

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE OF DECISION

22.12.1989

P R E S E N T

HON'BLE SHRI S.P MUKERJI, VICE CHAIRMAN

&

HON'BLE SHRI A.V HARIDASAN, JUDICIAL MEMBER

TRANSFERRED APPLICATION NO.K 480/87

OP 3448 7 85

K.J.Davis

.. Petitioner

v.

1. Union of India, represented by the Secretary, Ministry of Finance, Central Secretariat, North Block, New Delhi.
2. The Central Board of Excise and Customs, represented by its Secretary, North Block, New Delhi.
3. The Deputy Collector, Central Excise, Head Quarters Office, Cochin-31.
4. The Collector, Central Excise, Broadway, Cochin-682 031.
5. The Additional Collector, Central Excise, Head Quarters Office, Cochin-682 031.
6. Mukunda Kunaran
7. Janardhanan Acharya
8. P.T.Mathew
9. K.Ganapathy
10. P.K.Sahadevan
11. P.M Mathew
12. T.Muraleedharan
13. K.Soman Pillai
14. Mary Jacob
15. P.Sivadasan Pillai
16. Pushpavally Amma
17. P.Unnikrishnan
18. M.M.Jacob
19. P.P.Raveedran
20. M.Balan
21. C.G Ramachandran
22. K.V Hassan
23. M.Girija
24. P.Sree Kumaran Nair
25. M.Satheesh
26. C.K Paul
27. M.K.Jayarajan
28. The Departmental Promotion Committee, represented by its Chairman (Additional Collector, Central Excise, H.Q Office, Cochin-31).

.. Respondents

Mr.R Rajasekharan Pillai

.. Counsel for the petitioner

Mr.K.Karthikeya Panicker, ACGSC

.. Counsel for R1 to R5

Mr.KRB Kaimal

.. Counsel for R6 to R11

O R D E R

Shri S.P Mukerji, Vice-Chairman

In this petition dated 8th April, 1985

moved before the High Court of Kerala and transferred to the Tribunal under Section 29 of the Administrative Tribunals Act the applicant who has been working as an Upper Division Clerk(U.D.C) in the office of the Collector, Central Excise, Cochin, has prayed that he should be declared to be qualified to be appointed as Inspector of Central Excise on a regular basis, that the order dated 31.1.85(Ext P-8) rejecting the combined representation of the applicant and seven other U.D.Cs dated 6.4.84 should be set aside, that the order dated 22.12.84(Ext P-18) promoting on a regular basis twelve U.D.Cs as Inspector who had been earlier officiating as Inspector on an adhoc basis as also the order dated 22.12.84 (Ext P-19) promoting ten U.D.Cs and Stenographers as Inspector on an adhoc basis should be set aside. He has also challenged the proceedings of the Departmental Promotion Committee in their meetings convened on 4.12.84 and 21.12.84 and prayed that the respondents be directed to convene DPC meetings 'de novo' in accordance with law and to revert respondents 6 to 27 who had been promoted or regularised to their status before 4.12.84. His final prayer is that the respondents be directed to appoint him as an Inspector of Central Excise. The brief facts of the case are as follows.

2. The posts of UDCs are filled up 50% by direct their recruitment and 50% by promotion of L.D.Cs after having completed five years of service. The applicant was

appointed as an U.D.C as a direct recruit on 18.3.80 and confirmed as such on 18.3.82. It appears that direct recruitment had been halted for some period, as a result of which there was dearth of UDCs. In order to make up the dearth, the respondents had issued orders on 25th September 1978(Ext P-1) that the qualifying service of five years for promotion of LDCs as UDC is to be relaxed to three years for filling up the vacancies of UDCs in the promotion quota arising upto 31.12.78. This relaxation was necessitated because of lack of adequate number of qualified LDCs with five years of experience for filling up the promotion quota vacancies. Since there were deficiencies in the direct recruitment quota also because the Staff Selection Commission had not been sending regularly panels for direct recruitment, the respondents taking recourse to the aforesaid relaxation order promoted respondents No. 18, 21, 25, 26 and 27 under the relaxation provision against the direct recruitment quota vacancies. They were later adjusted against the promotion quota vacancies as and when such vacancies arose and their seniority was fixed with reference to the availability of promotion quota vacancies and not with reference to the dates in 1979 when they were given actual promotion. Accordingly, they in the seniority list of UDCs, even though they had longer service than the applicant who was recruited as

U.D.C on 18.3.80, were placed below the applicant.

This created an anomalous situation as explained below.

