

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 879/92.

Dated, this 10<sup>th</sup>, the Tuesday day of January, 1997.

CORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).  
HON'BLE SHRI P. P. SRIVASTAVA, MEMBER (A).

Chandrasekhar Vitthal Kuvalekar,  
403/16, C.G.S. Quarters,  
Sector-VII,  
Antop Hill,  
Bombay.

... Applicant

(By Advocate Shri R. Ramamurthy  
alongwith Shri M.A. Mahalle).

VERSUS

1. Union Of India  
through the Secretary,  
Government of India,  
Ministry of Finance,  
Department of Revenue,  
North Block,  
New Delhi - 110 011.
2. The Chairman,  
Central Board of Excise  
& Customs,  
Govt. Of India,  
Ministry of Finance,    
Deptt. of Revenue,  
North Block,  
New Delhi - 110 011.
3. The Collector of Central  
Excise,  
Central Excise Building,  
Bombay-I, M.K. Road,  
Churchgate,  
Bombay - 400 020.
4. Additional Collector (P&V),  
Central Excise, Bombay-I,  
Collectorate,  
Central Excise Building,  
M.K. Road, Churchgate,  
Bombay - 400 020.

... Respondents.

(By Advocate Shri Suresh Kumar  
for Shri M.I. Sethna).

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: ORDER :

! PER.: SHRI B. S. HEGDE, MEMBER (J) !

Heard Shri M.A. Mahalle for the applicant and Shri Suresh Kumar for Shri M.I. Sethna, Counsel for the respondents.

2. In this O.A., the applicant is seeking his seniority to be reckoned on the basis of his continuous officiation and consider him for promotion from the date his junior was promoted as Superintendent in Central Excise i.e. with effect from 15.10.1990 for which date the a-ppllicant's junior Shri S.D. Thakkar was promoted as Superintendent in Central Excise.

3. The applicant was directly appointed as Inspector (O.G) on 05.07.1973 and was confirmed in service w.e.f. 07.12.1984 in the post of Inspector (O.G) by the order dated 18.09.1985. He was allowed to cross the efficiency bar in the year 1978. The delay in the confirmation has been challenged by the applicant by filing O.A. No. 280/90 which has been disposed of by the Tribunal vide its order dated 02.04.1991 on the ground that the application is barred by limitation.

4. The applicant's main thrust of argument in this O.A. is that, mere disposal of the earlier O.A. seeking earlier confirmation has nothing to do with the reckoning of inter-se-seniority of the incumbents in a particular grade. Applicant's juniors were confirmed in

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service seven years after their appointment, whereas the applicant was confirmed after eleven years from the date of his appointment. The D.P.C. was not convened for years together, although vacancies existed from time to time. Thereafter, he made representation to the Collector of Central Excise, Bombay, vide his letter dated 11.07.1991 whereby he claimed that his seniority should be fixed in the integrated grade of Inspector on the basis of continuous length of service in the grade, irrespective of the date of confirmation. Prior to 1986, there were two grades of Inspectors - Inspector (O.G) and Inspector (S.G). Promotion to the grade of Inspector (SG) was regulated strictly in order of seniority in the grade of Inspector (O.G). However, with effect from 01.01.1986, the said two grades were amalgamated into a common grade of Inspector, as the duties performed and responsibilities shouldered by the Inspectors of the said two grades, were found to be the same. The Counsel for the applicant further submitted that in support of his contention, he is relying upon two decisions of this Tribunal - (i) O.A. No. 213/87 ! K. K. Petlur V/s. Union Of India & Others ! wherein the Tribunal had directed the respondents that seniority in the said case was to be given on the basis of continuous officiation, irrespective of the date of confirmation, vide its order dated 26.03.1991 and (ii) O.A. No. 823/87 ! U.H. Jadhav & 10 Others V/s. Union Of India & Others ! which has been disposed of by the Tribunal on 11.07.1991 stating that the seniority should be determined on the basis of continuous

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officiation in the cadre notwithstanding the dates of confirmation and they will be entitled to all consequential benefits arising therefrom. These decisions were rendered by the Tribunal keeping in view the ratio decided by the Apex Court in S.B. Patwardhan V/s. State of Maharashtra [(1977) 3 SCC 399] as well as in the cases of Direct Recruit Class-II Engg. Officers' Assn. V/s. State of Maharashtra [(1990) 2 SCC 715] and R. L. Bansal V/s. Union Of India [(1992) SCC (L&S) 773]. In all these cases, the Apex Court held that confirmation is one of the inglorious uncertainties of government service depending neither on the efficiency of the incumbent nor on the availability of substantive vacancies and the provision linking seniority with confirmation leaves valuable right of seniority to depend upon the mere accident of confirmation. Therefore, seniority in the integrated grade is to be determined on the basis of continuous officiation or length of service in the grade and not on the basis of date of confirmation. In the light of the above, the learned counsel for the applicant also submitted that there is no justification on the part of the respondents to fix the seniority of the applicant in the grade of Inspector on the basis of confirmation. It is further stated that since his juniors have been promoted to the post of Superintendent in Central Excise in the year 1990, by-passing the applicant on the basis of his belated confirmation, therefore, he is to be considered for promotion from the date his juniors were promoted.

