

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE TWENTY NINETH DAY OF DECEMBER
1986

Present : Hon'ble Shri Ch Ramakrishna Rao ... Member (J)
Hon'ble Shri P. Srinivasan ... Member (A)

APPLICATION NO. 206/86 (T)

K. Sarpabhushana,
Inspector, Central Excise,
Davanagere,
Chitradurga Distt. ... Applicant

(Shri C.G. Achar, ... Advocate)

V.

The Collector of Central
Excise and Customs,
C.R. Building, Queens Road,
Bangalore-1.

Central Board of Excise &
Customs by its Secretary,
New Delhi.

Union of India by its Secretary
Ministry of Finance,
Department of Revenue,
New Delhi.

G. Jayapalan,
R. Rangarajan,
I.G. Pattana Shetty,
S. Rajarao Kote,
P. Viswanathan
(Respondents 4 to 8 are
Inspectors Central Excise,
C/o The Collector of Central Excise,
Bangalore-1) ... Respondents

(Shri M.S. Padmarajaiah ... Advocate)

This application came up for hearing before this Tribunal on
27.11.1986. Hon'ble Member (A) Shri P. Srinivasan made the following:

ORDER

This is a transferred application received from the High Court
of Karnataka.

2. In this application, the applicant challenges the seniority
assigned to him in the cadre of Inspectors of Central Excise working
in the charge of the Collector of Central Excise, Bangalore, vis-a-vis
respondents 4 to 8. The prayer in the application is that the

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only on 1.8.1972. As a result, the applicant became junior to R4 and R5, in the cadre of Inspector of Central Excise. So far as R6 and R7 are concerned, they joined as LDCs in the same department and obtained promotion in the ministerial line to posts of UDC and then to posts of Inspector of Central Excise in December 1971 again before the applicant. They were both junior to the applicant in the original grade of LDC, having joined service a few months after the applicant. Since they also obtained promotion to the posts of Inspectors of Central Excise from the ministerial quota earlier than the applicant, their seniority in the cadre of Inspectors was fixed above that of the applicant. The relative seniority of persons promoted as Inspectors of Central Excise from different sources, namely, those promoted from the cadre of SIs, those promoted from the ministerial cadre and others directly recruited (during the period when direct recruitment was allowed) was determined by rotating the vacancies occurring from time to time among them, according to the quota prescribed for recruitment from the different sources. This, combined with the earlier promotion of respondents 4, 5, 6 and 7 gave them a higher seniority vis-a-vis the applicant. It appears that ^{R-4} ~~R4~~ got a further advantage because of reservation in promotion posts to Scheduled Caste candidates and thus in the seniority list as on 1.1.1977 of Inspector of Central Excise, he figured at S.No.3, while the applicant was at S.No.263 and respondents 5, 6, and 7 figured between S.Nos.112 and 201. (1)

4. So far as R8 is concerned he was directly recruited as Inspector of Central Excise on 24.8.1972, while the applicant, as stated earlier, was promoted to that post on 1.8.1972. However, by reason of rotation of vacancies for direct recruitment and promotion, R8 was again given a higher seniority above the applicant in the list of Inspectors of Central Excise as on 1.1.1977 and in subsequent seniority lists.

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seniority list of Inspectors of Central Excise as on 1.1.1978 (Ex 'U') announced on 23.6.1978 by the Collector of Central Excise, Karnataka, Bangalore, Respondent 1 in this application be quashed so far as it relates to the petitioner and respondents 4 to 8 and to direct the respondents 1 to 3 to place the petitioner above respondents 4 to 8 in the said seniority list.

81 3. The facts relating to the applicant's contention that he should be assigned seniority ^{above} on respondents 4 to 7 may first be considered.

