

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NOS. 22/2005 AND 25/2005

....FRIDAY.....this the 4thday of NOVEMBER 2005

CORAM

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

P.K.Vijayakumaran,
Superintendent of Central Excise (Retd)
Padikal Kozhissery House,
Alumpady,
Chavakkad
Trichur District.Applicant in OA 22/2005

1. V.C.Haridasan, Superintendent of
Central Excise (Retd) V.P.House,
Lokamalleswaram,
Kodungallur 680664
Trichur District.

2. C.M.Vijayan
Superintendent of Central Excise (Retd)
Sarayu, South Junction,
Kamampuzha Temple Road,
Chalakkudy,
Trichur District.Applicants in OA 25/2005

(By Advocate Mr. C.S.G. Nair)

V.

1. Commissioner of Central Excise & Customs,
Cochin Commissionerate,
Central Revenue Buildings,
IS Press Road, Cochin.18.
2. The Chairman ,
Central Board of Excise & Customs,
North Block,
New Delhi.

3. Union of India, represented by the Secretary, Department of Revenue, North Block, New Delhi.1.
4. Assistant Commissioner of Central Excise, Trichur Division, Trichur.1Respondents in OA 22/05

(By Advocate Mr.Thomas Mathew Nellimootil (rep)

1. Commissioner of Central Excise & Customs, Cochin Commissionerate, Central Revenue Buildings, I.S Press Road,Cochin.18.
2. The Chief Commissioner of Central Excise & Customs, Central Revenue Buildings I.S.Press Road, cochin.18.
3. The Chairman , Central Board of Excise & Customs, North Block, New Delhi.
4. Union of India, represented by the Secretary, Department of Revenue, North Block, New Delhi.1.Respondents in OA 25/05

(By Advocate Mr.TPM Ibrahim Khan, SCGSC)

These applications having been heard jointly on 27.9.05 the Tribunal on...04.11.05 delivered the following:

ORDER

HON'BLE MR. GEOERGE PARACKEN, JUDICIAL MEMBER

The issues raised in both the O.As are identical and hence they are taken up together for hearing with the consent of the parties.

O.A.No. 22/05:

The applicant has filed this O.A seeking promotion as Senior Grade Inspector with effect from the date his immediate junior was

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promoted to that grade and to grant him all consequential monetary benefits including the revised retirement benefits. He has also sought 10 percent interest on arrears of pay, pension and other retiral benefits.

2. The facts of the case are that the applicant joined service in Bombay Central Excise Commissionerate as an LDC in 1962, promoted as UDC in 1972 and later as Inspector on 20.8.74. He was transferred to Cochin Central Excise Commissionerate with effect from 20.9.76.

3. The Ministry of Finance, Department of Expenditure, Government of India vide OM No.6/97/97-Ad.III(A) dated 12.2.1958 issued instructions regarding transfer of non gazetted staff from one charge to another within the same Department which contained the following benefits, among others:

(i) Transfers of staff within a period of three years of first appointment in the Department may be allowed without any loss of seniority.

(ii) In the case of persons transferred after a period of three years of their first appointment in the Department the benefit of past service should be allowed up to the period of three years only, for the purpose of determining their seniority in the new charge eg., an Upper Division Clerk transferred after he has put in a service of 4 years may count only three years of his service for seniority.

4. The question of granting the aforesaid benefits to the non-gazetted staff in CBEC who took inter-commissionerate transfer before 20.5.80 was under dispute. Consequent upon the order of the

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Patna Bench of this Tribunal which was upheld by the Hon'ble Supreme Court, the respondents vide letter No A.23024/4/94.Ad.III (A) dated 20.10.98 (Annexure.A1) decided to grant the benefits of the aforementioned two clauses of the 1958 OM to all the similarly situated Group C officers under the CBEC who were transferred before 20.5.1980.

5. The applicant is a beneficiary of the aforesaid order dated 20.10.98. The respondents have, accordingly, revised the seniority vide Annexure.A2 list dated 4.7.2000 and the applicant was assigned the notional seniority with effect from 20.8.1974 and his position was shown at Sl.No. 183 in the list. Consequent on the revision of the seniority of inter-commissionerate transferee Inspectors prior to 20.5.80, a review D.P.C meeting was held on 30.4.02 and as per recommendations of the review DPC, revision of promotion/seniority was ordered in the cadre of Superintendent of Central Excise. In the revised promotion/seniority list issued on 12.6.02 (Annexure A3), the applicant was given the notional promotion with effect from 3.5.89 in place of the original date of promotion on 30.9.96. By the time the order dated 12.6.02 reached the applicant's hand, he had already retired from service on 30.6.2002. While issuing the aforesaid order dated 12.6.02, there was a stipulation that it was subject to the outcome of OP 16010/02 filed by the Department before the Hon'ble High Court of Kerala against the decision of this Tribunal in OA 408/01 filed by one Shri CSG Nair (Superintendent retired) on very

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same issue. The main contention raised in the O.P was that the Annexure.A1 order dated 20.10.98 was applicable only to the existing employees and not to the retired employees. Hon'ble High Court did not find merit in this argument of the Department and vide judgment dated 25.11.02 the said O.P was dismissed with the direction to implement the order of this Tribunal within a period of five months.