*[Signature]*

5. During the course of hearing, when we asked the Counsel for the respondents whether any seniority list has been published, he was not able to give any cogent reply, however, the applicant's counsel has furnished a seniority list published by the respondents vide dated 01.01.1993 wherein Shri U.H. Jadhav, who has been promoted to the post of Superintendent in the year 1990 has been shown junior to the applicant. Though the date of confirmation of the applicant as well as Shri U.H. Jadhav in the cadre of inspector is same - i.e. 07.12.1984 and the reply filed by the respondents is very brief and rather vague and have not answered the points raised in the O.A. They have not submitted any detailed reply as to why the applicant has been denied the legitimate inter-se-seniority on the basis of his continuous officiating in the post of Inspector, though it was given to others who are similarly situated like the applicant. The only ground taken by the respondents is that, since the earlier O.A. No. 280/90 filed by the applicant has been dismissed by the Tribunal on the point of limitation and further stated that Shri Thakkar was senior to the petitioner as per the date of confirmation, which point was agitated in O.A. No. 280/90 and in view of the dismissal of the said O.A., the present petition is not sustainable and barred for reconsiderating the issue which is raised in this O.A. The respondents did not care to furnish any record as to whether the applicant is senior to Mr. U.H. Jadhav,

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however, the same has not been denied in the reply. Neither any recruitment rules nor the seniority list was furnished by the respondents in this behalf. It is understood that as per the recruitment rules, for the post of Inspector, the seniority is to be determined on the basis of 3:1 ratio - 3 from direct recruits and 1 by promotion from the lower cadre to the post of Inspector. We notice that the reply given by the respondents vide dated 05.08.1992 at page 49 of the O.A. is rather vague and evasive stating that, since there are no specific orders either from C.A.T. or from the Ministry regarding fixation of his seniority according to the Tribunals judgement, the request of the applicant cannot be acceded to. One thing is clear that the respondents have not been consistent in adhering to the settled principle that seniority is to be determined on the basis of continuous officiation in the grade and not on the basis of confirmation in view of the Apex Court as well as this Tribunal's decisions. The department on its own accord, should have applied the aforesaid principle to similarly situated employees like the applicant instead of forcing each and every employee to resort to Court, especially, in the same department, they have given relief to one Shri K. K. Petlur as well as Shri U.H. Jadhav & Others.

6. In this O.A., the applicant is only seeking the relief which was granted to U.H. Jadhav and K. K. Petlur, to be granted to him because insofar as the applicant is concerned, because of the wrong seniority

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assigned to him on the impermissible period of confirmation, he is denied of promotion as Superintendent, Central Excise and he should have been promoted alongwith Shri U.H. Jadhav in the year 1990 itself. It is an admitted fact that seniority should be determined on the basis of continuous officiation, notwithstanding the date of confirmation.

7. The Learned Counsel for the respondents, Shri Suresh Kumar for Shri M.I. Sethna, draws our attention to the O.M. of the Department of Personnel & Training dated 04.12.1992. In view of the various judicial decisions of the Courts including the Apex Court, the Department of Personnel & Training has stated in that O.M. that seniority of a person regularly appointed to a post would be determined by the order of merit indicated at the time of initial appointment and not according to the date of confirmation. This notification has got only prospective operation.

8. The Learned Counsel for the applicant, Shri Mahalle, on the other hand, draws our attention to the decision of the Hyderabad Bench in V. Subba Rao V/s. Union Of India & Others ((1993) 25 ATC 561) wherein the Tribunal reiterated the same principle, as has been laid down in Direct Recruit Class-II Engineering Officers' Association - that the period of continuous officiation by the government servant after his appointment following the rules applicable for substantive appointments has to be taken into

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account for determining seniority and accordingly, the Tribunal upheld that provisos to para 4 and 5 (i) of the annexure to O.M. dated 22.12.1959 has been held to be violative of articles 14 and 16 of the Constitution.

9. In the light of the above legal position, and the facts stated above, we are of the view, that the relief claimed by the applicant is just and reasonable. It is not open to the respondents to take advantage of the dismissal of the earlier O.A. on the ground of limitation, which has nothing to do with his present prayer i.e. seniority to be refixed on the basis of his continuous officiation in the cadre viz.a.viz. with that of Shri U.H. Jadhav. Accordingly, we allow the O.A. and hereby direct the respondents to review the position of all the direct recruits viz.a.viz. promotees and refix the seniority in the light of our findings i.e. seniority is to be fixed with regard to the date of continuous officiation in the cadre of Inspector, irrespective of their confirmation in the cadre. The relief which was granted by the Tribunal in the case of Shri U.H. Jadhav, is required to be granted to the present applicant, who is similar situated.


