

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:574/99

DATE OF DECISION: 1.12.2000

All India Customs Appraising Officers Federation Applicant.
and others.

Shri M.S.Ramamurthy

Advocate for

Applicant.

Versus

The Union of India and others

Respondents.

Shri M.I. Sethna

Advocate for

Shri G.K. Masand

Respondents

CORAM

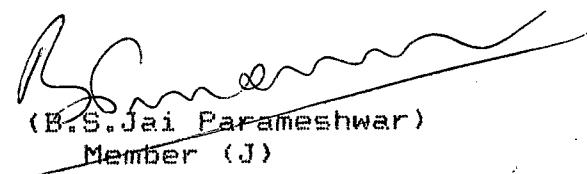
Hon'ble Shri B.S.Jai Parameshwar Member (J)

Hon'ble Ms. Shanta Shastry, Member (A)

(1) To be referred to the Reporter or not? X

(2) Whether it needs to be circulated to
other Benches of the Tribunal?

(3) Library.


(B.S.Jai Parameshwar)
Member (J)

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FRIDAY the 1st day of DECEMBER 2000

CORAM: Hon'ble Shri B.S. Jai Parameshwar, Member (J)

Hon'ble Ms. Shanta Shastry, Member (A)

1. The All India Customs Appraising Officer's Federation, Having its office at New Custom House, Ballard Estate, Mumbai. through its General Secretary Mr. C.A.B. Rebello Residing at Fantasia Sherlesy Rajan Road Bandra (West) Mumbai.
2. K.A. Shaikh Residing at Flat No. 5473, III Floor Bldg. No. 199, M.I.G. Colony Behind Old Panth Nagar, P.O. Panth Nagar, Ghatkopar (East) Mumbai.
3. Fateh Singh Residing at Flat No. 59, Bldg., No. 3, 4th floor, New Customs Quarters Five Gardens, Adenwala Road, Matunga (East), Mumbai.
4. P.N. Balchandran, Residing at 402, Nikita, 'A' Wing, Nikita Natasha Co-Op. Housing Society Ltd., Amrit Nagar, Ghatkopar (West), Mumbai.
5. V.K. Arya, Residing at Flat No.188, Bldg. No.9 Sector VII, C.G.S. Colony, Antop Hill, Mumbai.Applicants.

By Advocate Shri M.S. Ramamurthy with Shri R. Ramamurthy.

V/s

1. Union of India through the Secretary, Ministry of Finance, Department of Revenue North Block New Delhi.

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1. Union of India through the Secretary, Ministry of Finance, Department of Revenue North Block New Delhi.

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2. The Chairman
Central Board of Excise
and Customs, North Block,
New Delhi.

By Advocate Shri M.I. Sethna with Shri V.D. Vadhavkar.

3. All India Customs Officers (Direct Recruit Appraisers Association) through its General Secretary Shri Sharad C. Shrivastava, New Custom House, Ballard Estate, Mumbai.

4. Sudhir Kumar M. Patel
Appraiser,
Customs Department
O/O Commissioner of Customs,
Jawahar Custom House,
Nhava-Sheva, District Raigad
Maharashtra.

5. S.V. Venugopalachar
Appraiser
Customs Department
O/O Commissioner of Customs,
New Custom House,
Ballard Estate. Mumbai.

6. G.V. Reddy
Appraiser
Customs Department
O/O Commissioner of Customs
New Custom House,
Ballard Estate, Mumbai ... Respondents.

By Advocate Shri G.K. Masand with Ms. Gode.

ORDER (ORAL)

{Per Shri B.S. Jai Parameshwar, Member(J)}

Applicant No.1 is the Association of Customs Appraising Officers represented by its General Secretary. Like wise applicant No.2 to 5 are Members of applicant No.1 Association and ^{are} they ^{also} working as Customs Appraising Officers. Likewise respondent No.3 is the Customs officers Direct recruit Appraisers Association represented by its General Secretary. Respondents No 4 to 6 are Members of said Association who are working as ^{officers} Customs Appraising Direct Recruits.

2. The applicants herein are aggrieved by the impugned seniority list dated 18/13.1.1998 Exhibit A. Their main grievance is that the inclusion of Appraisers at serial No.1044 to 1100 in the seniority list en-bloc senior to promotees is irregular. The main contention is that 57 officers are the direct recruits appointed after coming into operation of the department of Revenue customs Recruitment Rules 1988 i.e. after 1.1.1988. They have relied upon the decision of the Hon'ble Supreme Court in the case of Gaya Baksh Yadav's case Exhibit B page 58 to 66 of the OA. They submit that as per the Recruitment Rules 1988 Direct Recruits and promotees are 50% : 50% and therefore they have to be placed in 1:1 ratio in the seniority list.

