniors who had joined earlier." (emphasis ours)

11. The applicants have challenged the impugned Ann. V, VI and VII instructions and the Ann.I seniority list based thereon on the following important grounds.

(i) The impugned instructions are violative of the recruitment rules prescribing a quota of 1:1 between direct recruits and promotees.

(ii) Annexure III memorandum relating to the seniority list as on 1.1.85, clearly stated that the seniority of inter-collectorate transferees had already been decided on the basis of instructions contained in the Board's letter dated 20.5.80 (Ann.V). Therefore, there was no occasion to reopen the matter and revise the seniority list as in Annexure-I.

(iii) In reply to a representation, the Department had taken the stand on 23.3.88 (Annexure-VIII) that the impugned letter dated 12.3.87 (Ann.VII) will have only prospective effect and "hence seniority already decided prior to the date of the issue of the said order cannot be revised in the existing

circumstances." Therefore the Ann.III and Ann.IV seniority lists showing the position as on 1.1.85 and 1.1.88 cannot be revised to the detriment of the applicants.

12. The most comprehensive reply has been filed by the respondents 5, 23, and 25, who are either SST-UDC or CGT-UDC. The allegations made in the application are denied by making the following important submissions.

(i) Ann. V and Ann. VI have to be read together to understand the conditions regulating inter-collectorate transfers. They clarify that such transferees should be treated as direct recruits and posted to vacancies reserved for them; they should be given the slots reserved for direct recruits immediately below the direct recruit last appointed; (ie, as the junior-most direct recruit) their seniority will be counted from the day they take over and ^{lastly,} any direct recruit who may be appointed from the panel under operation, but who joins later, will be placed below them.

(ii) It is on this basis that the ^{provisional} seniority list as on 1.1.84 was drawn up (Exbt. R5(g)). These ^{Cochin as UDCs} three respondents had joined long before the applicants were appointed. In other words, effect had already been given to the Ann.VI circular in preparing the seniority list as on 1.1.84 and even earlier ^{dates} ~~orders~~.

(iii) The seniority lists as on 1.1.85 and 1.1.86 had been prepared (Ex. A.III and A.IV) without assigning any reason, as to why the principles adopted in preparing the ^{provisional} seniority list on 1.1.84 were given up. These ^{lists} were challenged and an undertaking was given ^{by the Respondents 1 to 4} that a revised seniority list would be prepared. The resultant list is Ann.I.

(iv) The directions in Ann. V, VI and VII are not inconsistent with the Recruitment Rules and they govern the seniority of the ICT-UDCs from the dates they have joined at Cochin.

13. The reply filed by the government respondents (R-1 to R-4) does not at all refer to the ^{provisional} seniority list as on 1.1.84 and the principles followed in preparing that list, ^{which is surprising,} It does not, therefore, clarify why those principles were given up in preparing the seniority list as on 1.1.85 and 1.1.86. What is more, Shri C.Kochunni Nair, the Additional Standing Counsel appearing ^{for} the govt. respondents 1 to 4, took the stand in the course of arguments, that An. VI and VII have no relevance at all and have not been given effect to and that the Ann.I seniority list can be justified in terms of Ann.V letter alone.

u

We will make our observations on this submission later on.

14. It is in these circumstances that we find that Ann.V, VI and VII have to be construed in the light of Rule 5 of the Recruitment Rules(extracted in para 6)for,that will help in the disposal of these applications.

15. The learned counsel for the applicant,contended that on the face of it, para 2(ii)of Ann.V(extracted in para 8 supra) means that the ICT-UDCs received in the Central Excise Collectorate, Cochin from outside, should be placed at the bottom of the list of all the temporary employees of that cadre. In other words, they should really be at the bottom of the seniority list showing the names of ^{all} the persons working as UDCs for the time being, both Direct Recruits & promotees

16. Evidently, para 2(ii) of the letter dated 20.5.80 (Annexure-V) is not happily worded. The learned counsel for the applicants is on strong grounds in contending as above. To fathom the meaning of para 2(ii) of this circular, one has to assume that a seniority list is divided into two parts, viz. seniority list of confirmed employees and seniority list of temporary employees. Therefore, at any point of time, the confirmed employees will all be treated as senior to temporary employees. If, therefore, the inter-collectorate transferees are to be placed

at the bottom of the list of the temporary employees (as directed by Ann.V), in effect, they will be the junior-most amongst all persons in the Cadre working in that Collectorate, for the time being.

17. We would have agreed with this proposition had this circular stood by itself. That, unfortunately, is not the case; for, we have to reckon with the subsequent circulars dated 23.11.81 (Ann.VI) and 3rd March, 1987 (Ann. VII).

