

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 371 of 1995.

Dated this Tuesday, the 18th day of December, 2001.

Ravinder Kumar & 10 others. Applicants.

Shri G. K. Masand. Advocate for the
Applicants.

VERSUS

Union of India & Others. Respondents.

By Advocate Shri V. D. Vadhavkar Advocate for the
for Shri M. I. Sethna. Respondents.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

Hon'ble Shri S. L. Jain, Member (J).

- (i) To be referred to the Reporter or not ? Yes
- (ii) Whether it needs to be circulated to other X
Benches of the Tribunal ?
- (iii) Library. X

B. N. Bahadur
(B. N. BAHADUR)
MEMBER (A).

OS*

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02*

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CORAM : Hon'ble Shri B. N. Bahadur, Member (A).
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1. Ravinder Kumar.
2. Davinder Singh Rana.
3. Vipin Chopra.
4. Naveen Kant.
5. Balbir Singh Mangat.
6. P. K. Thomas.
7. Mahendra Kumar.
8. Vinay Kumar Arya.
9. Ved Prakash.
10. Vinay I. Singh.
11. A. K. Sinha.

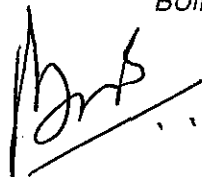
... Applicants.

All working as Examiners with
Custom House at Bombay.

(By Advocate Shri G. K. Masand)

VERSUS

1. Union of India through
the Secretary in the
Ministry of Finance,
Department of Revenue,
North Block, New Delhi.
2. Collector of Customs (I),
New Custom House,
Ballard Estate,
Bombay.



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3. Smt. S. B. Nair.
4. V. C. Jagwani.
5. G. J. Sachdev.
6. A. S. Joshi.
7. Smt. C. K. Joney.
8. Smt. Licy Baby.
9. Smt. T. N. Tambi. ... Respondents.

Presently working as Customs
Appraisers under Respondent No. 2.

(By Advocate Shri V. D. Vadhavkar for
Shri M. I. Sethna).

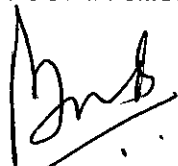
O R D E R

PER : Shri B. N. Bahadur, Member (A).

This is a case filed by eleven Applicants who are all direct recruits to the post of Examiner in the Bombay Customs Collectorate. They seek the quashing and setting aside of the impugned seniority list notified vide circular dated 29.03.1995 (exhibit-A) and seek directions to Respondents to convene a D.P.C. on the basis of the seniority list earlier notified on 30.12.1994. By a subsequent amendment, the Applicants also seek the quashing and setting aside of the promotions of Respondent Nos. 3 to 9 as Appraisers in Group 'B', as contained in promotion order dated 03.04.1995.

2. The facts of the case, as put forth by the Applicants, are that they have been recruited as Examiners through direct recruitment, by which mode 2/3rd of the posts are to be filled in

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as per Recruitment Rules. The other 1/3rd posts are to be filled by promotion from U.D.Cs./Stenographers with five years service in the grade. Applicants made the point that seniority shall be determined according to rotation of vacancy between direct recruits and promotees based on the quota provided in Recruitment Rules. The methodology of providing seniority is then explained and the historical background is described with reference to the alleged attempt of the Collector of Customs, Bombay to disturb the seniority position of Examiners of 1977-78. The litigation that followed in the High Court and the direction of the High Court to the effect that seniority be recast in accordance with Quota Rota is then described. It is stated that, thereafter, the Respondents have been publishing seniority lists of Examiners from time to time, accordingly, and that one such list was published on 11.06.1990, being seniority list as on 01.04.1990. Attached to this was a list of ad hoc promotee Examiners containing 31 names of those who have been appointed to the post of Examiner in excess of their quota. Subsequently, after incorporation of the names of ad hoc employees, a tentative seniority list of Examiners was published vide circular dated 21.11.1994, being seniority list as on 01.11.1994. Representations were invited against this list (Exhibit-F). A final seniority list was subsequently published by circular dated 30.12.1994 after considering all representations received. It is the contention of the Applicants that this is the correct seniority list and was drawn up as per due procedure.