The applicant who joined the Central Excise Department as a Lower Division Clerk (LDC) on 10.1.1957, was promoted as Sub Inspector of Central Excise (SI) by order dated 16.1.1961. In that order, respondent 4 who was junior to the applicant in the grade of LDC was also promoted. Respondent 4 was placed immediately below the applicant in the order of merit in the said order. Respondent 5 who also started his career as a LDC in the Central Excise Department was promoted as SI by a subsequent order dated 10.4.1961. Respondent 5 was also junior to the applicant in the grade of LDC as well as in the grade of SI. When all these three persons were appointed as SI, the appointment order narrated, inter alia, that after their "transfer to the grade of SI, they will not be allowed to revert as LDC". However, by an order dated 21.11.1966, respondents 4 and 5 alongwith 14 others were reverted as LDCs as 16 posts of SIs were found to have become surplus. 16 junior-most SIs including R4 and R5 were thus reverted. Subsequently, in 1967, some more posts of SIs were sanctioned and some of the persons reverted as LDC were restored to the post of SI, but not respondents 4 and 5. They continued as LDC, obtained ^{promotion} in the ministerial cadre as Upper Division Clerks (UDC) and further promotion as Inspector of Central Excise in 1971 against the ministerial quota. However, the applicant, who continued as SI, could get his turn for promotion as Inspector of Central Excise in the quota assigned to SIs

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5. The applicant appears to have made representations from the latter half of 1972 against the promotion of respondents 4 and 5 before him, but these representations were finally rejected by the President in February 1973 (Ex N). Thereafter in November 1977, the applicant made another representation (Ex P) challenging the seniority not only of respondents 4 and 5 but also R6 and 7. This representation was rejected by a letter dated 31.12.1977 from the office of Collector of Central Excise, R1 in this application (Ex Q) stating that his earlier representation on the same issue had been turned down by the Central Board of Customs and Excise as well as by the President of India and that those decisions held good against his latest representation. It was after this that the applicant filed the present application as a writ petition before the High Court of Karnataka on 13.8.1979.

6. Shri C.G. Achar, learned counsel for the applicant, vehemently contended that by fixing the seniority of the applicant below that of R4 to 8, the applicant had been discriminated against. When R4 and 5 were reverted from the post of SI, because they were juniors to the applicant, they should not have been allowed to earn promotion to the higher grade of Inspector before the applicant, particularly since the applicant was senior to them in the cadre of LDC also. In fact, there was a prohibition against reverting a person once promoted as SI to the post of LDC and this prohibition was violated when R4 and 5 were reverted and they had benefitted by this illegal reversion. When persons ^(b) so reverted were again re-promoted as SI in 1967, R4 and 5 should also have been re-promoted, being the senior-most among those who had earlier been reverted. By not doing this R1, the Collector of Central Excise, Bangalore, again committed an illegality and conferred a benefit on R4 and 5. When R4 and 5 were promoted from the grade of LDC to the grade of UDC, the applicant should also have been considered for such promotion, being senior to them in the grade of LDC, and not having at that time been confirmed as SI of Central Excise. In any case,

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in 1971, when both R4 and 5 were promoted as Inspectors of Central Excise, the applicant should have also been considered for promotion. The eligibility for promotion to the post of Inspectors was five years' experience, as SI or as UDC. The post of SI being in the executive line, persons with the qualifying service as SI like the applicant, should have been preferred for promotion to the post of Inspectors (as an executive post) over persons in the ministerial cadre like the respondents. In fact, while prescribing the eligibility for promotion, SIs had been mentioned first and UDCs only later. Similarly, when R6 and 7 were promoted as Inspectors in December 1971, the applicant who was senior to them in the ministerial cadre of LDC and had the requisite qualifying experience in the executive post of SI, should have been preferred for promotion. Therefore, the applicant should have been promoted as Inspector in 1971 before R4, 5, 6 and 7 and accorded a position of seniority in the cadre of Inspectors above them. Respondent 8 had been directly recruited as Inspector on 24.8.72 i.e., 23 days after the applicant was promoted and he should not have been placed above the applicant in seniority. In fact, the determining factor for fixing seniority should have been total length of Government service, counting the initial appointment of all the persons as LDCs and if that were done, the applicant having the longest period of service, should have been placed above all the respondents ~~and~~ even ^{and} in the post of Inspector, the applicant had longer service than R8. Shri Achar relied on the decision of the Supreme Court in Union of India V. Ravi Varma and others AIR 1972 SC 1927, in support of his contention that the criterion for fixing the seniority of the applicant vis-a-vis R4, 5, 6, 7 and 8 in the cadre of Inspectors of Central Excise should have been their date of entry into Government service.

