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IN THE GENERAL ADMINISTRATIVE TRIBUNAL

BOMBAY BRANCH

(i) O.A. No. 425/92

6th the day of October 1995.

Hon'ble Shri B.S. Hegde, Member (J).

Hon'ble Shri N.K. Verma, Member (A).

Shri Shankar Ramchandra Kadam
and 146 others

Inspectors working in the
Central Excise Department in
Bombay under Bombay I & II

(By Advocate Shri G.K. Masand)

....Applicants.

Versus

1. Union of India through
the Secretary, Govt. of India,
Ministry of Finance, Deptt. of Revenue,
North Block, Central Secretariat,
New Delhi.
2. The Chairman,
Central Board of Excise and Customs,
Govt. of India, New Delhi.
3. The Collector,
Bombay-I Collectorate,
Office of the Collector of Central Excise,
115, Maharshi Karve Road,
Churchgate, Bombay.
4. The Collector,
Bombay-II Collector,
Piramal Chambers, Malbaug,
Bombay.
5. Smt. Susi Jacob
and 5 others private respondent.

(Respondents No. 1 to 4

By Shri M.T. Sethna with Mr. Karkera
for Mr. Pradhan and Mr. Suresh Kumar,
Advocates)

(Respondents No. 5 to 10

By Shri S.R. Atre alongwith
Shri Ranganathan, advocate)

....Respondents.

(ii) O.A. No. 259/93

Padmakar Arjunrao Deshmukhi
and 6 others

Inspectors working in the
Central Excise Department under
Bombay I and III Collectorate.

(By Advocate Shri Masurkar)

....Applicants.



Versus

1. Union of India through the Secretary, Govt. of India, Ministry of Finance, Department of Revenue, North Block, Central Secretariat, New Delhi.
2. The Chairman, Central Board of Excise and Customs, Govt. of India, New Delhi.
3. The Collector of Central Excise, Bombay-I, Collectorate, Office of the Collector of Central Excise, 115, Maharsi Karve Road, Churchgate, Bombay.

(By Advocates Shri M.I. Sethna with Mr. Karkera for Mr. Pradhan and Mr. Suresh Kumar)

.....Respondents.

O R D E R

(Per Hon'ble Mr. N.K. Verma Member (A))

In these two O.As, the common question under agitation is the seniority of the directly appointed Inspectors in the Central Excise Department during the period 1973 to 1985.

2. The facts of the case are that the applicants were appointed as direct recruits to the cadre of Inspectors in the Central Excise during the period 1973 to 1985, in the ordinary grade initially which was later on merged with the Selection grade in 1986 and both the categories were put in the scale of Rs. 1640-2900. The seniority of all the Inspectors working in Bombay-I, Bombay-II and Bombay-III Collectorates was put in common seniority of the Inspectors wherein the seniority had to be decided on the basis of total length of continuous service subject to the maintenance of

inter-se-seniority among the staff of the same Collectorate. At some point of time, the problem of fixing the inter-se seniority between the direct recruits and the promotees cropped up and the respondents vide circular dated 14.6.91 fixed the inter-se seniority wrongly by assigning notional seniority to the promotees in the cadre of Inspectors from dates earlier than their dates of actual promotion and appointment for the first time to the cadre of Inspectors on the basis of dates of confirmation. Thus the promotees have been assigned seniority in the cadre of Inspectors from the dates when they were working in the lower ranks of U.D.C. or Stenographers. While making these averments the applicants have also brought to notice the assignment of wrong and higher seniority to the promotees from lower Clerical ranks like Smt. Susi Jacob at Sr. No. 250 who was promoted from U.D.C. to the cadre of Inspectors on 29.12.1977 and has now been shown senior to the direct recruits at several serials though her date of appointment as Inspector is 29.12.1977 and that of direct recruits is 20.5.1975. Similarly, cmr. S.S. Talwadekar appointed on 29.12.1977 has been shown senior to many direct recruits who were appointed as Inspectors earlier than that date. The applicants, therefore, represented this matter to the Collector, Central Excise, Bombay-I individually wherein they also pointed out the judgment of this Tribunal delivered in OA No. 823/87 (W.H. Jadhav & ors. Vs. Union of India and ors.) which was decided on 11.7.91 and requested the respondents that the seniority should be determined on the basis of continuous officiation in the cadre as in Jadhav's case (OA No. 823/87). In this case, the