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3. The Applicants then go on to describe the promotion procedure to the post of Customs Appraiser. They state that they were waiting and corresponding regarding the filling up of post of Customs Appraisers and allege that they were surprised by the letter of the department dated 30.03.1995, through which information about 53 officials mentioned in the letter in respect of enquiries/disciplinary action pending were sought for. They highlight the fact that information was sought for by 2 p.m. on the same day. They moved the Collector of Customs-I, Bombay, through a letter requesting the Collectorate not to change the seniority list of Examiners issued vide letter dated 30.12.1994, since their seniority position/s were being jeopardised. It was stated that seniority list of 30.12.1994 should be the only base for considering promotion. However, no reply has been received. It is with such grievance that the Applicants are before us seeking the relief, as described above.

4. The Respondents in the case have filed a written replies resisting the claims of the Applicants. The second reply has been filed after the filing of the rejoinder by the Applicants. It is stated by Respondents that the petitioners have challenged the correctness and validity of seniority list dated 29.03.1995, wherein the Department has only re-arranged the seniority list of Examiners i.e. Examiners who have been promoted from the feeder cadre of UDC/Stenographer and Examiners who have been directly recruited during the period commencing from 1977.

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It is averred that this seniority list represents the correct adjustment of seniority position of the Examiners as on 01.01.1992. The point (repeatedly) made by Respondents is that the impugned seniority list was only a "correction" in respect of the earlier seniority list dated 30.12.1994. It is further stated that this correction was made pursuant to the representations made by some Examiners bringing to the notice of the Respondents that they have not been given proper position in the seniority list of 30.12.1994, which they were entitled to get in accordance with the findings of the Tribunal in the case of V.C. Jagwani in O.A. No. 390/87. This judgement is then referred to and the stand is also sought to be taken that the present impugned seniority list is infact an effort made to carry out the direction of the Hon'ble Tribunal, as given in the said case of V.C. Jagwani. The case of V.C. Jagwani and its implications are then discussed and it is stated that between the period 1977 and 1986 no D.P.C. was held for regular promotion to the cadre of Examiner from the said feeder cadre. The dates on which the D.P.Cs. were held in 1986 and 1990 are then provided and the method in which seniority has been given is explained in this Written Statement in some detail. It is reiterated that the list of 29.03.1995 impugned in the O.A. is nothing else but a complete implementation of the Tribunal's order, after correcting the bonafide mistakes of the principles laid down by the Hon'ble Tribunal in the judgement dated 13.09.1991 in case of V.C. Jagwani. A stand is taken that in view of this only a superior court can now change this list. No legal rights of the Applicants have been violated, it is contended.



5. We have heard learned counsels on both sides namely Shri G.K.Masand for the applicants, and Shri V.D.Vadhavkar for Shri M.I.Sethna for the official respondents. There was no representation during arguments by or on behalf of Private Respondents. It is seen from record that private respondents had earlier shown interest and Learned Counsel, Shri Ramamurthy, had even appeared for them at one stage. But they did not pursue the matter and their Learned Counsel had asked for discharge.

6. The Learned Counsel for the applicants, Shri Masand, took us over the facts of the case at length to set his arguments in the background of the facts and circumstances highlighted by him as being especially relevant to his arguments. He especially made reference to the lists of seniority and made the point that the seniority list issued vide notification dated 29.3.1995 was in fact malacious when the matter had been settled by the issue of the final seniority list as early as in December, 1994. He also stressed the attitude of the respondents by citing the fact that the entire proceeding for issue of fresh list of 29.3.1995 was done in a kind of haste that smacked of wrongful intentions on the part of the applicants. He urged that a perusal of Exhibit-B will show the kind of havoc that has been brought about in the seniority positions of people like the applicants by the action of revision of seniority - the seniority position had changed drastically.