6. Even though the respondents have issued revised seniority list of Inspectors on 4.7.2000 and also revised the date of promotion of the applicant notionally from 30.9.96 to 3.5.89 and the applicant had opted fixation of pay in the cadre of Superintendent, the respondents have not paid arrears of pay as Sr.Grade Inspector and Superintendent.

7. The respondents' case is that the applicant was transferred to Cochin Central Excise Commissionerate on 20.9.76 and he was governed by the conditions contained in the letter No.31/71/64 Ad.III dated 27.8.1971. The relevant part of the said letter is as under:

6. **Relative seniority of Direct Recruits and Promotees:**
The relative seniority of direct recruits and of promo tees shall be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on the quotas of vacancies reserved for direct recruitment and promotion respectively in the recruitment rules.

Transferees: (i) The relative seniority of persons appointed by transfer to a central Service from the subordinate offices of the Central Government or their departments of the Central or State Governments shall be determined in accordance with the order of their selection for such transfer.

Where such transfers are effected against specific quotas prescribed in the recruitment rules therefore, the relative seniority of such transferees, vis a vis direct recruits and promotees shall be determined according to the rotation of vacancies which shall be based on the quotas reserved for transfer, direct recruitment and promotion respectively in the recruitment rules.

(II) Where a person is appointed by transfer in accordance with a provision in the recruitment rules providing for such transfer in the event of non-availability of a suitable candidate by direct recruitment or promotion, such transferee shall be grouped with direct recruits or promotees, as the case may be, for the purpose of para 6 above. He shall be ranked below all the direct recruits or promotees, as the case may be, selected on the same occasion.

8. The respondents have further submitted that the order of the Hon'ble Supreme Court in Civil Appeal No.6734/96 arising out of the order of the Patna Bench was an order in personem and not an order in rem. The order of the Hon'ble Supreme Court in the aforesaid Civil Appeal dated 31.3.98 says as under:

"The Tribunal by the impugned judgment has come to the conclusion that in view of the policy of the Central Government in the year 1958 the respondent's seniority has to be determined taking the entire service period and not on the basis of the transfer which was made at his request. The appellant has not been able to produce any material to indicate that the said policy was not in vogue when the respondent was transferred pursuance to his request. In that view of the matter we see no infirmity with the impugned order of the Tribunal. This appeal is accordingly dismissed. No order as to costs."

9. Later on vide Annexure.R.(c) order dated 25.3.2004, the respondents have decided to withdraw the Annexure.A1 order dated 20.10.98 which granted the benefit of three years of seniority to Group C Officers who had allowed inter-commissionerate transfer

prior to 20.5.80 on their own request and it was also clarified that the above decision will apply to all pending cases where benefit of seniority of three years is claimed by the officers who are transferred from one Commissionerate to another commissionerate prior to 20.5.80. Vide dated 9.7.04, the Ministry of Finance has informed the Commissioner, Central excise and customs at Cochin that the decision to withdraw the instructions of 20.10.98 has to be implemented only with prospective effect and, therefore, the decision will not apply to certain candidates who were already retired as Superintendents. The respondents have submitted that the Annexure.A1 order dated 20.10.98 was withdrawn as the same was found to be in violation of the general principles laid down by the Ministry of Home Affairs vide their O.M.No.9/11/55/RPS dated 22.12.59 which stipulated that the seniority of officers on transfer be ranked below all Direct Recruits or promotees selected on the same occasion. Respondents have further submitted that another O.A. 59/03 was pending before the Tribunal in which Annexur.eA.1 order dated 20.10.98 was sought to be quashed and the applicant was respondent No.6 in that case. The respondents have prayed in their reply that till OA 59/03 is disposed of they may be permitted to keep the monetary benefits in abeyance.

OA 25/05

The facts in OA 25/05 are not very much different. The Applicants in this case have retired on 31.3.98 and 31.1.98

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respectively. In the seniority list of Inspectors as on 20.5.80, circulated vide Annexure.A2 letter dated 4.7.2000 the applicants are at Sl.Nos.122 and 184 respectively. However, the applicants were not granted revision of promotion/seniority in the order No.102/02 dated 12.6.02 (Annexure.A3) as in the case of the Applicant in OA 22/05 in whose case the promotion/seniority has been revised from 30.9.96 to 3.5.89.