applicants were all direct recruits to the cadre of Inspectors and they had made a grievance inter-alia that 35 promotees from Clerical ranks were shown senior to them even though they were appointed to the cadre of Inspectors later than the said Jadhav and others. The respondents in that case had stated that the seniority of the Inspectors (O.G.) had been fixed on the basis of ratio for direct recruit quota and promotee quota i.e. 3:1 as per MHA's OM dated 22.12.1959 and a roster was maintained on that basis. The seniority of promotee Inspectors (O.G) who were promoted later on for the reason that either they had not completed the qualifying service in the feeder cadre for the post of Inspector (O.G) or the D.P.C. could not be held in time, had been fixed. It was only for this reason that the promotee officers were placed above Applicant Nos. 1 to 3. This Tribunal in Jadhav's case had given a direction which was based on a judgment dated 26.3.1991 in the case of K.K. Petlur Vs. Union of India & others (OA No. 213/87) , "that applicants' seniority should be determined on the basis of continuous officiation/in the cadre notwithstanding the dates of confirmation and they will be entitled to all consequential benefits arising therefrom." While the judgment in regard to Jadhav and 10 others in that Application was complied with by the respondents, the respondents have confined the benefit of the said judgment only to the applicants in that case and not to others like the applicants in this OA who are seniors to the promotee Inspectors. The applicants, herein, are senior to several promotees and they have blemishless record of service. In case their seniority vis-a-vis promotees is not fixed properly, they will lose the valuable opportunity of

getting promoted to the cadre of Superintendent, Central Excise and Customs, which would be first promotion to the applicants after having rendered service ranging between 7 to 19 years. In view of these averments, the applicants have sought directions of the Tribunal:-

- i) For recasting the combined seniority list of Inspectors of the several Collectorates as on 1.1.1991 on the basis of continuous officiation in the cadre;
- ii) Direct the respondents to assign seniority to the promotees in the said combined seniority list only from the dates from which the promotees have been actually promoted to the cadre of Inspectors and not from any notional earlier date when they were working in the lower clerical ranks; and
- iii) They also sought that respondents be restrained from acting upon the combined seniority list of Inspectors as on 1.1.1991.

3. In their reply, the respondents took the preliminary objection that the Application was not maintainable as the matter is being agitated long after the seniority list arranged in accordance with the rules in respect of the direct recruits and promotees had been prepared and finalised. The applicants are challenging the well settled seniority for the last 15 years, which according to law cannot be unsettled after such a long time. The respondents also made the averment that the post of Inspectors in the department are filled on the basis of 25% by promotion and 75% by direct recruits i.e. 1 : 3 as per Ministry of Home Affairs' O.M. dated 22.12.1959. However, whenever the promotees or direct recruits were not available for appointment in the particular

years, the vacant slots were kept reserved and as soon as the incumbents joined the department, the vacant slot of the seniority was filled in. The said adjustment has facilitated the promotees as well as direct recruits. The DPA's Memo. of 1959 was substantially revised by the Department of Personnel and Training Memo. dated 7.2.1986 which became operative from 1.3.1986, which is at Exh. I. However, it was clarified in that Memo. that the seniority already determined in accordance with the existing principles on the date of issue of this order will not be reopened. In other words the circular dated 7.2.1986 cannot be given retrospective effect which was communicated to the various Heads of the Departments at various places. Therefore, primarily the Applications are hit by the Law of Limitation. A combined seniority list of Inspectors as on 1.7.1981 was published on 4.8.1981 for which representations were called for and the said seniority list was finalised. This seniority list was again published in May, 1983 and the same was also finalised followed by another seniority list on 19.1.1985. The seniority list was published from time to time during the years 1985, 1986, 1987, 1988, 1989 and in 1990. Thus, every year a seniority list was published for finalisation as per the availability of vacancies & the recruitment made during these years. Therefore, the challenge of the present applicants to the seniority list dated 14.6.91 is totally incorrect as the seniority list was published in regard to these applicants much before the establishment of the Tribunal. The respondents have also stated that the Hon'ble Supreme Court's judgment quoted by the applicants in the case of Direct Recruits Class-II