7. Shri Masand further made the point that the revision of lists as made on 1.1.1992 was also wrong as was the fact that the

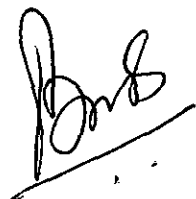
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same officer had reviewed the position. While pointing out the fallacies and anomalies that had come about in the new list Shri Masand took us over the seniority lists to make the point that even slots of officers who had since passed away, or retired, have also been filled in and that this was contrary to the established norms and rules. He cited some examples in this regard, eg. Annexure-N vis-a-vis Annexure-R.

8. Learned counsel Shri Masand took us over the rejoinder filed by the applicants and stated that the respondents were taking different stands not only in different OAs but in the different affidavits filed in this OA. He drew attention of the Bench to the letter dated 29.5.1986 annexed at Exhibit - P (Page 121) and questioned as to why the Board's order were not followed. Para 9 of the rejoinder was taken support of. Learned Counsel, Shri Masand sought to take support from the ratio in the case of Narendra Chadha reported at 1997 (15) SLR 810 as also from the Direct Recruit Class II Engineering Officers' Association & Ors. V/s. State of Maharashtra & Ors. decided by the Hon'ble Supreme Court reported at AIR 1990 SC 1607. Para 47 of the latter case was especially depended upon.

9. Arguing the point on behalf of the respondents, Shri V.D.Vadhavkar stated that no officer had been arrayed by name, with reference to the malice being attributed and argued. In view of this legal position, no malice could be attributed to any officer, he contended.



10. Shri Vadhavkar then directly proceeded to seek reliance from the case decided in OA No.755 of 1996 on 21.6.2001 by a Bench of this Tribunal, where Shri V.Choudhari was the applicant. It was argued by him that the seniority list there questioned was the seniority list dated 28.8.1995 i.e. a later day seniority list. This seniority list has been concluded to be in order by the judgment in Mr.Choudhari's OA. The argument made by Shri Vadhavkar was that when a seniority list of August, 1995 has been found to be in order it should follow, by deduction, that the seniority list being impugned in the present OA, being of an earlier date i.e. 3.4.1995 has logically to be taken to be in order. He, in fact, sought to exemplify this argument that by giving the example that if the fourth floor of the building is found to be proper in structure, it must follow that the third floor indeed had to be proper. Shri Vadhavkar then took us over the various portion of Choudhari's case and also argued that even if this Bench chooses to disagree then the matter would have to be referred to a larger Bench.

11. Shri Vadhavkar then took us over the various portions of the written statement filed by respondents as also the sur-rejoinder filed and sought to depend on the various arguments taken therein reiterating the point that the respondents ... were merely following the earlier judgment of CAT.


12. Re-arguing the case briefly, learned counsel for applicant questioned the relevance of the judgment in Choudhari's



case saying that it dealt only with the case of an applicant who was a direct recruit of 1992. Private respondents in this case had got promotion and had lost interest in the case, even though arrayed in part line up. He made the point that if mistakes had been found in a list already finalised, then it was upto persons like Jagwani to approach higher courts in the matter.

13.....Now let us look at the basic point made by the Applicants and the reliefs sought. The Applicants are challenging the seniority list issued vide Notification dated 29.03.1995, while maintaining that the seniority list notified on 30.12.1994 prior to this should hold the field. The Respondents, on the other hand, take the stand that the list notified in March, 1995 is in fact a correction and that the list notified in December, 1994 contained mistakes. The term 'mistake' is used with reference to Respondents' stand that in fact the list was to be drawn up in terms of the directions of this Tribunal, in its judgement made on the application of one V. C. Jagwani in O.A. No. 390/87, a copy of which is at Exhibit-I (judgement delivered on 13.09.1991 by this Bench of the Tribunal). This judgement has been seen by us. The basic point again was the seniority claimed by Shri Jagwani vis-a-vis selection held in 1982-83. The Tribunal has arrived at a conclusion that the Applicants in that O.A. (No. 390/87) had been selected by a duly constituted D.P.C., and that it would be inappropriate to subject them to a fresh selection process. The Tribunal accordingly allowed the application by directing the Respondents to regularise the Applicants in that O.A. in the post of Examiners on the basis of selection held in

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1982 and 1983 "on the basis of the position to which their seniority entitles them, without having to go through a fresh selection process."