18. It is a different matter that the learned counsel for the respondents 1 to 4 practically disowned these two circulars and contended that Annexure-V circular by itself makes it unambiguously clear that the ICT-UDCs should be placed below the last direct recruit. We are unable to agree with this proposition. If this was so, the seniority lists as on 1.1.85 and 1.1.86 (Ann. III & IV) would not have been prepared at all assigning the ICT-UDCs places below the last UDC (invariably a promotee) who was in position before they joined. Secondly, the language used in the Annexure-^u~~IV~~_v circular cannot, however much it may be stretched, be interpreted to direct that the inter-collectorate transferees should be placed in the recipient Collectorate in the slots

/ instead of assigning them places below the last direct recruit.

ff

reserved for direct recruits, immediately below the last direct recruit who has been assigned such a slot.

19. That does not mean that the Annexure-I seniority list can be set aside. For, notwithstanding the submissions made by the learned counsel for the respondents 1 to 4, we are of the view that it is really Annexure-VI primarily and Annexure-VII secondarily, that give proper meaning to Ann.V. For a proper understanding of the matter it has to be looked at as a whole and if that be done, the following conclusions follow:

(i) If the interpretation of Ann.V given by the learned counsel for the applicants is correct, full, complete and unambiguous directions should be deemed to have been given in Ann. V circular about the assignment of seniority. There was then no need to issue any further clarification. The very fact that Ann.VI clarification had to be issued will show that Ann. V really ^{does not mean what it} states and perhaps, does not state what was ~~perhaps~~ intended.

(ii) Annexure-VI circular was issued on 23.11.81, that is, not too late after Ann.V circular was issued. After specifically referring to the ^{Annexure-V} earlier circular and stating that the place to be

assigned in the seniority list to inter-collectorate transferees has been explained therein, Ann.VI circular (vide para 9 supra) begins the clarification with "In other words". This really means that the earlier circular^{Ann.V} has and always had the meaning now given to it in the Ann.VI circular.

(iii) Therefore, the inter-collectorate transferee is not just to be placed at the bottom of the seniority list. Annexure VI establishes ^{for him a} relationship with the direct recruits included in the panel under operation, but who have not yet joined. It is well known that in respect of direct recruits, slots are kept vacant for 3 or 4 years, which is the lead time needed to make direct recruitment. The slots are filled up when such recruitment is made. Such vacant slots are available as can be seen from the seniority list as on 1.1.85 produced by the applicant as Annexure-III or from the seniority list as on 1.1.84 produced by the 5th respondent vide Annexure-R.5(g). In this background, the implications of the direction ^{in Ann.VI} are as follows:

- Inter-collectorate transferees will be treated as DRs and appointed against vacancies ^{reserved for} direct recruits;
 - Their place in the seniority list will be in slots left vacant for direct recruits, which are immediately below the last direct
- ll

recruit who has already taken charge.

--- They will be placed above all those direct recruits included in the panel under operation, who are yet to join.

(iv) If the ICT-UDCs are to be placed below all UDCs, as contended by the applicant, the direction given in Ann.VI that the DRs, who are yet to be appointed from the panel under operation, will be placed below such ICT-UDCs ^{is unnecessary and in fact} will amount to penalizing them. For, in the normal course, those DRs would have occupied slots kept vacant for them, very much above the last promotee. Instead, they will be now placed, according to the Ann.VI instruction, below the inter-collectorate transferees, who, themselves, will be assigned the last place in the seniority list after the last promotee. This makes no sense, whatsoever, and will amount to penalizing them, though Government could not have intended to treat them in this manner. On the contrary, Ann.VI circular will make sense if, ^{to state} it is understood ^{that}, instead of being the junior-most in the whole seniority list, the inter-collectorate transferees will be junior ^{U only} to the last direct recruit ^{that} and the DRs who are yet to join, will be placed below them. For, this is based on the principle that as between equals, date of joining determines seniority.

u

(v) Though the Annexure-VII circular issued in March 87, states for the first time, that the ICTs would be assigned seniority " in the recipient Collectorate as the junior-most direct recruit", this was already implicit in the Annexure-VI circular itself, as pointed out above.

20 For the foregoing reasons we are of the view that the instructions issued on the subject (i.e., Annexures V, VI and VII) can have only one meaning viz; that the group C officials transferred from one Collectorate to another on compassionate grounds are to be treated as DRs and given the vacant slots of DRs immediately below the last DR who has taken charge.

