

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NOs.485/99 & 556/99

Dated this the 10th day of July 2001.

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

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

1. The Mumbai Customs Preventive Service Association represented through President Shri Anupam Majumdar

2. S.P.Dudeja

3. R.S.Potdar

4. Asutosh Bala

5. V.B.Singh

6. Atanu Choudhury

(Applicants in OA.485/99)

(Applicant in OA.556/99) Applicants

All are Superintendents of Customs (Preventive) presently working under the Commissioner of Customs, New Custom House, Ballard Estate, Mumbai.

By Advocate Shri V.S.Masurkar

vs.

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

2. The Commissioner of Customs, New Custom House, Ballard Estate, Mumbai.

3. Joint Secretary (Adm.) through The Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi.

4. President/Gen.Secretary, All India Customs Officers (Direct Recruit) Appraisers Association, Mumbai.

5. President/Gen.Secretary,
All India Customs Appraising
Officers Association
(Promotee Appraisers)

C/o Commissioner of Customs,
New Custom House,
Ballard Estate, Mumbai.

... Respondents

By Advocates Shri M.I.Sethna
along with Shri V.D.Vadhavkar
for R-1,2 & 3, Shri J.P.Deodhar
for R-4 and Shri M.S.Ramamurthy
for R-5.

O R D E R

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

These are (OA.Nos.485/99 & 556/99) the applications under
Section 19 of the Administrative Tribunals Act,1985 seeking the
following reliefs :-

"8 (a) that it be pleased to quash the impugned
Rules, i.e. Rule 18(2) of the Indian Customs and
Central Excise Group 'A' Service Rules (Amended),
1998 as being ultravires of Articles 14 and 16 of
the Constitution of India.

(b) and issue an appropriate order or direction
declaring that the above said impugned Rules
should be read down/construed and/or modified in
a manner, such that it provides proportionate and
proportional opportunities in the Grade VI Group
'A' posts to the cadres of the Superintendents of
Customs (Preventive) and the Appraisers of
Customs vis-a-vis their respective numerical
cadre strengths in the Group 'B' cadre as changed
over the period of time by redetermining the
quota of the two feeder cadres of Customs.

(c) That the Respondents file an Affidavit, indicating the cadre strengths of the Superintendents of Customs (Preventive) and the Appraisers of Customs from 1979 onwards till date, and that they appportion the Customs share of Group 'A' posts accordingly by a fresh determination as directed by the Hon'ble Supreme Court in their order in the interim application No. 6 of 1998 in Writ Petition No. 306 of 1988.

(d) And issue appropriate order and/or direction, such that, when the backlog of the 125 pending vacancies of the Superintendents of Customs (Preventive) are filled up and/or any other vacancies which may arise as a result of this Hon'ble Tribunal's order and/or direction, the respondents may be asked to redetermine the date of promotion/seniority in the Seniority List of Superintendents of Customs (Preventive) as the case may be.

(e) And issue any other appropriate order and/or directions, considering the facts and circumstances of the case, in the interests of justice and fairness.

(f) The costs of this Application be provided for."

2. The OA.No.485/99 is being filed by Applicant No.1 being the Association of the officers of the Mumbai Customs Preventive Service and the Applicant No. 2 to 5 are Superintendents of Customs (Preventive) which is a Group 'B' post, the post above Group 'B', being Group 'A', i.e. Grade VI of service which is the post of Assistant Commissioner of Customs and Central Excise. The appointment to the said post is 50% by Direct Recruitment and 50% by promotion. The Direct Recruit Assistant Commissioner are appointed through the Civil Service Examination conducted by the Union Public Service Commission (UPSC) while the promotee quota of the posts are filled up from among the following three feeder cadres of the Central Excise and Customs Department :-

- (a) Superintendents of Central Excise - Group 'B'
- (b) Superintendents of Customs(Preventive) - Group 'B'
- (c) Appraisers of Customs - Group 'B'

3. The posts mentioned at (a) & (b) are 100% by promotion from the Group 'C' posts of Inspectors of Central Excise and Preventive Officers of Customs respectively. The post of Appraisers as mentioned at (c) are filled up 50% by Direct Recruit and the remaining 50% by promotion mainly from the Group 'C' posts of Examiner of Customs only.

4. The present application is being filed by the applicants to consider the quota falling to the share of Customs department which is to be apportioned between the two feeder cadres of the Customs - the Superintendents of Customs (Preventive) and the Appraisers of Customs.

