CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this the 4th th day of July, 2003

Coram: Hon'ble Mr.Kuldip Singh - Member (J)
Hon'ble Mr.Shankar Prasad - Member (A)

OAs 419/00, 590/00, 591/00, 97/03, 98/03, 148/03, 154/03 & 192/03

Kanubhai Govindbhai Randeria - Applicant in OA 419/00
Suresh Yashwant Parab - Applicant in OA 590/00
Sharad Dattatraya Bahadkar - Applicant in OA 591/00
Jaiprakash Vithal Ghadigaonkar - Applicant in OA 97/03
Dnyaneshwar Govind Gawas - Applicant in OA 98/03
Shahanwaj Abdulgani Mujawar - Applicant in OA 148/03
Anant Mahadev Kalekar - Applicant in OA 154/03
Anuradha Ashok Kudtarkar - Applicant in OA 192/03
(By Advocate Shri K.R.Yelwe - For Applicants in OAs 148/03, 154/03, 192/03 & 97/03).
(By Advocate Shri S.P.Inamdar - For Applicant in OA 98/03
(By Advocate Shri S.S.Karkera - For Applicants in OAs 419/00, OA 590/00, 591/00)

Versus

1. Union of India
through the Chairman,
Central Board of Excise & Customs,
Central Secretariat, North Block,
New Delhi - 110 001.

2. The Commissioner of Central
Excise & Mumbai - I,
Central Excise Building, 115, MG Road,
Churchgate, Mumbai - 400 020.

3. The Joint Commissioner (P&V),
Central Excise, Central Excise Building,
115, MG Road, Churchgate,
Mumbai - 400 020.

4. The Secretary to
Government of India,
Ministry of Personnel & P.G. &
Pensions, Department of Personnel
& Training, New Delhi 110 001.

5. Shri S.V.Shinde,
Superintendent of Central Excise,
C/o Commissioner of Central Excise,
115, M.K.Road, Churchgate,
Mumbai - 400 020.

6. Shri V.D.Ohal,
Superintendent of Central Excise,
O/o Commissioner of Central Excise,
Mumbai - I, Central Excise Building,
115, M.K.Road, Churchgate, Mumbai - 20.
(By Advocate Shri V.S.Masurkar - For Respondents in OAs 419/00, 590/00& 591/00)
(By Advocate Shri R.R.Shetty - For Respondents in OAs 97/03,98/03, 148/03, 154/03 and 192/03).

O R D E R

By Hon'ble Mr.Shankar Prasad, Member (A) -

A common order shall govern OA 419/2000, 590/2000, 591/2000, 97/2003, 98/2003, 148/2003, 154/2003 and 192/2003. They all relate to seniority in the grade of Inspectors in Customs & Central Excise Department.

2. It appears that a number of these employees vis-a-vis other persons claiming inter-se seniority were appointed as Lower Division Clerks/Upper Division Clerks. These Lower Division Clerks were promoted as UDCs and employees promoted as UDCs were subsequently confirmed.

3. Exhibit-D, Page 49 - 50 of OA 419/2000 is Ministry of Finance, Department of Revenue's letter No.A-32011/64/80-Admn.II (A) dated 4.2.1981. The first page of the said letter is as follows and the second page is illegible. The legible part is as follows

F.No.A32011/64/80-Ad
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPTT. OF REVENUE)

NEW DELHI, THE 4TH FEBRUARY, 1981

All Collectors of Central Excise.

Sub:- Promotion to the grade of U.D.C. & Inspector - Relaxation of minimum qualifying service.

I am directed to say that it has been brought to the notice of the Board that it has not beenn found possible to fill up the promotion quota vacancies in the grades of U.D.C. and Inspector of Central Excise (OG) on account of the non-availability of eligible officers in the feeding cadres. After careful consideration of the matter, it has been decided that the vacancies falling in the promotion in these grades may be filled by making promotions on ad-hoc basis, by relaxing the eligiblity period by one year in respect of th officers in the feeding cadres. In other words, LDC with six years regular service may be consiered for adhoc promotion to the grade of U.D.C. and U.D.Cs. and Stenos who have put in four years regular service in the grade and the lady searchers and draftsmen who put in 6 (six) years in the grade may be considered for ad-hoc promotion to the grade of Inspector of Central Excise (O.G.). The ad-hoc promotions should be made for a specific period not exceeding one year at a time, till eligible candidates, in terms of the provisions of recruitment rules, become eligible for consideration for promotion on rgular basis. It should be made clear in the promotion orders that the promotions are purely provisional and ad-hoc and the period of ad-hoc promotion will not count towards seniority. It should be further made clear that the ad-hoc promotion will not confer for any right on the person concerned for regular promotion.

