CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.837/2001, 838/2001, 839/2001, 840/2001, 841/2001 & 842/2001

THIS THE 18th DAY OF NOVEMBER, 2002

CORAM:
HON'BLE SHRI JUSTICE BIRENDRA DIKSHIT. VICE CHAIRMAN.
HON'BLE SMT. SHANTA SHASTRY. .. MEMBER (A)

Suresh Shivram Kulkarni,
residing at 39, 1st Floor,
Sindhi Society, Chembur,
Mumbai-400 016. .. Applicant

By Advocate Shri V.S. Masurkar.

Versus

1. Union of India through the Chairman, Central Board of Excise & customs, North Block, Central Secretariat, New Delhi.

2. The Chief Commissioner of Central Excise, Churchgate, Mumbai-400 020.

3. The Commissioner of Central Excise-I, Mumbai-VI, Vardhan Building, Wagle Ind. Estate, Thane. ... Respondents

By Advocate Shri M.I. Sethna.

O.A. NO. 838/2001

Chirakkalath Devasia Ephrem,
residing at D-4, Nav Monica C.G.S.
Vidyanagari PO Kalina,
Mumbai-400 098. ... Applicant

By Advocate Shri V.S. Masurkar.

Versus

1. Union of India through the Chairman, Central Board of Excise & customs, North Block, Central Secretariat, New Delhi.

2. The Chief Commissioner of Central Excise, Churchgate, Mumbai-400 020.

...2.

3. The Commissioner of Central
Excise-I, Mumbai-I,
Churchgate, Mumbai-400 020. .. Respondents

By Advocate Shri M.I. Sethna.

O.A. NO. 839/2001

Ramachandra Daji Shinde,
residing at C/201 Brindavan,
Shiv - Sruthi, Kurla,
Mumbai-400 024.
... Applicant

By Advocate Shri V.S. Masurkar.

Versus

1. Union of India through the
Chairman, Central Board of
Excise & customs, North Block,
Central Secretariat,
New Delhi.

2. The Chief Commissioner of
Central Excise,
Churchgate, Mumbai-400 020.

3. The Commissioner of Central
Excise-I, Mumbai-I,
Churchgate, Mumbai-400 020. .. Respondents

By Advocate Shri M.I. Sethna.

O.A. NO. 840/2001

Umakant Ghanashyam Kulkarni
residing at A-9, Ulra Society,
Dilip Gupte Marg, Mahim,
Mumbai-400 016. .. Applicant

By Advocate Shri V.S. Masurkar.

Versus

1. Union of India through the
Chairman, Central Board of
Excise & customs, North Block,
Central Secretariat,
New Delhi.

2. The Chief Commissioner of
Central Excise,
Churchgate, Mumbai-400 020.

3. The Commissioner of Central
Excise-I, Mumbai-I,
Churchgate, Mumbai-400 020. .. Respondents

By Advocate Shri M.I. Sethna.

...3.

O.A. NO. 841/2001

Vijay Kumar Ramachandra Parmaj,
residing at Flat No.111,
Molax Bhavan, Chedanagar,
Chembur, Mumbai-400 089. .. Applicant

By Advocate Shri V.S. Masurkar.

Versus

1. Union of India through the
Chairman, Central Board of
Excise & customs, North Block,
Central Secretariat,
New Delhi.

2. The Chief Commissioner of
Central Excise,
Churchgate, Mumbai-400 020.

3. The Commissioner of Central
Excise-I, Mumbai-VI,
Vardhan Building, Wagle Ind.
Estate, Thane. .. Respondents

By Advocate Shri M.I. Sethna.

O.A. NO. 842/2001

Suresh Balajirao Ghag,
residing at 116-B, Flat
No.3984 Geet Govind
Co-op. Hsg Society,
Tilak Nagar, Chembur,
Mumbai-400 089. .. Applicant

By Advocate Shri S.S. Ghag

Versus

1. Union of India through the
Chairman, Central Board of
Excise & customs, North Block,
Central Secretariat,
New Delhi.

2. The Chief Commissioner of
Central Excise,
Churchgate, Mumbai-400 020.

3. The Commissioner of Central
Excise-I, Mumbai-VI,
Vardhan Building, Wagle Ind.
Estate, Thane. .. Respondents

By Advocate Shri M.I. Sethna.

...4.

O R D E R

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

The issue for consideration in all these OAs and the grievances are identical. Advocates both for the applicants in these OAs and the respondents have agreed that these OAs can be heard together. Accordingly, these OAs are being disposed of by a common order.