5. The brief facts as brought out by the applicants are that till 1987, for the promotion to the Group 'A' posts for each of the above three feeder categories, the respondents, with concurrence of the UPSC and in consultation with the service Association of the Central Excise and Customs Department, had laid down that the promotion quota would be fixed by every Departmental Promotion Committee (DPC) in Direct Proportion to the numerical strength of the respective cadres.

6. In the year 1987, the respondents promulgated "The Indian Customs and Central Excise Group 'A' Service Recruitment Rules, 1987" wherein for the purpose of making promotions to the Group 'A' post from the Group 'B' post, the quota system of making promotion, which had been followed till then was given away and promotions were to be based in view of Rule 18 (2)(a) & (b) on a single combined seniority list of all the feeder cadres, based on the length of service in the Group 'B' post and subject to maintaining the interse seniority list of each feeder cadre. Aggrieved by this change of principle, the Federation of the Central Excise Officers filed a Writ petition No. 306/1988 before the Apex Court. In the said Writ Petition the respondents made certain proposals to the various service Associations and to the Apex Court which are as under :-

5.1 The proposal is that the promotee quota vacancies in the Group 'A' grade of Senior Supdt./Assistant Collector may be filled from Central Excise and Customs Group 'B' officers in the ratio of 2:1, the number of vacancies falling to the share of Customs group 'B' officers being further apportioned between the two feeder cadres of Customs, namely, Customs Appraisers and Customs (Preventive) Superintendent in the ratio of their respective sanctioned strength (which rounded off to workable ratio comes to 2:1).

At the time of submitting the said proposal, the All India Cadre Strength of Superintendents of Customs (Preventive) was 427 while that of Appraisers of Customs was 539.

" Para 6.3 of the said proposal of the respondents further states :

"6.3. To sum up, according to the above formula, each bunch of 9 vacancies in the promotion quota from the Group 'B' feeder cadres will be apportioned in the ratio of 6:1:2 consisting of the Central Excise Superintendents, the Customs (Preventive) Superintendents and the Customs Appraisers respectively. To illustrate, if 9 vacancies exist for the promotee quota in a Group 'A' entry point, the first six vacancies would go to the Superintendent of Central Excise, the seventh vacancy to the Customs (Preventive) Superintendent and the eighth and ninth to the Appraisers. Further vacancies were to be filled up on the basis of a cycle in the above order."

7. The proposal of the respondents was accepted by the Apex Court and incorporated the same, i.e. 5.1 in para 16 of its judgement dated 22.11.1996 in Writ petition No. 306/1988 with a direction to give retrospective effect since 1979.

8. While making the calculation by the respondents to comply the said judgement, it was revealed that the Customs Department had suffered loss in vacancies from 1980 to 1986 to the extent of 125 posts for Superintendent of Customs (Preventive) and 5 posts of Appraisers of Customs, which the respondents decided to fill up in four stages as is evident from a reply filed by the Chairman, Central Board of Excise and Customs to the Apex Court. In July 1997 the respondents began to implement the judgement, without amending the Rules, issued an order of promotion whereby 48 Superintendents of Central Excise & Superintendent of Customs (Preventive) and 15 Appraisers were promoted to the post of Assistant Commissioner.

9. The applicants claim that no attention was paid to the huge back log pending in the Customs Share of promotions. The Association and some of the Superintendents of Customs (Preventive) made representations to fill up the pending backlog based upon the judgement of the Apex Court in W.P.No. 306/88.

10. In September 1996 and then again in May 1997, there was a steep increase in the cadre strength of the Superintendents of Customs (Preventive) to the tune of 429 posts and 114 posts respectively (Total 543 posts) while there were no such increase in the cadre strength of the Appraisers of Customs. Thus the cadre strength of Superintendent of Customs became 1608 - more than double while the cadre strength of Appraisers of Customs is 723.