7. Shri M.S. Padmarajaiah, learned counsel for the respondents, refuted the arguments of Shri Achar. He pointed out that promotion to the posts of Inspectors of Central Excise was from two separate

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sources viz. from the cadre of Sub Inspectors and from the ministerial cadre. Once the applicant was promoted to the post of SI from the post of LDC, he had to seek further promotion only within the quota allocated to SIs. R4 and 5 were reverted to the post of LDC in 1966, and thereafter got promotion through the ministerial line to reach the post of Inspector of Central Excise before the applicant and that was a fortuitous circumstance^M. There was no illegality in reverting R4 and 5 as LDCs in 1966, because when posts are rendered surplus in a particular cadre, only the junior-most persons have to be reverted, and R4 and 5 were junior to the applicant. The prohibition against such reversion contained in the earlier order promoting them as SI had to give way when posts in the cadre of SI were rendered surplus, for no fault of the said respondents. If the applicant had at that time felt that his prospects would be better if he were also reverted, he could have offered for reversion at that time. But obviously he preferred to work in the higher post of SI and did not make any representation for being reverted. It was only an accident of fortune that in spite of their reversion, R4 and 5 reached the posts of Inspectors of Central Excise before the applicant through the ministerial quota. Similarly R6 and 7 also had obtained earlier promotion as Inspectors of Central Excise because they happened to be working on the ministerial side and they were favoured by fortune. So far as R8 is concerned, though he was recruited as Inspector a few days after the applicant was promoted to that post, R8 obtained a higher position of seniority by virtue of the principle of rotation of vacancies between the different sources of recruitment. There were vacancies of Inspectors of Central Excise which existed before 1.8.1972 when 27 posts of SIs were upgraded to those of Inspectors according to a Government letter dated 22.7.1972; the earlier ban on direct recruitment which had

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been in existence upto 22.7.1971 was lifted by Government's order dated 23.7.1971. Therefore, between 23.7.1971 and 31.7.1972, recruitment to posts of Inspectors was to be made (1) by promotion from among SIs; (2) by promotion from among ministerial staff; and (3) by direct recruitment, in the ratio of 2:1:1. According to Government letter dated 22.7.1972, those appointed to vacancies which existed before 1.8.1972, were to be placed senior to those SIs promoted en bloc in the 27 upgraded posts of Inspectors allocated to the Bangalore Collectorate created with effect from 1.8.1972. The applicant was one of the SIs of CE who were promoted as Inspector in one of the upgraded posts created from 1.8.1972, while respondent 8 was directly recruited against a vacancy for direct recruits which existed prior to 1.8.1972. That is how R8 was given seniority above the applicant.

8. We have given the matter our most anxious consideration. So far as the applicant's quarrel with R4, 5, 6 and 7 is concerned, what he says is that they were junior to him as LDC and so when they were given promotion in the ministerial cadre to posts of UDCs and then to posts of Inspectors, he should have been preferred to them at each stage. So far as R4 and 5 are concerned, one more argument advanced on behalf of the applicant is that they were also promoted with the applicant as SIs in 1961 and placed lower in the order of selection, but were later reverted as LDC illegally, despite the prohibition against such reversion. The applicant's case seems to be that he should also have been reverted as LDC in 1966 from the post of SI in which case he would have gained promotion to the post of UDC and then to the post of Inspector before the said two respondents and would have been senior to them. In the alternative, even though he was not reverted as LDC, he was only officiating as SI and therefore should have been considered for promotion to the post of

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UDC, when R4 and 5 were so promoted and for further promotion to the post of Inspector along with and with a higher seniority than R4 and 5. The final argument, as we have noticed earlier, was that by virtue of earlier entry into Government service compared with R4, 5, 6, 7 and 8 the applicant should have been shown senior in the cadre of Inspectors following the Supreme Court's Judgment in Ravi Varma's case. We are unable to accept any of these contentions. If R4 and 5 were reverted from the post of SI to their original posts as LDC, that was because when a reversion has to take place, it is the juniors who have to be reverted and R4 and 5 were junior to the applicant. As regards the alleged illegality of the reversion, it has been explained on behalf of the respondents that posts of SIs were rendered surplus and, therefore, there was no choice but to revert the junior-most SIs to their earlier posts of LDC. In our opinion, no taint of illegality attaches to their reversion in view of the compelling circumstances in which it had to take place. Moreover, at this point of time, that reversion has to be ^{taken} as having ^{been} become a final fact whose legality cannot be now questioned twenty years later. Therefore, we have to accept the fact that R4 and 5 were LDCs from 1966 onwards and were entitled to all promotions in the ministerial line open to LDCs. Similarly R6 and 7 having been appointed as LDCs were entitled to all the promotions open to the ministerial cadre. We have also to accept as a final fact the position that from 1961 onwards, the applicant had moved over to the executive line as SI, and continued in that post thereafter and was, therefore, entitled to all promotions open to SIs. It was ^a piece of good luck ^M for the respondents that vacancies of Inspectors open to the ministerial cadre came their way earlier, while similar vacancies open to the executive cadre of SIs did not become available for the applicant till a later date. It was, therefore, a quirk of destiny which enabled the respondents to be promoted as Inspectors earlier than the applicant and not any act of discrimination in their favour or against the