3. The U.D.Cs along with the Stenographers and Women

Searchers with five years of service in these grades are

eligible to be considered for promotion as Inspector,

Central Excise against the 25% promotion quota. Since

again, there was dearth of qualified candidates for

promotion as Inspectors, the respondents in relaxation

of the statutory Recruitment Rules, specified that U.D.Cs

with four years of experience will be eligible for

adhoc promotion as Inspector. As a result, those U.D.Cs

who had been promoted under the relaxation provision,

but were junior to the applicant in the UDC's grade

were considered for adhoc promotion as Inspector in
though senior to them

1982, but the applicant was not called for test for

such promotion as he had only two years of service

at that time. The applicant along with another

direct recruit similarly placed moved the High Court

of Kerala in Original Petition No. 8619 of 1982 praying

that on the basis of their seniority, they should also

be considered for adhoc promotion as Inspector even

though they had not completed four years of service.

They took recourse to certain orders issued by the

respondents dated 31.5.1982 in which the Ministry of

Finance had directed that for promotion to the grade of

Superintendent, Central Excise "if a junior with requisite

length of service is considered for promotion, all his

seniors will be considered for promotion even if they have not put in the prescribed length of service". The directing the concerned respondents Court passed an interim order to consider the petitioner's name also if he was eligible. He was, however, not considered for adhoc promotion as he had not completed four years of service. Some of the respondents junior to the applicant were promoted as Inspector on an adhoc basis in November, 1982. When the applicant learnt that selection for regular appointment as Inspector was scheduled to be conducted in December, 1984 he approached the High Court, who directed that the applicant and the other petitioner in O.A 8619/82 should also be interviewed. He was interviewed on 21.12.84 but those junior UDCs who had been appointed as adhoc Inspectors had already been recommended for being considered by the D.P.C on 4.12.84 and regularised. The applicant was considered for promotion as Inspector along with other UDCs, but was not found fit for promotion. The Writ Petition No.8619/82 which had been transferred to the Tribunal as T.A.K 173 of 87 was disposed of and closed by the order dated 21.7.88 on the basis of the statement made by the counsel on behalf of the Government that the Government had modified the Recruitment Rules for promotion as Inspectors by the notification dated 30.11.84 to the effect that if a junior person is considered for promotion as Inspector, all the seniors will also be considered even

though they may not have rendered the prescribed period of qualifying service as had been already prescribed for Superintendent of Central Excise. It was indicated that with this amendment and the assurance that the applicant also will be considered, the grievance of the applicant stood redressed. However, the fact remains that the applicant was never considered for adhoc promotion as Inspector w.e.f 1982 when his juniors were considered. The second limb of the applicant's grievance arose out of the claim of the other category of promoted UDCs who had been promoted as U.D.C against the direct recruitment quota and had put in longer service as L.D.C than the applicant. These promoted UDCs were regularised not from 1979 i.e. from the date of their actual promotion, but from 27.8.80 or later when the vacancies arose. When the question of filling up the vacancies of Inspector arose in 1984, they claimed that for the purposes of qualifying service their entire service as U.D.C prior to their regularisation in 1980 should also be taken into account. They filed a Writ Petition No.4449 of 1984 before the High Court of Kerala and got an interim order from the Court that they as eligible should also be considered for promotion as Inspector.

The applicant before us along with three other directly recruited U.D.Cs got themselves impleaded in that case opposing the reckoning of pre-regularisation service of the promoted UDCs as qualifying. The High Court, however, in an interim order directed that the service

of the promoted UDCs from 31.3.79 should also be included as qualifying service and the D.P.C should consider their cases within one month from 26.10.84. The applicant before us and some other direct recruits also moved an Original Petition No.10189 of 1984 seeking a direction from the Court to the Department to dispose of their representation dated 6.4.84(Ext P-7) opposing the consideration of the promoted U.D.Cs as eligible for promotion as Inspector. This Writ Petition was disposed of with the direction to dispose of their representation in accordance with law. That representation was rejected by the impugned order dated 31.1.85 at Ext P-8. The matter as it stood in the beginning of December, 1984 was as follows.

4. There were 21 vacancies in the promotion quota in the grade of Inspectors of Central Excise. These had to be filled up by the process of selection with ULCs amongst others with five years of qualifying service. The applicant having been directly recruited on 28.3.1980 was not eligible for being considered for promotion as he had not completed five years of service. Some UDCs who were junior to the applicant in the UDC's grade and had been promoted as Inspector on an adhoc basis in 1982 by relaxation of the qualifying service of five years to four years ~~but were junior to the applicant~~ were being considered for regular promotion as Inspectors.

On 30.11.84 the Ministry of Finance had issued a notification entitling the seniors to be considered for promotion as Inspector even though they had not the qualifying service when their juniors with qualifying service are so considered. Accordingly the applicant had the right to be considered for promotion as Inspector because his juniors who were officiating as Inspector on an adhoc basis were being considered for regular promotion. The High Court had also given a direction in O.P No. 8619 of 82 to consider the applicant. There were other promotee UDCs also who claimed that they should also be considered for promotion as Inspector by counting their service as U.D.C before their regularisation as qualifying service. Under the direction of the High Court in O.P No.4449/84 they were also to be considered for promotion as Inspector.

met on 4th and 21st Dec.1984

5. The Departmental Promotion Committee which was under the Recruitment Rules to be chaired by the Collector of Central Excise was chaired by the Additional Collector of Central Excise and three more members. They met in three instalments. Firstly, they met at 9.30 a.m on 4.12.84 and considered only the cases of 12 Inspectors who have been officiating as such. These twelve Inspectors are respondents 6 to 17 before us and included all of them in the panel for regularisation. On the basis of their

recommendations all the twelve were promoted on regular basis by the impugned order dated 22.12.84 at Ext P-18.