2. In reply the respondents have stated that the applicants in this OA are not entitled for grant of Inspector (SG), Superintendent Group G and Assistant Commissioner as prayed for in the O.A as the Central Board of Excise and Customs vide letter No.F.A.23024/8/03/Adm.III(A) dated 25.3.04 have decided to withdraw the instructions given in Annexure.A.1 order dated 20.10.98.

3. The applicants in their rejoinder submitted that the aforesaid letter dated 25.3.04 will not be applicable to the applicants as well as others who took inter commissionate transfer prior to 20.5.80 as their seniority had already been revised vide their order dated 4.7.2000 and their prayer is only limited to consequential benefits. The respondents should have on their own granted the revised seniority and the consequential benefits to all those who took inter commissionate transfer prior to 20.5.98 in terms of clauses (i) and (ii) of the OM dated 12.2.58 which was in force at the relevant period. They had also produced a copy of the letter No.A.23011/6/2000

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Adm.III(Pt) dated 27.9.2000 issued by the Government of India, Ministry of Finance, Department of Expenditure according to which the retired employees are entitled for the benefit of review of their promotions in the grades on which they had worked before their retirement. Consequently such officers are also entitled for re-fixation of their notional pay and pension etc. after the review D.P.C.

4. We have heard the parties at length and have given due consideration to the arguments advanced by them and perused the materials placed on record. We have also gone through the order of the coordinate Bench of this Tribunal in O.A 59/2003 – N.J.Sajive & others Vs. Union of India and others issued on 27.7.2005. The applicants in the said O.A are direct recruit Inspectors under the Collectorate of Central Excise, Cochin. They were aggrieved by the 12.6.2002 order by which the revision of promotion/seniority was ordered in the cadre of Superintendent of Central Excise consequent upon the revision of the seniority of inter-commissionerate transferee Inspectors prior to 20.5.1980. The co-ordinate Bench of this Tribunal dismissed that O.A for the reason that the matter has already reached finality by the order of the Apex Court and the Hon'ble High Court of Kerala on the subject.

5. In the above facts and circumstances of these cases, we are of the considered view that the Respondents have taken an unreasonable and contradicting stand against their own orders/instructions. In the case of OA. 22/05, the Respondents

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themselves have revised the seniority of the Applicants vide the Annexure.A2 list dated 4.7.2000 and they have been assigned the notional seniority with effect from 20.8.74. Therefore, the Review DPC was held and the Applicant was given notional promotion with effect from 3.5.89 as against the original date of promotion on 30.9.96. The Respondents' contention at that time was that the monetary benefits could not be released to the Applicants as O.P.No.16010/02 filed by the Respondents before the Hon'ble High Court of Kerala was pending. The Hon'ble High Court vide judgment dated 25.11.02 rejected the contention of the Respondents that the benefit of Annexure.A1 order dated 20.10.98 was applicable only to the existing employees and not to the retired employees. The Respondents also took an absolutely wrong stand that order of the Apex Court in Civil Appeal No.6734/96 arising out of the order of the Patna Bench was an order ^{not} in personem and ^{not} in rem when the applicants in this O.A are also similarly placed. In the case of O.A 25/05, the Respondents have not granted the benefit of promotion/seniority even though the Applicants in this O.A are also similarly placed as those in OA 22/05.

6. We, therefore, allow the Original Applications and direct the respondents as under:

- (i) In respect of OA 22/05, the Respondent No.1 shall consider the applicant for promotion as Senior Grade inspector with effect from his immediate junior Shri K.Sreedharan was

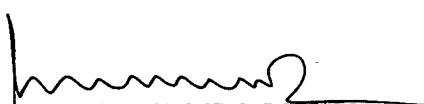


promoted as Senior Grade Inspector. Consequentially the Applicant will be entitled for all monetary benefits on account of pay and allowances. The Applicant will also be entitled for revision in pension and other retiral benefits with 8% interest from the date it has become due till the date of payment.

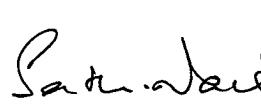
(ii) In respect of OA 25/05, the Respondents shall hold review DPC and consider the Applicants for notional promotion as Senior Grade Inspector, Superintendent Group B and Assistant Commissioner on the basis of the Annexure.A1 letter F.No.A.23024/4/94-Adm.III(A) dated 20.10.98 and the Annexure.A2 letter No.C.No.II/34/15/99-Estt.I dated 4.7.2000. Consequently, the Applicants will also be entitled for revision in pension and other retiral benefits with 8% interest from the date it has become due till the date of payment.

(iii) The above direction shall be complied with within a period of three months from the date of receipt of this order. There shall be no order as to costs.

Dated this the 4th day of NOVEMBER, 2005


GEORGE PARACKEN
JUDICIAL MEMBER

S.


SATHI NAIR
VICE CHAIRMAN