10. Accordingly, we allow the O.A. and hereby direct the respondents to review the seniority of the applicant in the light of our aforesaid observation, that seniority is to be fixed on the basis of continuous officiation and not on the basis of confirmation and refix the seniority accordingly. Further, the relief


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which was granted by the Tribunal in the case of Shri U.H. Jadhav, is required to be granted to the present applicant who is similarly situated and his seniority should be determined on the basis of continuous officiation, notwithstanding the date of confirmation. (However, in the facts and circumstances of the case, the applicant is not entitled for any consequential benefits, except the seniority.) The respondents are also directed to consider the case of the applicant for promotion to the post of Superintendent in the Central Excise not on the basis of his confirmation but on the refixation of the seniority on the basis of his continuous officiation in the grade of Inspector, if his confidential reports are upto the mark because promotion to the post of Superintendent is by selection and not by seniority alone, as per norms required for promotion. This exercise be completed within a period of four months from the date of receipt of a copy of this order.

11. The O.A. is disposed of with the above directions. There will be no order as to costs.

  
(P.P. SRIVASTAVA)  
MEMBER (A).

  
(B. S. HEGDE)  
MEMBER (J).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI.

REVIEW PETITION NO. 20 OF 97.

IN

ORIGINAL APPLICATION NO. 879 OF 92.

Thursday, this the 1st day of January, 1998.

Coram: Hon'ble Shri B.S.Hegde, Member(J),  
Hon'ble Shri P.P.Srivastava, Member(A).

C.V.Kuvalekar. ... Applicant.

V/s.

Union of India & Ors. ... Respondents.

ORDER ON REVIEW PETITION BY CIRCULATION.

(Per Shri B.S.Hegde, Member(J))

The applicant has filed this application seeking review of the Judgment dt. 10.1.1997. He has sought review of the Judgment on the following grounds. The relief which was granted in the case of Shri U.H.Jadhav by this Tribunal is required to be granted to the present applicant who is similarly situated and belongs to the same department. Pursuant to the direction of the Tribunal both U.H.Jadhav and K.K.Petlur are given the consequential benefits. In ~~the~~ Judgment the Respondents were directed to consider the applicant for promotion to the grade of Superintendent, Central Excise after re-fixation of seniority on the basis of continuous officiation, but not mentioned about the fixation of pay and arrears of payments. It is the intention of the Tribunal to grant similar benefits to the applicant as was granted to U.H.Jadhav and K.K.Petlur. Despite he was due for promotion in the year 1990 he was given promotion only on 30.9.1996 as Superintendent. Both in the case of Jadhav and Petlur seniority was ordered

to be given on the basis of continuous officiation irrespective of the date of confirmation, thereafter the applicant made representation on 11.7.1991 for which no reply was received till 1992, and he sent a reminder on which he pointed out the case of Jadhav and ten others in O.A. No.823/87 wherein, the principle of determining seniority on the basis of continuous officiation in the grade received reiteration. The respondents have accepted such Judgment and assigned proper seniority as per the Tribunal's direction. Unfortunately, the respondents rejected his representation on the ground that no specific order either from the CAT or from the Ministry regarding fixation of seniority of the applicant. Accordingly, he was performed to file the present O.A. which was decided on 10.1.1997.

2. The main plea made in the O.A. was that he should be considered for promotion from the date his juniors were promoted in the year 1990. As per the direction of the Tribunal, the Department on its own accord should have applied the same principle to similarly situated employees like applicant instead of forcing him to approach the Tribunal, when in the same Department the Tribunal had granted relief to Jadhav and Petlur and others. Because of wrong seniority granted, he is denied promotion of Superintendent along with Shri Jadhav which he is otherwise entitled to in the year 1990. The applicant was directly appointed as Inspector on 5.7.1973 and confirmed in the service on 7.12.1989 in the post of Inspector. The applicant's immediate junior Mr.Thakkar was promoted


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as Superintendent and he was directed to pay consequential benefits and arrears in the grade on 15.10.1990. In the reply, the respondents have contended by saying that the applicant has been given promotion w.e.f. 30.9.1996 in the normal course. Further, so far as the applicant's prayer ~~was~~ in the Review Petition regarding consequential benefits and the question of arrears of pay is concerned, no such relief has been granted by the Tribunal, but nowhere it is stated that the applicant is situated similar to the one which is decided by the Tribunal in Jadhav and Petlur's case. They highlighted one observation of the Tribunal that in the facts and circumstances of the case the applicant is not entitled to get any consequential benefit except the seniority and no direction was given to payment of arrears to the applicant in the present case. The question for consideration here is whether the seniority is to be given from the date of continuous officiation or from the date of confirmation. It has been held time and again by the Apex Court and there is no ambiguity in the matter that the seniority is to be given from the date of officiation and not from the date of confirmation. Therefore, the contention of the respondents that the matter was pending in the Tribunal does not have any force and the same is not based on any material facts.

