

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: MUMBAI

ORIGINAL APPLICATION NO. 866 OF 2000

SHRI JUSTICE ASHOK AGARWAL. ... CHAIRMAN
SMT. SHANTA SHAstry. ... MEMBER (A)

Date of Decision: 24.07.2001

Shri Arunkumar Pandey

Applicant(s)

Shri G.K. Masand

Advocate for Applicant

Versus

Union of India & 12 others

Respondents

Shri V.P. Thali
Shri M.S. Sonak

Advocate for Respondent No.1 & 2
Advocate for Respondents 6 to
13

Shri G. Vijayendran

Advocate for Respondent No.3

CORAM: HON'BLE JUSTICE ASHOK AGARWAL
HON'BLE SMT. SHANTA SHAstry.

CHAIRMAN
MEMBER (A)

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?
- (3) Library ✓

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(SHANTA SHAstry)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

CIRCUIT SITTING AT GOA

ORIGINAL APPLICATION NO. 866/2000

TUESDAY, THE 24TH DAY OF JULY, 2001.

CORAM: HON'BLE JUSTICE SHRI ASHOK AGARWAL. CHAIRMAN
HON'BLE SMT. SHANTA SHAstry. MEMBER (A)

Arunkumar Pandey,
Preventive Officer,
Goa Customs House. ... Applicant

By Advocate Shri G.K. Masand

Vs.

1. Union of India through the
Secretary, Ministry of Finance,
Department of Revenue,
North block, New Delhi.
2. Commissioner of Customs and
Central Excise, Goa Customs House,
Panaji, Goa.
3. Smt. Juliet Fernandes.
4. Shri A.K. Moriya
5. Shri Sunilkumar Sahjan
6. Shri Atchut M. Alernekar
7. Shri S.T. Naik
8. Shri S.N. Kudalkar.
9. Shri Joseph Joy.
10. Shri D.B. Kubal.
11. Shri H. Rebello
12. Smt. Anjali Raikar.

13. Shri R.B. Dalal..

... Respondents

Respondents 3 to 13 are working as
Preventive Officers, Customs House, Goa

By Advocate Shri V.P. Thali for R1 & 2
Shri M.S. Janak for R6 to 13

Shri G. Vijaychandran for R3.

O R D E R (ORAL)

Hon'ble Smt. Shanta Shastry.

.. Member (A)

The applicant in this case is challenging the seniority list of Preventive Officers of Goa Customs House as on 1.1.99 published on 7.4.99 calling for objections if any. Thereafter, a reply was given to the applicant on 4.12.2000 in response to his representation dated 7.5.99 rejecting his request for refixation of his seniority.

2. The applicant has sought the following reliefs:-

- (a) That delay, if any, in filing the present application be graciously condoned.
- (b) That this Hon'ble Tribunal will be pleased to call for the records and proceedings leading to the issue of the impugned seniority list circulated vide circular dated 7.4.99 (Ex.A) and after going through the legality or otherwise thereof, this Hon'ble Tribunal will be pleased to quash and set aside the same.
- (c) That this Hon'ble Tribunal will be pleased to direct the respondents to redraw the seniority list of Preventive Officers of Goa Custom House in the light of the various directions issued by the Govt. of India including the directions with regard to maintainance of inter se seniority between direct recruits of the same year wherein

the seniority will be based on the merit position awarded by the Staff Selection Commission and other directions issued for maintenance of relative seniority between direct recruits and promotees as contained in Chapter II of Swamy's Compilation on seniority and promotion.

- (d) That pending the hearing and final disposal of this Original Application, finalisation of combined seniority/eligibility list of Preventive Officers of Mumbai & Goa Custom Houses and promotions to the post of Superintendent of Customs be directed to be made subject to the outcome of this Original Application.
- (e) That costs of this application be awarded in favour of the applicant; and
- (f) That such other and further reliefs as are expedient be granted in favour of the applicant.

3. A notification was issued for selection to the posts of Inspector of Central Excise, Examiners and Preventive Officers in Goa Customs House, for an examination to be held in 1989 by the Staff Selection Commission. In response to the same, the applicant applied and was selected. As per the offer of appointment received by him, the applicant joined on 14.1.1991. Two of the four other persons, who were selected along with the applicant joined earlier than the applicant in December, 1990, except the 3rd respondent was selected against sports quota.