21 This view gains strength from the manner in which the seniority of a dependent of a deceased government servant, who is appointed on compassionate grounds as UDC in the Cochin Collectorate, is determined. A perusal of the seniority list as on 1.1.85 (Annexure III) or the impugned seniority list as on 1.1.89 (Annexure-I) shows that the compassionate appointees are treated as DRs and are given seniority immediately below the last direct recruit and very much above the last promotee. This is evident from Sl.No.21 and 52 of Annexure-III and Sl.Nos 118 and 132 of Annexure-I seniority lists. If the inter-se seniority of a rank outsider like a compassionate appointees is determined in this manner, it is not surprising that the inter-se seniority of

u

group C officials transferred from one Collectorate to another on compassionate grounds after making some sacrifice, is also directed to be determined in the same manner.

22 That leaves for consideration the question about the seniority to be assigned to surplus pool personnel posted to a Collectorate. As can be seen from the seniority list as on 1.1.89 (Annexure-I). Respondents 5,6,7,8,10, 12 & 13 are surplus staff transfer~~es~~es. The instructions considered in the preceeding paragraphs do not apply to them. As pointed out in the joint reply affidavit filed by Respondents 5,23 & 25 they are governed by a different set of instructions issued by the Government of India for general application to all Departments/ Ministries. These are contained in the Ministry of Home Affairs Memo F 3/27/65-66-II dated 25.2.1966, (Exhibited as Annexure R 5(a)) outlining a scheme for the disposal of personnel rendered surplus for any reason. Such surplus persons are drawn away from their posts and kept in a pool separately under the Ministry of Home Affairs. A total ban was imposed on direct recruitment unless the concerned department obtained a certificate from the Central Cell of the Surplus Pool for each category of ~~office~~^{post} that the Cell has no suitable candidate to offer. Thus, suitable candidates were to be absorbed against vacancies, which would other wise have been filled up

by direct recruitment. It is in this manner that the aforesaid respondents have been inducted in the Lochin Collectorate as direct recruits in the slots then remaining vacant for Direct Recruits.

23 We are, therefore, of the view that the seniority assigned to the seven persons (Respondents 5,6,7,8,10,12 & 13) in the impugned Annexure-I seniority list as on 1.1.89 cannot be assailed by the applicants.

24 The 16th and the 28th respondents, who are promoted UDCs, have also filed replies separately. They appear to support the applicants in their stand in regard to the seniority given to the inter-collectorate transferees. They allege that some of these transferees are promotees and have been promoted in their parent cadre as UDCs much later than them. Yet, in the Annexure-I seniority list such ICT-promotees have been given a place very much above their names. It is for this reason that they concede that the applicant's claim on merits, adding that similar relief should be given to them too. The contentions of these two respondents need not detain us. If they had any grievance against the

Annexure-I seniority list, they should have filed an application just as the present applicants have done or the 28th respondent has since done. They cannot be granted any relief on the basis of their reply affidavits.

25. We now deal with two other objections raised by the applicants.

i) It is stated that Rule 5(2)(b) contemplates issuing separate orders in the case of each transfer and therefore the Annexure V, ⁴ letters VI & VII are not in conformity with the provisions of the Rule. We are unable to see any force in this argument. Instead of imposing such conditions in each case, the competent authority could, very well, codify the instructions and make them applicable to all such cases.

ii) The learned counsel for the applicants then contended that by the Annexure-VIII letter dated 23.3.88, a clarification had been given that the Annexure-VII instructions are only prospective and will not affect the seniority prepared earlier. This does not mean that the clarification given in Annexure-VII cannot be deemed to be a clarification in respect of the Annexure-V circular. What was probably meant was, that the Department was not intending to change the seniority list, prepared as on 1.1.85 and 1.1.86 on this basis, but that they would prepare a revised seniority list based on

u

that instruction. That is precisely what has been done by Respondents 1 to 4 when they published the Ann. I seniority list.

26. The applicants in the second case (i.e. OA 735/89) are direct recruits. They are aggrieved because they ~~were~~ are not being considered for promotion to the post of Central Excise Inspectors as they are far junior in the Ann.III seniority list as on 1.1.89 (i.e. same as Annexure-I in the first case). The grounds of challenge against this seniority list are similar. It is only added that the seniority as on 1.1.85 and 1.1.86 have become final and that there was no material reason for changing it drastically when the list as on 1.1.89 was prepared. A direction is sought to the respondents to consider them for promotion as Inspectors of Central Excise without acting upon the impugned Ann.III seniority list, i.e. the one prepared as on 1.1.89.

27. These issues are already considered in our discussion of the first case in the preceding paras. Nothing remains to be considered specially in this case.