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applicant. In Ravi Varma's case, the Supreme Court was concerned with the seniority in the cadre of Inspectors of Central Excise of persons appointed to that cadre prior to 22.12.1959 and the Court decided that it should be determined according to the rules existing prior to 22.12.1959 which was on the basis of continuous officiation in the cadre. We do not agree with the applicant that the seniority of a person who entered Government service before 22.12.1959 is entitled to seniority in any cadre to which he may have been promoted after that date in accordance with the date of his entry into Government service. The Supreme Court did not say so. As we understand it, the judgment of the Supreme Court only lays down that in a particular cadre to which a person may have been appointed before 22.12.1959, seniority will be determined by continuous officiation or length of service in that cadre. Appointments made to a cadre either by promotion or ⁽¹⁾ ~~by promotion or~~ by direct recruitment, after 22.12.1959 would be governed, for the purpose of seniority by rules prevalent at the relevant time: even if the test of continuous officiation in the cadre is applied (ignoring rotation of vacancies), R4, 5, 6 and 7 were appointed as Inspectors before the applicant and so would be entitled to a higher seniority. Therefore, we are unable to allow the claim of the applicant for seniority above R4, 5, 6 and 7.

9. We now come to the applicant's claim against R8 who was a direct recruit to the post of Inspector and who joined on 24.8.1972. While dealing with this matter, it is necessary to set out the background in some detail. By a circular dated 22.7.1972 addressed to all Collectors of Central Excise, the Department of Revenue and Insurance in the Ministry of Finance, conveyed the decision of the Government to upgrade 664 permanent posts of SIs of Central Excise into posts of Inspectors of Central Excise with effect from 1.8.1972.

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As a result of this decision, 28 permanent posts of SI were upgraded to those of Inspectors in the Bangalore Collectorate. The upgraded posts were all to be filled from persons working as SIs. The same letter set out the principles of seniority of the persons promoted from the grade of SIs to the upgraded posts of Inspectors vis-à-vis others. We may here refer only to those portions of the said letter which are relevant for the present purpose. It was stated in para 2(ii) that "the vacancies in the grade of Inspector of Central Excise (OG) existing as on 31.7.1972 shall be filled in accordance with the orders applicable in respect of these vacancies immediately before the issue of the present orders." Para 2(iii) of the same letter stated that the posts of Inspectors created with effect from 1.8.1972 by upgrading the same number of posts of SIs" shall be filled exclusively by promotion of Sub-Inspectors of Central Excise who are found fit for such promotion". In para 2(v), it was laid down that "officers appointed to the post of Inspector of Central Excise (OG) in accordance with sub-para (ii) above will rank en bloc senior to the officers appointed in accordance with sub-para (iii)...". In other words, persons appointed as Inspectors to vacancies which existed on 31.7.1972 would be reckoned senior to SIs promoted as Inspectors in the upgraded posts created with effect from 1.8.1972. Now the orders applicable in respect of posts of Inspectors existing on 31.7.1972 were set out in a letter dated 23.7.1971 issued by the Central Board of Excise and Customs, Delhi, to all Collectors of Central Excise. Alongwith this letter, draft rules of recruitment to posts of Inspectors were enclosed. It may here be mentioned that upto 2.6.1979, there were no rules framed in pursuance of Article 309 of the Constitution governing recruitment to posts of Inspectors. Recruitment to the posts before that date were entirely governed by executive orders. Returning to our narration, the draft recruitment rules circulated with the letter