The same D.P.C met in the afternoon of 4.12.84 for filling remaining

up the nine out of the twenty one vacancies, twelve being

already covered by regularisation of the adhoc

Inspectors. The DPC considered apart from those UDCs

who had five years of regular service, other UDCs also

who had been regularised from 1980. Even though they

had not completed five years of regular service, they

were also considered under the direction of the High

Court of Kerala in O.P No.4449 of 84. The applicant

was not considered as he did not have five years of

total service. The DPC considered twenty three candidates

and prepared a panel of seven candidates. The D.P.C

met again on 21.12.84 under the interim direction of the

High Court in O.P No.8619/82 to consider the cases of

senior direct recruits without five years of service

whose juniors had been considered. The D.P.C considered

the applicant before us sixteen such direct recruits amongst whom Shri Davis/

was at the top in the seniority list. The D.P.C

assigned marks to the sixteen candidates but instead of

preparing a panel out of them, compared the marks obtained

by the sixteen candidates with the marks obtained by the

seven candidates in the panel prepared in the afternoon

of 4.12.84 and prepared a combined panel of eleven

candidates. The highest mark of 80 was obtained by

respondent No.18 and the lowest mark of 65 was obtained

by respondent No.27. The applicant was not included in the panel as he was given only 50 marks. Based on this panel, ten UDCs ,i.e, respondent Nos. 18 to 27 were promoted as Inspector on an adhoc basis vide the impugned order at Ext P-19 dated 22.12.84. The applicant was not considered at all by the D.P.C in their meeting held at 9.30 a.m on 4.12.84 when the question of regularisation of adhoc Inspectors was taken up. This is in spite of the fact that the direction of the High Court in Writ Petition No.8619/82 filed by the applicant and another directly recruited U.D.C against the proposed adhoc promotion of their juniors as Inspector was to close the petition on the assurance given by the Government Advocate that the applicants' case also will be considered for promotion notwithstanding that they may not have rendered the prescribed qualifying period of service.

6. After the aforesaid meetings of the D.P.C were held and the orders of promotion issued on ~~the same date~~ ^{one} 22.12.84 ^{at} Ext P-18 regularising all the twelve adhoc inspectors, i.e, respondents 6 to 17 and the other at Ext P-19 promoting the UDCs, i.e, respondents 18 to 27 as Inspector, two developments took place. One of the direct recruits Shri K.C.George who along with the applicant before us had filed the Writ Petition No.8619 filed another Writ Petition No.866/85 before the High Court of Kerala against the promotion of respondents 18 to 27

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vide the impugned order at Ext P-19 on the ground that some of them were junior to him and in accordance with the notification of 30.11.84 he should also have been considered for promotion. The other development was as follows. The Writ Petition No.4449/84 filed by the promoted UDCs for being considered for promotion as Inspector on the basis of their pre-regularisation service and the Writ Petition No.866/85 which were transferred to the Tribunal as Transferred Application Nos. 398 and 1007 of 1986 were decided by the Madras Bench of the Tribunal in the judgment dated 18th February, 1987 with the following directions:-

"Evidently the order of promotion dated 22.12.1984 is only an adhoc arrangement, as is clear from the order and also from the circumstances under which the Departmental Promotion Committee was constituted, as well as the procedure that was followed by the Committee. What has to be done to fill up the vacancies in the cadre of Inspector(Ordinary Grade) that existed in December 1984 is to prepare a panel of the eligible officers in accordance with the rules and relevant orders and then to make the selection. In doing so the applicants in TA 398/86 shall not be excluded on the ground that at that time they had not rendered the prescribed qualifying service of five years. We direct the first respondent in TA 398/86 to do so as expeditiously as possible. We quash the order dated 22.12.1984(Ext .P-7 in TA 1007/1986) by which ad hoc promotion has been given to the respondents 4 to 13 in TA 1007/1986".