2. When the ad-hoc promotees become eligible for regular promotion in accordance with the provisions of the recruitment rules, they should be considered afresh for promotion by the duly constituted D.P.C. The D.P.Cs. for regular promotions should be convened in such a manner that the ad-hoc promotees are considered for promotion on regular basis before the completion of ad-hoc period of one year. If any officer is not found fit for promotion on regular basis ....."

The said letter has also been annexed with two other OAs and the position is as follows -

S.No.	OA No.	Exhibit	Page No.	Second Page
(a)	590/2000	C	33-34	Missing in OA
(b)	591/2000	D	44-45	As in 419/00

4. The second page of the said letter of 1981 is Annexure-R-7 and reads "they should be reverted if there is no vacancy for continuance on ad-hoc basis." There is a hand written endorsement that the non-underlined portions were deleted as per Ministry 's letter of 4.4.1985.

5. It would be appropriate to recollect the Recruitment Rules. The recruitment rules framed under Article 309 of the Constitution have been notified in 1979, Annexure-R-I in OA 148/2003.

The recruitment rules provide that 75% of the posts will be filled by direct recruitment and 25% by promotion of UDC and Stenographers (Ordinary Grade) with five years'regular service and some other categories more fully described in the schedule.The method of promotion is by selection These appear to have been amended in 1989.

5. It appears that pursuant to the 1981 instructions a number of employees were promoted as Inspectors on ad-hoc basis. They were subsequently promoted on regular basis. They must then have been confirmed as Inspectors as per the instructions then in force.

6. The Department had published the seniority lists from time to time vide the following -

(a) Draft seniority list of 1988. The forwarding memo is not enclosed. It appears to have been prepared on quota rota principle with three direct recruits followed by one promoted officer. it has begun from Sr.No.2039 and ~~they~~ employees have been shown as promoted from 17.12.85.

(b) A draft seniority list is again circulated in 1993. the said letter reads -

> "Sub: Combined Seniority List of Inspectors of Bombay - I/ Bombay-II/Bombay-III/Pune/Aurangabad and Goa Collectorates as on 1.1.1992.
>
> Please find enclosed a combined seniority list of Inspectors working in Bombay - I/II/III Pune & Aurangabad Collectorates as on 1.1.1992. The names have been arranged in the seniority list on the basis of their length of service in the cadre subject to maintenance of inter-se seniority among the staff of the same Collectorates as laid down in the Ministries letter F.No.A-11013/69/79-AD fileIV dated 12.9.1979 read with Ministries letter F.No.12/31/86 dated 9.109.1986 and 13.3.1986. Non-confirmed Inspectors are brought below the confirmed officers as per Para 2.3 of Ministry of Personnel and Trainings O.M. No.22011/7/86 (Estt.) (D) dated 3.7.1986.
>
> The seniority of the candidates, who have been appointed through Staff Selection Commission has been fixed on the basis of the ranks of the candidates in the examination and not on the basis of dates of joining as per the Instructions of Ministry and Staff Selection Commission. As per the instructions of Staff Selection Commission, the candidates nominated from the reserve list, have been en bloc junior to those nominated from the main list of the same examination.

The names of Inspectors of Central Excise working in Goa Collectorate, who have completed 8 years of service in the grade of Inspectors and are eligible for consideration for the post of Superintendent, Group 'B', have been included in the seniority list as per Board's letter F.No.A-32011/37/72-ADIIIA dated 10.7.1975.

You are requested to circulate the seniority list among the officers concerned. The particulars regarding date of birth, SC and ST etc. shown in the seniority list should be verified with reference to the Service Books and errors if any should be reported to this office immediately. You are also requested to furnish the service particulars of officers from Service Book against whom the same has not been given, so as to complete the seniority list in all respects, also any representation from the officer concerned should be sent to this office through proper channel within one month of the date of receipt of this list."

(c) The next draft seniority list is dated 1.10.94. Para 1 and Para 2 of the forwarding memo are identical to that of the earlier memo of 1993 except that para 1 has the following additional lines, " till 1992. Thereafter names have been kept in the same place though the officer is not confirmed as per the Ministry's letter dated (blank) 1992".

(d) Thereafter there is a combined seniority list as on 1.1.96 without any forwarding memo.

(e) Next follows the draft seniority list of 1997 prepared on the basis of judgment of C.A.T., Mumbai Bench. The said letter is as follows -

Sub: Combined Revised Draft Seniority List of Inspectors of Central Excise, Mumbai-I/II/III/IV/V/VI/VII/Pune-I/II/Aurangabad and Goa Commissionerates from 1.8.1972 to 31.12.1995 as per C.A.T. order.

