

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.879/1999.

Wednesday, this the 12th day of December, 2001.

Hon'ble Shri Justice Birendra Dikshit, Vice-Chairman,
Hon'ble Smt. Shanta Shastry, Member (A).

S.L.Ghule,
Assistant Commissioner
of Customs, New Custom House,
Ballard Estate,
Mumbai - 400 038.
(By Advocate M.S.Ramamurthy)

...Applicant

v.

1. Union of India through
the Secretary,
Ministry of Finance,
Government of India,
Department of Revenue,
North Block,
New Delhi - 110 001.
2. The Chairman,
Central Board of Excise & Customs,
Ministry of Finance,
Government of India,
North Block,
New Delhi - 110 001.
3. Joint Secretary (Administration),
Central Board of Excise & Customs,
Ministry of Finance, Government of
India, North Block,
New Delhi - 110 001.
4. Commissioner of Customs
(General), New Custom House,
Ballard Estate,
Mumbai - 400 038.
5. P.K.Sen,
formerly employed as Assistant Commissioner
of Customs, and retired.
335/5, Ahirwad, 12th Road,
Khar,
Mumbai - 400 052.

...Respondents.

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

: O R D E R (ORAL) :

Smt.Shanta Shastry, Member (A).

The reliefs sought in this OA by the applicant are as

...2.

follows:

"(a) that the Respondents be directed to take immediate steps to grant promotion to the Applicant in the grade of ~~Applicant in the grade~~ of Assistant Collector of Customs and Central Excise, Junior Time Scale from the due date notionally i.e. from 10.9.1990 with all consequential benefits;

(b) that the Respondents be directed to take steps to grant promotion to the Applicant to the Senior Time Scale Group 'A' in the Indian Customs and Central Excise Service w.e.f. 10.9.1994 notionally with all consequential benefits such as fixation of pay retrospectively, arrears of pay with interest.

(c) that the Respondents be directed to fix the seniority of the Applicant in the All India Seniority List of Customs Appraisers at the proper place, based on the principle of continuous officiation, as indicated in the seniority list published by the Association of Appraisers;

(d) that it be declared that seniority in the case of direct recruits cannot be fixed on the basis of date of declaration of results by the UPSC in the case of non-experts or date of recommendation by UPSC in the case of experts, as done by the Respondents in the Seniority List published under Circular dt. 9.4.1997 and that seniority is to be granted only from the date of actual appointment or based on continuous officiation.

(e) that such other and further relief or reliefs be granted as may be considered just and proper in the facts and circumstances of the case.

(f) that the costs of this application be provided for."

2. The main grievance of the applicant is that he was not promoted to the grade of Assistant Collector of Customs and Central Excise Group 'A' Junior Time Scale from the due date, so also to the Senior Time Scale from the due date. The other grievance is that Respondent No.5 who is junior to the applicant was granted promotion to Group 'A' much before the applicant, though he was lower down in the seniority list.

...3.

3. The applicant is a direct recruit Examiner appointed in the Customs Department in Mumbai. He was promoted as Customs Appraiser on 25.6.1982. However, it was treated as an ad-hoc promotion and by the subsequent order it was regularised w.e.f. 8.1.1989. The applicant had filed OA No. 362/90 along with some other similarly placed Appraisers claiming regular promotion w.e.f. the initial date of promotion to the cadre of Appraisers. The OA was allowed by the Tribunal by Judgment dt. 18.7.1991. The seniority list was also directed to be corrected accordingly. In pursuance of the Judgment, the Respondents issued Establishment Office Order No.307/92 on 21.9.1992. In this applicant was shown⁴ to have been regularised as Customs Appraiser w.e.f. 25.8.1982 and the Respondent No.5 i.e., Shri P.K.Sen was shown to have been regularised w.e.f. 8.3.1983. A further combined seniority list of Appraisers which was published vide Circular dt. 25.11.1992 also showed the applicant to be senior to Respondent No.5.