In implementation of the aforesaid directions, the respondent-Department did not touch the regularisation twelve of adhoc Inspectors effected by the order at Ext P-18 even though the direction of the Tribunal was to prepare a panel of the eligible officers in order "to fill up the vacancies in the cadre of Inspector(Ordinary Grade) that existed in December, 1984". The respondents interpreted the direction of the Tribunal to mean that only the order

at Ext P-19 by which adhoc promotions of UDCs were made having been quashed, a fresh panel has to be prepared remaining for filling up the nine vacancies only. In the supplementary affidavit dated 19th October, 1989 filed by respondents 1 to 5 on this file, they indicated that a review D.P.C meeting was held under the direction of the Tribunal on 20.7.88 to fill up the five vacancies of 1984, six vacancies of 1985, five vacancies of 1986 and six vacancies of 1987. The applicant was considered for promotion against the five vacancies of 1984 and was promoted as Inspector, Central Excise and he took over as such on 3.8.88. It is not clear how they assessed the number of vacancies of 1984 as five instead of 21. Since by the order of the Madras Bench of the Tribunal the impugned order at Ext P-19 in this case promoting respondents 18 to 27 has been set aside, the relief sought by the applicant before us against these respondents by the quashing of Ext P-19 has already been given. We have, therefore, to consider the other relief that the impugned order dated 22.12.84 at Ext P.18 regularising the twelve adhoc Inspectors should be quashed and that the status quo ante as on 4.12.84 should be restored.

8. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The learned counsel for the respondents was good enough to produce the proceedings of the D.P.C meetings held on 4.12.84 and 21.12.84. As has been indicated above, the D.P.C was given to understand that there were twenty one vacancies as in December, 1984 in the cadre of

Inspector(Ordinary Grade), of which twelve vacancies had been filled up on an adhoc basis since 1982.

Accordingly for reasons best known to them the D.P.C held two separate meetings one in the morning of 4.12.84 and the other in the afternoon of 4.12.84 and under the directions of the High Court held a further meeting on 21.12.84. In the morning meeting of 4.12.84 the D.P.C interviewed and assessed only twelve Inspectors who had been given adhoc promotion as Inspector in 1982. They did not consider anybody else from the feeder cadre of UDCs including the applicant who was senior to some of them. The applicant was not only senior to some of them, but had been made eligible by the notification of 30.11.1984 indicating that where juniors are considered for promotion as Inspectors, the seniors also should be considered even though they may not have the required length of service. The D.P.C selected all the twelve adhoc Inspectors but reshuffled them on the basis of marks obtained by them. Shri T.Mkaleedharan who obtained 80 marks was placed at the top of the panel and Smt. Mary Jacob who got 50 marks was placed at the bottom of the panel. The applicant who was occupying the 86th position in the seniority list of UDCs having been appointed as U.D.C on 28.3.80, was not considered by the D.P.C whereas the last adhoc Inspector who was

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considered and regularised was Mr.P.Unnikrishnan , who was occupying 130th position in the seniority list of U.D.C. There may be a number of other U.D.Cs senior to Shri P.Unnikrishnan with whom these twelve adhoc Inspectors did not have to compete for regularisation. These twelve adhoc Inspectors competed amongst themselves for regularisation. This by any standard is a very unusual method of selection.

9. As a matter of fact when there were twenty one vacancies in the cadre of Inspectors to be filled up by promotion by selection of eligible U.D.Cs , it was concerned wrong on the part of the respondents to have earmarked exclusively twelve vacancies for regularising twelve adhoc Inspectors to have and confined the selection for filling up these twelve vacancies to only those twelve adhoc Inspectors. This is not only against the Recruitment Rules but also unfair to other eligible UDCs who for one reason or the other could not be appointed as adhoc Inspectors earlier. It is established law that an adhoc employee is at the lowest rung of employment (S.K Verma v. State of Punjab, 1979 SLJ 477) and a person appointed on an adhoc basis has no right to the post (S.P Vasudev v. State of Haryana, AIR 1975 SC 2292). In N.K.Chauhan v. State of Gujarat, AIR 1977 SC 251, it was held that "if exigencies of administration demand quick posting in the vacancy and one source (here, direct recruitment) has gone dry , for a while, then the proper course is to wait for a direct recruit and give him notional date of

entry as the quota vacancy and manage to keep the wheels of Government moving through improvised promotions of expressly stripping such adhocists/all rights flowing from temporary occupancy". In the instant case before us , the respondents 6 to 17 were given adhoc promotions as Inspectors by relaxing the statutory qualifying service of five years to four years as there were not enough numbers of eligible UDCs with five years of service. The applicant was a direct recruit as U.D.C and was given seniority above some of the aforesaid respondents even though he had only two years of service in 1982 while the respondents had four years of service. By the principle of senior becoming eligible automatically if the junior is eligible, a principle which had already been accepted by the respondents for filling up the post of Superintendents,Central Excise and accepted by them for even Inspectors, though by a later date notification of 30.11.84, the applicant also should have been considered for adhoc promotion as Inspector in 1982 itself. Instead of repairing this damage in 1984 by throwing open all the twenty one vacancies of Inspectors to all eligible U.D.Cs and others, the respondent-Department perpetrated the injustice by as it were reserving the twelve vacancies exclusively for the twelve adhoc Inspectors to the exclusion of other eligible U.D.Cs.