This Office had called for information vide letter F.No.II/34(B)/97 dated 19.5.97, 29.8.97 & 25.9.97 and also filed letter of even number dated 30.9.97 and 8.10.97 in repect of all Inspectors who are/were in the Establishment from 1.8.1972 for implementation of various judgments passed by the Hon'ble C.A.T. especially in OA Nos. 879/92, (Shri C.V.Kuwalekar), 213/87 (Shri K.K.Petlur, 823/87 (Shri U.H.Jadav & others), 363/97 (Shri R.N.Bhoopathy), 515/97 (Shri K.R.Paldiwal),230/97 (Shri A.V.Hingorani), 916/94 (Shri K.K.Chavan), 531/97 (Shri V.R.Wankhede), 425/92 (Shri S.R. Kadam & others). Report in the forms prescribed by this Office have not been received so far from many of the Commissionerates.

Keeping in view the decision of the Hon'ble C.A.T. a draft seniority list has been compiled on the basis of records readily available in the Mumbai- I Commissionerate. The same is enclosed for your perusal with a request to scrutinise the same with reference to records available in your office and to verify its accuracy in the light of the various judgments mentioned herein above. **This seniority list is subject to outcome of pending C.A.T. and other Court cases.**

You are requested to kindly check the above list for factual ommissions, errors including those relating to SC/ST and also for furnishing information in respect of some of the columnswhich have been left blank for required information.

In case no reply is received within fiteen days from the date of receipt of this letter and in any case by 25.12.1997, it will be presumed that there is no objection/representation against the list and the list is correct.

Receipt of this letter may please be acknowledged."

(f) The said seniority list was sent to Pune - I/Pune -II and Pune Customs in July, 1999 mentioning that said list has not been finalised.

(g) A provisional draft seniority list has been circulated vide letter dated 29.6.2000. As far as the promotee Inspectors are concerned the forwarding memo states as follows -

"(1) While preparing the draft seniority list effect has been given to Hon'ble C.A.T. order dated 10.1.1997 in Shri C.V.Kuvalekar's case, regarding reckoning the seniority on the basis of continuous officiation and non-confirmation. While preparing a draft seniority list in addition to the principal of continuous officiation, the principle of rota quota has also been followed. This is for information, that on the principal of rota-quota, two different judgments have been given by the Hon'ble C.A.T. Mumbai Bench in Shri U.H.Jadav's case in OA No.823/87 and in Shri S.R.Kadam's case in OA 425/92.

(2) Draft seniority list is provisional for following reasons:

(a) A review petition filed by the Department against Hon'ble C.A.T.'s order in Shri C.V.Kuvalekar's case which is pending before Hon'ble Supreme Court. Further SLP Nos.4946 to 4949 of 1994 dated 8.3.1994 and SLP No.13227/97 dated 19.9.1997 in the case of Shri V.Subbarao of C.B.D.T. and incase of Shri U.P.Nandusekar of CBEC respectively are pending with Hon'ble Supreme Court for decision.

(b) On receipt of rota quota also number of OAs are pending before Hon'ble C.A.T. Mumbai Bench and their decision in these cases are awaited."

7. The applicants in various OAs have filed representations either against seniority list of 1997 or that of 2000.

(a) 419/00	K.G.Randeria	As per decision in OA 886/97 & Apex Court decision in L.Chandra Kishore Singh, 1999 SCC (L&S) 1460 seniority from 1981 and not 1982.
(b) 590/00	S.Y.Parab	There are two representations. First representation is to 1997 claiming on the basis of his date of promotion. The second is identical to first above.
(c) 591/00	S.D.Bahadkar	Representation against seniority list dated 1.1.96 senioriy as pr decision in U.R.Jadhv & 11 ors. i.e. date of continuous officiation. Seniority vis-a-vis R.M.Bhide, K.T.Nihalani & S.N. Punjabi has widened. They have been promoted as Superintendents
(d) 97/03	J.V.Ghadigaonkar	The applicant had submitted a repre sentation dtd.9.9.02 against draft

seniority list of June, 2000 claiming that his juniors in LDC/UDC have been shown as senior. It is on account of my not being confirmed as Inspector a procedure which is delinked from 1988. The decision of CAT, Mumbai Bench in A.N.Kulkarni Vs. UOI & ors. refers.

The representation was rejected by order dated 1.11.02.

(e) 98/03 D.G.Gavas

The applicant had submitted a representation dated 12.2.98 stating therein that his juniors in LDC/UDC have been shown as senior because he was confirmed later. He relied on CAT decision.

He submitted another representative when some persons whom he claims to be his junior in LDC grade were promoted as Supdt. on the ground of delinking of confirmation and promotion and decision in Subbarao Vs. Jadav & A.N.Kulkarni cases.

