

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 383 / 96.

Dated this Monday, the 15<sup>th</sup> day of July, 2002.

Shri M. A. Vidyasagaran, Applicant.

Shri R. Ramamurthy, Advocate for the  
Applicant.

VERSUS

Union of India & Others, Respondents.

Shri V. D. Vadhavkar for Advocate for the  
Shri M. I. Sethna, Respondents.

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

Hon'ble Shri V. K. Majotra, 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

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

OS\*

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

PRE DELIVERY JUDGEMENT IN OA.NO. 383/96

~~Hon'ble Vice Chairman / Member (J) /~~  
Member (A) may kindly see the above judgement for  
approval / signature.

*PSM* / *V. Mahesh*  
~~V.C. / Member (J) / Member (A)~~

~~Hon'ble Vice Chairman~~

~~Hon'ble Member (J)~~

Hon'ble Member (A)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

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Dated this Monday the 15<sup>th</sup> day of July, 2002.

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

Hon'ble Shri V. K. Majotra, Member (A).

M. A. Vidyasagaran,  
Preventive Officer,  
New Customs House,  
Ballard Estate,  
Bombay - 400 038.

...

Applicant

(By Advocate Shri R. Ramamurthy)

VERSUS

1. Union of India through  
The Secretary,  
Ministry of Finance,  
Department of Revenue,  
North Block,  
New Delhi - 110 001.
2. Chief Commissioner of Customs,  
New Customs House,  
Ballard Estate,  
Bombay - 400 038.
3. Commissioner of Customs-I,  
New Customs House,  
Ballard Estate,  
Bombay - 400 038.

... Respondents.

(By Advocate Shri V. D. Vadhavkar  
for Shri M. I. Sethna)

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 to quash and set aside the Memorandum dated 10.01.1996 (Exhibit 'B') with the direction to the Respondents to treat the Applicant as belonging to the Examiner's cadre and he be extended all benefits on that basis including promotion to the cadre of Appraiser and if need be, to

*A. S. M.*

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cancel and withdraw the unilateral order passed by them regularising the services of the Applicant as Preventive Officer, promote the Applicant as Appraiser from the date any of his junior has been promoted to the said cadre under Estt. Office Order No. 85/95 dated 03.04.1995 with seniority, fixation of pay and arrears on that basis. In alternative, the Applicant has sought the seniority in the cadre of Preventive Officer w.e.f. 08.03.1983 and grant him promotion to the post of Superintendent of Customs on that basis with all consequential benefits.

2. The Applicant was appointed as a Stenographer in the Customs Department. He was selected for promotion to the post of Examiner (OG) alongwith U.D.Cs. in the year 1982, which was conducted by the Departmental Promotion Committee for Group 'C' post which consists of an interview and scrutiny of service records. The Applicant was called to appear for interview on 28/29.07.1982 and promoted w.e.f. 08.03.1983 in the cadre of Examiner (O.G).

3. The Applicant and three other ad hoc Examiners filed the Writ Petition No. 2030/84 in the Hon'ble High Court in order to avoid their probable reversion to the grade of Stenographer (SG). The said petition was thereafter withdrawn by the Applicants on getting assurance that they will not be reverted until their appeal pending with the C.B.E.C. is decided. The Board vide letter F.No. A-32018/53/85-AD III A dated 29.05.1986 communicated the rejection of appeal preferred by the Applicant and other Stenographers (SG) and directed to revert these officers. The aforesaid Board's decision was communicated to the