This is violative of Articles 14 and 16 of the Constitution.

16. It is also established prescribed procedure sanctified by judicial pronouncements that in the matter of promotions, vacancies in the promotion quota have to be filled up on a year to year basis and bunching of vacancies of a number of years in one year and preparing one consolidated list is illegal. In *Basava Sindivale v. Union of India*, ATR 1987(2) CAT, 275, it was held that bunching of vacancies of a number of years in violation of Ministry of Home Affairs O.M of 24.12.80 (laying down yearwise seniority list to be prepared) is illegal. By bunching of vacancies, candidates who were not eligible when the vacancies arose in an earlier year, are also clubbed with eligible earlier vacancies to compete even for those vacancies, if they are bunched with the later vacancies. Nothing has been shown by the respondent-Department to indicate that the twenty one vacancies which existed in the beginning of December had arisen in one year of 1984. Most probably they have been carried forward from earlier years. Even if it is presumed for the sake of argument that all the twenty one vacancies arose in 1984, there was no reason to prepare three panels, one exclusively confined to adhoc Inspectors and two prepared on 4.12.84 and 21.12.84 out of other UDCs etc. Respondents 6 to 18 were subjected to

a favourable and unequal competition for the twelve vacancies as compared to those who were considered by the D.P.C for the remaining nine vacancies.

17. Further, action taken by the respondent-Department in compliance of the judgment of this Tribunal dated 18th February, 1987 is also erroneous. The Tribunal had directed "to fill up/vacancies in the cadre of Inspector(Ordinary Grade) that existed in December, 1984" and "to prepare a panel of eligible officers in accordance with the rules and relevant ^{and then to make the selection}".

The respondents maintained the panel of twelve adhoc Inspectors and got a review D.P.C meeting arranged to fill up the remaining nine vacancies. The violation of the established rules and procedure for filling up the twenty one vacancies persisted in spite of the fact that the Madras Bench of the Tribunal had quashed the selections made in December, 1984 for filling up all the twenty one vacancies.

18. In the facts and circumstances we allow the application and set aside the impugned order dated 22.12.84 at Ext P-18 noting that the impugned order of the same date at Ext P-19 already stands quashed in the judgment of the Madras Bench of the Tribunal dated 18th February, 1987 in T.A.K 1007 of 1986. The result is that all the twenty one vacancies will have to be filled up by review D.P.C. We direct further

that the respondents 1 to 5 should convene review D.P.C for preparation of year-wise panel to fill up the twenty one vacancies arising in each year by considering only those officials who were eligible in that year. For the purposes of eligibility in each year, the principle enunciated in the notification dated 30.11.84 also should be followed. The adhoc Inspectors will have to compete on the basis of their seniority, suitability and merit with other eligible candidates. Action on the above lines should be completed within a period of 3 months from the date of communication of this order. The application is allowed to the extent of aforesaid directions with no order as to costs.

Sdl-
(A.V. HARIDASAN)
JUDICIAL MEMBER

Sd/-
(S.P. MUKERJI)
VICE CHAIRMAN



TRUE COPY
Dated 29/12/84

n.i.j

[Signature]
Deputy Registrar

Ans
29/12/84

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE OF DECISION : 28.2.90

PRESENT

HON'BLE SHRI S.P MUKERJI, VICE CHAIRMAN

&
HON'BLE SHRI A.V HARIDASAN, JUDICIAL MEMBER

ORIGINAL APPLICATION NO.219/89

K.C George .. Applicant

v.

1. Union of India represented by the Secretary, Ministry of Finance, North Block, New Delhi.
2. The Collector, Central Excise, Cochin.
3. The Deputy Collector(P&E), Central Excise, Office of the Collector, Central Excise, Cochin.
4. The Departmental Promotion Committee, represented by the 2nd respondent.
5. P.Sreekumaran Nair
6. P.P.Raveendran
7. M.Balan
8. M.Antony
9. K.J.Davis
10. M.Girija
11. G.Harikrishnan
12. C.Abdul Majeed
13. K.V Jose
14. K.Padmajadevi
15. Ravivarma Raja
16. Mary P.S.
17. S.Aleykutty
18. T.V Sasidharan
19. Jossy Bridgit Joseph
20. K.M Satheeshchandran
21. C.G Ramachandran
22. C.K Paul
23. M.M Jacob
24. Sherine Mathew
25. M.Sathish
26. M.K.Jayarajan

.. Respondents

Shri R.Rajasekharan Pillai

.. Counsel for the applicant

Mr.P.Santhalingam, ACGSC

.. Counsel for R1 to R4.

M/s. M.P Govindan Nair &
George Poonthottam

.. Counsel for R-10

M/s. O.V Radhakrishnan &
Raju K.Mathews

Counsel for R21, 22 & 23.

