

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 911/96

Date of Decision : 30th January 2002

<u>P.V.George</u>	Applicant
<u>Shri S.V.Marne for</u> <u>Shri G.K.Masand</u>	Advocate for the Applicant.

VERSUS

<u>Union of India & Ors.</u>	Respondents
<u>Shri S.D.Bhosale for</u> <u>Shri M.I.Sethna</u>	Advocate for the Respondents

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

The Hon'ble Shri M.P.Singh, Member (A)

- (i) To be referred to the reporter or not ? *yes*
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? *no*
- (iii) Library *yes*

S.L.Jain
(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.911/96

Dated this the 30th day of January 2002.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Shri M.P.Singh, Member (A)

P.V.George,
C-2, Customs & C.Excise Quarters,
Katrak Road,
Mumbai.

...Applicant

By Advocate Shri S.V.Marne
for Shri G.K.Masand

vs.

1. Union of India
through Secretary,
Ministry of Finance,
Department of Revenue,
New Delhi.
2. Chairman,
Central Board of Excise & Customs,
North Block,
New Delhi.
3. Commissioner of Customs (G),
New Customs House,
Ballard Estate,
Mumbai.

...Respondents

By Advocate Shri S.D.Bhosale
for Shri M.I.Sethna

...2/-

P.S.M. -

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 for the direction to the respondents that the anomaly in the seniority list be ordered to be rectified and seniority of the applicant as Appraiser be counted from 8.3.1983, i.e the date of his first promotion and to consider the case of the applicant for further promotion on the basis of counting his seniority effective from 8.3.1983.

2. The applicant joined the Bombay Customs in August, 1969, in the year 1970 he appeared for the post of Examiner as well as for the post of Preventive Officer and qualified in both the examinations and was placed on top. In the seniority list of POs, he was placed above Shri M.G.Dabrai {list dated 28.10.1980 (Ex.B)}. He was first appointed as PO on 10.7.1972 and subsequently as Examiner on 15.1.1973. M.G.Dabrai is placed at S.No.63. The applicant, Shri Nimbalkar and said Shri M.G.Dabrai were promoted as Appraiser vide order dated 8.3.1983. In the promotion order dated 8.3.1983, officers working as Examiners and Preventive Officers were placed enbloc in their respective groups. Accordingly, Shri Dabrai was placed at Sr.No.26 under the category of Preventive Officers whereas the applicant was placed at Sr.No.44 under the category of Examiners.

Shri -

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3. On 31.7.1984 respondents had issued orders for reversion of those who were promoted from the category of Examiners. Accordingly, the order of reversion of the applicant was issued whereas the said Shri Dabrai was allowed to continue in the post of Appraiser. Shri Nimbalkar - the Examiner challenged the said order of reversion dated 31.7.1984 before the Hon'ble High Court of Bombay and status-quo was ordered. In consequence thereof, not only the said Shri Nimbalkar was not reverted. The applicant continued to draw the salary of the post of Appraiser and order was not given effect to even in respect of the applicant. Even otherwise, as the applicant's juniors Shri Dabrai and Shri Nimbalkar continued in the post of Appraiser, the applicant is also entitled to continue in the post of Appraiser from the date of his original promotion, i.e. 8.3.1983. The applicant was shown in the seniority list of Appraiser at S.No.99 whereas the said Shri Nimbalkar was shown at Sr.No.108. M.G.Dabrai, Nimbalkar and the applicant were promoted to the post of Appraiser though in the said year but later in time. These persons should have been placed below the Examiners or at least interpolated with Examiners.

4. The applicant was placed as junior to the two officers, namely, Shri Dabrai and Shri Nimbalkar. He submitted the representation dated 2.8.1984 (Ex.'E') and was orally told that so called seniority list is not the final and the applicant believed the words.

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5. While issuing the Est.Order dated 8.3.1983 pertaining to the promotion of Examiners/Preventive Officers to the post of Customs Appraiser O.M.No.1/11/55/RPS dated 22.12.1959 was not followed which provides that when promotions to a grade are made from more than one cadre, the eligible persons shall, be arranged in separate list in the order of their relative seniority in their respective grades. Thereafter the DPC shall select persons for promotion from each list upto the prescribed quota and arrange all the candidates selected from different lists to make a consolidated order of merit which will determine the seniority of the persons for promotion to the higher grade. The department failed to observe the said principle and also failed to interpolate the findings of the DPC while making selection of the applicant for the post of Appraiser on the basis of merits and grades. All Examiners and Preventive Officers clubbed in separate lots shows that the said Est. order was not in accordance with the findings of the DPC and as such were in violation of OM No.1/11/55 dated 22.12.1959.

6. Vide Circular dated 22.11.1992 respondents published a combined seniority list of Appraisers as on 1.1.1992. The said seniority list is purported to be issued in pursuance of the decision of the Bombay Bench of CAT in case of P.H.Mahajan and Ors. The applicant represented against the same vide his representation dated 21.12.1992. requesting that his seniority is to be counted from March, 1983 and not from March, 1984.

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Madras Customs House has issued similar seniority list based on the said judgement of the P.H.Mahajan & Ors. referred above and the seniority was drawn on the basis of the continuous officiation but the said criteria should be followed by the respondents. The said representation was not replied by the respondents. The respondents issued a certificate dated 27.7.1993 to the applicant certifying that the applicant was promoted as Appraiser w.e.f. 8.3.1983 and since then he was working in the same capacity.

7. On 31.7.1984 12 Appraisers were reverted without assigning any reason, no direct Appraisers joined during that period nor any Examiner was reverted to their earlier cadre, the error was corrected within a fortnight and vide order dated 17.8.1984 applicant along with others were posted as Appraisers while no fresh vacancy was created during this period. It is alleged that virtually the reversion order dated 31.7.1984 was not given effect. The applicant was paid salary for the post of Appraiser. Shri V.S.Nimbalkar was junior to the applicant was not reverted in view of the order of the Hon'ble High Court. Hence, this OA. for the above said relief.