11. The respondents issued promotion orders as enumerated in para 4.8 of the OA. which are as under :-

Date of order of promotion	Promotions for Supdts. of Central Excise	Promotions for Supdts of Customs(Preventive)	Promotions for Appraisers of Customs
02.07.97	48	8	15
08.09.97	48	37	32
		(*including partial backlog)	(*including partial backlog)
24.10.97	1	1	2
17.06.98	40	36	-
		(*including partial backlog)	
12.08.98	-	-	27
			(*including partial backlog)
09.09.98	17	-	6
Total	154	82	82
Backlog Promotion	-	62	29*
Regular Promotion	154	20	53

12. Thus the respondents began filling up some of backlog vacancies pending against the Customs quota ignoring the increase in strength of Superintendent of Customs (Preventive). The applicants and other Superintendents of Customs made several representations including Annexure-'A-4' dated 1.8.1997 against this policy of the respondents but received no response from the respondents. Finally, on 17.1.1998 the applicants approached the Apex Court vide Interim Application No. 6/1998 in W.P.No.306/88 against the respondents, the respondents filed a rejoinder in October, 1998 informing the Apex Court that they have amended the Rule 18 of the Indian Customs and Central Excise Group 'A' Service Rules, 1987 and had framed the Indian Customs and Central Excise Group 'A' Service Rule (Amended) 1998 on 23.3.1998.

13. The grievance of the applicant is that the respondents have completely ignored the principle of quota being apportioned on the basis of comparative cadre strength as specified in the judgement of the Apex Court dated 22.9.1996 in W.P.No.306/88 and the respondents have framed the Rules in a manner in which the illustrative Ratio of 6:1:2 has been made inflexible, irrespective of the cadre strength.

14. The said I.A.No.6 was heard along with other petitions filed by the officers of the Central Excise and the Appraisers of Customs and decided vide order dated 22.1.1999 by holding that "the applicant had to make out a case and take necessary steps to cause the modification of the Rules." Thereafter, the applicants

and other Superintendent of Customs (Preventive) have made representations requesting for modification of the aforesaid Indian Customs and Central Excise Group 'A' Service Rules (Amended) 1998 dated 23.3.1998 in terms of the principles laid down in the judgement of the Apex Court dated 22.11.1996 in W.P.No.306/88 (Annexure 'A-7') and the respondents have shown total apathy to the representations of the applicants and even not bothered to reply. The result is that the quota heavily tilted in favour of the Appraisers of Customs at the cost of the Superintendents of Customs (Preventive). Hence, this OA. for the above said reliefs.

15. OA.NO.556/99 has been filed by A.Choudhury working as Superintendent of Customs (Preventive), New Custom House, Ballard Estate, Mumbai.

16. The respondents have filed the written statement narrating the history of the litigation and legislation resisting the claim of the applicants.

17. In OA.No.485/99 official Respondents No.1 to 3 have filed the written statement stating the fact that the Group 'B' post in the Feeder Cadre, Superintendent of Central Excise and Superintendent of Customs (P) are filled 100% by promotion and those in the grade of Customs Appraisers are filled 50% by direct recruitment and 50% by promotion of group 'C' officers. Prior to

coming into force of IC & CES Rules, 1987, the promotions to the grade of Asstt. Commissioner (JTS), IC & CES, Gr. 'A' were being made on the basis of the respective cadre strength of the three feeder categories. The filling up of the vacancies in the above manner was challenged by a Group of officers by filing Writ Petition (Civil) No. 4532-33/78 before the Hon'ble Supreme Court challenging the promotion of 174 Superintendents of Central excise and 10 Superintendents of Customs (P) made on the basis of 1978 DPC raising the question that for promotion to Group 'A' service all eligible officers belonging to 3 Group 'B' feeder categories should be arranged in one common consideration list based on their continued length of service in Group 'B'. When these petitions were pending, recruitment rules for IC & CES were under contemplation and factually not existed. The Hon'ble Supreme Court gave direction in those petitions as per rules. IC & CES Rules were notified on 17.9.1987 and in regard to promotion of Group 'B' officers to the grade of Asstt.Commissioner (JTG), the provisions were made. The provisions as stated by the applicants are not being disputed by the respondents. The provisions are reiterated at page 75, 76 and 77. With regard to the above provisions in the Recruitment Rules, the All India Federation of Central Excise had filed a Writ Petition before the Hon'ble Supreme Court challenging the aforesaid rules. The applicants had earlier filed Writ Petition before the Hon'ble Supreme Court praying for preparation of a combined All India Seniority List consisting of Superintendent of Customs (P) and

