

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

Replicase
for Dad set

ORIGINAL APPLICATION NO.: 835/93.

Dated this Tuesday, the 4th day of February, 1997.

CORAM : HON'BLE SHRI M.R. KOLHATKAR, MEMBER (A).
HON'BLE SHRI D.C. VERMA, MEMBER (J).

Uday Panditrao Nandusekar,
Inspector of Central Excise
& Customs,
C/o. Collector of Central
Excise & Customs,
Jafar Gate, Mondha Road,
Aurangabad - 431 001.

... Applicant

(By Advocate Shri V.S. Masurkar
for Smt. N.V. Masurkar).

VERSUS

1. Union Of India through
Secretary,
Central Board of Excise &
Customs,
Central Secretariate,
North Block,
New Delhi.
2. Collector,
Central Excise Bombay-I,
Central Excise Building,
M.K. Road, Churchgate,
Bombay - 400 020.
3. The Collector,
Central Excise & Customs,
Pratapmal Surana Complex,
Jafar Gate, Mondha Road,
Aurangabad - 431 001.

... Respondents.

(None for the respondents)

: ORAL ORDER :

PER.: SHRI M.R. KOLHATKAR, MEMBER (A)

The applicant was appointed as Inspector
Central Excise through Staff Selection Commission in the
erstwhile Pune Central Excise & Customs Collectorate on

07.04.1982. In the combined seniority list of Inspectors working in Bombay-I, Bombay-II, Bombay-III, Pune and Aurangabad as on 01.01.1989, his name was shown at sl. no. 1353 i.e. below Shri S.K. Sharma and above Shri P.M. Londhe, correctly according to the applicant. However, in the combined seniority list as on 01.01.1990, his name was brought down from Sl. No. 1353 to 1827, apparently due to his late confirmation in the grade of Inspector Central Excise. Although the respondents have not filed a reply, from the reply to the representation dated 07.12.1990 - at page 12 and 09.03.1993 at page 26, it could be gathered that the reason for his seniority being brought down was that he was confirmed late because of the D.P.C. not finding him fit for confirmation, in the D.P.C. held on 27.10.1988. The next D.P.C. was held after 1½ years, namely on 12.04.1990, which found him fit for confirmation and he was confirmed from that date and accordingly his seniority was fixed at Sl. No. 1827 i.e. below Shri B.N. Dongare and above Shri K.K. Chavan in the combined seniority list of Inspectors as on 01.01.1990. It appears that the department has taken this action in terms of Department of Personnel & Training O.M. No. 5/13/85-PP.II dated 7.08.1985 and in particular, para 4, which reads as below : (Vide Swamy's Compilation on Seniority & Promotion .. 1989 Edition).

"Direct Recruits - Notwithstanding the provisions of para 3 above, the relative seniority of all direct recruits shall be determined by the order of merit in which they are selected for such appointment, on the recommendations of the U.P.S.C. or other selecting authority, persons appointed as a result of an earlier selection being senior to those appointed as a result of a subsequent selection : -

Provided that where persons recruited initially on temporary basis are confirmed subsequently in an order different from the order of merit indicated at the time of their appointment seniority shall follow the order of confirmation and not the original order of merit."

2. The counsel for the applicant has contended that the issue is no longer res-integra in view of the series of decision of this Tribunal in reference to the same department, beginning with U.H. Jadhav V/s. Union Of India & Others, O.A. No. 823/87 decided on 17.07.1991 and L.Y. Sant V/s. Union Of India & Others O.A. No. 254/87 decided on 25.09.1991, which relied on U.H. Jadhav's case. On perusal of the cases, it is seen that Jadhav's case itself was decided on the basis of K.K. Petlur V/s. Union Of India & Others, decided on 26.03.1991 O.A. No. 213/87. The Petlur's case followed the ratio laid down by the Supreme Court in regard to principle of seniority of the regularly recruited employee, i.e. the judgement was based on the Supreme Court decisions in the cases of S.B. Patwardhan V/s. State of Maharashtra [(1977) 3 SCC 399] and Direct Recruit Class-II Engineering Officers' Association V/s. State of Maharashtra [(1990) 2 SCC 715]. It is laid down in Patwardhan's case that the period of continuous officiation by a Government servant after his appointment by following the rules applicable for substantive appointment, has to be taken into account for determining the seniority and seniority cannot be determined on the sole test of confirmation, which is one of the inglorious uncertainties of the

service Government. As is known, the Direct Recruit case and above essentially confirmed & elaborated the observations in Patwardhan's case. Reference is also made to the Supreme Court judgement in Shiv Kumar Sharma V/s. Haryana State Electricity Board & Others, wherein the Supreme Court has observed that a rule other than a rule of continuous officiation for determination of seniority, exposes a government employee to arbitrary action. It is well known that following these observations of the Supreme Court, the department of Personnel & Training moved to amend the rules on seniority by the O.M. dated 04.12.1992 that the 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 O.M. does not help the applicant because it was issued in 1992 and the grievance of the applicant is in relation to the seniority list published in 1990 but the law laid down by the Supreme Court, noticed as above, is binding on the Government and in particular, when the law has been laid down by the Tribunal following the Supreme Court judgement in relation to the same department the department was bound to follow the same. The Counsel for the applicant has brought to our notice that the S.L.P. against Jadhav's case was dismissed by the Supreme Court and the C.P. No. 56/92 in U.H. Jadhav's case was also decided in favour of the applicant on 08.02.1994.

3. In view of the above discussion, we consider that the matter is no longer res-integra and that we are bound to follow the law laid down by the Tribunal in the cases relating to Central Excise Department, beginning with

K.K. Petlur's case decided on 26.03.1991. We therefore, dispose of the O.A. by passing the following order :-

O R D E R

The applicant's seniority be arranged on the basis of continuous officiation in the cadre notwithstanding the date of confirmation and he will be entitled to all consequential benefits arising therefrom. Sofar as consequential benefits if any, by way of arrears of pay are concerned, the same may be granted to him w.e.f. one year prior to the date of filing of the O.A., namely 03.09.1993. This process shall be completed within a period of three months from the date of communication of this order.

There would be no order as to costs.

MEMBER (J).

MEMBER (A).