

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**BOMBAY BENCH, MUMBAI.**

**ORIGINAL APPLICATION NO. : 467/2000**

*Dated this Monday, the 22<sup>nd</sup> day of Feb 2010.*

**CORAM** : Hon'ble Shri Jog Singh, Member (J).

Hon'ble Shri Sudhakar Mishra, Member (A)

Bhanudas D. Besre,  
 R/at : Asiatic Evergreen Apartment,  
 Near Satteri Temple,  
 1<sup>st</sup> floor, F-11, Khorlim,  
 Mapusa - Goa.

... **Applicant**

(None for the applicant)

**VERSUS**

1. Union of India through the  
 Chairman,  
 Central Board of Customs  
 and Central Excise,  
 New Delhi.

Commissioner of Customs and  
 Central Excise,  
 Panaji, Goa.

3. Chief Commissioner of Central  
 Excise-I, Commissionerate,  
 Mumbai having office at  
 Central Excise Building,  
 M.K. Road, Churchgate,  
 Mumbai 400 020.

... **Respondents**

(By Advocate Shri R. R. Shetty)

**O R D E R**

Per : Shri Jog Singh, Member (J)

This is the second round of litigation. The  
 O.A. was earlier allowed by an order dated 02.03.2001

by a Division Bench of this Tribunal holding that the services rendered by the applicant on officiating/ad hoc basis in the post of Inspector Central Excise w.e.f. 18.07.1984 till 08.11.1985 should be counted for the purpose of seniority and that the applicant's services should be regularized w.e.f. 18.07.1984 instead of 08.11.1985. However, the Hon'ble High Court by order dated 18.02.2009 has remanded the matter to consider it afresh in accordance with law, after setting aside the Tribunal's order dated 02.03.2001.

2. The matter was listed for final hearing on 05.01.2010, when Shri V.G. Rege, Learned Counsel, who appeared initially for the applicant in this matter, sought time and the case was adjourned to 03.02.2010. However, on 03.02.2010, Shri Rege stated that he did not have any instructions or authority from his client to appear in the matter. As such, after affording opportunity to the applicant to appear in the matter and defend his interest, the Tribunal decided to proceed under Rule 15 (1) of the Central Administrative Tribunal (Procedure) Rules, 1987, is reproduced overleaf :

"15. Action on application for applicant's default - (1) Where on the date fixed for hearing of the application or on any other date to which such hearing may be adjourned, the applicant does not appear when the application is called for hearing, the Tribunal may, in its discretion, either dismiss the application for default or hear and decide it on merit."

3. Briefly stated, the applicant, who has been working on the post of Inspector, Central Excise Department, has approached this Tribunal by way of present O.A. seeking a direction to the respondents to grant him seniority in the cadre of Inspector w.e.f. 18.07.1984. The main grievance of the applicant is that the services rendered from 18.07.1984 till 07.11.1984 in the said post should be counted for the purpose of fixation of his seniority in the cadre of Inspector, Central Excise. The learned counsel for applicant has also relied upon a judgment of this Tribunal in O.A. No. 419/2000 & others [Kanubhai Govindbhai Randeria Vs. Union of India & Others] decided on 04.07.2003, involving similar issue, which has been upheld by the Hon'ble

High Court of Bombay in Writ Petition No. 9286/2003 decided on 03.03.2004.

4. The respondents have filed their reply and have stated that the applicant was considered for the post of Inspector, while he was working on the post of U.D.C., in accordance with the existing rules and was promoted purely on provisional and ad hoc basis by order dated 18.07.1984. It is stated that the applicant was considered and promoted to the post of Inspector against short term and temporary vacancies which became available due to the deputation of certain Inspectors of Central Excise to Airport/Directorate of Revenue Intelligence. It is submitted by the respondents that out of the six vacancies which arose, only one vacancy was against promotee quota and was meant for regular appointment. The respondents specifically submit that the applicant was not considered against regular vacancies but was considered and promoted as a stop-gap arrangement against short-term vacancies only. The remaining 5 vacancies were purely temporary vacancies which were created by Inspectors of Central Excise having been posted to Airports/DRI on deputation. The Inspectors on deputation could report back or be repatriated to their parent Collectorate of Customs and Central Excise, Goa and consequently the officers promoted on ad hoc basis would have been reverted. It was made clear to the

applicant in the said order that service rendered on ad hoc basis was purely provisional and the officers concerned will not have any claim for seniority in the cadre vis-a-vis those who would be appointed on regular basis.

5. We have heard the learned counsel for respondents and have also perused the pleadings, including copy of the O.A. and documents annexed by the respondents with their reply dated 24.11.2000.

6. We note that the applicant was initially appointed on the post of Lower Division Clerk in March, 1973 and was further considered and promoted to the post of U.D.C. in August, 1976. Later on, he became eligible to be considered for the post of Inspector, Central Excise. Certain vacancies arose due to Inspectors going on deputation to other department from Central Excise Department and the applicant was considered along with others for ad hoc promotion and was promoted w.e.f. 18.07.1984. This was purely a stop gap arrangement and in the absence of adherence to quota-rule, it cannot be termed as a regular promotion. The applicant was considered and appointed purely on ad hoc and provisional basis. He continued for some time for about a year or so and later on when regular vacancy became available, the applicant was considered along with others by a duly constituted D.P.C. in accordance with rules in the quota meant for promotees and was promoted by order No. 124/85 dated 08.11.1985.

7. It is evident from the pleadings that the second consideration of the applicant for promotion to the post of Inspector Central Excise in question was against a clear and regular available vacancy which arose in the promotee quota. Therefore, the second selection of the applicant is a regular selection and he cannot be given any benefit, including benefit of seniority, of the service rendered by him between 18.07.1984 till 07.11.1985 as he was working on the promoted post of Inspector purely on ad hoc and provisional basis and the said promotion was not within the quota meant for regular promotion. As such, the first promotion dated 18.07.1984 cannot be termed as promotion according to the rules. This is evident from the law laid down by the Hon'ble Supreme Court in the

case of The Direct Recruit Class II Engineering Officers' Association & Others Vs. State of Maharashtra & Others [AIR 1990 SC 1607] and State of West Bengal & Others Vs. Aghore Nath Dey & Others [1993 SCC (L&S) 783]

8. In view of the above discussion of law and fact, the O.A. is hereby dismissed. No order as to costs.

MEMBER (A)

OS\*

MEMBER (J)

*bir*  
Certified True Copy  
Date 26/2/10  
Section Officer  
Central Admn. Tribunal  
Bombay Bench

*3/2/2010  
B/23R*