M/s. Krishnan, Unni & Ajith

Counsel for R24 & 25

O R D E R

Shri S.P Mukerji, Vice-Chairman

In this application dated 6.4.89 the applicant who has been working as Deputy Office Superintendent in the Collectorate of Central Excise at Cochin has prayed that the impugned order dated 1.8.88 at Annexure-H promoting as Inspectors of Central Excise on a regular basis certain officials who have been holding the post of Inspector, Central Excise and Technical Assistant on an adhoc basis should be set aside and that the applicant should be declared to be entitled to be considered for promotion for the years 1982 to 1986 and that the respondents 1 to 4 directed to include his name in the panel at least for the years 1982 or 1983. The brief facts of the case as recounted by the applicant are as follows.

2. The applicant joined the Excise Department as an U.D.C by direct recruitment on 6.3.1980 with fifteen years of service in the Indian Army. He was confirmed as U.D.C on 19.4.82. Some L.D.Cs who had been promoted as U.D.Cs earlier against the direct recruitment quota, but later regularised against the promotion quota as and when they arose, had previously been shown senior to the direct recruits but in the seniority list of 1.1.86 they were placed below the later dates of the direct recruits on the basis of their regular promotion against the promotion quota posts. In 1982 when some vacancies in the post of Inspector of Central Excise (Ordinary Grade) arose the U.D.Cs junior to the applicant were considered for promotion as they had longer period of qualifying service than the senior direct recruits. The applicant moved the High Court of Kerala in Writ Petition No.8619 of 82 for direction to the Department to consider the seniors for

promotion when their juniors are considered for promotion as Inspector. Ultimately the Department themselves on 30th November, 1984 notified an amendment to the Recruitment Rules to the effect that when a junior person is considered for promotion, his senior should also be considered provided he has successfully completed his probation and put in two years of continuous service. The applicant's Writ Petition was transferred to the Tribunal as T.A.K 173/87 which was disposed of by the Tribunal by its judgment dated 21.7.1988 closing the Writ Petition on the ground that appropriate amendment (dated 30.11.84) had been brought about by the Department. Since the amendment had not been give retrospective effect, the applicant did not get necessary relief and he filed a Review Petition No.51/88 which was pending consideration (but has since been dismissed as time barred) of the Tribunal. In December, 1984 two sets of D.P.C meetings were conducted, which according to the applicant twelve were illegal. By one proceeding adhoc Inspectors who were junior to the applicant were considered for regular promotion as Inspector, while in the other proceedings the D.P.C considered certain eligible persons in violation of the norms prescribed by the Government of India. The applicant challenged these proceedings in O.P 866/85 which was transferred to the Tribunal as T.A 1007/86. The Tribunal disposed of this petition by its judgment dated 18.2.87 (Annex:8) setting aside the order of promotion of certain U.D.Cs. by another directly recruited U.D.C. Still another petition was filed(O.P 3448/85) which was transferred to the Tribunal as T.A.K 480/87, and has since been disposed of by this Tribunal by its judgment dated 22.12.89 setting aside the regularisation of adhoc Inspectors also. It may be noted that the latter judgment dated 22.12.89 was delivered by the Tribunal, to which both of us were party, during the pendency of

this application before us. In the Original Application before us ~~Ex-XXXX~~ the applicant stated that the Transferred Application No.480/87 was pending before the Tribunal. The applicant's contention is that contrary to the direction of the Tribunal in the judgment dated 18.2.1987, the respondent-Department held another meeting of the D.P.C in 1987 and gave promotion to adhoc Inspectors/T. As vide the impugned order dated 1.8.88(Annexure-H). On applicant's representation a further D.P.C meeting was convened for appointment to the post of Inspectors for the years 1984, though 1985, 1986 and 1987. However, even^{though} the applicant had already been promoted as Deputy Office Superintendent(Level II) in December, 1985, he was also called for interview by the D.P.C which^{interview} according to the applicant was an abnormal procedure. The applicant was not selected. The applicant's contention is that the selection by interview was conducted by the respondents just to eliminate him from the selection because he has been filing petitions after petitions against the Department before the Tribunal and two petitions were pending^{when he was} interviewed. He has indicated that the D.P.C was headed by the same officer who had made the selections prejudicial to the petitioner, earlier. He has challenged the D.P.C proceedings as violative of the instructions issued by the Government in the O.M of 24.12.80 at Annexure-K. He has challenged the proceedings also on the ground that regularisation of twelve adhoc Inspectors was under challenge in T.A 1007/87. He has also indicated that the vacancies of 1982 and 1983 to which adhoc Inspectors were promoted and whose promotions were under challenge, should also have been considered by the D.P.C. He has also argued that by not reckoning the number of vacancies in each year properly, distorted zones of consideration have been