3. It is true that the Review Petition is only meant to correction of any error apparent on the face of any record and not to be treated as an appeal etc. However, on a perusal of the Judgment it is made clear in para 4, para 9 and para 10. After analysing the entire Judgment, it is to be construed what is intended

for. There is no dispute regarding the status of the applicant vis-a-vis that of Jadhav and Petlur. Accordingly, this Tribunal has directed the relief which was granted by the Tribunal in the case of Jadhav is required to be granted to the applicant who is similarly situated and his seniority should be determined on the basis of continuous officiation notwithstanding the date of confirmation. That being the factual position, the observation of the Tribunal stating that he is not entitled to any consequential benefits except seniority does not stand the legal scrutiny. If we are to construe harmoniously, the applicant cannot be denied the benefit vis-a-vis that of Jadhav and Petlur. It is not the case of the respondents that they have not paid consequential benefits to Jadhav and Petlur who were similarly situated like the applicant. In the circumstances, the above observation of the Tribunal is to be treated as an error apparent on the face of record. Accordingly, we hereby direct the respondents to grant the applicant notional seniority from the date his immediate junior was promoted as Superintendent i.e. w.e.f. 15.10.1990 and monitory benefits from the date he is actually promoted. To this extent the Review Petition is allowed. The respondents are directed to comply with the direction within a period of two months from the date of receipt of this order. No costs.

  
(P.P. SRIVASTAVA)  
MEMBER(A)

  
(B.S. HEGDE)  
MEMBER(J).

B.

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

C.P. NO. 83/97 AND 19/98 IN O.A. NO.: 879/98. 92

Dated this Monday, the 5th day of October, 1998.

CORAM : Hon'ble Shri Justice R. G. Vaidyanatha,  
Vice-Chairman.

Hon'ble Shri D. S. Baweja, Member (A).

C. V. Kuvalekar ... Applicant  
(In Person)

Versus

Union Of India & Others ... Respondents  
(By Advocate Shri V. D. Vadhavkar  
for Shri M. I. Sethna),

TRIBUNAL'S ORDER :

Contempt Petition No. 83/97 is filed by the applicant alleging that the respondents have not complied with the order of the Tribunal dated 10.01.1997. C.P. No. 19/98 is filed by the applicant alleging that the respondents have not complied with the order of the Tribunal on the Review Petition dated 06.01.1998. The respondents have filed reply to both the contempt petitions.

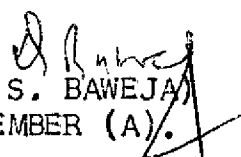
2. At the time of argument it is brought to our notice that the respondents have issued promotion order dated 30.09.1998. This order shows that the applicant has been given notional seniority from 17.10.1980 and he has been given actual promotion as Superintendent w.e.f. 01.10.1996. The order also shows that applicant will be entitled to actual monetary benefits w.e.f. 01.10.1996.

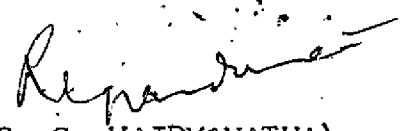
It is further mentioned in the order of promotion that this order is subject to the outcome of S.L.P/Review Petition which is stated to be pending in the Supreme Court.

In our view, the respondents have complied with the orders passed by this Tribunal both in the O.A. and in the R.P. It is true that there is delay in passing the order. Respondents have given some explanation for the delay, since number of O.As. are pending in this Tribunal on similar question, namely - about seniority of Inspectors of Central Excise. At any rate, there is no wilful disobedience of the order passed by this Tribunal except that, there is some delay in passing the order.

2. In our view, the order dated 30.09.1998 substantially complies with the direction given by this Tribunal both in the O.A. and R.P. If the applicant has some more grievance regarding service benefits, he has to take appropriate action according to law.

3. In the result, both the contempt petitions are disposed of subject to above observations. The respondents are directed to make all the monetary benefits to which the applicant is entitled w.e.f. 01.10.1996, as mentioned in the promotion order dated 30.09.1998, within a period of three months from the date of receipt of this order. The question about applicant being entitled to any other reliefs is left open, which he can agitate according to law. No costs.

J II  
(CO)  
  
(D. S. BAWEJA)  
MEMBER (A).

  
(R. G. VAIDYANATHA)  
VICE-CHAIRMAN.