

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 823/87
~~T.A. No.~~

198

DATE OF DECISION 11-7-1991

Uttamrao Hanumantrao Jadhav & 10 Petitioners
 others.

Mr. M.D. Lonkar Advocate for the Petitioner(s)

Versus

Union of India and others. Respondent

Mr. P.M. Pradhan for R.No. 2 to 4 Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. G. Sreedharan Nair, 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 ? *N*
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*

(M.Y. PRIOLKAR)

(10)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.823/87

Uttamrao Hanumantrao Jadhav,
and 10 ors.,
C/o.M.D.Lonkar,
Advocate High Court,
B-56, Suyog Society,
Sant Dnyaneshwar Road,
Mulund(East),
Bombay - 400 081.

.. Applicant

v/s.

1. Union of India

2. Principal Collector of Customs
& Central Excise, Bombay-I,
4th Floor, New Central Excise Building,
Maharshi Karve Road, Churchgate,
Bombay - 400 020.

3. Collector of Central Excise
Bombay-II,
9th Floor, Piramal Chambers,
Jijibhoi Lane, Parel,
Bombay - 400 012.

4. Deputy Collector(P&B),
Central Excise Bombay-I,
4th Floor, New Central Excise Bldg.,
Maharshi Karve Road,
Churchgate,
Bombay - 400 020.

5. Deputy Collector (P&E),
Central Excise Bombay-II.
9th Floor, Piramal Chambers,
Jijibhoi Lane, Parel,
Bombay - 400 012.

.. Respondents

Coram: Hon'ble Shri G.Sreedharan Nair, Vice-Chairman

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

Appearances:

- Mr. M.S. Ramamurthy with*
1. Mr.M.D.Lonkar
Advocate for the
Applicant. *4*
2. Mr.P.M.Pradhan
Advocate for
Respondents No.2 to 4

JUDGMENT

Per M.Y.Priolkar, Member(A)

Date: 11-7-1991.

The 11 applicants in this case were directly recruited to the posts of Inspectors in the Central Excise Department, Bombay, between 1973 and 1977. Most of the applicants were confirmed in 1980 while applicant No.1 against whom certain disciplinary proceedings were initiated in 1978 and sealed cover procedure was followed, was confirmed only in

December, 1984. The grievance of the applicants is that several persons appointed subsequently to the applicants have been shown senior to the applicants in the seniority list dated 13-8-1987 and that the date of confirmation seems to have been taken as the basis for determining the seniority when, in fact, the continuous length of service should have been taken into consideration while fixing the seniority of Inspectors. The prayer in the application is for direction to the respondents to prepare a fresh seniority list on the basis of continuous length of service in accordance with law and for consequential promotions and other benefits.

2. In their written reply, the respondents have admitted that the impugned seniority list has been prepared taking into account the date of confirmation as required in the Ministry of Home Affairs O.M. dated 22.11.1959. They have also stated that in the disciplinary proceedings, the applicant No.1 was awarded on 30-6-1983 a penalty of stoppage of his next increment for one year without cumulative effect and he was confirmed only after a DPC which met on 7-12-1984 had found him fit for confirmation. It is also stated that the seniority of Inspectors has been fixed on the basis of the ratio for direct recruit quota and promotion quota of 3:1 as per the Ministry of Home Affairs O.M. dated 22-12-1959.

3. In a similar dispute regarding seniority of Inspectors in the Central Excise Department, Bombay, whether it is the continuous officiation or the date of confirmation which should determine the seniority, another Bench at New Bombay of this Tribunal, of which one of us (Mr. M.Y. Priolkar) was a Member, has held in its ~~xxx~~ recent judgment dated 26.3.1991 (O.A. 213/87 - K.K. Petlur v. Union of India and Others)

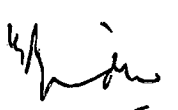
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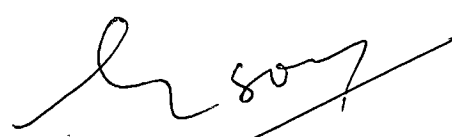
that seniority will be determined on the basis of continuous officiation in the cadre notwithstanding the date of confirmation. The judgment was based on the Supreme Court decision in the case of S.B.Patwardhan and another v. State of Maharashtra and Others(AIR 1977 SC 2051) which was referred to in the recent Supreme Court decision of the Direct Recruits Class II Engineer Officers Association v. State of Maharashtra and Others(AIR 1990 SC 1607). It was laid down in Patwardhan's case that the period of continuous officiation^a by 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 as was pointed out, for, "Confirmation is one of the inglorious uncertainties of Government service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies." Based on these Supreme Court decisions, it has been held in our judgment dated 26.3.1991, referred to above, that "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." The learned counsel for the applicants also brought to our notice the following observation of the Supreme Court in para 7 of their judgment dated 27-7-1988 in the case of Shiv Kumar Sharma v. Haryana State Electricity Board and others(1988(8) ATC 792):

"While there is some necessity for appointing a person in government service on probation for a particular period, there may not be any need for confirmation of that officer after the completion of the probationary period. If during the period of probation a government servant is found to be unsuitable, his services may be terminated.

On the other hand, if he is found to be suitable, he would be allowed to continue in service. The archaic rule of confirmation, still in force, gives a scope to the executive authorities to act arbitrarily or mala fide giving rise to unnecessary litigations. It is high time that the Government and other authorities should think over the matter and relieve the government servants of becoming victims of arbitrary actions."

4. In view of the above and since there is no plea taken by the respondents that regular vacancies were not available at the time of their officiating appointments, the applicants must succeed. Since the respondent department is the same, we give a similar direction to the respondents in this case as was given in ~~our~~^{the} earlier judgment dated 26-3-1991 cited above, namely, that the applicants' seniority should be determined on the basis of continuous officiation in the cadre notwithstanding the dates of confirmation and they will be entitled to all consequential benefits arising therefrom. There will be no order as to costs.


(M.Y. PRIOLKAR)
Member(A)


(G. SREEDHARAN NAIR)
Vice-Chairman