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Engineers Association Vs. State of Maharashtra is not relevant in this case as in that case the seniority of promotee Engineer was not fixed when he was confirmed in the cadre, whereas the direct recruit Engineer was confirmed as soon as he completed probation period above and stood senior/~~to~~ promoted Engineer. In the instant case of the Inspectors of Excise and Custom, the seniority of the direct recruits and promotees is fixed as per quota prescribed in the ratio 3 : 1 and their cases for confirmation are considered on a later date. The respondents, therefore, denied that the inter-se seniority was ever fixed wrongly by assigning notional seniority to the promotees in the cadre of Inspectors from the date earlier to their actual date of promotion and appointment. The respondents averred that the seniority already fixed on 2.7.79 is continued and no revision is made against direct recruits and promotees in the seniority list published on 1.1.1991. The respondents also denied that the applicants at Sr. No. 250 to 500 in the seniority list would be considered for promotion to the grade of Supdt. Group-B. They brought to the notice that even the officers at Sr. No. 1 onwards in the seniority list have not yet been promoted and will be considered as per the seniority position and consideration zone. So far as the case of Susi Jacob at Sr. No. 250 is concerned, she was appointed in the Central Excise Deptt. initially w.e.f. 11.4.1972 and was promoted to the grade of Inspectors w.e.f. 29.12.1977 whereas the first applicant in this case, S.R. Kadam, was initially appointed in the Deptt. as Inspector w.e.f. 20.5.1975. The seniority of Smt. Jacob was given effect to fill up vacant slot of

promotion quota which has been in vogue since 1959. Similarly, S.S. Talwadkar was appointed in the department on 10.11.1970 and was promoted an Inspector on 29.12.77. His seniority was also fixed vis-a-vis direct recruits Inspectors 20.5.1975 to fill up vacant slot of promotion quota as in the case of Smt. Jacob. They have accepted the point that the rules were made for fixation of seniority but the seniority could not be assigned to the applicants because of the policy decision of the Govt. As regards the decision of this Tribunal in the case of Jadhav and others, the same is not relevant because that was a case for fixation of seniority according to the date of continuous officiation notwithstanding the date of confirmation. On the other hand, this QA is for rotation of seniority amongst direct recruits and promotees which is a continuous process.

4. During the course of arguments, the learned counsel for the applicant, Shri Masand, brought to our notice that unless the ratio of the judgment in Jadhav's case is applied to all the direct recruits in the cadre of Inspectors, there will be blatant injustice to the Inspectors who were not the applicants in that QA and are applicants in this QA and there may be a few others also who have not agitated their seniority so far. In compliance of the Tribunal's order in the QA filed by Jadhav and 10 others, the seniority of all the applicants has been fixed with regard to the date of continuous officiation in the cadre of Inspectors irrespective of their confirmation and by this interpolation in the seniority list, a number of

present applicants who are senior to Jadhav and 10 others have remained juniors. Thus, a situation has been created by that judgment in that OA. There is now a question of seniority between direct recruits versus another direct recruits as also with the promotees. The anomaly thus created requires to be removed only by recasting of seniority of the entire combined cadre of Inspectors with reference to the date of continuous officiation and not on the ratio of 3 : 1. Shri Masand also brought to our notice that rota quota system has failed and, therefore, the seniority has to be ascertained and determined with reference to the date of continuous officiation. Shri Masurkar, learned counsel for the applicants in OA No. 259/93 also made a similar submission. He also brought to our notice that the quota rule cannot be applied while confirming the applicants as the quota rule had failed as per the own admission of the respondents in their affidavit made before the Tribunal in the OA 823/87. At the time of appointment of these direct recruits the promotees were not eligible to be appointed as Inspectors as they did not have the requisite number of years of service either as UDC or as combined service of LDC or UDC or Stenographer. Therefore, they were promoted to the reserved vacancies meant for the promotees subsequent to the appointment of the direct recruits; but were given the seniority earmarked for the promotional quota arising in a particular year. Thus, the persons who were 2 years juniors to direct recruits were given earlier date of confirmation because of the slot. Shri Masand

21 asked whether such kind of situation be allowed when a person is appointed in 1977 and given a seniority pertaining to 1975. This action agitates against the principles of equality. Once they are posted whether direct recruits or promotees to the grade of Inspectors they are equals and have to be given the seniority from the dates they are appointed. Now with the implementation of the Tribunal's orders, there are three sets of seniority injuring the rights of the applicants.

(1) The seniority assigned to the promotees on account of slot reserved for them, (2) the seniority changed due to the implementation of the Court's orders whereby Jadhav and 10 others became senior by continuous officiation and now the applicants have to stick to their position as per the slots fixed for direct recruits quota. While the Bombay Collectorate is stuck in this situation, the Ministry of Finance, Deptt. of Revenue has directed the Hyderabad Collectorate to apply the rule regarding the seniority from the date of officiation to everybody in that Collectorate. The same Ministry has stopped the implementation of the seniority from the date of officiation in regard to Bombay Collectorate. During the course of arguments, our attention was also drawn to the several Review Petitions filed in this regard by the respondents in the said OA which were rejected by this Bench. Review Petition was filed by the promotees who were not parties to the OA 823/87 but were affected by the en-bloc seniority granted to the applicants in the OA. 10 direct recruits had also filed an Application for joining as intervenors in the Review Petition.