28. The third application is filed by M.C. Sivaraman who himself is the 28th respondent in the first case. He has also impugned the Annexure-I seniority list as on 1.1.89, but on somewhat different grounds. This applicant is a promotee UDC, unlike the applicants in the other two cases, who are direct recruits. His grievance is against only the ^{party} ~~private~~ respondents 5 to 9 who, as can be seen from the first case, are CGT-UDCs and are respondents 17, 19, 21, 23 & 25 in that case. These

party respondents are also promotee UDCs in the parent Collectorate from where they came on transfer to Cochin. It is, therefore, contended that they should be treated as promotees and given seniority in Cochin Collectorate with effect from the dates on which they joined as UDCs, i.e., on 21.3.83 and thereafter, and placed below the applicant, because he was regularised as UDC on 27.8.81. This contention has no force because Rule 5 requires that these transfers be made against vacancies to be filled by direct recruits. These UDCs have necessarily to be treated as DRs. Therefore, this contention has no force.

29 Even so, the question raised is whether, for purposes of seniority they should be treated as DRs. For, as alleged by the applicant, respondents 6 & 7 against whom he has this grievance were promoted in Coimbatore Collectorate and Madurai Collectorate respectively on 13.2.82 and 4.11.81 only while he was promoted earlier on 13.2.81 as UDC and regularised on 27.8.81. Therefore, merely by their transfer to Cochin Collectorate against the vacancy of a direct recruit, they cannot get a place in the seniority list above him as a DR. In other words, the rule that these transferees be treated as DRs and be placed below the last direct recruit cannot be

applied blindly ignoring special features as in this case. On the facts mentioned above the applicant contends that respondents 6 & 7 cannot be placed above the applicant in the Cochin Collectorate after they were transferred.

30 Before this substantive issue is considered we have ^{to dispose of} a preliminary objection raised by the seventh respondent that this application is not maintainable. It is contended that the applicant has suppressed the fact that he had earlier filed an application OA 70/88, challenging the validity of the seniority list as on 1.1.86, which was disposed of against him by this Bench by its order dated 29.5.89. Therefore, the applicant may not now be heard to say in this application that the Annexure-III seniority as on 1.1.86 should prevail over the impugned Annexure-I seniority list showing the position as on 1.1.89.

31 We are of the view that the tenability of this application cannot be questioned on this ground for at least two reasons. Firstly, the applicant perhaps, feels more aggrieved by the seniority list as on 1.1.89 than by the seniority list as on 1.1.86, which he had impugned earlier. Hence, he can seek to maintain the latter- bad though it may be, in his view- in preference to the former. Secondly, the challenge

here is in a different context, viz. the assigning
in Ann.I 6 & 7
of higher seniority/to the respondents/who are
inter-collectorate transferees, but who were placed
below the applicant in the seniority list as on 1.1.86.

32. Another objection of respondent-7 is that the
application is barred by estoppel. The applicant
had not challenged the seniority list as on 1.1.83
or 1.1.84, in which the relative position as between
the applicant and the ^{party} ~~private~~ respondents were the
same as they are now in the seniority list as on
1.1.89. This argument has no force, because the
seniority lists as on 1.1.85 and 1.1.86 replaced the
earlier lists, and in these lists the party respondents
were placed below the applicant. This was revised
to the applicant's detriment again in the seniority
list as on 1.1.89. Hence, the applicant is ^{free to} ~~is~~ agitate
the matter by filing this application.

33. The most important contention of the 7th
respondent is that the applicant cannot claim the
his
benefit of 27.8.81 as the date of/regularisation
as UDC, because his appointment as UDC by promotion
was ^{purely} ~~ad hoc~~ and out of turn. The applicant's turn
for promotion, in fact, came only some time in 1985
as would be evident from the seniority list as on

U

1.1.89. He has been placed therein at Sl.No.99, immediately after TC Rajakumaran, a DR who was appointed only on 14.3.85. On the basis of the quota rota formula, the next vacancy reserved for a promotee regularly by the applicant could, therefore, be filled/only after 14.3.85. In this view of the matter, the 7th respondent contends that he is senior to the applicant as he had joined Cochin Collectorate earlier on 18.4.83.