Customs Appraiser on the basis of continuous length of service. The Apex Court in its judgement dated 22.11.1996 has referred to the Government letter dated 8.6.1989 in regard to adoption of equitable fair principles taking care of legitimate interest of officers of the 3 feeder categories in regard to promotion to the grade of Assistant Commissioner (JTS). Along with the letter the Government had circulated a brief note indicating possible action in regard to promotion of Group 'B' officers to the grade of Asstt.Commissioner (JTS). In the said brief, it has been stated that "the Board has taken stock of the nature of Group 'A' entry grade posts (Senior Superintendent/Assistant Collectors) which are the subject matter of dispute." For this purpose, the total number of posts in the entry grade of Group 'A' service has been divided as Central Excise posts and Customs posts. On the basis of functions which each post is required to perform. The post required to perform had been categorised as Central Excise posts. The ratio so arrived at has been applied for dividing the common posts in the Directorates and CEGAT. This calculation has given the ratio of 64:36 as between Central Excise and Customs. Since the posts and the persons manning them could not be divided into fractions, the figures were rounded to 67:33 so as to give the workable ratio of 2:1. It is further stated in the said brief that the vacancies falling in the share of Customs, Group 'B' officers are to be further apportioned between the two feeder cadres of Customs Appraiser and Superintendent of Customs (P) in the ratio of 2:1 as per their respective sanctioned strength.

Accordingly, the Hon'ble Supreme Court in its judgement dated 22.11.1996 has held that the above modified proposal is just fair and equitable and accordingly they had directed the Union of India to amend the rules so far as Group 'A' service is concerned so as to provide for apportionment of vacancies in the ratio 6:1:2 amongst Superintendent of Central Excise, Superintendent of Customs (P) and Customs Appraiser respectively for promotion to the grade of Assistant Commissioner (JTS). They further directed to review all post 1979 ad-hoc promotion to the post of Senior Superintendent/Asstt. Collector in the promotee quota. In the light of the present proposal, re-determine the respective placement of the promotee officers in the combined seniority list of Group 'A' officers. Accordingly, the respondents have amended the provisions of Rule 18(2) of the IC & CES Rules, 1987. The respondents have also taken up the matter with the UPSC to review the post 1979 adhoc promotions from Group 'B' to the grade of Asstt. Commissioner (JTS).

18. In the meantime, the All India Federation of Central Excise had filed another Writ Petition (Civil) No.651/97 praying for amendment of the revised provisions of the Rule 18(2) of the IC & CES Rules, 1987 praying that the ratio deserves to be reflected in the Group 'A' post all the time. This is because in practice most of the Asstt.Commissioners promoted from the rank of Superintendent of Central Excise are aged and retiring very soon after being promoted. Hence, it was contended that the

ratio must be applied vis-a-vis the posts in Group 'A' but not to the vacancies. In other words, petitioners had claimed that there should be apportionment of the posts falling to the share of promotion quota in the grade of Asstt. Commissioner (JTS) among the 3 feeder categories. The Apex Court in its judgement dated 22.2.1998 has dismissed the said petition. It was contended before the Apex Court that the ratio of 6:1:2 was based on the cadre strength of 1989 and the said ratio was liable to be reviewed as per the cadre strength now available in the each category. The Apex Court has held that the applicants to make out a case for change of the quota and take appropriate steps as they deem fit. The Superintendent of Customs (P) have been demanding review of the ratio of 1:2 between Superintendent of Customs (P) and Customs Appraiser laid down by the Supreme Court in its judgement dated 22.11.1996 on account of upgradation of 543 posts of Preventive Officers to that of Superintendent of Customs (P) in the two phases of re-structuring of Gr. 'B' and 'C' posts under C.B.E.C. Similar exercise of Central Excise wing of the Department was also conducted and it resulted/in upgradation of 1629 posts of Inspectors of Central Excise to that of Superintendent of Central Excise.

19. The respondents claim that there has been no change in the overall strength of Preventive Wing of Customs Department. There was only a restructuring of Gr. 'B' and Gr. 'C' posts of Preventive Wing resulting in upgradation of posts of Preventive

Officers to the grade of Superintendent of Customs (P). In para 6 of the written statement, it is alleged that "there was only restructuring of Gr.'B' and 'C' posts of Customs Department. In para 9 of the written statement, it is alleged that the increase in the cadre strength of Superintendents of Customs (P) was on account of upgradation of equal number of posts of Preventive Officers and not on account of any expansion in the cadre. The overall cadre strength of Superintendents of Customs (P) and Preventive Officers remained the same. The intention of the Supreme Court had been to have flexibility in the matter of apportionment in the promotion quota vacancies amongst three feeder grades based on their respective cadre strength. It has been observed by the Apex Court in Writ petition No.306/88 that "we are not also prepared to accept that the proposals of the Government of India dated 8.6.1989 themselves visualize a constant change in the quota from time to time. Such a change, in our view, has to be done by a fresh determination and it is for the applicants to make out a case therefor and take necessary steps for such modifications". The Apex Court nowhere observed that there was a case in favour of the petitioners praying for revision of apportionment of vacancies. Even apportioning all vacancies in the ratio of 6:1:2 has resulted in disparity to the extent of 4 years in the matter of adhoc promotions of Gr.'B' officers to the grade of AC (JTS) between Superintendents of Customs (P) and Customs Appraisers. A few appraisers appointed in the year 1987 are yet to be promoted as AC and in the case of