The said Review Petition was rejected and the direct recruits were not allowed to join as intervenors in the Review Petition. They were, however, given the liberty to approach the Tribunal in accordance with law by filing an OA. The present OA, therefore, has been filed by those intervenors direct recruits and others similarly situated.

5. In reply to arguments of Shri Masand and Shri Masurkar, Shri M.K. Sethna, the learned counsel for the respondents reiterated the point of limitation urged in the written reply of the respondents. He said that the position taken in 1979 in assigning the seniority holds good today as the guidelines have not changed during that time onwards till 1986. As per MHA OM of 1959 the seniority inter-se between direct recruit and promotee was to be fixed on the basis of confirmation. The dates of the seniority even in the case of direct recruit had to be changed in case the date of the order of confirmation is different from the seniority list at the time of selection. This principle was followed all along during the relevant period. Even so, the seniority was not counted with reference to continuous officiation or even on the basis of confirmation, but was based on the slot of 3:1. The direct recruit were given the first three slots leaving the fourth slot for the promotees. Sufficient number of promotees were not available in 1975 and hence when they became available in 1977, they were given the slot reserved for them in 1975 and that is how Smt. Jacob & ors were shown higher in the seniority list compared to the applicants. There was nothing wrong in this and this was the position which was published in the seniority list of 1979 and in the

subsequent years annually, the last being the one which has been impugned now. The 1986 order which stipulates 1:1 promotion and has prescribed a separate basis for assigning seniority is only prospective in nature inasmuch as that rule was made effective only from 1.3.86 without unsettling the position which was fixed in accordance with the 1959 rules. The rota quota system had not failed as the backlog was only for two years and hence the ratio decedendi of the Direct Recruit Engineers Class II vs. State of Maharashtra quoted by the earlier judgment in Jadhav's case could not be of any assistance in the present O.A. In the case of Direct Recruit Engineer vs. State of Maharashtra, the Hon'ble Supreme Court had made the following pronouncements :-

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

(B) x x x
x x

(C) When appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources, and if rules are framed in this regard they must ordinarily be followed strictly.

(D) If it becomes impossible to adhere to the existing quota rule, it should be substituted by an appropriate rule to meet the needs of the situation. In case, however, the quota rule is not followed continuously for a number of years because it was impossible to do so the inference is irresistible that the quota rule had broken down.

(E) Where the quota rule has broken down and the appointments are made from one source in excess of the quota, but are

made after following the procedure prescribed by the rules for the appointment, the appointees should not be pushed down below the appointees from the other sources inducted in the service at a later date.

x x x x"

In the case quoted above, there had been appointment of a large number of engineers to officiate on continuous basis during the period 1960 to 1970 because adequate number of direct recruits were not available. In the instant case there was no break down of the rota quota system and, if at all, there was shortfall only for two years in regard to the promotees and no excess recruitment had been resorted to by the respondents. The rules were already available under the MHA OM of 1959 for assigning the seniority to the direct recruits and the promotees and hence the question of application of the ratio in the above quoted judgments does not arise. There has been no change in the inter-se seniority after 1979 except the fact that whosoever had retired or died or resigned, their names had been removed from the seniority list. The only exception has been the interpolation of the names of Jadhav and 10 others as per the Tribunal's order. It is only now that the applicants are claiming benefits which have accrued to Jadhav & 10 others in that OA which cannot be supported by any other reasoning, as no prejudice has been caused to others. So far as extra advantage given to Jadhav & others, the respondents had to comply with the Tribunal's order and they have done so which has now landed the other applicants in a situation wherein they find themselves juniors to Jadhav & others, although they had been seniors to him in the seniority list earlier because of the date of confirmation given to them earlier

to Jadhav. They also brought to our notice the case of Sahestiao, U.V. Coerio and others vs. U.O.I. & others in OA No. 258 of 1986 decided on 8.3.1990 by the Tribunal wherein it was decided that "as the 1967 Rules govern the determination of the inter se seniority between the direct recruit and the promotees, it will not be appropriate to apply the general principle of continuous officiation in a post for determination of seniority. We are also not convinced that there has been any violent departure from the 'rota quota' rule in the instant case. In view of this we see no merit in the present applications and the same is dismissed." In view of the DB judgment of this very Tribunal the applicants do not deserve any relief and the OA must be dismissed on merits also.