2. The applicants in these OAs have approached this Tribunal with the grievance that though the seniority list of Assistant Commissioner (Junior Time Scale) (AC JTS) was published on 30.11.2000 and the applicants have been shown as deemed to have been promoted as Assistant Commissioner, Group-A JTS as on 01..01.1983 (in OAs 838 to 842/2001) and on 01.01.1986 (in OA 837/2001), they have not been granted the benefit of revising their pay fixation with retrospective effect and paid the difference of pay and allowances. Further, juniors to them were promoted as Joint Commissioner (JC) with effect from May, 1995. The applicants are also deemed to have been promoted as such with effect from May, 1995, but no orders have been issued granting them the promotion as Joint Commissioner and paying them the difference in pay and allowances due to such refixation. Aggrieved by the non-promotion and non payment of difference of pay and allowances, the applicants have approached this Tribunal. For the purpose of illustration, the facts in OA No.837/2001 are given below.

...5.

3. The facts of the case are that the applicant joined service as Preventive Officer Grade-I in the Customs Department in 1963. Thereafter, he was promoted as AC Group-A JTS, Delhi Customs in the year 1990. He was transferred to various places in the Central Customs and Excise Department and was granted further promotion to Senior Time Scale with effect from 30.01.1994.

4. The Group-A post of AC is filled 50% by direct recruitment through UPSC and the balance 50% is filled through promotion from Group - B cadres namely Superintendents of Central Excise, Superintendents of Customs and Customs Appraisers. The question of determining the seniority of the Group-B officers of different feeder cadres was under consideration. The applicants state that therefore the All India Federation of Central Excise had filed Writ Petition No.306/1988 before the Supreme Court. It was decided on 22nd November, 1996 wherein the Supreme Court decided the issue of promotion from the three cadres mentioned above in the ratio of 6:1:2 i.e. Central Excise Superintendents - six posts, Customs Preventive Superintendent - one post and Customs Appraisers - two posts. Thus, in each package of nine vacancies in the promotion quota, the quota is to be shared in the ratio of 6:1:2. The Supreme Court directed the Government to rearrange the interse seniority and promotion of the respective direct recruits and promote within their

...6.

quota and secondly promotion in further higher service and to arrange their seniority accordingly. The respondents thereafter, reviewed all the adhoc promotions made to the grade of AC from 1980 onwards and the orders promoting Group-B officer to the grade of AC on regular basis by preparing year-wise panel from 1980 to 1996-97; the panels were issued on 21.11.2000. Thereafter, the notification regarding the seniority list was issued on 30.11.2000.

5. The applicant states that his name appears at Sl. No.3 in the panel of the year 1986 and his date of promotion to the post of AC is shown as 01.01.1986, though he was actually promoted in January, 1990. Thus, the applicant is given the seniority from 01.01.1986 since he was due for promotion as per the ratio of the Apex Court judgment. The applicant therefore prays that he is entitled to pay of AC from 01.01.1986 in the JTS and from 01.01.1990 in the STS. The applicant further submits that one Shri Om Prakash and Shri A.G. Shakkarwar working as AC on 01.01.1986 and shown junior to the applicant had now been shown in the seniority list at Sl.No.1225 and 1229 respectively. They were promoted to the grade of Deputy Commissioner now known as Joint Commissioner though junior to the applicant. Applicant is at Sl. No.1224.

6. According to the applicant, the respondents ought to have convened DPC and promoted the applicant and other promoted candidates as Joint Commissioner in accordance with the rules, at least adhoc promotion ought to have been considered.

7. The applicant submits further that one of the officers namely Shri J.M. Sharma who was promoted in the panel of 1986 as shown vide Notification dated 21.11.2000 has been granted promotion from Group B to Group-A with effect from 01.01.1982 and the JTS to STS with effect from 01.01.1986 and although Shri Sharma had retired, his pay was revised and refixed. Similar promotion ought to have been given to the applicant also. The applicant has also mentioned the name of one Shri Unnikrishnan, who too has been promoted on the basis of the seniority list published on 30.11.2000 and the revised panel declared on 21.11.2000. The respondents have also issued posting orders of 32 junior officers who were promoted including three promotees who were junior to the applicant. The action of the respondents therefore is discriminatory and violative of Articles 14 and 16 of Constitution of India.

8. The applicant made a representation to all the respondents on 30.5.2001, 23.7.2001 and 04.9.2001. The applicant has therefore, prayed to grant him the benefit of the seniority as shown in the seniority list of

30.11.2000 and the letter dated 21.11.2000 showing the empanelment.