34. We have considered the arguments on both sides carefully. We are unable to agree with the contention of the learned counsel for the 7th respondent that the applicant cannot get any benefit from his regularisation as UDC from 27.8.81. It is a cardinal principle of, assigning seniority to persons transferred from one unit to another, that the interests of those existing in the recipient seniority unit will be fully protected. It is for this purpose that the circular dated 20.5.80 specifies in para 2(ii) thereof (Annexure-VIII of this application) that the transferee will not be entitled to count the service rendered by him in the former Collectorate for the purpose of seniority in the new charge and that he will be treated as a new entrant. It is by treating them as new entrants and by placing

u

them below the last DR then in position that the 6th and 7th respondents in the present case have been given seniority at Sl.No.88 and 90 as on 1.1.89, immediately below the last DR, K Shyamala, at Sl.No.84 who was appointed from 5.2.82. As against this, the applicant is placed at Sl.No.99 and it is this relative position that is impugned. The applicant's grievance is that even if the previous services of Respondents 6 & 7 are not ignored, they would have been junior to him, as the applicant was regularised as UDC a few months before these two persons were regularised as UDC in their original cadre. It would be anomalous, if the result of ignoring their previous service as directed in the OM dated 20.5.80 (Annexure VIII) is that they become senior to the applicant by a backdoor method, as it were. We find considerable merit in this grievance.

35 It is true that the vacancies of UDLs have to be filled up on a 1:1 basis in view of the quota principle. Therefore, if at any point of time, there are clearly vacant posts of UDCs, 50% of them would be meant for direct recruits and the remaining 50% would be for promotees. There may be difficulties in making timely direct recruitment and procedural difficulties may result in delays of 2 or 3 years before the DRs become available. Merely because of such delays, Government is not prevented from selecting, on a regular basis, the persons who are to be appointed

on promotion as UDCs. If the Recruitment Rules require the holding of a DPC, such a DPC can be held and regular appointments can be made to the slots reserved for the promotees, much before the DRs are appointed. It is on this basis that the service of the applicant was regularized from 27.8.81 as an UDC. Proof of this is available in Annexure-R.16(a) filed by the 16th respondent in the first case.

36. The quota-rota rule only means that in respect of the DR who has occupied the slot above his name, (ie, TC Rajakumaran appointed on 15.3.85, at Sl.No.98 in Annexure-I), the applicant cannot claim higher seniority over him merely on the basis of the earlier date of commencement of his regular officiation, ie, 27.8.81. The date of commencement of this officiation should now be assumed to be 15.3.85 only as he is kept below this DR but that is for comparison with a regular DR only.

37. But, when compared to the respondents 6 and 7 who are also promotees in ^{their} parent cadre, the date of regularisation (27.8.81) of the applicant cannot be ignored, even if these 2 respondents are treated as DRs on their induction in the Cochin Collectorate. These 2 respondents cannot be permitted to steal a march over the applicant, merely because they have

chosen to come to the Cochin Collectorate on compassionate grounds. It appears to us that the Annexure-V, VI and VIII instructions in the OA 765/89 (Annexures VII, IX and X in the present case) are deficient in this respect as they do not indicate how the relative seniority should be fixed in this special circumstances. For example it could have been considered whether, though such transferees are appointed against seats left vacant for DRs, their inter-se seniority should not be determined by treating them as promotees.

38 We can view the matter from another angle. We may try to visualise what would have happened if the applicant and the 7th respondent had merely exchanged places on mutual transfer. As the date of regularization as UDC of the 7th respondent in his parent cadre is 4.11.81, he would not have been given the place of the applicant in the seniority list as on 1.1.89 (i.e., Sl.No.99 in Annexure-I) because the applicant had started regular officiation earlier from 27.8.81. The 7th respondent's appropriate place would be Sl.No. 115 i.e. below the last promotee (Cherian Dommen at Sl.No.113) whose date of officiation was earlier than his i.e., 3.10.81.

39 The stipulation in the circular dated 20.5.80 (Annexure V in OA 765/89) that the transferee will not be entitled to count the service rendered by him in the former Collectorate for purpose of seniority in the new charge has one important implication. It is this, that in the matter of seniority in the new charge he shall invariably be worse off than in the previous charge- or at best, that there may be no difference- but in no case

shall he be better off in this respect in the new charge than in the old one. This cardinal principle is violated in the assignment of ^{a higher} seniority to respondents 6 & 7 vis-a-vis the seniority assigned to the applicant in the Annexure-I seniority list.

40. In these circumstances, we are of the view that the directions issued by the Central Board of Excise & Customs for the fixation of seniority of the inter-Collectorate transferees ~~has~~ ^{have} not taken into account this ^{contingency} ~~aspect~~, where-
ver it is applicable and ^{therefore,} appropriate instructions have to be issued now.