6. We have given very careful and anxious consideration to the averments, pleadings and arguments of both the parties.

7. The cause of action in this OA has arisen because of the two judgments passed by this very bench of the Tribunal in the case of K.K. Petlur v. U.O.I & others and Jadhav's case. In both these cases the grounds canvassed by the applicants for relief was that the seniority is being determined with reference to the date of confirmation in the respective feeder services with the result that the applicant no. 1 had suffered loss of seniority. Jadhav's seniority had been brought down because of his date of confirmation got postponed due to involvement in a disciplinary case. He alongwith 10 others therefore had urged the Tribunal to take the date of initial entry and continuous officiation as the crucial date for determination of seniority and not the confirmation.

8. The judgment in Jadhav's case was based on ratio of deci_dendi in S.B. Patwardhan & another vs.

State of Maharashtra & others (AIR 1977 SC 2051) which was referred to in the Direct Recruit Class II Engineering Officers Association and others, wherein the Constitution Bench endorsed the ratio in S.B. Patwardhan, ".....

We are in complete agreement with the ratio decidendi, that the period of continuous officiation by a Government servant, after his appointment by following the rules applicable for substantive appointments, has to be taken into account for determining his seniority, and the seniority cannot be determined on the sole test of confirmation, for, as was pointed out, confirmation is one of the inglorious uncertainties of Government services depending neither on efficiency of the incumbent nor on the availability of substantive vacancies. However, in Patwardhan's case there was a challenge to the validity of Rule 8(iii) of the 1960 Rules and Rule 33 of 1970 Rules as being violative of Articles 14 and 16. In para 4 of the Direct Recruit Class II Engineering Association case, their Lordships observed, "the judgment in the case is treated as landmark in the service jurisprudence and has covered extensive grounds dealing with several important aspects relevant in the case. The learned counsel for the parties have in the course of their arguments read and re-read the judgment and made elaborate comments on its interpretation and effect, which we will discuss later. In the result, Patwardhan succeeded and Rule 8(iii) of the 1960 Rules and Rule 33 of the 1970 Rules were struck down." In the context of Patwardhan's case, their Lordships in Para 44-C laid the rule that, "when appointments are made from more than one source, it is permissible to fix the ratio

for recruitment from the different sources, and if rules are framed in this regard they must ordinarily be followed strictly." In sub para (E) of Para 44, their Lordships also indicated what requires to be done where the quota rule has broken down and appointments are made from one source in excess of the quota.

9. We find that the learned counsel for the applicants have ^{not} made out a case wherein they have challenged the validity of MHA OM of 1959 or even the 1986 rules which have been used for determination of seniority upto 1.3.86. The only ground taken by the applicants has been the two judgments delivered by this very Bench earlier in which one of the Members, Shri M. Y. Priolkar was common. In those two cases also there was no agitation against the operation of MHA Memo of 1959. The Bench at that time held the view that, "Legal position is quite clear that once the applicant was confirmed and subsequently he was promoted, then the seniority will be governed by the date of continuous officiation, if he has continuously officiated and obviously he is senior to others." While the ratio given by the Bench at that time cannot be disputed, it is interpretation which needs to be re-appreciated. With all respects to the views taken by that Bench at that time, we do not find ourselves in agreement with the conclusions based on that ratio. Patwardhan's case has clearly rejected the confirmation theory at all promotional posts and there is no dispute about it now. The Govt. of India itself in 1988 issued the orders that

once somebody was confirmed at the initial stage of entry, further confirmation of that official is not necessary even when he gets promoted to the higher post and there is vertical mobility in his career. The direct recruits in these two QAs before us and in the QAs which were before the other Bench were all direct recruits to the post of Inspectors (OG) who were appointed between the period 1973 to 1985. They had to be confirmed in this grade after successful completion of probation, and assigned seniority according to the dates of confirmation vis-a-vis the promotees who had to be given seniority as per their quota fixed in the ratio of 3:1. The eligibility criteria for the promotees was either UDC with 5 years service or UDC or LDC with 12 years service subject to the condition that they should have been UDCs at least for 2 years. Similarly, Stenographers with 12 years service with at least 2 years as Stenographers could be promoted as Inspectors. These promotees had also to be confirmed with reference to the vacancy reserved for them against a particular year and given the seniority vis-a-vis the direct recruits with reference to the date of confirmation as such. This rule of seniority was implemented by the respondents till 3.86 as per the MHA, OM of 1959. The seniority list annexed by the applicants in this QA includes the names of promotees in the first 41 and thereafter the names of direct recruits have also started appearing. The first direct recruit was appointed in 1973 and has been placed at Sr. No. 42. His