3. Hence they have filed this application for the following reliefs:

(a) that the respondent Nos 1 and 2 be directed to forthwith cancel and withdraw the All India Seniority List/Consideration List published under Circular dated 13.1.1998 and publish a fresh Seniority List / Consideration List, assigning seniority to the Appraisers shown against Sr. Nos. 1044 to 1100 on the basis of continuous officiation in the posts of Appraisers.

(b) that the Respondent Nos 1 and 2 be directed to assign seniority to the promotee - Appraisers in the new All India Seniority / Consideration List, to be published on the basis of the continuous officiation counting service from the first date of their appointment on the part of Appraiser, ignoring the routine label "ad hoc" given to such appointments initially.

(c) that the Respondent Nos. 1 and 2 be directed to include in the new All India Seniority List / Consideration List to be published, 156 left out promotee - Appraisers selected and promoted on the basis of DPCs held upto the year 1994 - 95 and fix their seniority on the basis of continuous officiation ignoring the routine label "ad hoc" given to their appointments.

(d) to hold and declare that the seniority assigned to the direct recruit Appraisers whose names are shown against Sr. No. 1044 to 1100 in the impugned Seniority List dated 13.1.1998 is illegal, arbitrary and contrary to statutory rules and Judgements of the Hon'ble Supreme Court.

(e) that the Respondent Nos. 1 and 2 be permanently restrained from acting upon the impugned All India Seniority List / Consideration List dated 13.1.1998 for the purpose of grant of promotions to Group 'A' service . from the category of Appraisers.

4. On 30.7.1999 an interim relief was passed which reads as under:

As far as interim relief is concerned, we direct that any promotion made in pursuance of the impugned seniority list, namely - All India Seniority List / Consideration List of Customs Appraisers Group 'B' Direct Recruits and Promotees, vide No. A-23011/1/94-Ad.II(A) dated 13.1.1998, shall be subject to further or final orders to be passed in the OA.

5. The respondent Nos 1 and 2 have filed reply. Para 6 to 8 of the reply reads as under:

6. I further say that, the seniority / consideration list circulated vide letter F.No.A-23011/1/94-Ad.IIA dated 13.1.1998 comprises of 445 Customs Appraisers both direct recruits and promotees out of which Customs Appraisers recruited on the basis of Civil Service Examination, 1986 and 1987 as per Customs Appraisers Service Class II Recruitment Rules, 1961. The inter-se seniority of 57 Customs Appraisers appearing at S.No. 1044 to 1100 who have been recruited on the basis of Civil Service examination 1986 and 1987 as per the Customs Appraisers Service Class II Recruitment rules, 1961 has been determined on the basis of continuous officiation as has been done in the seniority list circulated vide letter F.No.A-23011/1/96 dated 12.11.97. It is significant to note that in its judgement given in the case of Gaya Baksh Yadav V/s Union of India and others, the Hon'ble Apex Court has made it clear that where fixed quota is available in the feeder cadre, Mervyn Continho would prevail and between 1961 and 1.1.88, the principle of continuous officiation as per the

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principle enunciated by the Hon'ble Apex Court would govern. Therefore these 57 Customs Appraisers recruited on the basis of 1961 Recruitment Rules on the basis of Civil Services Examination, 1986 & 1987 (vacancies pertaining to the year 1986 & 1987) but joined after 1.1.88 have been assigned seniority ex-bloc senior to the promotees empanelled by the DPC for the vacancies 1988-89 and 1989-90. The Customs Appraisers Recruitment Rules, 1988 came into force with effect from 1.1.88 wherein it provides that 50% of the vacancies filled by direct recruitment through Civil Services Examination conducted by the UPSC and the remaining 50% by promotion from the feeder grades of Examiners, Preventive Officers and Office Superintendents in the ratio of 75:20:5 respectively. The seniority of these officers has been fixed on rota quota as per the Recruitment Rule of 1988 and existing Rules of the Government on the subject.

7. In view of the above, I say and submit that the All India combined consideration / seniority list circulated vide letter dated 12.11.97 and 13.1.98 has been prepared as per the directions of Hon'ble Supreme Court in its judgement dated 8.5.96.

8. I deny the correctness of the allegations that applicants no. 2, 3 and 4 have been shown junior to the Customs Appraiser direct recruit who join during the year 1989. The applicants were promoted against these vacancies pertaining to the year 1989 as per the Customs Appraisers Recruitment Rules, 1988 and their seniority has been fixed as per the quota-rota rule prescribed in the Recruitment Rules whereas the seniority of the Customs Appraisers appearing at S.No. 1059 - 1079 and 1100 in the seniority list dated 13.1.98 has been fixed on the basis of continuous officiation as they were recruited as per the Recruitment Rules 1961.