Superintendents of Customs (P), those appointed in the year 1991 have also been promoted on an adhoc basis. Any review of the promotion quota vacancies in favour of Superintendents of Customs (P), is bound to further increase gap between Customs Appraisers and Superintendents of Customs (P) in the matter of promotion to the grade of AC. If there is stagnation at Gr.'C' level in the cadre of Superintendents of Customs (P) vis-a-vis Customs Appraisers, the solution to the problem lies in seeking review and restructuring of promotion from Gr.'C' to Gr.'B' instead of demanding more quota at the level of AC which has been fixed by the Apex Court. With these averments, the respondents have prayed the dismissal of the OA. alongwith the cost.

20. The applicants in OA.NO.485/99 have filed the rejoinder placing the number of documents on record.

21. The learned counsel for the applicants relied on Annexure-'A-11' (OA.page 107) a letter issued by Ministry of Defence, Department of Revenue, New Delhi dated 16.7.1999 which is as under :-

" There was only a restructuring of Gr.'B' and Gr.'C' posts of Preventive Wing which resulted in upgradation of posts of Preventive Officers to the grade of Supdt. of Customs (P). Even otherwise a further exercise to restructure the Group 'C' & 'B' cadres as also of cadre review are under consideration. As such, any proposal for change in ratio for promotion to IC&CES, Group 'A' can be considered after such an exercise is over."

On perusal of the same, we are of the considered opinion that there is a restructuring of Group 'B' and Group 'C' posts of Preventive Wing which resulted in upgradation of posts of Preventive Officers to the grade of Superintendent of Customs (P). As pointed out by the learned counsel for the applicants that previously the sanctioned strength of Superintendent of Customs (P) was 427 and after the upgradation 543 posts are more added to it. He has further relied on the Brochure which deals with "sanctioned strength of posts and vacancy position in different grades in Central Excise and Customs formations" and according to him, it suggests 1393 posts of Superintendent of Customs. The exact number of posts is disputed by the respondents but to this extent, there is no dispute between the parties that upgradation had resulted in an increase of 543 posts of Superintendent of Customs (P).

22. The posts of Appraisers were 539 prior to upgradation and after the upgradation, the number is 723 as mentioned in the Brochure referred above.

23. Thus, on perusal of the figures after upgradation, there has been a substantial increase of posts in the cadre of Superintendent of Customs (P) by more than 127% while there has been an increase in the posts of Appraisers by more than 34%.

24. In 1999 (3) SCC 384, All India Federation of Central Excise vs. Union of India & Ors., at page 396 the Apex Court has observed as under :-

" It will be for the applicants to take such steps as they deem fit, if they feel aggrieved about the existing quota but the filing of this IA is not the proper remedy. We are also not prepared to accept that the proposals of the Government of India dated 8.6.1989 themselves visualised a constant change in the quota from time to time. Such a change, in our view, has to be done by a fresh determination and it is for the applicants to make out a case therefor and take the necessary steps for such modification."

25. The learned counsel for the respondents argued that the Apex Court has held that "We are also not prepared to accept that the proposals of the Government of India dated 8.6.1989 themselves visualised a constant change in the quota from time to time". As the rules are framed in view of the Apex Court decision, now the said rules cannot be declared arbitrary or illegal or unconstitutional. We are not able to accept the said contention of the learned counsel for the respondents for the reason that after the changed circumstances, the examination of the said rules becomes necessary and the said opportunity has been even provided by the Apex Court by mentioning "such a change, in our view, has to be done by a fresh determination and it is for the applicants to make out a case therefor and take the necessary steps for such modification".