8. The claim of the applicant is being resisted by the respondents alleging that the OA. is misconcieved and discloses no cause of action. The applicant was initially appointed as LDC in the Mumbai Customs Commissionerate on 4.8.1969. Thereafter,

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he was appointed as Preventive officer on 12.7.1972. Thereafter, he was sponsored for direct recruitment as Examiner and accordingly was appointed as direct recruit examiner w.e.f. 15.1.1973. As per his turn in the seniority of Examiners, he was promoted as Appraiser on adhoc basis w.e.f. 8.3.1983 by the DPC held on 7.3.1983 against the vacancies meant for direct recruitment. The Ministry then in the month of June, 1984 sponsored the candidates for the post of Appraisers for direct recruitment, the applicant along with other 11 officers were reverted to their parent grade on 31.7.1984. Thereafter, the applicant and other 6 officers who were reverted on 31.7.1984 were again promoted as Appraisers on adhoc basis w.e.f. 17.8.1984. The seniority list as on 1.1.1992 showing the inter se seniority of direct and promotee Appraisers was issued by the Commissionerate on 25.11.1992 and was circulated amongst the Appraisers. The said seniority list was prepared taking into account the judgement of this Tribunal in OA.No.362/90 on 18.7.1991 in case of Shri P.H.Mahajan & Ors. The principle laid down was that the seniority of the applicant should be fixed from the date they were continuously working on the post of Appraisers. Accordingly the seniority of adhoc promotee Appraisers since 1982 onwards was fixed from the date of their adhoc promotion subject to continuous officiation in the grade. In the case of the applicant, though he was promoted as Appraiser on adhoc basis on 8.3.1983 but he was also reverted on 31.7.1984 and again promoted on 17.8.1984. As such the applicant was not continuously officiating as Appraiser w.e.f. 8.3.1983 but w.e.f. 17.8.1984.

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17.8.1984.

9. The case of Shri V.S.Nimbalkar though he was promoted as Appraiser on adhoc basis on 21.4.1983, he was reverted along with the applicant as per Est.Office Order No.215/84 dated 31.7.1984. Shri Nimbalkar along with others have filed W.P.No.2538/82 in the High Court, Mumbai on the matter of promotion of reserved category candidates against the quota meant for them. In the meantime, he was promoted as Appraisers on adhoc basis on 21.4.1983 and was reverted vide Est.Office Order dated 31.7.1984. He filed a notice of motion No.1667/84 in the aforesaid Writ Petition and on the said notice of motion the Hon'ble High Court of Bombay directed to maintain status quo in respect of Shri Nimbalkar and in compliance to the High Court's aforesaid order, his reversion was cancelled. Vide another Est.Order No.223/84 dated 9.8.1984 and therefore he remained to continue as Appriaser on adhoc basis. As Such while determining his seniority in terms of the decision of Shri P.H.Mahajan date of his continuous officiation was taken as 21.4.1983 and accordingly he was placed in the seniority list issued on 25.11.92. The applicant represented vide his representation dated 27.11.1995 which was decided vide Memo. No.S/10-2-95 Est. dated 22.5.1996 rejecting the same. However, it is added that the said representation of the applicant has also been forwarded to the Ministry along with the detailed comments and the decision of the Ministry is awaited. The respondents also submitted the parawise comments in respect of the facts mentioned in O.A.

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10. The applicant was never posted as Preventive Officer, as such qualifying in the said examination, being placed on the top and above Shri M.G.Dabrai is an irrelevant fact has no bearing on the decision of the present case.

11. Similarly, promotion of Shri M.G.Dabrai, Preventive Officer along with the applicant to the post of Appraiser vide order dated 8.3.1983 is also an irrelevant fact has no bearing on the present case.

12. The infringement, if any, of the provisions of O.M. dated 22.12.1959 being a stale claim, the applicant cannot challenge the same after a period of 13 years on account of delay and laches and also being barred by limitation. [1998 (1) SC SLJ 168 B.S.Bajwa & Ors. vs. State of Punjab & Ors.].


13. The Hon'ble High Court of Bombay during the pendency of W.P.No.2538/82 filed by Shri V.S.Nimbalkar on notice of motion 1667/84 passed the order to maintain status quo in respect of Shri V.S.Nimbalkar protects the applicant of the said case, i.e. Shri V.S.Nimbalkar and none else as the said order was in personam. The case of the applicant may be on facts better one or similar one but as the applicant has not approached the Hon'ble High Court of Bombay or any other judicial forum, no order is passed in his favour, the said order was an interim order, the benefit of the said order cannot be extended to the applicant.

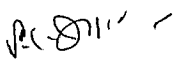
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14. As the post of Appraiser is to be filled by Direct Recruitment as well as by promotion with a fixed quota therefore, the applicants promotion was against the Direct Recruitment, while he was infact a promotee, in June 1984 on being sponsored the candidates for Direct Recruitment, applicant along with 11 officers were reverted to their parent grade on 31.7.1984. The pleadings of the applicant that no direct recruit Appraisers joined during the peirod nor any examiner was reverted to their earlier cadre and it was an error corrected after a fortnight or so not being truthful, not to be acted upon.

15. In the result, we do not find any merit in the OA., it is liable to be dismissed and is dismissed accordingly with no order as to costs.


(M.P. SINGH)
MEMBER (A)


(S.L. JAIN)
MEMBER (J)

mrj.

dt: 30.1.2002
Judgement desptd that
Applicant/Respondent
on 6.2.2002.