The representation was rejected vide order dated 1.11.02.

(f) 148/03 S.A.Mujawar

A representation dated 26.8.02 has been filed against draft seniority dated 29.6.00 drawing attention to the decision in U.H.Yadav, A.N.Kulkarni & Subbarao cases.

He has enclosed order dated 1.11.02 rejecting the representation of four persons.

(g) 154/03 A.M. Kalekar

The applicant had submitted a representation dt.19.9.02 against the seniority list dt.June, 2000. He has relied on the decisions cited in Mujawar's case cited above.

The representation has been rejected vide order dated 1.11.02.

(h) 192/03 Smt.A.A.Kudtakar

The applicant had submitted a representation dt.25.9.02 against th draft seniority list dated June, 2000. He has relied on decisions cited in Mujawar's case.

The representation has been rejected.

8. The basic case of the applicants in all these cases is that as ad-hoc promotion is followed by regular promotion, their seniority should be counted from the date they completed five years regular service.

9. The applicants have also relied on a number of decisions of this Bench in OAs filed by similarly situated persons. Some of these were carried to the Apex Court also.

10. (a) Mr.R.R.Shetty for the Respondents in five of the OAs including OA 148/2003 has drawn our attention to the written statement in OA 148/2003, the relevant portion of which is as follows -

> "2. With reference to para 2 of the OA, the Respondents submit that the representation made by the applicant had been replied and if the applicant was aggrieved, the remedies were available for him to represent the matter to the Chief Commissioner of Central Excise, Mumbai Zone and thereafter the Board. The applicant has approached the Hon'ble Tribunal before exhausting the remedies available to him. The contention of the applicant that his juniors were promoted is based on a totally wrong notion. The applicant is misleading the issue by stating that his colleagues were juniors to him. The colleagues, who are named by the applicant in the OA were juniors to him in the seniority list of feeder cadre, however, the applicant is conveniently ignoring the fact that these so termed juniors were placed above him in the merit list declared by the DPC after considering the marks/grading achieved by the candidates in the selection procedure which comprises written exam, physical test and oral examination. As such under the provision of Section 20 of the Administrative Tribunals Act, 1985 the application is not at all admissible inasmuch as the applicant has approached this Hon'ble Tribunal before exhausting available remedies.
>
> 3. With reference to para 3 of tthe OA, the respondents submit that the OA is hopelessly time barred.The applicant though was senior to the colleague officers mentioned in para 4.6 of the OA in the feeder cadre, the seniority in the cadre of Inspectors has been fixed in accordance with the result of the merit panel list declared by the DPC and by merging with the direct recruit Inspectors selected through Staff Selection Commission. The seniority list of Inspectors has been circulated from time to time since 1988 and the applicant never challenged his seniority till now."

(b) He has also drawn our attention to orders F.No.II/34(8)9/2002 965A dated 1.11.2002 by which the

representation of four of the applicants have been rejected for the grounds stated therein. The grounds are that Inspector of Central Excise are selection post and hence the order as recommended by DPC have been followed. The seniority has been correctly fixed as per tthe instructions in MHA OM 9/11/RPS dated 22/12/59 as amended from time to time.

It has been further contended that the application is hopelessly time barred and that applicant cannot base his claim on decisions in other OAs. The application is also barred by latches. He has relied on the following decisions -

(a) B.S.Baijwa Vs. Union of India, 1998 SCC (L&S) 611

(b) B.V.Sivaih Vs. Union of India, 1998 SCC (L&S) 1656

(c) Y.Rama Mohan Vs. Union of India, 2002 SCC (L&S) 911

(d) Bhoop Singh Vs. UOI, JT 1992 (3) SC 322.

(e) Decision in OA 593/02 rejecting the claim on the ground that decisions cannot be re-opened after such a long lapse of time.

11. Mr.V.S.Masurkar for the respondents has appeared in OAs 419/2000, 590/2000 & 591/2000. We note that he had earlier filed OA 148/2003. The case as made out in those OAs is as follows -