taken into account by the D.P.C. The respondents have stated that direct recruit U.D.C like the applicant who had not been considered by the D.P.C because they did not have the required qualifying service for promotion to the post of Inspector were later called by the D.P.C on 21.12.84 and ten officers from the select panel were promoted. However, when the Tribunal by its judgment dated 18.2.87 set aside the order dated 21.12.84 and directed fresh selections to be made and the Review Application filed by the Department was rejected, the Department decided to hold fresh D.P.C for the vacancies that existed in December, 1984. Since any change in the panel prepared in 1984 was bound to affect the panel and promotions made in the later years, it was decided to conduct yearwise D.P.Cs for the years 1984, 1985, 1986 and 1987. The D.P.C was held on 20.7.88 and yearwise panels were prepared for 1984, 1985, 1986 and 1987 and twenty two officers were promoted by the impugned order dated 1.8.88. The applicant was considered by the D.P.C for promotion against vacancies in 1984 and 1985, but he was not selected. He was not considered for 1986 vacancies onwards as he was promoted as Deputy Office Superintendent (Level II) in 1985 and went out of the feeder category for promotion as Inspector. The respondents have stated that against 5 vacancies of 1984, fifteen officers were considered. For the 6th vacancy of 1985, eighteen officers were considered and so on. In all 38 candidates were called for interview and none of them was outside the field of consideration. They have argued that the applicant cannot be considered for the years 1982 and 1983 as he had only two to three years qualifying service as U.D.C having been promoted on 6.9.80. His contention that his juniors were considered for promotion as Inspector has been met by the respondents by stating that the juniors had the requisite length of qualifying service as U.D.C and they were shown as junior to the applicant because they rendered

service as U.D.C partly in promotion quota post and partly in direct recruitment post vacancies. In the years 1982 and 1983 there was no provision to consider seniors when juniors are considered as such an amendment was made in Group C Recruitment Rules by the notification dated 30.11.1984. They have argued that if the applicant wanted to be considered for promotion as Inspector he should not have accepted his promotion as Deputy Office Superintendent (Level II) in 1985 and the allegation of any vindictiveness is not true. They have produced the notification dated 19th May, 1984 (Annexure R-1) amending the Recruitment Rules for the post of Inspector to the effect that the "eligible officers shall be required to pass through an interview before promotion". They have denied the allegation of the applicant that ineligible officers have been selected. They have asserted that the procedure laid down by the Government in O.M of 24.9.80 have been followed by the D.P.C in the proceedings on 20.7.88. In his rejoinder the applicant has stated that on 4.12.1984 there was eleven vacancies. He has also referred to the case of ^{him had been} 11th person at Annexure-H who ^{like} promoted as DOS in ^{unlike him} 1985, ^R but was considered for promotion. On the other hand, the applicant had accepted his promotion as DOS II under protest vide his letter dated 3.9.85 at Annexure-L ^{was} wherein he indicated his acceptance ^R "without prejudice to the outcome of the said O.P" (i.e. O.P No.866/85). He has also argued that the twelve vacancies which were filled up by promoting twelve adhoc Inspectors who were interviewed on 3.12. 1984 had not been touched by the Review D.P.C and their names have not been taken into account. This clearly vitiates the entire proceedings. According to him, if these vacancies are also taken into account, there would have been twenty three vacancies in 1984 and not eleven. He has controverted the arguments

of the respondents about the applicant not having qualifying service in 1982 and 1983 by stating that the judgment of the Tribunal dated 18th February 1987 (Annexure-B) entitles him to such consideration. He has also argued that in accordance with the respondents' own showing in O.A 424 of 1988 the D.P.C interviews the eligible candidates only to categorise them as fit and not fit for promotion and thereafter examines the service records. Thus the interview is not the sole governing factor.

3. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. As has been stated earlier, this application was filed on 7.4.1989 after which this very Bench of the Tribunal, to which both of us were a party, delivered judgment on 22.12.1989 in Transferred Application No.480/87 which had been transferred from the High Court where Shri K.J Davis had filed that Writ Petition No.O.P 3448/85. In that application the main challenge was against the order dated 22.12.84 by which the Department had regularised promotion of twelve U.D.Cs who had been earlier promoted as Inspector on an adhoc basis as also the order dated 22.12.84 by which ten U.D.Cs and Stenographers, some of whom were junior, had been promoted as Inspector on an adhoc basis. In that Transferred Application we found that the second order dated 22.12.84 promoting ten U.D.Cs and Stenographers as Inspector had already ^{been} set aside by another Bench of this Tribunal in T.A.K 1007/86, by the order dated 18th February, 1987. So far as the first order dated 22.12.84 regularising twelve adhoc Inspectors are concerned, we found that order to be irregular and set that order also aside. The concluding

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two paras of our judgment would be illuminating and are as follows:-

"17. Further, action taken by the respondent-Department in compliance of the judgment of this Tribunal dated 18th February, 1987 is also erroneous. The Tribunal had directed "to fill up the vacancies in the cadre of Inspector(Ordinary Grade) that existed in December, 1984". and "to prepare a panel of eligible officers in accordance with the rules and relevant orders and then to make the selection". The respondents maintained the panel of twelve adhoc Inspectors and got a Review D.P.C meeting arranged to fill up the remaining nine vacancies. The violation of the established rules and procedure for filling up the twenty one vacancies persisted in spite of the fact that the Madras Bench of the Tribunal had quashed the selections made in December, 1984 for filling up all the twenty one vacancies.