date of entry into the service has been shown as 29.6.1973 and date of appointment as Inspector (OG) has been shown to be 23.6.73. His date of confirmation has been shown as 23.7.80 and appointment to the grade of Inspector (SG) as 31.12.85, the dates from which the two grades were merged i.e. 1.1.1986. The position between 42 and 44 are held by direct recruits. Thereafter a promotee is shown, again 3 direct recruits and again direct recruit is shown at Sr. No. 46 followed by two promotees at Sr. Nos. 47 and 48. There is no pattern by which these direct recruits and promotees have been assigned their inter-se seniority. On some pages more than 3 direct recruits have been shown seniors to promotees and on some pages seniority has been fixed 1:1. Smt. Susi Jacob at Sr. No. 250 has been shown to have entered service on 11.4.72 and given promotion on 29.12.77 in the Inspectors' grade and confirmed w.e.f. 23.7.80. Similarly Talwadkar has been shown at Sr. No. 257 having the same date of promotion and confirmation. Smt. Jacob was placed below one direct recruit Sh. S.S. Sawant appointed on 10.3.75 and confirmed on 23.7.80. The person senior to Sawant again is a promotee. However, ~~if~~ Smt. Jacob, there are 6 direct recruits who have been given promotion although dates of entry as Inspectors (OG) was 10.3.75, except the name of Gaykawar who entered service on 20.9.77. All these officials were confirmed w.e.f. 23.7.80. Shri S.R. Kadam who is an applicant in this case has been shown at Sr. No. 275 and who entered service on 20.5.75 and was confirmed only on 23.7.80. This official though having been appointed earlier to

Smt. Jacob was given lower seniority just because they had given vacancies relating to the promotees pertaining to earlier years. The entries during this intervening serials pertain to 7 promotees who actually were appointed as Inspectors on 29.12.77, but their placements are not strictly in the ratio of 3 : 1. The respondents at no time had come out with the exact number of vacancies which subsisted at the relevant time in 1975 against the quota meant for the promotees. If the vacancies of 1975 for the promotees were available for confirmation, all these promotees should have been placed against the slots available for the promotees in 1975 and their names arranged accordingly in the seniority list. A perusal of the seniority list does not confirm that the allocation of seniority was done strictly in accordance with the MHA OM of 1959. All this supports the contention of the learned counsel for the respondents that under the cover of MHA orders, all direct recruits as well as the promotees got the ante-date of seniority even when they had not physically joined the service at that particular point of time. The advantages which occurred to them under this system was first circulated under the Memo. dated 29.11.79 by the respondents (applicants) who were also directed to file representations, if any. None of these applicants at that relevant time only had filed any representation and it is now have been that the OAs filed in this Bench on the basis of relief granted in favour of the applicants in 1991.

10. It is a settled proposition of law that the decision in an OA cannot be a cause of action

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH : BOMBAY

Date of order : 26-2-96

1. R.P. No. 30/96
in
O.A. No. 425/92

Shankar Ramchandra Kadam
& 146 Others Petitioners.

versus

Union of India & 9 Others Respondents.

2. R.P. No. 31/96
in
O.A. No. 259/93

Padmakar Arjunrao Deshmukh
& 6 Others Petitioners.

versus

Union of India & Others Respondents.

PER HON'BLE MR. N.K. VERMA, MEMBER ADMINISTRATIVE:

These are the Review Petitions against the judgement and order of the Tribunal in OA No. 425/92 and 259/93, which were decided by a common order on 6.12.95. The applicants in these two Review Petitions have brought to notice that there are serious errors in the judgement contrary to the pleadings as well as facts. In the Review Petition No. 30/96 in relation to OA No. 425/92 the applicant has canvassed again the ratio of the judgement in the case of Uttamrao Hanumanrao Jadhav in OA No. 823/87 by which the seniority was required to be determined between direct recruits and promotees on the basis of continuous officiation in the cadre notwithstanding the dates of confirmation.

Since the said judgement of the Tribunal was upheld by the Hon'ble Supreme Court by the dismissal of S.L.P. filed on behalf of Union of India and a Review Petition No. 18/93 was also dismissed by the Tribunal, the matter relating to the fixation of inter-se seniority between direct recruits and promotees has been settled. The revised seniority list subsequent to the judgement is now based on the length of service after their initial appointment as direct recruits. The applicants have prayed in these R.Ps that by the present judgement in these O.As, the whole matter has been sought to be re-opened which stood concluded by the earlier judgement of this Tribunal in O.A. No. 823/87 Uttamrao Hanumantrao Jadhav & Ors. This is an error apparent on the face of the record and the present judgement, therefore, deserves to be reviewed. The applicants have also brought to the notice that the judgement went much beyond the pleadings as it was nobody's case that the judgements in the case of U.H. Jadhav & Ors. (O.A No. 823/87) and K.K. Patkar (O.A. No. 213/87) ought to be reviewed. The present judgement in these OAs has sought to be review the judgements in the earlier OAs which is not permissible for a Division Bench to do. The effect of the judgement in the present OAs is that the reliefs granted in the earlier judgements are liable to be withdrawn. The present judgement, therefore, deserves to be reviewed to remove this anomalous and incongruous situation.