*Pr. J. -*

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Applicant and others vide Memorandum dated 16.06.1986. The Applicant alongwith others, namely - Smt. S. B. Nair, Smt. Lissy Baby and Smt. T. N. Thambi, again filed the Writ Petition No. 1594/86 in the High Court against the said decision to avoid their reversion. Hon'ble High Court rejected their petition on the admission stage itself vide order dated 08.01.1986 on the grounds that the relief sought by the petitioners were within the exclusive jurisdiction of the Administrative Tribunal and the Tribunal can determine the question relating to the Recruitment Rules under Section 14 and 28 of the Administrative Tribunals Act. The Applicant and others filed Appeal No. 627/86 in respect of the orders passed in the Writ Petition No. 1594/86. The Hon'ble High Court ordered to maintain the status quo till 20.08.1986 vide oral judgement dated 01.08.1986 in order to enable the petitioners to move the Tribunal in the matter of their grievance and also in the matter of interim relief which would thereafter come to an end unless in the meanwhile the Tribunal passes in the matter such orders as it deems just and proper. However, the petitioners did not move the Hon'ble C.A.T.

4. The Applicant and other Stenographers met the Chairman, C.B.E.C. regarding their grievance on 20.09.1986 and consequent upon this meeting, they were allowed to appear for the post of Preventive Officer instead of reverting them as Stenographer (SG) as the said Stenographer (SG) cadre was also one of the feeder cadre for the said promotion. Only the applicant qualified in the interview and physical test for the post of Preventive

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Officer and was promoted as Preventive Officer on ad hoc basis w.e.f. 30.01.1987 and until further orders.

5. A telex message dated 24.09.1986 was sent by the Collector of Customs, Bombay to the Central Board of Excise & Customs (Exhibit 'D'). The Applicant vide his letter dated 06.10.1986 to the Collector of Customs, Bombay, offered his conditional willingness to be considered for appointment as Preventive Officer subject to the administration giving him seniority with effect from 1983 and allow to rejoin the cadre of Examiner with all benefits in the event of lacuna in the Recruitment Rules being set right (Exhibit 'E').

6. The endorsement on the Establishment Office Order No. 42/87 dated 30.01.1987 reads - "The officers promoted are informed that their promotion is purely provisional and they will not have any claim for seniority in the cadre viz-a-viz those who have been regularly promoted nor will they be entitled to absorption in the Preventive Officer's Grade-I (OG) on the basis of such ADHOC Promotion."

7. Under Notification dated 26.12.1987 the Customs Department (Group 'C') Recruitment Rules, 1979 were amended and it was provided that Upper Division Clerks with 5 years regular service in the grade, Stenographer (Grade-II) and Stenographer (Grade-III) with 5 years regular service as Stenographer were made eligible for being promoted as Examiner (OG).

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8. The grievance of the Applicant is that the Respondents did not take any action to send the Applicant back to the Examiner's Cadre after the said amendment to the said Recruitment Rules making Stenographer Grade-II also eligible for promotion as Examiner (OG). The repeated requests to the authorities and after meeting the higher ups personally several times the Applicant sent the representation dated 12.04.1990 which was replied vide letter dated 18.09.1990 (Exhibit 'K'), another representation dated 26.09.1990 (Exhibit 'M') which was replied vide letter dated 09.01.1991 (Exhibit 'N').

9. Several employees who were selected and appointed in the year 1982 and 1983 as Examiners (OG) and who were asked to appear for fresh selection for so-called regular promotion to the same post filed Writ Petition No. 2155 of 1985 in the High Court at Mumbai challenging - being compelled to appear for a second round of selection for promotion to the post of Examiners (OG) and seeking confirmation of their promotions granted in the years 1982 and 1983. The said petition was transferred to Central Administrative Tribunal and registered as T.A. No. 390/87. The said petition was allowed by order dated 13.09.1991. A perusal of the said order makes it clear that neither the Applicant was one of the party in the said Writ Petition, nor the relief asked for in the said Writ Petition has any relevance to the present litigation.

10. The Respondents published the correct seniority list dated 29.3.1995 revising the seniority list earlier published on 30.12.1994 (Exhibit 'P'). In the said seniority list the names

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of Smt. S. B. Nair, Smt. Lissy Baby and Smt. T. N. Thampi have been shown at Sl. Nos. 55, 67 and 69 respectively, while the Applicant is shown at Sl. No. 68, though the date of regularisation is 31.12.1986 in respect of the Applicant as well as Smt. Lissy Baby and Smt. T. N. Thampi while in case of Smt. S. B. Nair it is 31.12.1983.