41. We have only to consider one more issue of a legal nature. Shri M.R. Rajendran Nair, the learned counsel for the applicants challenges the transfer of the respondents to the Cochin Collectorate on the ground that the orders have been issued by the Collector of Central Excise, Cochin [Annexure-R5(b)]. His submission is that Rule 5(2) empowers only the Central Board of Excise and Customs to order such inter-Collectorate transfers. The Rules have also not empowered the further delegation of these powers to Collectors of Central Excise. This plea has been specifically taken in the third case before us (QA 213/90).

42. The respondents contend that the only power which has been delegated is the power to transfer from one Collectorate to another and that too, in the light of the clear guidelines set out in the letter dated 20.5.80 (Annexure V in the first case). It is stated therein that the transfer can be made only if the two Collectorates agree to the transfer and that, ordinarily, such request should be entertained only after completing atleast 2 years in the parent Collectorate. The conditions regulating assignment of seniority on transfer are also spelt in great detail. Therefore the delegatee has hardly to exercise any judgement.

43. We are of the view that in these circumstances, the transfer itself is merely a mechanical operation and does not require any major decision to be taken i.e. the Collector. by the delegatee/. Our attention has been drawn to the decision of the Supreme Court in AIR 1968 SC 850 Union of India Vs. P.K.Roy. That was a case under the States Re-organisation Act, 1956. The submission that the powers vested in the Central Government have been delegated to the State Government, without any authority, was repelled therein by observing that there had been no

u

delegation of any of the essential functions entrusted to the Central Government by statute. We are of the view that in the present case also, the same principle will apply and therefore, the orders of transfer cannot be impugned on this ground.

44) Having considered the three cases in detail, we come to the conclusion that as far as persons from the Surplus Cell are concerned they are appointed in lieu of direct recruitment and have the privileges of direct recruits. We also hold that the instructions contained in the letters dated 20.5.80 and 23.11.81 of the Central Board of Excise & Customs, and the letter dated 3.3.1987 of the Ministry of Finance (i.e., Annexures V, VI, & VII in OA 765/89) have validly been issued and the seniority of Group C officials transferred from one Collectorate to another on compassionate grounds, should, except in one circumstance stated below, be fixed on the basis of the principles laid down in these three letters. The exceptional circumstance arises in the case of a promotee in the recipient cadre (like the applicant in OA 213/90) and an inter Collectorate transfer~~ee~~ also a promotee in his parent cadre - (like Respondents 6 & 7 in the aforesaid case) where the latter started officiating regularly as UDC in his original cadre from a date later than the date with effect from which the former commenced such officiation in the recipient cadre. There is no provision in the rules or executive instructions as to how the seniority of such an inter-Collectorate transfer~~ee~~ has to be fixed. Some provision will have to be made in this behalf ^{in the interest of justice} by the issue of instructions supplemented ^{al} to the instructions contained in the three letters referred to above, protecting the interest of the promotee UDC in the recipient cadre.

4.5 In accordance with these decisions, we dispose of the three cases with the following orders/ directions:-

- (i) DA 765/89: The application is dismissed.

Annexure-I seniority list as on 1.1.89 is upheld.

- (ii) DA 735/89: The application is dismissed.

The case for the further promotion of the applicants from the grade of UDCs may be considered only on the basis of the seniority list as on 1.1.89 (ie, Annexure-III) and not on the basis of the earlier seniority lists as on 1.1.85 and 1.1.86 (ie, Annexure-I & II).

- (iii) DA 213/90: As the respondents 6 & 7 had

started officiating regularly as UDC in their parent cadre from dates later than the date with effect from which the applicant started officiating regularly as a UDC in

the Cochin Collectorate, the inter se seniority as between them ^{as on 1.1.89} has to be refixed in

the light of such supplemental instructions as may be issued by respondents 1 & 4,

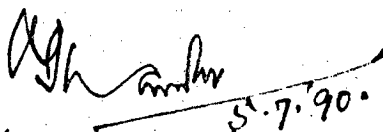
keeping in view the observations we have made. Respondents 1 & 4 in this application are further directed to issue such supple-

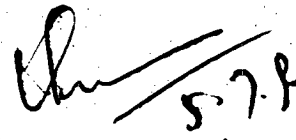
mental instructions and prepare a fresh seniority list ^{as on 1.1.1989} based on those instructions, within three months from the date of receipt.

recipient cadre ^{i.e.} is the

of this order. Pending such action, any decision that may be taken regarding the promotion of respondents 6 & 7 based on the impugned seniority list Annexure-I, shall be kept in abeyance. This application is, therefore, partly allowed with these directions. .

In the circumstances, the parties in all the cases will bear their own costs.