6. The Direct Recruittees Appraiser's Association and private respondents have filed reply. Their main contention is that the application is not maintainable. The 57 officers included in the seniority list 1044 - 1100 are the direct recruittees with respect to the vacancies ^{which} arose in the year 1986-87. The official respondents have properly placed them in the impugned seniority list. They relied upon the O.M. dated 7.2.1986 which came into

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force with effect from 1.3.1986. Further they submitted that as per the 1961 rules a certain percentage of quota for direct recruits not less than 50% had been included. Therefore they are to be placed above the promotees whenever there are promotees in excess with the prescribed quota. In support of this contention they relied on para 2.4.4. which reads as follows:

2.4.4. With a view to curbing any tendency of under reporting / suppressing the vacancies to be notified to the concerned authorities for direct recruitment. It is clarified that promotees will be treated as regular only to the extent to which direct recruitment vacancies are reported to the recruiting authorities on the basis of the quotas prescribed in the relevant recruitment rules. Excess promotees, if any, exceeding the share falling to the promotion quota based on the corresponding figure. Notified for direct recruitment would be treated only as ad hoc promotees.

Then they contended that 57 officers are recruited earlier to the recruitment rules 1988 and accordingly they have been placed en-block senior to the applicants. The 1998 recruitment rules are at page 223 of the paper book. They relied upon the phrase in the first para of the Rules 1988.

"Except as respects things done or omitted to be done before such supersession, the President hereby makes the following rules regulating the method of recruitment to the post of Customs Appraiser in the Collectorates of Customs.".....

7. After hearing the learned counsel for the parties the following points arise for our consideration.

- (a) Whether the application is not maintainable or barred by the principles of res-judicata?
- (b) Whether the respondent Nos. 1 and 2 are justified in placing the 57 Appraisers at serial No. 1044 - 1100 in the impugned seniority list?

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(c) Whether the impugned seniority list is liable to be interferred or not?

POINT (a)

8. The applicant Nos 2 to 5 are the promotees. The officers at serial No. 1044 - 1100 are the direct recruits.

9. Earlier the Customs Appraisers were governed by the 1961 Rules which is at page 164 - 181 of the reply filed by the official resondents. The respondents relied upon Rule 4(c) which reads as follows:

The percentage of posts to be filled by direct recruitment by competitive examination or by selection otherwise than by competitive examination shall notbeless than 50 plercent of the total cadre of appraisers.

10. Further they relied upon the observations made by the Hon'ble Supreme Court in the case of Gaya Baksh Yadav V/s Union of India and others para 16 of the judgement is at page 66 of the paper book which reads as follows:

16. We must bear in mind and strive that there should, in the interests of justice be an end to litigation. It has also to be borne in mind that the attempt herein is not to amalgamate separate services. Here the service was and is one i.e. an All India Service of Appraisers. Prior to the Rules 50% posts in the service were filled by direct recruitment and the seniority of the selectees was fixed by the UPSC in the order of selection. Inter se seniority amongst direct recruits was thus a sealed event. That was the foundation. Entry into service by promotion was fortuitous dependent on the exercise by the departmental committees in the respective Customs Houses and the outcome. Mervyn Coutinho case tells the way to work it out. In their respective quotas direct recruits as well as promotees rotate the quota system as (ssic was) 1:1 as mentioned in Mervyn Coutinho case. But after the Rules of 1961, when the quota system

has been discarded Mervyn Coutinho rule cannot apply. As per Rule 4-C of the 1961 Rules, the allocation of at least 50% posts in favour of direct recruits is ensured at all times. The enlistment of the direct recruits, allocated to Customs Houses on the basis of their selection, would obviously present no difficulty. Equally enlistment of promotee Appraisers, since coming from feeder sources of Customs Houses, from the date of their promotion, would present no difficulty. Both would be entitled to placement in the joint seniority list on the basis of their continuous officiation.

11. In the first instance the learned counsel for the Direct Recrutees Association contended that the application is not maintainable. It is on the ground that the applicants had earlier approached the Hon'ble Supreme Court challenging the very seniority list in WP No.205/98. The order passed by the Supreme Court in WP No. 205/98 is reproduced below:

Learned counsel appearing for the petitioner seeks permission to withdraw these matters in order to approach the appropriate forum. Accordingly, they are dismissed as withdrawn.