9. The respondents did not file a final reply, but only a limited reply as interim relief had been prayed for by the applicant. The Tribunal did not grant any interim relief.

10. According to the respondents, the application is totally misconceived and discloses no cause of action than can be entertained at this stage. According to them, the OA is not maintainable and deserves to be dismissed at this ~~this~~ stage only. The respondents submit that adhoc promotions have been made during the pendency of the dispute regarding the promotion quota for different feeder cadre. After the Supreme Court decided the Writ Petition on 22.11.1996 the respondents prepared a draft combined seniority list of all direct recruits and regular promotees of all India Customs and Central Excise services Group-A officers. However, more than 100 representations have been received against the said draft seniority list. Since records as old as 25 years were required to be checked in order to verify the claims of the representations, they were still under the examination and it was very likely that regular promotions made from 1980 to 1996-97 may again have to be reviewed in order to rectify the bonafide anomalies. Therefore, adhoc promotion to the AC (STS) has not yet been regularised.

11. The respondents have not denied the factual position. The applicant was promoted to the grade of AC (JTS) on adhoc basis with effect from 30.01.1990 and further promoted to the grade of AC (STS) with effect from 03.11.1994. It is also not denied that after the review, the applicant was shown as deemed to have been promoted to the grade of AC (JTS) on regular basis with effect from 01.01.1986. In accordance with the judgment dated 22.11.1996 the vacancies to the grade of AC (JTS) falling to the share of promotion quota have been filled by regularising the adhoc promotions made after 01.01.1980 vide Notification dated 21.11.2000. In the Notification, it has been clarified that the officers mentioned in AS 1, 2 and 3 shall be deemed to have been promoted with effect from the date of commencing of the panel year to which they had been recommended. Accordingly, a draft combined seniority list had been circulated. However, the respondents submit that the applicant is entitled to notional fixation of his pay in the AC (JTS) grade with effect from 01.01.1986, he is not entitled to AC (STS) with effect from 01.01.1990 because the appointment to the AC (STS) Group-A are made in accordance with rule 19 of Indian Customs and Central Excise Service Rules 1987. The promotions are to be made in the year of seniority subject to rejection of the unfit. Under the rules, there is also a provision that an officer appointed to the grade VI of the service shall not be considered for promotion to Grade V until

he successfully completed the period of probation. The promotion can be made only on the basis of recommendations of a duly constituted DPC against the vacancies available in a year. Since the seniority had not been finalised, DPC could not be convened.

12. Coming to the contention of the applicant that Shri Om Prakash Dadhich and Shri A.G. Shakkarwar, who were direct recruit officers and were placed junior to the applicant, were promoted to the grade of Joint Commissioner on adhoc basis in March, 1999, is not proper, the respondents submit that the applicant would be considered for promotion to the grade of Joint Commissioner as per his seniority when the adhoc promotion to the grade of Joint Commissioners is regularised.

13. The respondents have also taken note of the contention of the applicant against pay fixation granted to Shri J.M. Sharma and have stated that the same is being investigated. Similarly in the case of Om Prakash Dadhich and A.G. Shakkarwar the respondents submit that till the seniority list is finally brought out their seniority also cannot be treated as fixed. They have been promoted to the grade of Joint Commissioner on adhoc basis in March, 1999 i.e. before the applicant was promoted to AC (JTS) grade on regular basis. In short, the respondents have harped on the fact that the

seniority list of 30.11.2000 is not the final list, but only a provisional list and therefore, the relief sought by the applicant is premature.

14. In this connection, the learned counsel for the applicant drew our attention to a judgment of the Chennai Bench of the Tribunal in OA No.166/2000 decided on 20th December, 2001 wherein the same seniority list of 30.11.2000 was under consideration and in this judgment it has been mentioned in para 2 that the learned counsel for the official respondents has filed additional reply stating that as per the Supreme Court's order, the Ministry has reviewed and regularised the integrated seniority list of promoted AC of 1997 and issued order and notification dated 20.11.2000. In para 3, it has been further stated, now that the seniority list has been finalised, it is for the respondents to convene a DPC and promote the applicant and other promotees and Joint Commissioner in accordance with rules. Thus, according to the learned counsel for the applicant, the respondents have thus admitted that the seniority list has been finalised. It cannot therefore, now be said that the seniority list is not finalised.