26. Regarding the proposal submitted by the Government of India dated 8.6.1989, it is necessary to refer the proposal para 5.1 which is enumerated at page 5 of this order. Perusal of the same makes it clear that quota principle was adopted even by the respondents and the ratio was fixed taking into consideration the sanctioned strength at the relevant time. Hence, the observation of the Apex Court "We are also not prepared to accept that the proposals of the Government of India dated 8.6.1989 themselves visualised a constant change in the quota from time to time". On careful examination of the facts of the present case, it is not a case of constant change but change in view of upgradation which has resulted in an increase of sanctioned strength of Superintendent of Customs (P) by more than 127%, when by the proposal dated 8.6.1989 quota system was adopted and the Apex Court proceeded to decide on the said proposal and came to the conclusion that the proposal is just and fair. Now, the grievance of the applicants cannot be said to be unreasonable for demand of change in their quota for the post of Assistant Commissioner for Central Excise.

27. Our reasoning as stated above finds support from para 23 of the order passed in the said case which is as under :-

"23. For the aforesaid reasons, Writ Petition No.651 of 1997 and IA.No.8 are dismissed. IA.No. 7 is allowed granting permission to file IA.No. 6. But IA.No.6 is dismissed leaving it to the applicants to make out a case for change of the quota and take appropriate steps as the applicants may deem fit. We express no opinion as to the merit of such claim. The above matters are all disposed of as stated above."

Not only this, even the respondents have vide Annexure-'A-11' (OA. page 107) agrees to this extent that such a proposal can be considered after exercise of restructure of the Group 'C' and 'B' cadres which is under consideration.

28. Para 18 of the Apex Court judgement clearly states that:-

" 18. As stated above, we find that the above modified proposal is just fair and equitable and accordingly we direct the Union of India to amend the impugned Rules so far as Group 'A' Service is concerned. As a proposal was based on quota system. (1997 (1) SCC 520)."

29. The learned counsel for the respondents relied on 1994 SCC (L&S) 237, Indian Railway Service of Mechanical Engineers Association & Ors. vs. Indian Railway Traffic Service Association & Anr. with Union of India vs. Indian Railway traffic Service Association which lays down the proposition that Selection post based on merit-cum-seniority - Rule fixing the maximum number of such posts which could be filled up by members of any one of the various lower categories in service - Amendment replacing such a number by a specific percentage, held, within the competence of the employer (Government in this case) - It is a matter of policy and its correctness is not subject to judicial review.

He further relied on 1997 SCC (L&S) 1186, Tech. Executive (Anti-Pollution) Welfare Association vs. Commissioner of Transport Deptt. & Anr., which lays down the proposition that in case of promotional avenues, the Tribunal is not competent to

give directions for laying down policy or for creation of promotional avenues because these matters fall within policy making functions of the Government body.

He has also relied on 1998 (2) SCC 198, Govt. of T.N. & Anr. vs. S.Arumugham & Ors., which lays down the position that in case of promotion policy, judicial review has a limited scope, approach of the Administrative Tribunal in giving directions to the appellant Government for reframing of the scheme in a particular manner is not warranted.

30. The applicants have challenged the validity of Rule 18 (2) of the Indian Customs and Central Excise Group 'A' Service Rules (amended 1998) as being ultra vires of Article 14 & 16 of the Constitution of India. In this respect, AIR 1977 SC 2051, S.B.Patwardhan & Anr. vs. State of Maharashtra & Ors. is relied on. As stated above, it is a policy decision of the Government, hence it cannot be said that the rule is violative of Articles 14 & 16 of the Constitution.

31. The learned counsel for the respondents relied on 2001 (1) SLR 616, S.Ramanathan vs. Union of India & ors. and argued that if the provisions exist for review of the cadre strength, non compliance of the said provisions without any reasons, the aggrieved party may well approach the Court and the Court in its turn would be well within its jurisdiction to issue appropriate direction. As in the present case, there is no such provision which can be got implemented by the respondents.

32. 1976 SCC (L&S) 353, V.B.Badami & Ors. vs. State of Mysore & Ors. deals with seniority proposition and the appointment in excess of quota. The said proposition of law is not relevant to the matter in dispute.

33. Keeping in view the limited scope of the Tribunal in such matters where promotional avenues are to be considered, as there is a substantial increase of the cadre strength of Superintendent of Customs (P) by more than 127% after the determination of their quota by the Apex Court judgement, while there has been a small increase, i.e. 34% in quota of Appraisers we feel it just and fair to direct the respondents to consider the grievances of Superintendent of Customs (P) and Appraisers within a period of three months providing them just and fair opportunity of their representation to the post of Assistant Commissioner of Central Excise and thereafter to fill the existing vacancies. With these observations, the OAs. stand disposed of. No order as to costs.

(SMT.SHANTA SHAstry)

MEMBER (A)

(S.L.JAIN)

MEMBER (J)

mrj.