4. The main grievance of the applicant is that the applicant should have been granted appropriate seniority considering that he was actually selected against the vacancy of 1989 and he could have joined in 1989 itself. But he received his appointment order in December, 90

giving time to join upto 15.1.91 and accordingly, after being relieved by his parent organisation, he joined the new organisation on 14.1.1991. The applicant has been at the top of the select list, therefore, his seniority should be in the order of merit. But in the seniority list others i.e. respondents 4 & 5 who have joined earlier to him in 1990 have been shown above as they joined prior to him. The learned counsel for the applicant submits that as per the DOP & T instructions a person who ^{could not} ~~has~~ joined ~~within~~ within the stipulated date in the offer of appointment, could seek extension of time to join the post. The maximum time permissible thus, is 9 months and if the person joins within this period, he retains his original seniority as per the merit list in the selection. Therefore, since the applicant was at the top of the merit list, which is admitted by the respondents, he should have been shown senior to respondents 4 & 5.

5. The other contention of the applicant is that respondents 6 to 13 who are promotees, have been, shown senior to him. These promotees according to the applicant, are in excess of the quota for the promotees for 1989 and therefore they should not be shown above the applicant. The learned counsel for the applicant has referred to the instructions of the DOP & T contained in the OMs dated 7.2.86 and 3.7.86 wherein guidelines have been given regarding maintenance of rota quota principle and how to count the

the seniority of direct recruits vis-a-vis the promotees, whenever adequate number of direct recruits are not available in the selection for a particular year. According to the applicant, in the year 1989 only 5 direct recruits were selected/ made available. The ratio of recruitment between direct recruits and promotees is 3:1 . Keeping this in view, there could have been only one promotee for select list for 1989 or at the most 2 if fraction is to be rounded up and therefore, respondents 6 to 13 who have now been shown as having been ~~or~~ promoted in 1989-1990 are obviously in excess of the quota meant for the promotees. Thus, they cannot be shown above the applicant in the seniority list, they need to be pushed down in the seniority list.

6. The official respondents have filed the reply today. They have taken the preliminary objection of the OA being barred by limitation. They submit that the first seniority list was issued on 10.12.91 initially and the last date for making representation ^{was} on or before 30.12.91. The representation of the applicant was rejected by the respondents by their letter dated 22.9.92. Subsequently, another seniority list was issued by the Department on 27.1.93 and again objections were invited. The applicant again made representation on 3.3.93 and 13.8.93 though it was not within the stipulated period. Inspite of that, the

department considered his representation and rejected the representation on 19.11.93.

7. The applicant did not challenge his position in the seniority list of 91 or 93 and therefore, he cannot now challenge by reopening the issue after a gap of 7 years and after having accepted his position in the seniority list, in the year 1991, by challenging the list of 1999. This is the stand taken by the official respondents. Further, the respondents also issued seniority list in the years 94, 95, 96 and 97 on various dates. There has been no change in the seniority list from 1991 till 1999 as far as the applicant's case is concerned.

8. The applicant was given a reply to his representation way back in 1993 itself. This is reflected in the impugned reply dated 04.12.2000 given to the applicant. He had ample time to challenge the same before this Tribunal. But he has approached this Tribunal only in December, 2000. He has not even applied for condonation of delay. Therefore, the applicant's application is barred by limitation. Repeated representations cannot extend the period of limitation. The application deserves to be dismissed on this ground itself.

9. The learned counsel for the applicant, however, harped on the fact that the applicant's seniority is not reflected properly and no delay is there as he is question-

9. The learned counsel for the applicant, however, harped on the fact that the applicant's seniority is not reflected properly and no delay is there as he is questioning the list of 1999 and limitation does not apply, because this is a matter of seniority affecting his promotion. According to the learned counsel one becomes aware of the seniority at the time of promotion. As it affects promotion which is a continuous cause of action, limitation cannot be a ground to reject the applicant's application.

10. The respondents, submit on merits that there were 22 vacancies for the year 89 and as per the ratio of 3:1, 17 vacancies were meant for direct recruits and 5 vacancies were meant for promotees. Against 17 vacancies notified the Staff Selection Commission could make available only 5 persons out of whom one did not join. R4 & R5 joined earlier than the applicant. Further, the respondents submit that there has been no excess promotion. The respondents 6 to 13 are not in excess of the quota prescribed for the promotees. In fact, they had already been promoted on adhoc basis in 1985 and 1987, but for want of vacancies, their promotions were not regularised. The same were regularised against the quota for the promotees in 1989. They had been promoted much before the applicant was appointed. The respondents further submit that they strictly followed the guidelines of DOP & T

contained in their OMs dated 7.3.86 and 3.7.86 and there is no infirmity in the seniority list published by the respondents granting due seniority to the promotees as per their quota. Every opportunity was given to raise objections if any and applicant availed of the same, but failed. Therefore, the respondents plead that there is no substance in the application of the applicant and the same deserves to be dismissed both on the ground of limitation as well as on merits.