> "3. With reference to paragraph 1, I say that the applicant joined the Central Excise Department as a Lower Division Clerk in 1973 (from 6.3.1973). Thereafter, the applicant was promoted to the grade of UDC on 15.1.1997. In the year 1981, the Ministry vide its letter F.No.A32011/64/80-AD-38 dated 4.2.1981, due to

non-availability of eligible officers in the cadre of UDC decided to fill up promotional vacancies to the grade of Inspector by relaxing the eligibility period by one year in UDC cadre and to promote them on ad-hoc basis. In the said letter it was also clarified that the ad--hoc promotion to the grade of Inspector (OG) should be made for a specific period not exceeding one year till eligible candidates in terms of provisions of recruitment rules became eligible for consideration for promotion on regular basis. It further made clear that the period of ad-hoc promotion will not count towards seniority. I say that accordingly, since the applicant had completed four years in the feeder cadre as UDC, the DPC held on 4.5.1981 to 7.5.1981 considered his name for promotion on ad-hoc basis to the cadre of Inspector of Central Excise (OG). The applicant was promoted on ad-hoc basis as Inspector of Central Excise (OG), vide Establishment Order No.66/81 dated 15.5.1981 issued vide F.No.II/3A-13/81/A-I (3) dated 15.5.1981. In the said order it is especially mentioned that the promotion of the applicant was clearly provisional and that he would not have any claim for seniority in the grade of Inspector of Central Excise (OG). It also mentioned therein that the ad-hoc promotion would not confer any right of the applicant for regular promotion.

4. With further reference to the aforesaid I say that as applicant has put in five years of regular service, the DPC for promotion of UDC/Stenos held on 16.3.1982 considered his case for regular promotion. The applicant was promoted on regular basis vide Establishment Order No. 98/1982 dated 29.3.1982. Accordingly the ad-hoc promotion of the applicant was regularised with effect from 29.3.1982 and his seniority was fixed correctly from the date of his regular promotion."

12. We first note that the Constitution Bench of the Apex Court in Direct Recruit Class II Engineering Officers' Association Vs. State of Maharastra, AIR 1990 SC 1607 has laid down a number of principles including principles (A) & (B) -

(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary

non-availability of eligible officers in the cadre of UDC decided to fill up promotional vacancies to the grade of Inspector by relaxing the eligibility period by one year in UDC cadre and to promote them on ad-hoc basis. In the said letter it was also clarified that the ad--hoc promotion to the grade of Inspector (OG) should be made for a specific period not exceeding one year till eligible candidates in terms of provisions of recruitment rules became eligible for consideration for promotion on regular basis. It further made clear that the period of ad-hoc promotion will not count towards seniority. I say that accordingly, since the applicant had completed four years in the feeder cadre as UDC, the DPC held on 4.5.1981 to 7.5.1981 considered his name for promotion on ad-hoc basis to the cadre of Inspector of Central Excise (OG). The applicant was promoted on ad-hoc basis as Inspector of Central Excise (OG), vide Establishment Order No.66/81 dated 15.5.1981 issued vide F.No.II/3A-13/81/A-I (3) dated 15.5.1981. In the said order it is especially mentioned that the promotion of the applicant was clearly provisional and that he would not have any claim for seniority in the grade of Inspector of Central Excise (OG). It also mentioned therein that the ad-hoc promotion would not confer any right of the applicant for regular promotion.

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into account for considering the seniority.' Thus the corollary expressly excludes the category of cases where initial appointment is only ad-hoc and not according to rules, being made only as a stop gap arrangement. The case of the writ petitioners squarely falls within the corollary.

Conclusion (B) was added to cover a different kind of situation where appointments are otherwise regular except for the deficiency of procedural requirements laid down by the rules. This is clear from opending words,namely, 'if the initial appointment is not made by following the procedure laid down by the rules' and the latter expression 'till regularisation of his service in accordance with the rules'. In order to reconcile (B) with (A), (B) is to be read to cover cases where initial appointment is made against a existing vacancy not limited to a fixed period of time or purpose by the appointment order itself, and there is deficiency in procedural requirements prescribed by the rules for adjudging suitability of the appointee for the postbeing cured at the time of regularisation, the appointee being eligible and qulaified in every manner for a regular appointment on the date of initial appointment in such cases. Decision about the nature of appointment, for determining whether it falls in this category, has to be made on the basis of terms of initial appointment itself and the provisions in the rules. In such cases, the deficiency in procedural requirement laid down in the rules has to be cured at the first available opportunity without any fault of the employee, and the appointee must continue in the post uninterrupetedly till regularisation of his service in accordance with the rules. The appointee, in such cases, is not to blame for deficiency in the procedural requirements under the rules at the time of his initial appointment, and the appointment not being limited for a fixed period of time is intended to be a regular appointment, subject to the remaining procedural requirements of the rules being fulfilled at the earliest. In such cases also, if there be any delay in curing defects on account of any fault of the appointee, the appointee would not get the full benefit of the earlier period on account of his/her fault, the benefit being confined only for the period for which he is not to blame. This category of cases is different from those covered by the corollary in conclusion (A) which relates to appointment only on ad-hoc basis as a stop-gap arrangement and not according to rules."