18. In the facts and circumstances we allow the application and set aside the impugned order dated 22.12.84 at Ext P-18 noting that the impugned order of the same date at Ext P-19 already stands quashed in the judgment of the Madras Bench of the Tribunal dated 18th February, 1987 in T.A.K 1007 of 1986. The result is that all the twenty one vacancies will have to be filled up by review D.P.C. We direct further that the respondents 1 to 5 should convene review D.P.C for preparation of yearwise panel to fill up the twenty one vacancies arising in each year by considering only those officials who were eligible in that year. For the purposes of eligibility in each year, the principle enunciated in the notification dated 30.11.84 should also be followed. The adhoc Inspectors will have to compete on the basis of their seniority, suitability and merit with other eligible candidates. Action on the above line should be completed within a period of 3 months from the date of communication of this order. The application is allowed to the extent of aforesaid directions with no order as to costs".

It may be recalled that the applicant Shri K.J.Davis who was the petitioner in the aforesaid case and the applicant jointly before us Shri K.C George had/moved Writ Petition No.8619/82 challenging the adhoc promotion of Inspectors made in 1982, the regularisation of whom in 1984 had been challenged by Shri K.J Davis in the aforesaid Transferred Application decided by us on 22.12.1989. S/Shri Davis and George had challenged the adhoc promotion of their juniors as Inspectors (S/Shri Davis and George) stating that since they/were senior to them, they should also be considered for such promotion. In C.M.P 31970/84 moved by the aforesaid two petitioners before the High Court

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in that Writ Petition the High Court directed that the petitioners should be considered for adhoc promotion as Inspector on the ground of their seniority. But this was not done. On the other hand, on 21.7.88 the Tribunal closed the case with the following observations :-

"4. When this matter was taken up for hearing Advocate Mr.K.Prabhakaran, ACGSC appearing on behalf of the respondents has produced before us a copy of the notification dated 30.11.84 by which the Central Excise and Land Customs Department Group C Post Recruitment Rules, 1979 have been amended by adding a note that if a junior person is considered for promotion on the basis of his completing the prescribed qualifying period of service in that grade, all persons senior to him in the grade shall also be considered for promotion, notwithstanding that they may not have rendered the prescribed qualifying period of service in that grade, but have completed successfully the prescribed period of probation.

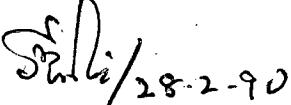
5. In view of the aforesaid amendment, the grievance of the applicants is redressed and hence no relief is called for as prayed.

6. We close this application."

From the above observations it is clear that the Tribunal was given the impression that the grievance of the two petitioners including the applicant before us which arose in 1982 because of adhoc promotion of their juniors as Inspector stood redressed by the amendment of 30.11.1984 by which when a junior is considered for promotion as Inspector, the seniors even though they did not have the requisite qualifying service will also be considered. Thus it is evident that the Department was committed to consider the applicant before us for adhoc promotion as Inspector in 1982. Since he was not so considered and if he had been considered his position would have been very much different in December, 1984 when the Department regularised the twelve adhoc Inspectors, the regularisation of these adhoc Inspectors by the order dated 22.12.84 was vitiated. In any case since all the promotions and regularisation as Inspectors made on the basis of the three meetings of the D.P.C held on

the forenoon of 4.12.84, afternoon of 4.12.84 and on 22.12.84 had been set aside by this Tribunal in the two judgments dated 18th February 1987 in T.A.K 1007/86 and our judgment dated 22.12.89 in T.A.K 480/87 and the Department was directed to get the twenty one vacancies filled up by a review D.P.C by preparing yearwise panels, the action already taken by the Department in convening the meetings of the D.P.C on 20.7.88 and getting the five vacancies of 1984, six vacancies of 1985 and six vacancies of 1987 filled up would be erroneous. Since the eligible candidates of 1985, 1986 and 1987 and zone of consideration would be different, if the twenty one vacancies of 1984 had been correctly filled up as directed by this Tribunal, we have no other alternative but to set aside the entire proceedings of the D.P.C held on 20.7.1988 and consequent action taken by the Department. We do so accordingly and direct the respondents to convene a review D.P.C for filling up the twenty one vacancies which arose upto December, 1984, strictly in accordance with our judgment dated 22.12.89 in T.A.K 480/87 and only thereafter get the vacancies of 1985, 1986 and 1987 filled up in accordance with law. We close this application on the above lines with no order as to costs.


(A.V HARIDASAN)
JUDICIAL MEMBER


(S.P MUKERJI)
VICE CHAIRMAN

n.j.j