Ms. Shyamala Pappu started per arguments at 11.00 a.m. and concluded at 1.00 p.m. Thereafter Dr. Rajiv Dhawan argued his case from 2.00 p.m. to 2.25 p.m. After that Mr. Anoop Choudhary was on his legs till 2.45 p.m. Mr. MN Krishnamani argued his case for 10 minutes. Mr. PP Rao then made his submissions till 3.45 p.m. Thereafter Mr. Rakesh Dwivedi argued his case for five minutes. Ms. Shyamala Pappu then made her reply submissions when the Court reserved the judgement.

12. Relying upon this order both the counsels for the official respondents and for the private respondents vehemently contended that even otherwise the application is barred by principle of res-judicata. As against this, the learned counsel for the applicant submitted that the Supreme Court has not decided any point involved in this application and hence this

application is not barred by principle of res-judicata. He submitted that Hon'ble Supreme Court permitted the applicants to withdraw the Writ Petition.

13. We have considered these submissions. The learned counsel for the applicants before the Hon'ble Supreme Court prayed to withdraw in order to approach the proper forum. It is in this background the Hon'ble Supreme Court dismissed the Writ Petition as withdrawn. Further it has recorded the proceedings of the day in the order. We are not prepared to accept the arguments of the learned counsel for the respondents that the application is barred by principle of res-judicata and not maintainable. Hence point (a) is answered against the respondents.

POINT (b)

14. In the impugned seniority list at serial No.1044 - 1100 (57 Appraisers) have been included. The main contention of the official respondents is that they were recruited against the vacancies arisen in the year 1986 and 1987. Therefore they are governed by the Recruitment Rules 1961. Thus they justified their action in placing the 57 officers in the seniority list.

15. In order to substantiate the fact that the 57 officers were recruited against the vacancies for the year 1986 - 87 the official respondents have not placed any material on record. We could have accepted if the process of selection had been completed before 31.12.1987 and for any technical reasons,

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letters of appointment could not have been issued. Even accepting for the moment that these 57 officers were appointed against the vacancies arose in 1986 - 87, their date of entry into service determines their seniority. In this connection the learned counsel for the applicant relied upon the decision of the Hon'ble Supreme Court in Suraj Prakash Gupta & Others V/s State of J & K others (reported in 2001 SC SLJ 427). Para 76 and 77 of the order is as under:

76. We have next to refer to one other contention raised by the respondents-direct recruits. They claimed that the direct recruitment appointment can be antedated from the date of occurrence of a vacancy in the direct recruitment quota, even if on that date the said person was not directly recruited. It was submitted that if the promotees occupied the quota belonging to direct recruits they had to be pushed down, whenever direct recruitment was made. Once they were so pushed down, even if the direct recruits came later, he should be put in the direct recruit slot from the date on which such a slot was available under direct recruitment quota.

77. This contention, in our view, cannot be accepted. The reason as to why this argument is wrong is that in service Jurisprudence, a direct recruit can claim seniority only from the date of his regular appointment. He cannot claim seniority from a date when he was not born in the service. This principle is well settled. In N.K. Chauhan V. State of Gujarat 1977 (1) SCC 308 Krishna Iyer stated:

"later direct recruit cannot claim deemed dates of appointment for seniority with effect from the time when direct recruitment vacancy arose. Seniority will depend upon length of service."

Again in A. Janardhana V. Union of India 1983 (2) SCR 936 it was held that a later direct recruit cannot claim seniority from a date before his birth in the service or when he was in school or college. Similarly, it was pointed out in A.N. Pathak V. Secretary to the Government 1987 Suppl SCC 763 that slots cannot be kept reserved for the direct recruits for retrospective appointments.

16. When the official respondents took particular stand in justifying the inclusion of 57 officers at serial No. 1044 - 1100, they should have placed sufficient materials on record to substantiate their contention. From the inter-se seniority list it is disclosed that they were appointed on 20.6.88, 23.10.89 and 29.5.89. That means after the recruitment rules 1988 came into operation.

17. According to the recruitment rules 1988 Rota Quota system in ratio 1:1 is indicated. The respondents authorities should have placed these 57 officers in accordance with recruitment rules 1988 in the impugned seniority list. Had they produced material to show that these 57 officers were governed by the recruitment rules 1961, we would have accepted their contention. In the absence of any such material and as observed by the Hon'ble Supreme Court in the case of Suraj Parkash Gupta and others V/s State of J & K Others we are of the view that the direct recruits cannot claim seniority with retrospective dates. The appointment date indicated in the seniority list clearly show that they were appointed after 1.1.1988.

18. In the facts and circumstances we are of the considered opinion that placement of 57 officers at serial Nos 1044 - 1100 is not proper and justifiable.