15. The Apex Court in State of U.P.Vs. O.N.Tandon& ors,.AIR 1993 SC 1171 has held that when a junior supersedes the senior on

The same set of persons were aggrieved by decision in OA 425 of 1992 and 259 of 1993 disagreeing with decision in OA 823 of 1987. It was againstthis that the SLP was preferred submitting that observations will prejudice their rights. The Apex Court inthe facts and circumstances of the case held that order under appeal will not affect the settled rights.

19. In the case of A.N.Kulkarni & 17 others the applications were disposed of with the following direction -

> ".....1. The respondents are directed to consider the claim of the applicants, taking into account the relevant provisions of law, including the judgments of the Hon'ble Supreme Court referred to above,and pass detailed, speaking and reasoned order regarding re-fixation of their seniority in the cadre of Inspectors/Superintendents 'B', as the case may be. this shall be done within six months from the date of receipt of copy of this order".
> The claim was based on Subba Rao & U.H. Jadhav.

20. In C.V.Kuvalekar , OA 879/92, the applicant was a directly recruited Inspector of 1973; who was confirmed in 1984. He wanted delinking of seniority from confirmation. He relied on K.K.Petlur and U.H.Jadhav. The same was allowed.

21. The facts in U.P. Nandu Shekar case are identical to C.V.Kuvalekar.

22. The applicants have also relied on the decision of this Bench in OA 467/00. The applicant therein Shri B.D.Besre was promoted on ad-hoc basis from 17.7.1984 and was promoted as

Inspector on regular basis w.e.f. 8.11.1985. The said OA was allowed by an oral order by counting the ad-hoc service.

23. OAs 418/00, 420/00, 479/00 and 484/00 have been decided by a common order dated 11.6.2003. The Tribunal in Para 6 have held as follows -

> "6. As held by the Apex Court in the case of C.N.Reddy Vs. Government of Uttar Pradesh, 1998 (3) SCC 240, final seniority list cannot be issued without a tentative list and without considering the objections. We find from the record that both in the year 1997 as well as 2000, what has been published by the Respondents is a draft seniority list and no final seniority list has been issued after consideration of individual representations of the Inspectors regarding objection put forth for assigning of seniority to them."

and have directed that the OA may be as statutory representation of applicants in the matter of seniority and the same may be disposed of through a detailed and speaking order within a period of six months. The issues raised in the OA shall remain open.

24. The applicants in OA 591/00 had also enclosed a detailed order passed by the Tribunal in a group of eight applications including OA 386/97. The same concerned UDCs/Stenos in the Custom Department who were selected and promoted as Preventive Officers.

25. The case of the applicant in that case was as follows -

> ".....The applicants were promoted against the promotional quota, but for th post of Preventive Officers the promotional quota is 1/4th and quota for direct

recruitment is 3/4th. All the applicantss have been working continuously as Preventive officers from the dates of their respective promotions. But, however, the respondents have issued an order dated 4.6.1991 purporting to regularise the promotions of many officers as Preventive officers including all the officers. It is stated that the applicants are entitled to seniority in the cadre of Preventive officers from the date of their initial promotionon the theory of "continuous officiation". The promotion of applicants was not for a short time affair or a stop-gap arrangement. It was a regular promotion by a DPC as per the Recruitment Rules, though wrongly styled as ad-hoc promotion."

25. Tthe case of respondent Custom Administration on the other hand was that the applicants were promoted on ad-hoc basis and they were regularised by order dated 17.5.1991. It was therefore stated that the applicants are entitled to claim seniority in the cadre of Preventive Officers only w.e.f. 17.5.1991.

26. The direct recruit Preventive Officers had intervened in the said set of four OAs and set out their grievance in the following terms -

".....As could be gathered from Miscellaneous Petitions filed by them, their defence appears to be that they are direct recruits and all the applicants are promotees. The ratio between direct recruits and promotees in the cadre of Preventive Officers is 3 : 1. There were no promotional posts at all. But, however, the applicants were given promotions on ad-hoc basis. It is also alleged that the applicants got ad-hoc promotion by the department without holding the Departmental Promotion Committee and without there being required number of posts available for promotion from Ministerial cadre. The main thrust of the interveners is that there were no posts available for the promotees, therefore their promotion on ad-hoc basis will not confer any rights on them and it is only in 1991 the promotional posts were identified and accordingly applicants were regularly promoted in 1991. Hence it is

stated that the applicants cannot claim any seniority on the basis of their ad-hoc promotion, but are entitled to seniority in the cadre of Preventive Officers only on and from 17.5.1991."