Another error has crept in by permitting grant of seniority to a promotee official for the period when he was not even eligible for being promoted to the post of Inspector. The reliance of the Division Bench

on the Ministry of Home Affairs Memorandum dated 22nd December, 1959 is not correct as in the earlier OAs of U.H. Jadhav & Others, the Bench did not accept this contention made on behalf of Union of India as well as on behalf of the promotee officials. The Said O.M. dated 22.12.59 had not only become obsolete as it was not being applied after the judgements of Hon'ble Supreme Court in various matters in which Hon'ble Supreme Court has stressed on seniority being determined on the basis of length of service as also the fact that the Ernakulam Bench of this Tribunal by its judgement dated 26.3.1991 in the case of V. Narayanan & Ors. versus Collector of Central Excise & Customs reported at ATR 1991 (2) C.AT. 66, has declared the paragraph 7 of the O.M. dated 22.12.59 as violative of Articles 14 and 16 of the Constitution and it also held that the fixing of the seniority in the case of these applicants basing on O.M. dated 22.12.59 was irregular and improper. The applicants have stressed the point that this D.B. did not have the liberty to disagree with the judgement of the Co-ordinate Benches of the Tribunal as given by the Ernakulam Bench and Hyderabad Bench earlier to that, besides the ratio of the judgement in Jadhav's case.

2. In the other Review Petition No. 31/96 in O.A. No. 259/93, the R.P. has been filed by Padmakar Arjunrao Deshmukh without having been verified by the learned counsel for the petitioners in that matter. Apart from this defect, this R.P. is also a repetition of the points made by the petitioners in R.P. No. 30/96.

Besides, the petitioners in this R.P. have brought to the notice the judgement of the Hon'ble Supreme Court in the case of P.S. Mahal & Others vs. Union of India & Ors. reported at AIR 1984 S.C. 1291 wherein the vires of Government O.M. dated 22.12.59 has been interpreted by their Lordships and subsequently in case of J.S. Lamba & Ors. vs. Union of India reported at AIR 1985 SC 1019 wherein the Hon'ble Supreme Court has held that the seniority of the applicant cannot be fixed in accordance with the O.M. dated 22.12.1959.

3. We have given the Review Petitions our serious consideration. The applicants in both these O.As under reference had at no time questioned the vires of the Government O.M. dated 22.12.1959 as would be seen from the relief clauses reproduced in R.P. No. 30/96. The entire adjudication in these two O.As was to recast the combined seniority list of the Inspectors of various Collectorates as on 1.1.91 on the basis of the continuous officiation in the cadre after being duly appointed and joined in the cadre leaving out the date of confirmation. In the pleadings and arguments, the learned counsel for the applicants totally relied on the ratio of the judgement given in the case of U.H. Jadhav & Ors. (O.A. No. 823/87) which recast the seniority of the direct recruits vis-a-vis Jadhav & others, who have according to certain seniority lists ^{had} been appointed and joined earlier to him. The O.As were filed to remove the anomalous situation created by the interpolation by Jadhav and others in the combined seniority list. Our judgement

and order in this matter has been passed on the facts and citations brought to our notice during the course of arguments. The case of V. Narayanan & Ors. versus Collector of Central Excise & Customs decided by the Ernakulam Bench and the cases of P.S. Mahal vs. Union of India & J.S. Lamba vs. Union of India (supra) decided by the Hon'ble Supreme Court were never brought in support of the arguments of the learned counsel for the applicants. In any case, the facts and circumstances of the case now brought to our notice have no relevance in the present case. In the case of V. Narayanan & Ors. vs. Collector of Central Excise & Customs, the vires of para 7 of the Government O.M. dated 9.2.86 was adjudicated and the same was declared null and void and accordingly, the seniority list prepared on the basis of that O.M. was directed to be recast on the basis of the principles laid down in the remaining part of the O.M. dated 7.2.86. In the case of P.S. Mahal, the matter related to appointments in the Central Public Works Department as Assistant Executive Engineers under the rules issued on 21.5.54, the problems of inter se seniority between the Assistant Executive Engineers and the Assistant Engineers arose because of the quota system which came into existence ^{on} 25.8.1949. The appointments, thereafter, continued with these problems upto 1971 when the seniority list of the Executive Engineers promoted from the grade of Assistant Engineers showed as juniors to several Executive Engineers promoted much later from the grade of Assistant Executive Engineers. In that case, at one time reliance was placed by the respondents on the Ministry of Home Affairs O.M. dated