14.....The time factor in the above stand is important and deserves to be noted. The judgement was delivered on 13.09.1991. The next list is published in December, 1994, a few years after this judgement. Then suddenly in March, 1995, a correction is sought to be made. Undoubtedly, the haste factor pointed out by the Respondents in notifying objections the same day has to be noted. Though the point made by the Learned Counsel for Respondents about non arraying of parties and the lacuna vis-a-vis the ground of individual malice is correct, and we are not looking into individual malice here in view of non arraying the parties, the haste will naturally have to be seen as a relevant fact. First a well considered action is taken by Respondents, and provisional seniority list is issued, due procedure is followed, objections notified and then after due consideration, the seniority list issued in December, 1994.

15.....It must be therefore concluded, noted that the list of December, 1994 has achieved a degree of finality in the eyes of law and rules. Even assuming that the Administration has suddenly discovered that the directions in V.C. Jagwani's case have not been correctly followed, we hold it necessary, under the above circumstances, that a fresh show cause notice was an absolute necessary to meet the basic requirements of principles



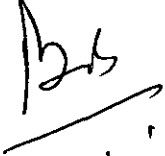
of natural justice. To merely say that fresh representations were received from some persons and having found that directions in Jagwani's case were not followed, corrections were made in a list that was already declared final does not do justice to those whose seniority have already been declared as finalised. It is a negation of principles of natural justice and the Respondents cannot be allowed to hide under the argument that all that they are doing is merely following the C.A.T's judgement. This is obviously just a manner of trying to protect itself against an action which is clearly against the principles of natural justice, in the facts and circumstances of the case.

16. Though the main point that appeals to us is the weakness on the part of the Respondents, as discussed above, we do note that it is not a marginal difference in seniority position that has occurred. There is no doubt that very large scale difference in seniority have come about, as could be seen from the comparison of various lists, as brought to our notice during argument. Needless to say, we are not going into some of the calculation aspects of individuals, as sought to be discussed by the Learned Counsel for Applicants. It must also be noted that at the initial stage the Private Respondents had come up with a desire to participate in the litigation process. In fact, the Applicants amended the O.A. in this regard. Learned Counsel, Shri M.S. Ramamurthy, who had initially appeared for them, then withdrew stating that they had written to some of the Private Respondents to come up but the Private Respondents had shown no



interest. Obviously, they do not seem to be interested. Hence, there is no occasion for hearing them in the matter, although the stand of the Respondents vis-a-vis their interest have been taken note of through the Written Statement that are on file. We would not like to go into further points, since the main reason and the main flaw that we find is that the principles of natural justice have not been followed and large scale basic seniority in a finalised seniority has been made on an untenable plea that there being mistake and the issue of new list merely being a corrected process. As discussed above, this plea cannot be allowed, and hence the O.A. will deserve to be allowed.

17. It may be mentioned here that one of the reliefs sought through amendment is that the promotion of Respondent No. 3 to 9 as Appraisers as contained in promotion order dated 03.04.1995 be set aside. There is no doubt that given the fact that the seniority list of December, 1994 holds the field, it would be wrong to promote anybody junior in that list to the Applicants. However, since more than six years have elapsed since that promotion order was made, we would feel that the Respondents may assess the position and could continue these persons already promoted subject to the fact that the Applicants' interest are protected vis-a-vis those persons. If that is not possible without reverting the Private Respondents, then the Private Respondents shall be reverted. In view of these directions, we are not quashing the order dated 03.04.1995.



18. In view of the above discussions, this O.A. is allowed in terms of the following orders :

(i) The seniority list issued vide Notification dated 29.03.1995 is quashed and set aside.

(ii) The directions in para 17 above shall be followed in regard the prayer at para 8(a-1) of the O.A.

(iii) No order as to costs.

Slotted
(S. L. JAIN)
MEMBER (J)

OS*

B. N. Bahadur
18-12-01
(B. N. BAHADUR)
MEMBER (A).