11. The learned counsel for the respondents 6 to 13, also submits that their promotions were not at all against excess quota for promotees, but ~~was~~ within the quota for the promotees. Had it been so, they would not have been continued as adhoc promotees till then. Only when the quota became available they have been promoted regularly.

12. The 3rd respondent has also filed a reply and submits that her case is totally different. In fact, there should be no grudge against the 3rd respondent's seniority at all. She came through a different examination for the quota meant for meritorious sports persons and she was selected and appointed in March, 1990, when ~~even~~ ^{even} the offer of appointment had not been made to the applicant. Further, she also passed all the departmental examinations much ~~earlier~~ prior to the actual appointment of the

of the applicant. Therefore, her seniority cannot be an issue at all.

13. The learned counsel for the applicant has again raised a point that even the person appointed against sports person's quota cannot be given higher seniority than that of others in the general category. In this context he has cited para 2.1 and the instruction No.11 under the same OM dated 3.7.86. We have perused both the instructions as well as the rules and we find that the same are not against 3rd respondent as she appeared in a different examination meant for sports persons quota. Therefore, there cannot be a comparison between the applicant's selection and that of ^{the third} 3rd respondent. Also the instruction No.11 is about the relative seniority among those sports persons who were recruited through Employment Exchange or by direct recruitment vis-a-vis those who were recruited in the department itself. In our considered view, this argument of the learned counsel for the applicant does not hold water. // We have heard the learned counsel for all the parties carefully.

14. The respondents have strongly urged the point of limitation. Considering that the seniority list has been consistently reflecting the seniority of the applicant at the same level from 1991 to 1999 there is substance in the objection. At the same time since

seniority is relevant for promotion and it affects the promotion prospects of the applicant, promotion being a continuous cause of action, we are inclined to overlook this objection and to proceed with the matter on merits.

15. We find that there is some substance in the submission of the learned counsel for the applicant that the applicant had been at the top of the merit list for selection of 1989 vacancies and since he had joined well within the time stipulated for him to join i.e. he joined before 15.1.91 as per the letter dated 12.10.90 received by him, by his own admission, in December, 1990 and this being well within the extended period of nine months the applicant deserves to be shown senior to all the others who were selected along with him though they might have joined earlier. ^{According to the respondents} It was a common offer of appointment sent to all the selected candidates, but the applicant joined later and therefore, he has rightly been placed below R4 and R5 in the seniority list. ^{however} The respondents cited could not prove satisfactorily as to how the applicant did not receive an earlier letter whereby he was asked to join before 15th November, 1990. We, therefore, have to accept that the applicant received the letter of appointment only in December, 1990 and he joined within the stipulated period. To this extent the applicant has to be shown above respondents 4 & 5.

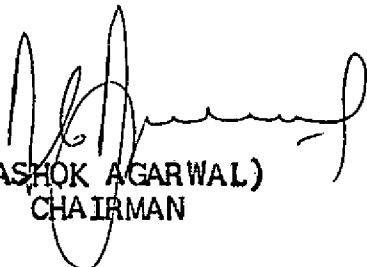
16. As regards the seniority of the applicant vis-a-vis the promotees though a clear averment has been

made by the respondents that the private respondents have been promoted long ago on adhoc basis and were adjusted against regular vacancies of 1989 we are unable to appreciate it in the absence of a clear picture. No substantive material has been produced in support of this. It is not established how if there was only one, at the most, two vacancies for promotees against the five vacancies for direct recruits, six or more persons could have been promoted in 1989. The applicant too has not produced any categorical evidence to show that his stand is correct. Therefore, in regard to whether the respondents 6 to 13 are in excess of the quota or otherwise, in our view, the interest of justice would be met if the respondents are directed to look into this position once again and ascertain whether respondents 6 to 13 are actually within the quota or otherwise and then issue a speaking order bearing in mind the point raised by the applicant. We direct accordingly. This exercise shall be carried out by the official respondents within a period of three months from the date of receipt of a copy of order.

17. The OA is accordingly disposed off with the above observations. We do not order any costs.

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(SHANTA SHASTRY)
MEMBER (A)



(ASHOK AGARWAL)
CHAIRMAN

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