CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 1050/95, 1130/96, 1131/96, 535/97, 536/97, 547/97, 782/97 and 675/97.

M.P. NO.: 702/97 in O.A. 782/97.

Date of Decision : 19.1.1998.

Shri Manohar Satyavan Naik & 7 Others — Petitioners.

Shri M. S. Ramamurthy,
Shri G. K. Masand,
Shri S. Natrajan. — Advocate for the Petitioners.

VERSUS

Union Of India & Others — Respondents.

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

CORAM :

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

Hon'ble Shri P. P. Srivastava, Member (A).

(1) To be referred to the Reporter or not ? Yes

(2) Whether it needs to be circulated to No other Benches of the Tribunal.

(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NOS.: 1050/95, 1130/96, 1131/96
535/97, 536/97. 547/97,
782/97 and 675/97.

Miscellaneous Petition NO.: 702/97 in O.A. No. 782/97.

Dated this Monday the 19th day of January, 1998.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA, VICE-CHAIRMAN.

HON'BLE SHRI P. P. SRIVASTAVA, MEMBER (A).

Manohar Satyavan Naik,
Air Customs Officer,
Sahar International Airport.
Residing at :-
105, Green Valley, 1st Floor,
Church Road, Hill Top,
Marol, Andheri (East),
Bombay - 400 059.
(By Advocate Shri M.S. Ramamurthy).

Applicant in O.A. No. 1050/95.

B. N. Ojha,
Preventive Officer, in
Bombay Customs Commissionerate
at SEEPZ, M.I.D.C.,
Andheri (East),
Mumbai.
(By Advocate Shri M.S. Ramamurthy)

Applicant in O.A. No. 1130/96.

D. S. Nandal,
Preventive Officer in
Bombay Customs Commissionerate,
New Custom House,
Bombay - 400 038.
(By Advocate Shri M.S. Ramamurthy)

Applicant in O.A. No. 1131/96.

Ms. Deepa S. Awchat,
Preventive Officer Grade-I
in Floating Section at
New Customs House,
Ballard Estate,
Mumbai - 400 038.
(By Advocate Shri G.K. Masand)

Applicant in O.A. No. 535/97.

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Smt. Imelda Menezes Pinto,
Preventive Officer, Customs
Group 'C'
Residing at -
301, Mangal Kalyan,
Opp: Military Camp,
Kalina, Santacruz (E),
Bombay - 400 029.

(By Advocate Shri S. Natrajan)

Applicant in O.A. No. 536/97.

Pitamber Samal,
Preventive Officer under
Chief Commissioner of Customs,
Mumbai.

(By Advocate Shri M.S. Ramamurthy)

Applicant in O.A. No. 547/97.

Jitendra Singh Duhan,
Preventive Officer in the
Commissionerate of Customs
at Bombay,
New Customs House,
Ballard Estate,
Mumbai - 400 038.

(By Advocate Shri M.S. Ramamurthy)

Applicant in O.A. No. 782/97.

1. Vivek Sawant,
Preventive Officer (Gr.I),
Resi. at :
301, 3rd Floor,
Dwarka Appt., B.P. Road,
Charai, Thane (W).

2. N. M. Sukumaran,
Preventive Officer (Gr.I),
Resi. at :
510, 1101 Shrinath Tower
Sane Guruji Marg,
Mulund East,
Mumbai - 400 081.

3. M. C. Mathpal,
Preventive Officer (Gr.I),
Residing at -
E-21, ITO Colony,
Peddar Road, Mumbai-26.

4. M. A. Chemburkar,
Preventive Officer (Gr.I),
Residing at -
D-34, Yama Sita,
Chembur, Gaothan,
Mumbai - 400 071.

5. K. S. Gill,
Preventive Officer (Gr.I),
residing at -
17-C-303, Kalpak Estate,
Antop Hill, Bombay-400 037.

(By Advocate Shri V. S. Masurkar)

Applicants in O.A. No. 675/97.

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VERSUS

1.	Union Of India, through the Secretary, Ministry of Finance, Government of India, Department of Revenue, North Block, New Delhi - 110 011.	Respondent No. 1 in all the 8 O.As.
2.	The Chief Commissioner of Customs, New Custom House, Ballard Estate, Bombay - 400 038.	Respondent No. 2 in O.A. Nos. 1050/95, 535/97, 536/97, 547/97 and 675/97.
3.	The Principal Commissioner of Customs, New Custom House, Ballard Estate, Mumbai - 400 038.	Respondent No. 2 in O.A. Nos. 1130/96 and 1131/96.
4.	Commissioner of Customs, Bombay - I Commissionerate, Ballard Estate, Mumbai - 400 038.	Respondents in O.A. Nos. 1130/96, 1131/96, and 782/97.
5.	Additional Commissioner of Customs (Personnel & Estt. Department), New Custom House, Ballard Estate, Mumbai - 400 001.	Respondents in O.A. Nos. 1050/95, 535/97, 547/97 and 782/97.
5.	The Commissioner of Customs, New Custom House, Ballard Estate, Mumbai - 400 038.	Respondent No. (3) in O.A. No. 536/97.
6.	Commissioner of Customs(G), New Custom House, Ballard Estate, Mumbai - 400 038.	Respondent No. 3 in O.A. No. 535/97.
7.	Commissioner of Customs & Central Excise, Panjim, Goa.	Respondent No. 3 in O.A. No. 675/97.
8.	Smt. Imelda Pinto, Supdt. of Customs (Bl Preventive)	Respondent Nos. 4 and 5 in O.A. No. 675/97.
9.	Shri Manohar S. Naik, Supdt. of Customs (Preventive)	

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10. Smt. Deepa S. Awachat,
Suptdt. of Customs.