19. The learned counsel for the respondent No.1 and 2 relying upon the observations made by the Hon'ble Supreme Court in para 16 of Gaya Baksh Yadav V/s Union of India and others extracted above, pleaded that the Tribunal has to put an end to the



litigation with regard to inter-se seniority of the Customs Appraisers Group 'B' between promotees and direct recruits. Whenever they finalise and publish the seniority list, either the direct recruit Appraiser's Association or the Promotees Association challenged the same and thus stall the progress in the administration. Thus he submitted that this Tribunal may put an end to this sort of litigation.

20. Considering these submissions the Bench had at one stage suggested both the Association to submit their grievances with regard to the inter-se seniority list dated 13/18.1.1988 to the Chief Commissioner of Customs and it may constitute a committee to go into their grievance. In fact this suggestion was not accepted by the learned counsel for the applicants. It is his submission that the official respondents have not taken pains to prepare the seniority list in accordance with the recruitment rules of 1988. He submitted that the department shall have prepared the seniority list in accordance with the recruitment rules 1988 in the ratio 1:1 between the direct recruits officers and promotee officers.

21. He further submitted that the direct recruit officers Association has also challenged the impugned seniority list dated 13/18.1.1988 in OA 855/98.

22. On perusal of the averments made by the respondents and after going through the Rule position we are convinced that there was absolutely no justification whatsoever for the official

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respondents to place these 57 officers, direct recruit Customs Appraisers Group 'B' at serial Nos. 1044 - 1100 in the impugned seniority list. They attempted to justify that these officers were recruited against vacancies of the year 1986 - 87. Further they have not been able to place any material to justify their action. We feel that it is in the hands of the official respondents to put an end to the dispute regarding the inter - se seniority list of Customs Appraisers of Group 'B' officers. We feel in case the official respondents adhere to the rules 1988 the dispute will be more or less solved.

23. In this connection, we feel it proper to reproduce herein the observations made by the Hon'ble Supreme Court in the case of S.T. Rooplal and Anr. V/s Lt. Governor through Chief Secretary, Delhi and Others (Reported in 2000 (2) AISLJ 395. In para 26 the Hon'ble Supreme Court has been placed the observations as follows:

Before concluding, we are constrained to observe that the role played by the respondents in this litigation is far from satisfactory. In our opinion, after laying down appropriate rules governing the service conditions of its employees, a State should only play the role of an impartial employer in the inter-se dispute between its employees. If any such dispute arises, the State should apply the rules laid down by it fairly. Still if the matter is dragged to a judicial forum, the State should confine its role to that of an *amicus curiae* by assisting the judicial forum to arrive at a correct decision. Once a decision is rendered by a judicial forum, thereafter the State should not further involve itself in litigation. The matter thereafter should be left to the parties concerned to agitate further, if they so desire. When a State, after the judicial forum delivers a judgement, files review petition, appeal etc. it gives an impression that it is espousing the cause of a particular group of employees against another group of its own employees, unless of course there are compelling reasons to resort to

such further proceedings. In the instant case, we feel the respondent has taken more than necessary interest which is uncalled for. This act of the State has only resulted in waste of time and money of all concerned.

24. We hope and trust that the respondent No. 1 and 2 will judiciously and impartially review the seniority list of Customs Appraisers Group 'B'.

25. Hence we pass the following order:

(a) The application is hereby allowed.

(b) The impugned seniority list dated 13/18.1.1998 is hereby set aside.

(c) We hold that inclusion of 57 direct recruits officers at serial No. 1044 - 1100 in the impugned seniority list is unjustified and not called for.

(d) The respondents No. 1 and 2 shall revise the seniority list of Customs Appraisers Officers Group 'B' strictly in accordance with the rules 1988.

(e) Time for compliance 4 months from the date of receipt of copy of this order.

(f) Till such time any promotion from the Customs Appraisers Group 'B' shall be made.

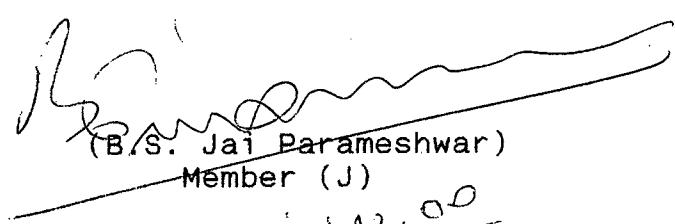
26. The OA is disposed of. Hence M.P. does not survive for consideration.

27. Parties are directed to bear their own costs

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(Ms. Shanta Shastry)
Member (A)

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(B.S. Jai Parameshwar)
Member (J)

1.12.00