(N Dharmadan)
Judicial Member


(NV Krishnan)
Administrative Member

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

R.A. 106/90

~~OA No.~~
~~106/90~~

in

~~199~~

OA 213/90

DATE OF DECISION 29-4-91

K. Krishna Moorthy

Applicant (s)

Mr Rajasekharan Pillai

Advocate for the Applicant (s)

Versus

Mr. C. Sivaraman and 8 others

Respondent (s)

Mr. M.R. Rajendran Nair for

R-1 and Mr. C. Kochunni Nair for R-2 to 8

Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N.V. Krishnan, Member (Administrative)

The Hon'ble Mr. N. Dharmadan, Member (Judicial)

JUDGEMENT

N.V. Krishnan, M(A)

This R.A. has been filed by the seventh respondent in OA 213/90. That OA along with OA 765/89 and 735/89 were disposed of by a composite judgment dated 5-7-90.

2. The review applicant submits that a mistake has crept in para 37 of the judgment wherein he is considered as a promotee in the parent cadre. On this basis ^{& alone} ~~above~~, it was found that there was a need to determine the inter se seniority of the

...../

Q vis-a-vis

applicant in that OA viz. the 7th respondent, in the light of the supplementary instructions that might be issued by Govt.. It is submitted that the review applicant was directly recruited as UDC to the Madurai Collectorate on 4-11-81 and hence the direction in the judgment in the OA for fresh determination of the seniority of the original applicant ~~in case the~~ ^{vis-a-vis Q}

Q the senior

original applicant needs modification.

3. However, the learned counsel for the Original applicant ^{Q that} submits, if the mistake which crept is required to be corrected, the judgment, in so far as it concerns OA 213/90, may be reopened in the interest of justice. He contended that the review applicant, even according to his own statement, ^{Q was} directly recruited only on 4-11-81, i.e. after the original applicant's promotion. Hence, the original applicant still has a grievance against the seniority assigned to the review applicant. Therefore, the case may be heard again.

4. The other parties did not have any submissions to make.

u

5. Having heard the counsel, we are of the view that a mere correction of the original judgment in OA 213/90 will not be sufficient. The Original Applicant has to be given an opportunity to present his arguments in ^{the} the light of/new fact brought to our notice now. Hence, on the facts and in the circumstances of this case, OA 213/90 should be reopened.

6. Accordingly, in exercise of/powers of review, we direct that the following amendments be carried out in the composite judgment dated 5-7-90 disposing of OA 765/89, ^{our} 735/89 and 213/90 and, ^{thus} re call our judgment in so far as it concerns OA 213/90.

- (a) In the cause title all references to OA 213/90 shall be deleted.
- (b) Paragraphs 28 to 40 of the judgment shall be deleted.
- (c) In paragraph 44, in the first sentence, the word 'three' shall be substituted as 'two' and in the second sentence the words 'except in one circumstances stated below' as well as all portions after the second sentence shall be deleted and/will read as follows:

*44. Having considered the two cases in detail, we come to the conclusion that as far as persons from the surplus cell are concerned they are appointed in lieu of direct recruitment and have the privileges of direct recruits. We also hold that the instructions contained in the letters dated 20-5-80 and 23-11-81 of the Central Board of Excise and Customs, and the letter dated 3-3-87 of the Ministry of Finance (i.e. Annexure V, VI & VII in OA 765/89 have validly been issued and

Para 44, after
such amendment

and the seniority of Group-C officials transferred from one collectorate to another on compassionate grounds, should be fixed on the basis of the principles laid down in these three letters."

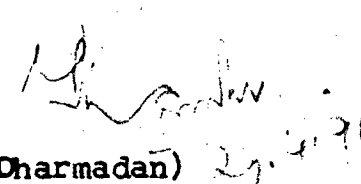
- (d) In para 45, in the first sentence for the word 'three' the word 'two' shall be substituted and sub para (3) thereof dealing with OA 213/90 shall be deleted. In its amended form para 45 shall read as follows:

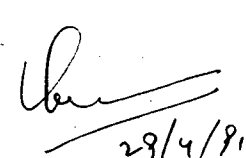
"45. In accordance with these decisions, we dispose of the two cases with the following orders/directions:-

(1) OA 765/89: The application is dismissed. Annexure-I seniority list as on 1-1-89 is upheld.

(2) OA 735/89 : The application is dismissed. The case for the further promotion of the applicants from the grade of UDCs may be considered only on the basis of the seniority list as on 1-1-89 (i.e. Annexure-III) and not on the basis of the earlier seniority lists as on 1-1-85, and 1-1-86 (i.e. Annexure I and II).