The Bench after going through the pleadings formulated the following question for consideration -

"10. Therefore, the decisions relied on both the sides lead us to one and only one conclusion. If the ad-hoc promotions or ad-hoc appointments wre done as peer Rules and after considering the seniority, then the promotions must be held to be regular from the initial ad-hoc appointment itself. If, however, the appointments or promotions are made ignoring the claims of seniors or contrary to the Recruitment Rules or in excess of the quota, thn the ad-hoc service will not count for seniority. This is the law laid down by the Apex Court. Now, therefore, we will have to apply the above test to the facts of thee present case and find out whether the initial ad-hoc promotions of the applicants was on the basis of seniority, on the basis of rules and within the quota of promotees. If the answers to these questions are in the affirmative, then the applicants ad-hoc service will be deemed to be regular service for the purpose of seniority. If the answers are in the negative, then, of course, the applicants cannot get the benefit of ad-hoc service for the purpose of seniority, but they are entitled to claim seniority only from the date of regularisation in 1991."

The Bench considered the facts of the case and held as follows -

".....It is therefore, seen that the respondents have admitted that the applicants promotions were done by holding written test, interview, passing of physical test and on examination of CRs for 5 years. These are all the requirements under the rules, nothing more need be done. The argument of Mr.M.M.Vashi, the learned counsel for the intervenors that regular promotions can be done only by a DPC and without being processed by a DPC the applicants claim regular promotion from 1983, has no merit. We have seen from the records that a regularly constituted DPC as provided in the Recruitment Rules consisting of Collector as Chairman and Members etc., the applicants have been selected for promotion. The applicants have been subjected to the same selection process as mentioned in the Recruitment Rules and that too by a regularly constituted DPC as provided in the Recruitment Rules. From the above discussion and the materials on record, we can safely conclude that the initial ad-hoc promotions of the applicants was as per the Recruitment Rules. It was not a case of mere ad-hoc or stop-gap arrangment made dehors the Rules."

In the light of these discussions they allowed the application for grant of seniority from the date of their initial ad-hoc promotion.

27. The respondents on the other hand have relied on the decision of this Bench in OA 593/02 which is also in the matter of Inspectors promoted on ad-hoc basis followed by regular promotion. The Bench held that the seniority list of Sub Inspectors notified in 1988 and as also in the year 1997. They finally held as follows -

> ".....It is well settled that the settled seniority should not be un-settled at the instance of person who has not been vigilant in agitating his grievance at tthe appropriate time. The learned counsel for the applicant vehemently argued that the OA has been filed within time. He has also argued that the question of limitation has not been taken up in the impugned order hence the respondents are estopped from raising that question now. We do not find any substance in the arguments. In fact the appliant is seeking to unsettle the seniority which has been settled more than 15 years back. Although in the impugned order the question of limitation has not been stated the Tribunal is bound to consider whether the claim of th applicant can be entertained on account of bar of limitation. A mere look at the two seniority lists would show that if the applicant is to be assigned seniority counting from 5.6.1981, thus seniority of about 200 persons which has been settled more than a decade and half back would be upset. Under the circumstances, we find that the application which is hopelessly barred by limitation has got to be rejected."

28. It is clear from the foregoing discussions that decisions in the cases of K.K.Petlur, V.H.Jadhav, C.V.Kuvalekar and Nandu Shekar are all relating to direct recruits. In all these cases the persons have been recruited prior to coming into force of the 1979 recruitment rules. In all these cases the basic ground was that

the seniority had been disturbed on account of delayed confirmation and they had accordingly asked for restoration of seniority. The decision in Subbarao's case is also in the case of direct recruits. Thus in case the seniority of the applicants in these OAs is being finalised, on the recommendations of DPC, recommending their regular promotion, uninfluenced by their subsequent confirmation, the decisions in these OAs shall be of no avail.

29. In the case of A.N.Kulkarni no specific guidelines have been given. They have only referred to the decision in the case of Subbarao and U.H.Jadav referred to above. Thus these two decisions are also of no avail.

30. It is only in the case of B.D.Besre - OA 467/00 that in the case of promoted Inspectors, the counting of service on ad-hoc promotion has been allowed. However the plain reading of this decision shows that there is no discussion ~~on the~~ point as to whether the applicant had been promoted on ad-hoc basis in accordance with the rules, has been considered.

31. We find from a plain reading of the recruitment rules that the promotion is subject to two conditions viz. regular service of five years and the mode of promotion is 'promotion by

selection'. This means that the officers falling in the zone of consideration will have to be graded and the officers who are 'Outstanding' shall be followed by officers who are 'Very Good' and then by other officers who have been adjudged as 'Good'. The 1981 circular which has been reproduced in para 3 above very clearly indicates that the qualifying service is being reduced by one year. It has further been indicated that the ad-hoc promotion shall not be for a priod of more than one year at a time till eligible candidates in terms of the recruitment rules become eligible for consideration for promotion on regular basis. It has also been made clear that the DPC for regular promotion should be convened in such a manner that ad-hoc promotees are considered on regular basis before the completion of ad-hoc period of one year and if any officer is not found fit for promotion on regular basis they should be reverted if there is no vacancy for continuance on ad-hoc basis.