11. ~~As~~ The grievance of the Applicant is that he was senior to Smt. S. B. Nair, Smt. Lissy Baby and Smt. T. N. Thampi in the grade of Stenographer, as such, he must be placed above Smt. T. N. Thampi. He further claims that Smt. S. B. Nair, Smt. Lissy Baby and Smt. T. N. Thampi failed in the selection meant for the post of Preventive Officer. The Applicant sought to invoke the principles contained in Article 14 of the Constitution of India that when these three persons, namely Smt. S. B. Nair, Smt. Lizzy Baby and Smt. T. N. Thampi, who failed were not reverted to the post of Stenographer and after amendment of the Recruitment Rules and in view of the order of the Tribunal in T.A. No. 390/87 they were not further asked for selection for the post of Examiner, the Applicant cannot be deprived of the said benefit, who has given a conditional acceptance for the post of Preventive Officer. Hence, this O.A. for the above said relief.

12. ~~As~~ As stated above, the representation of the Applicant dated 12.04.1990 and 26.09.1990 were replied by the Respondents vide their reply dated 18.09.1990 and 09.01.1991 respectively. The Applicant thereafter kept silence over the matter, failed to

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agitate the same within the time prescribed under Section 21 of the Administrative Tribunals Act, 1985. The Applicant is now hit by the said provision as he failed to file the O.A. within one year of the decision of his representations.

13. The grievance of the Applicant regarding seniority list dated 29.03.1995 which is issued in view of the decision of the Tribunal in T.A. No. 390/87 cannot be said to be a grievance on the facts available on record. On the one hand, the Applicant claims that he was selected for the post of Preventive Officer, joined the said post and continues in the said post, even after rejection of his representations, failed to agitate the said matter timely and now takes the turn and claims the cadre of Examiner with all consequential benefits. The Applicant has selected a particular cadre, may be conditional which was not incorporated in the order, though it may be a unilateral decision but after the rejection of representations, he failed to agitate the said matter further, now he is estopped by conduct to agitate the said matter. In addition to this, in view of Section 21 of the Administrative Tribunals Act, 1985, to raise this plea after a lapse of more than five years from the date of said decision of the Respondents, the grievance is barred by time.

14. The Recruitment Rules were amended vide Notification dated 26.12.1987, the Applicant was appointed as Preventive Officer before amendment of the said Recruitment Rules, continues as Preventive Officer till his first representation dated 18.09.1990. The conduct of the Applicant clearly establishes

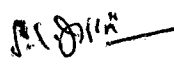
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that he was inclined to continue as Preventive Officer but subsequently when the Seniority List was published, he came to know that this decision was not correct. In view of the said circumstances now, he is not competent to take a stand otherwise when his earlier grievances which is barred by time and which he never intend to enforce the same. It is not worth belief that the Applicant was given any assurance that even after amendment to the Recruitment Rules he would be entitled to change of cadre.

15. In alternative, the Applicant has also sought the relief in respect of his cadre of Preventive Officer on the allegation that he was actually appointed as Preventive Officer under order dated 30.01.1987 while he was granted seniority on 17.05.1987. The working of the Applicant in equivalent cadre, i.e. to say, the grade of Examiner w.e.f. 08.03.1983 cannot entitle him to a seniority in the cadre of Preventive Officer. It is true that Preventive Officer promoted upto 31.12.1985 were appointed to the cadre of Superintendent of Customs but when the applicant was not borne in the said cadre as he was appointed on 30.01.1987 the Applicant is not entitled to any relief in respect of promotion to the post of Superintendent of Customs on upgradation of posts. It is not the only eligibility which entails an employee for promotion to a particular post but his seniority always plays an important role for considering him for promotion.

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

  
(V. K. MAJOTRA)  
MEMBER (A).

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