7. The Review Application is disposed of as indicated above and OA 213/90 alone is reopened.


(N. Dharmadan)
JM


(N.V. Krishnan)
AM

29-4-91

ganga

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

R.A. 106/90

~~9-A No.~~
~~1-A No.~~
~~2-A No.~~

in

~~190~~

OA 213/90

DATE OF DECISION 29-4-91

K. Krishna Moorthy

Applicant (s)

Mr. Rajasekharan Pillai

Advocate for the Applicant (s)

Versus

Mr. C. Sivaraman and 8 others

Respondent (s)

Mr. M.R. Rajendran Nair for

R-1 and Mr. C. Kochunni Nair for R-2 to 8

Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. **N.V. Krishnan, Member (Administrative)**

The Hon'ble Mr. **N. Dharmadan, Member (Judicial)**

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? >
4. To be circulated to all Benches of the Tribunal? >

JUDGEMENT

N.V. Krishnan, M(A)

This R.A. has been filed by the seventh respondent in OA 213/90. That OA along with OA 765/89 and 735/89 were disposed of by a composite judgment dated 5-7-90.

2. The review applicant submits that a mistake has crept in para 37 of the judgment wherein he is considered as a promotee in the parent cadre.
 & alone
On this basis ~~above~~, it was found that there was a need to determine the inter se seniority of the

...../

Q vis-a-vis

applicant in that OA viz. the 7th respondent, in the light of the supplementary instructions that might be issued by Govt.. It is submitted that the review applicant was directly recruited as UDC to the Madurai Collectorate on 4-11-81 and hence the direction in the judgment in the OA for fresh determination of the seniority of the original applicant ~~in case the~~ ^{vis-a-vis Q}

Q the senior.

original applicant needs modification.

3. However, the learned counsel for the Original applicant ^{Q that} submits, if the mistake which crept is required to be corrected, the judgment, in so far as it concerns OA 213/90, may be reopened in the interest of justice.

He contended that the review applicant, even according to his own statement, ^{Q was} directly recruited only on 4-11-81, i.e. after the original applicant's promotion. Hence, the original applicant still has a grievance against the seniority assigned to the review applicant. Therefore, the case may be heard again.

4. The other parties did not have any submissions to make.

u

...../

5. Having heard the counsel, we are of the view that a mere correction of the original judgment in OA 213/90 will not be sufficient. The Original Applicant has to be given an opportunity to present his arguments in ^{the} the light of new fact brought to our notice now. Hence, on the facts and in the circumstances of this case, OA 213/90 should be reopened.

6. Accordingly, in exercise of ^{our} powers of review, we direct that the following amendments be carried out in the composite judgment dated 5-7-90 disposing of OA 765/89, ^{thus} 735/89 and 213/90 and, ^{our} re call our judgment in so far as it concerns OA 213/90.

- (a) In the cause title all references to OA 213/90 shall be deleted.
- (b) Paragraphs 28 to 40 of the judgment shall be deleted.
- (c) In paragraph 44, in the first sentence, the word 'three' shall be substituted as 'two' and in the second sentence the words 'except in one circumstances stated below' as well as all portions after the second sentence shall be deleted and ^{will} read as follows:

Para 44, after such amendment
"44. Having considered the two cases in detail, we come to the conclusion that as far as persons from the surplus cell are concerned they are appointed in lieu of direct recruitment and have the privileges of direct recruits. We also hold that the instructions contained in the letters dated 20-5-80 and 23-11-81 of the Central Board of Excise and Customs, and the letter dated 3-3-87 of the Ministry of Finance (i.e. Annexure V, VI & VII in OA 765/89 have validly been issued and

and the seniority of Group-C officials transferred from one collectorate to another on compassionate grounds, should be fixed on the basis of the principles laid down in these three letters."

- (d) In para 45, in the first sentence for the word 'three' the word 'two' shall be substituted and sub para (3) thereof dealing with OA 213/90 shall be deleted. In its amended form para 45 shall read as follows:

"45. In accordance with these decisions, we dispose of the two cases with the following orders/directions:-

(1) OA 765/89: The application is dismissed. Annexure-I seniority list as on 1-1-89 is upheld.

(2) OA 735/89 : The application is dismissed. The case for the further promotion of the applicants from the grade of UDCs may be considered only on the basis of the seniority list as on 1-1-89 (i.e. Annexure-III) and not on the basis of the earlier seniority lists as on 1-1-85, and 1-1-86 (i.e. Annexure I and II).

7. The Review Application is disposed of as indicated above and OA 213/90 alone is reopened.

(N. Dharmadan)
JM

29.4.91

(N.V. Krishnan)
AM

29-4-91

ganga