22.12.59, but the learned Solicitor General appearing on behalf of the Union of India conceded that the said O.M. has no application to this case and was irrelevant and the Hon'ble Court also accepted the same view. Thus, it would be seen that there was no adjudication regarding applicability or the vires of O.M. dated 22.12.59 in the case of P.S. Mahal & Ors. (supra). Hon'ble Supreme Court decided that case on merits dehors Ministry of Home Affairs O.M. dated 22.12.59. So far G.S. Lamba's case is concerned, the Hon'ble Supreme Court has enunciated the following principles:

"Where recruitment to a service or a cadre is from more than one source, the controlling authority can prescribe quota for each course. It is equally correct that when the quota is prescribed, a rule of seniority by rotating the vacancies can be a valid rule for seniority. But as pointed out earlier, if the rule of seniority is inextricably intertwined with the quota rule and there is enormous deviation from the quota rule, it would be unjust, in-equitous and unfair to give effect to the rota rule. In fact, as held in O.O. Singla's case (AIR 1984 SC 1595) giving effect to the rota after noticing enormous departure from the quota rule would be violative of Article 14. Therefore, assuming that quota rule was mandatory in character, as pointed out earlier, its departure must permit rejection of rota rule as valid principle of seniority."

The Supreme Court has again in the same ruling held that :

"....giving effect to the rota rule after noticing the enormous departure from the quota rule would be violative of Articles 14 and 16, that selection or recruitment of one year shall have precedence over selection or recruitment of the next year and this is what is known service jurisprudence as seniority, according to continuous officiation in the cadre or the grade... This is in tune with fair play and justice and ensures equality as mandated by Article 16."

We have held in our judgement that there was no break down of quota and rota rule in the instant case. The applicants due to non-availability of promotees were

eligible for appointment as Inspector only for two years or so which cannot be considered to be a break down of quota rule. The promotees were given their dates of seniority against the vacancies reserved for their slots in the prescribed ratio and there is nothing wrong in such a system which was accepted by everybody when they got their appointments in the Inspector grades between the period 1973 to 1985, while the respondents have claimed that they had applied the MHA's OM dated 22.12.59. We did find that this was not done very meticulously and precisely and that is why we have given an order that they must recast the seniority list taking into account the exact stipulations of MHA's O.M. Dated 22.12.59, which may mean disturbing the seniority erroneously assigning to direct recruits as well as promotees. Since the seniority lists are only provisional subject to correction the order passed by us will have a salutary effect of bringing all the anomalies and errors to a logical and final correction. The rejection of S.L.P. by the Hon'ble Supreme Court does not confer upon the judgement and order passed by the Tribunal or the High Court the sanctity of final adjudication in the matter. It has been held by the Full Bench of the Tribunal in the case of DR. J.P. Sharma vs. Chief Secretary, Delhi, reported at 1995 (2) AIR 368, that :

"what is binding on all Courts within the territory of India, as provided in Article 141, is the law declared by the Supreme Court. The dismissal of S.L.P. by an unreasoned order does not amount to declaration of law under Article 141 of the Constitution and the said order cannot be treated as an affirment of the views expressed by the Court or the Tribunal against whose order/judgement the SLP was preferred."

In this, we are also supported by the latest judgement of the Hon'ble Supreme Court delivered by three Member Bench in the case of Union of India & Anr. versus G.K. Vaidyanathan & Ors. reported at (1996) 32 ATC 135. It has been held by the Hon'ble Supreme Court in paragraph 12 of the judgement/order that since the quota rule cannot be said to have broken down on going through the facts of the case although excess recruitment were made during the period 1978 to 1981 in the promotions from both direct recruits and promotees, it was not necessary either to deal with the decisions cited by the Benches on the question when the quota rule can be said to have broken down or with the question whether the principle contained in OM dated 7.2.1986 can be given retrospective effect." In that matter the judgements of two Benches of the Tribunal were different. The Hon'ble Supreme Court held that the decision of the Madras Bench was based upon concession and cannot be treated as a decision on merit. Our decision in the instant matter was based on the merits of the case. A judgement given by another Division Bench of this very Bench or any other Bench for that matter is not binding as we have disagreed with the conclusions arrived at by the earlier D.B. of this Tribunal with our own reasons as stated in the judgement / order.

4. In view of this, we find these two Review Applications totally devoid of merits and the same are dismissed.

(N.K. VERMA)
Member (A)

(B.S. HEGDE)
Member (J)

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