15. The learned counsel for the respondents also produced a copy of another judgment of the Bangalore ~~Bangalore~~ Bench of the Tribunal in OA No.1707 and other connected OAs of 2001 in the case of K.G. Bhat & Others

Vs. Union of India & Others. In this judgment also the seniority list of 30th November 2000 was under consideration. It was held in this judgment that at any rate the seniority list of 30.11.2000 is only a provisional seniority list, it was observed thus: "We find that the objections were invited by fixing the last date as 31.12.2000. After publishing the seniority list of 30th November, 2000 more than 1 1/2 years have ~~been~~ lapsed, Whatever the objection raised in pursuance of the provisional seniority list, the department should have decided by this time and prepared the final seniority list of the officers of Indian Customs & Central Excise Group-A." The application was disposed of as premature and the official respondents were directed to finalise the seniority list and prepare the final seniority list after considering the objections, if any.

16. We have heard the learned counsel for both the sides and have given our careful consideration to the rival contentions. We have also perused the judgments relied upon by the applicant as well as the respondents. During the course of hearing of the OA when the learned counsel for the respondents produced the judgment of the Bangalore Bench of the Tribunal dated 19.7.2000 in identical matter, the departmental representative was present in the court on that day. He made a statement that the seniority list of 30.11.2000 had not been finalised, but was likely to be finalised by the end of

September, 2002, subject to any order that may be passed by the court. He undertook to file an affidavit to that effect and he was permitted to do so, and he did file an affidavit on 09.8.2002. This is confirming the statement that he had made on 08.8.2002 in the court. The learned counsel for the applicant had taken objection to the contents of the additional affidavit and had also mentioned about the judgment of the Chennai Bench in OA No.166/2000 decided on 05.01.2001. After hearing both the sides, the Tribunal was of the considered view that the seniority list of 30.11.2000 ~~with~~ which was integrated seniority list prepared in pursuance of the judgment of the Supreme Court dated 22.11.1996 is still a provisional seniority list. This was evident from the letter dated 30.11.2000 that the seniority list was a provisional seniority list as in para 3 of the said letter it had been advised to circulate the list among all the concerned officers and the officers may file objections if any immediately and in any case not later than 13.12.2000. As the learned counsel for the applicant was not in a position to produce before this Tribunal any material to show that the list of 30.11.2000 had been actually finalised and also after perusal of the judgment of the Chennai Bench of the Tribunal, we found that even the respondents had not made any averment that the list of 30.11.2000 had been finalised actually. We held that the seniority list of 30.11.2000 was still not finalised. Thereafter, the

learned counsel for the respondents had undertaken to file an affidavit before the next date of hearing in regard to the progress in finalisation of the integrated seniority list of 30.11.2000. Accordingly, the learned counsel for the respondents filed an additional affidavit and informed that the integrated seniority list of 30th November, 2000 had been actually finalised on 24.9.2002 as already stated in the earlier affidavit by the departmental representative. The learned counsel also informed that now in the light of the final seniority list, proposals for promotion have been forwarded to the UPSC for their concurrence and thereafter, necessary orders can be issued.

17. The learned counsel for the applicant again objected that in the past when Shri Unnikrishnann and Shri A.G. Shakkarwar were promoted in pursuance of the seniority list of 30.11.2000 no concurrence of the UPSC had been obtained and therefore, it should not be insisted upon now, especially when the applicants have already retired long ago.

18. The respondents contended that as per procedure, it was necessary to refer the proposals to the UPSC for their concurrence and accordingly, the proposals might have reached UPSC by around 10th of October, 2002 and UPSC's concurrence has to be awaited.

19. It is now seen from the various affidavits filed by the official respondents that the seniority list has at last ~~has~~ been finalised on 24.9.2002 and now it is only a matter of concurrence of UPSC. The respondents are unable to give any definite date or time period by which the UPSC would give the concurrence or otherwise to the proposals sent to them. Normally, according to the respondents, UPSC needs sufficient time to go through the proposals. It would be unfair to the applicant especially to those who have already retired to make them wait for inordinately long time. Since the procedural concurrence of the UPSC is necessary, the process has to be gone through. All that is now required is to see that the UPSC expedites the matter and gives its concurrence or otherwise within the stipulated period. However, the UPSC has not been made a party in all these OAs, as such we are unable to grant any relief by way of any direction to the UPSC to give their concurrence to the proposals forwarded by the respondents within a fixed time period. The only course that is open for the respondents is to pursue the matter with UPSC vigorously. The OAs are disposed of with the above observation. No costs.

(SMT. SHANTA SHASTRY)
MEMBER (A)

(BIRENDRA DIKSHIT)
VICE CHAIRMAN

Gajan