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## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 213/87

XXXXXX No.

198

DATE OF DECISION 26.3.1991Shri K.K.Petlur PetitionerShri M.S.Ramamurthy Advocate for the Petitioner(s)

Versus

Union of India & Ors. RespondentSh.A.I.Bhatkar for Mr.M.I.Sethna Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. U.C.Srivastava, Vice Chairman

The Hon'ble Mr. M.Y.Priolkar, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *X No*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *N*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *N*

U.C.Srivastava  
 (U.C.SRIVASTAVA)  
 Vice-Chairman

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY

(16)

DA.NO. 213/87

Shri K.K.Petlur  
v/s.

... Applicant

Union of India & Ors.

... Respondents

CORAM: Hon'ble Vice Chairman Shri U.C.Srivastava  
Hon'ble Member (A) Shri M.Y.Priolkar

Appearance

Mr.M.S.Ramamurthy.  
Advocate  
for the Applicant

Mr.A.I.Bhatkar  
for Mr.M.I.Sethna  
Advocate  
for the Respondents

ORAL JUDGEMENT

Dated: 26.3.1991

(PER: U.C.Srivastava, Vice Chairman)

The applicant who has started his service career as Sub-Inspector in the Excise Department at Bombay and was promoted as Inspector in the year 1971, with notional seniority in the year 1970 and was confirmed in the Inspector's Grade w.e.f. 23.7.1980 has approached this Tribunal praying that the respondents be directed to refix the seniority of the applicant in the grade of Inspector and consequently in the grade of Inspector scale Rs.1640-2900, on the basis of continuous officiation w.e.f. 8.7.1970 and for considering his claim for further promotion to the post of Superintendent, Central Excise on the basis of the revised seniority which should also be confirmed. It appears that because of remarks in the confidential report communicated to him in the year 1975, he was passed over by the D.P.C. which met in July, 1977 while others were confirmed. But subsequently, he too was confirmed in the year 1980. Those

(12)

who were confirmed in 1977 were promoted in 1982 and the applicant was also promoted.

2. The dispute was short whether, notwithstanding the fact that the applicant was confirmed later than those who were junior to him in seniority, he is entitled to the seniority over them on the basis of continuous officiation. In this connection, the learned counsel for the applicant contended that in the absence of statutory rules in this regard, it is the continuous officiation which determines the seniority of the applicant unconnected with the confirmation which is made only once in service career. The learned counsel for the applicant goes beyond the arguments made with reference to the case of S.B.Patwardhan & Anr. v. State of Maharashtra & Ors., AIR 1977 SC 2051 which was referred to in the recent decision of The Direct Recruit Class-II Engineering Officers' Association v. State of Maharashtra & Ors., AIR 1990 SC 1607. It was laid down in Patwardhan's case that the period of continuous officiation by a Government servant, after his appointment, by following the rules applicable for substantive appointments, has to be taken into account for determining his seniority, and seniority cannot be determined on the sole test of confirmation, for, as was pointed out, confirmation is one of the inglorious uncertainties of Government service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies. The principle for deciding inter se seniority has to conform to the principles of equality spelt out by Arts. 14 and 16 of the Constitution of India.

(13)

3. The learned counsel for Union of India contended that in view of the Office Memorandum of the year 1961 a copy of which has been placed on record, the seniority will be determined in accordance with the Office Memorandum dated 20.4.1961. It has been provided that the order of confirmation is determined by the position occupied by a candidate in the merit list, but where a departure is made from the normal rule and one occupying a lower position is given preference for confirmation, he would legitimately expect exceptional treatment also in the matter of seniority. It is with this view that a proviso has been added to para 4 of the annexure referred to above which provides that where persons recruited/promoted initially on a temporary basis are confirmed subsequently in an order different from the order of merit indicated at the time of their appointment, seniority shall follow the order of confirmation and not the original order of merit. This means that seniority accompanies confirmation. This para indicates that it was not related to direct recruits. Even otherwise, if the latter part of the said memorandum deals with the promotees then that Office Memorandum of 1961 no longer helps after the decisions in above mentioned cases. No other Office Memorandum deviating from the earlier has been placed before us and that apart, the legal position is quite clear that once the applicant was confirmed and subsequently he was promoted, then the seniority will be governed by the date of continuous officiation if he has continuously officiated and obviously he is senior to others.

(PA)

4. Accordingly, the application is allowed. The applicant's seniority will be determined on the basis of continuous officiation in the cadre notwithstanding the confirmation and he will be entitled to all consequential benefits arising therefrom. There will be no order as to costs.

26.3.81  
(M.Y.PRIOLKAR)

MEMBER (A)

26.3.81  
(U.C.SRIVASTAVA)

VICE CHAIRMAN