32. It will be clear from a plain reading of the decision in Direct Recruit's case (supra) as well as the explanation given in State of West Bengal Vs. Aghore Nath Dey (supra) that ad-hoc promotion, dehors the rules cannot be counted for purposes of seniority.

33. The critical question therefore is as to whether these persons were promoted on ad-hoc basis by following the process

for promotion by selection. The respondents have stated that initial promotions were without following these rules and accordingly this period cannot count. This has not been controverted. It therefore appears that the initial promotion was without following the recruitment rules and accordingly the decision of the respondents dated 1.11.2002 in four OAs cannot be faulted. We are enforced in our views by the decision of this Bench in OA 386/97 and 7 others decided on 10.12.1998 where similar question regarding the Customs Department had come.

34. Shri Shetty had also argued that matters of seniority should not be allowed to be upset after a long passage of time. He has cited the decisions in the case of B.S.Bajwa and another Vs. State of Punjab and others, 1998 SCC (L&S) 611 wherein it has been held as under -

> "Seniority-Laches-Seniority dispute raised after more than a decade after joining service when in the meantime promotions had also taken place - Held, "the question of seniority should not be reopened ins uch situations aftr a lapse of reasonable period because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present case in making such a grievance. This alone was sufficient to decline interference under Art.226 and to reject the writ petition."

In the case of B.V.Sivaiah and others Vs. K.Addanki Babu 1998 SCC (L&S) 1656 the Apex Court held as under -

> "Constitution of India - Art.226 - Maintainability - Delay/Laches - After four years petitioners seeking

restoration of inter se seniority - Petitions rightly rejected."

In the case of Y.Ramamohan and others Vs. Government of India & others, 2002 SCC (L&S) 911 the Apex Court held as under -

"Administrative Tribunals Act, 1985 - S.21 - Limitation - Delay and laches - Subterfuge adopted by applicant would not entitle the applicant to get over the delay - Year of allotment for promotee officers of Indian Forest Service (appellants) fixed as 1976 and seniority determined and common gradation list prepared accordingly - That year of allotment assailed by filing application before Tribunal by direct recruits in 1986 by arraying the appellant promotees as part-respondents - Tribunal recording a positive finding that Principal Chief Conservator of Forests had communicated the common gradation list in his proceedings dated 3.5.1983 and hence dismissing the application on ground of delay - Thereafter, a representation filed by the promotees before Central Government seeking allotment of year of 1974 but the same having been rejected, they approaching the Tribunal - Held, Tribunal rightly dmsissed their application on grounds of gross delay."

35. We have also noted the decision in OA 593/02 rejecting the claim of similarly situated persons on the grounds that decisions cannot be re-opened after such a long lapse of time.

36. He has relied on the decision in the case of Bhoop Singh Vs. Union of India, JT 1992 (3) SC 322. The Apex Court had held that "judgment and orders of the Court in other cases do not give cause of action. The cause of action has to be reckoned from the actual date. The termination of service challenged after 22 years on the ground that similarly dismissed employee had been reinstated as a result of their earlier petition. The inordinate delay relief refused."

37. We however also note that the respondents have been publishing only draft seniority lists without finalising the same and having repeatedly inviting objections. The Apex Court in the case of C.N.Reddy Vs.Government of Madhya Pradesh, 1998 SCC (L&S) 870 has held that the objections received against the draft seniority list have to be finalised. The Apex Court found that objections raising points both on law and facts were summarily dismissed without assigning any reasons. The Government was accordingly directed to finalise the seniority list in the light of the directions given in the order appealed against.

38. We find that in the instant case we have two sets of reliefs claimed. The applicants in OAs 97/03, 98/03, 154/03 and 192/03 have challenged the order dated 1.11.2002 rejecting thir representations. The said challenge is found to be devoid of merit and is accordingly rejected. In the remaining set of OAs we find that the applicants have come for non-disposal of their representations against the draft seniority lists. The respondents are directed to dispose of the same expeditiously in accordance with law stated above.

39. In view of what has been stated above, OAs 419/00, 590/00, 591/00, and 148/03 are disposed off with the above directions while OAs 97/03, 98/03, 154/03 & 192/03 are dismissed. No costs.

Shankar Prasad
(Shankar Prasad)
Member (A)

Kuldip
(Kuldip Singh)
Member (J)

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