3. In the meantime, a dispute regarding interse seniority between direct recruits and promotee Appraisers Group 'B' filed by one Gaya Baksh Yadav Vs. Union of India & Ors. in the ^{years} 1987 to 1988 was before the Hon'ble Supreme Court of India. The same was disposed of by a Judgment and Order dt. 8.5.1996. The Respondents were directed to prepare a fresh All India combined seniority list of Appraisers on the basis of continuous officiation of the incumbents in the posts of Appraisers. The Respondents, then started the exercise for reviewing the seniority based on this Judgment. During the pendency of the case before the Supreme Court, the Supreme Court had also passed interim orders on 22.12.1989, 13.8.1990 and

13.3.1992 directing the Respondents to fill up the vacancies in the grade of Assistant Commissioner (JTS), Assistant Commissioner (STS) and Deputy Commissioner on ad-hoc basis subject to the final Judgment. Accordingly, the Officers who were promoted to the grade of Assistant Commissioner JTS on ad-hoc basis were promoted to the grade of Assistant Commissioner STS on ad-hoc basis by notification dt. 19.12.1996. However, in view of the Judgment of the Supreme Court dt. 22.11.1996 Review DPCs were held to take into consideration the proper placement of the applicants in the seniority list and to review the ad-hoc promotions to the grade of Assistant Commissioner JTS. The Review DPC drew panels from 1980 to 1996-97 for regular promotion of Appraisers to the grade of Assistant Commissioner (JTS). The Respondents have submitted that the applicant and Shri P.K.Sen Respondent No.5 did not find place in these panels upto 1996-97 as they were much below in the seniority list. The last person who was promoted on a regular basis was one Shri Raghunath who was at Sl.No.662 in the seniority list. Thus, the turn of the applicant had not come and further panels for regular promotion would be drawn up in due course.

4. In the meantime, the applicant was promoted to Assistant Commissioner (JTS) on ad-hoc basis and further as Assistant Commissioner (STS) on ad-hoc basis. The applicant has not so far come up in the appropriate zone of consideration which has been prepared as per Rules and as per the seniority from time to time. The zone of consideration as per the DPC held in 1995-96 included General candidates upto Sl. No.722 viz. upto

Shri T.Rajendran . During the DPC of 1996-97 it had reached only upto Sl. No.699, whereas, in the seniority list dt. 12.11.1997 showing the position of Appraisers as on 31.12.1987, The applicant is at Sl.No.717 and even the Respondent No.5 is at Sl.No.803. Thus the Respondent No.5 has all along been shown junior to the applicant in the latest seniority lists. He should therefore have no cause for grievance.

5. The learned counsel for the applicant contended that Respondent NO.5 was already promoted and he has even retired though junior to the applicant. The Respondents, however, rebut this and state that it was only an ad-hoc promotion.

6. Shri M.S.Ramamurthy learned counsel for the applicant submitted that after the matter had been posted for hearing he had tried to get in touch with his client and had written letters on 3.9.2001 and 30.10.2001 to seek instructions, in the light of the replies filed by the Respondents. However, he had not received any response from the applicant. He has therefore, expressed his inability to assist the Court in this matter. Since the Respondents have produced the complete record including the seniority list of 12.1.1997 showing the seniority as of 31.12.1987 of Appraisers Group 'B', we have proceeded to decide the matter on merits.

7. We have heard both the Learned Counsel and have perused the record produced. It is very clear from this that the applicant

had not come under the zone of consideration before the Review DPCs held for regularisation of promotions in the grade of Assistant Commissioners (JTS) and Assistant Commissioner (STS). In view of this factual position, in our considered view, the application fails. In the result, the OA is dismissed. No costs.

Shanta

(SHANTA SHASTRY)
MEMBER(A)

B. Dikshit

(BIRENDRA DIKSHIT)
VICE-CHAIRMAN

B.