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dated 23.7.1971 of the Central Board of Excise and Customs contemplated recruitment to posts of Inspectors of Central Excise from three sources -- i.e. 50% by promotion from ^{Sub} Inspectors of Central Excise, 25% by promotion from among ministerial staff and 25% by direct recruitment. Though the draft rules ^{were} officially notified only on 2.6.1979, Government acted on the basis of these draft rules from 23.7.1971 itself. In other words, as before, recruitment and seniority were governed by executive orders, the draft rules having no higher status at the time than executive orders. Prior to 23.7.1971, there was a ban on direct recruitment to posts of Inspectors, but this ban was lifted by the aforesaid letter of 23.7.1971. Thus the position that prevailed from 23.7.1971 to 31.7.1972 was that vacancies arising in the grade of Inspectors of Central Excise were to be filled in the ratio of 2:1:1 by promotion from SIs of CE, promotion from the ministerial cadre and direct recruitment respectively.

10. It has been explained on behalf of the respondents that respondent 8 was directly recruited to the post of Inspector of Central Excise against a vacancy which existed as on 31.7.1972 within the quota available for direct recruitment. The applicant, who was a SI was promoted as Inspector with effect from 1.8.1972 in one of the upgraded vacancies, created by Government letter dated 22.7.1972 which we have referred to earlier. Therefore, in terms of paras 2(ii), (iii) and (v) of the said letter, respondent 8 having been appointed to a post which existed on 31.7.1972, had to be accorded a higher seniority above the applicant who was one of the persons appointed to the newly upgraded posts which came into existence from 1.8.1972. The applicant's contention is that by virtue of earlier appointment to the post of Inspector, he should have been accorded a higher seniority above R8. We do not find any merit in this contention either. When recruitment is made to a post from more than one source, Government can regulate the seniority of persons

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so appointed by rotating the vacancies that arise from time to time among recruits from the different sources in accordance with the quota prescribed for their recruitment. There could be objection to such a procedure being prescribed by Executive Order in the absence of Rules framed under Article 309 of the Constitution, since the procedure does not offend any article of the Constitution (vide 1973 SCC (L&S) 133 Union of India v. K.P. Joseph). In the present instance, Government was by executive order applying the principle of rotation of vacancies for fixation of seniority for many years. If, however, there was a long delay between the recruitment of persons from one source and those from another source, it would not be right to accord persons recruited much later seniority above those recruited earlier by applying the principle of rotation. This is what the Supreme Court said in Narendra Chadda's case AIR 1986 SC 638 and in many cases decided earlier. But when the difference between the date of appointment of persons from two sources is negligible, and appointments are made from different sources in accordance with the quota prescribed therefor, the Supreme Court has always upheld fixation of seniority by rotation of vacancies. In the present case, there was an additional factor. Under a letter issued by the Government on 22.7.1972, it was specifically laid down that person appointed to vacancies existing on or before 31.7.1972, would rank senior to those promoted as Inspectors from the cadre of SIs in upgraded vacancies which came into existence from 1.8.1972. This cannot be regarded as an unreasonable rule of seniority, unless recruitment to the vacancies which existed on 31.7.1972 was made much later, resulting in persons recruited ~~xxx~~ or promoted years later becoming senior to persons recruited that many years earlier. We were told that on 31.7.1972 there were 32 vacancies of Inspectors. Recruitment to posts of Inspectors arising between 23.7.1971 and 31.7.1972 by promotion of SIs and

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of persons from ministerial cadre, according to their respective quotas, had been substantially made. Appointment of persons against the direct recruitment quota, however, took some time. Written tests for direct recruitment were held in February 1972, viva voce test on 16.7.1972 and the final selection list was drawn up on 16.7.1972. Appointment orders were, however, issued on 21.8.1972 in respect of 16 direct recruits⁰¹ including R8. Therefore, delay, if any, in filling up the direct recruitment quota of posts that arose upto 31.7.1972 was only about 20 days after that date and even ¹¹ that was due to ^{ke} long process of selection involved and administrative^{ve} delay in issuing appointment orders. In any case, R8 was appointed against direct recruitment quota hardly 22 days after the promotion of the applicant. There was not such a long delay as would shock the conscience as observed by the Supreme Court in Narendra Chadda's case. We, therefore, hold that R8 was also rightly accorded seniority above the applicant.

11. In the result, the application is dismissed. Parties will bear their own costs.



MEMBER (J)

29/12/86



MEMBER (A)

29/12/86

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