11. Shri Arun Kumar Sharma
Supdt. of Customs.

Address : Sl. No. 8 to 11

C/o. Posting Section,
3rd. Floor,
New Customs House,
Ballard Estate,
Bombay - 400 038.

Respondent No. 6 and 7 in O.A. No. 675/97.

(By Advocate Shri M.I. Sethna alongwith Shri V. D. Vadhavkar for official Respondent Nos. 1 to 7).

INTERVENORS

1. Nawal Kishor Singh

2. Vijay Bahadur Singh

Intervenors in O.A. No. 782/97.

(By Advocate Shri M.P. Vashi)

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: ORDER :

| PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN |

In all these cases the applicants are seeking promotion on the basis of seniority from the date of initial appointment in Goa. O.A. No. 675/97 is filed by some applicants challenging the promotions given to some of the applicants in other cases on the basis of interim orders passed by this Tribunal and for a direction that their claim for promotion should be considered as per the seniority list. The official respondents have filed reply in some cases and have adopted the same reply in other cases. Since common question of law and facts arise in all these cases, they are heard together and they are being disposed of by this common order. We have heard the Learned Counsel appearing on both sides.

2. The facts necessary for the disposal of these seven cases are as follows :-

(i) O.A. No. 1050/95 is filed by M.S. Naik, who was initially appointed as Preventive Officer in Goa Customs House in May 1977. On his own request for transfer on compassionate grounds, he was transferred to Bombay as per order dated 18.06.1992. Then he joined the service as Preventive Officer at Bombay on 25.06.1992. Then he made some representations regarding his seniority which was rejected. His case is

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that, for the purpose of next promotion as superintendent, his seniority should be determined from the date of his initial appointment at Goa in May, 1977. It is stated, though the transfer order says that he has to forego his seniority and though he had given an Undertaking that he will not claim seniority from the date of his initial appointment when he joins his new post at Bombay, those conditions are illegal and contrary to rules. He therefore pleads that the length of service in both the collectorates should be the guiding principle for determining both eligibility and seniority for the purpose of promotion. He has, therefore, filed this O.A. praying for a direction to the official respondents to promote him by considering his seniority from the date of his initial appointment and grant him promotion alongwith other consequential benefits.

(ii) O.A. NO.: 1130/96 is filed by B. N. Ojha and his case is identical as the applicant mentioned above. He was appointed at Goa on 21.10.1983. On his request, he was transferred as per order dated 14.11.1985. He joined the Bombay Customs House on 04.12.1985.

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(iii) O.A. NO.: 1131/96 is an application filed by B. S. Nandal. His case is also an identical one. He was appointed as Preventive Officer at Goa Customs House on 28.07.1981. On his request he was transferred as per order dated 29.10.1985. He joined the Bombay Customs House on 05.11.1985.

(iv) O.A. No. 535/97. is filed by Mrs. D.S. Awachal. Her case is also an identical one. She was appointed as a Preventive Officer at Goa on 18.11.1977. On her own request, she was transferred and she took charge in Bombay Customs House on 04.03.1985.

(v) O.A. NO. 536/97 is an application filed by Mrs. I. M. Pinto. Her case also is an identical one. She was appointed as a Preventive Officer at Goa on 11.10.1976. On her own request she was transferred as per order dated 08.04.1988. Then she took charge in Bombay Customs House on 28.04.1988.

(vi) O.A. NO. 547/97 is filed by Pitamber Samal. His case is also an identical one. He was appointed at Goa as Preventive Officer on 22.02.1983. On transfer on his own request, he took charge at Bombay on 10.06.1985.

(vii) O.A. No. 782/97 is filed by J. S. Duhan for identical reliefs on identical grounds as

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mentioned above. He was appointed at Goa as preventive Officer on 30.04.1984 and transferred to Bombay on his own request and he joined the new post at Bombay on 18.10.1995.

In some of the above cases, this Tribunal passed interim order directing the official respondents to consider the case of the applicants for promotion on the basis of seniority with reference to their initial appointment at Goa. In pursuance of this interim order, some of the applicants came to be promoted.

(viii) O.A. No. 675/97 is filed by Vivek Sawant and four others. As already stated, some of the applicants mentioned above in the other cases came to be promoted as per the interim order passed by this Court. Being aggrieved by the promotion, these applicants who were senior to them as per the seniority list, have filed this O.A. challenging the promotions of respondent nos. 4 to 7 in their O.A. Their case is that they were appointed at Bombay Customs House and Respondent Nos. 4 to 7 came to work in Bombay Customs House subsequent to their appointment. Respondent Nos. 4 to 7 are shown as juniors to the applicants in the seniority list. It is, therefore, stated that the promotion of Respondent Nos. 4 to 7 is illegal and contrary to the seniority list. Respondent Nos. 4 to 6 in this application are the applicants in O.A. No. 536/97, O.A. No. 1050/95 and O.A. No. 535/97 respectively. It is stated that these three respondents cannot claim their seniority

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on the basis of their initial appointment in Goa Customs House but their seniority should be counted only after they came on transfer to Bombay Customs House. So far as respondent no. 7 A. K. Sharma is concerned, he is the applicant in O.A. No. 528/97. It is alleged by the applicants that Shri A. K. Sharma was appointed as an Inspector Of Central Excise on 05.12.1978. He was subsequently appointed as Preventive Office in Goa Customs House on 16.08.1985. Then he was again appointed as Preventive Officer at Bombay and he joined that post after resigning his post at Goa. It is stated that respondent no. 7, A. K. Sharma, is entitled to count his seniority only from 17.02.1986, when he joined the Bombay Customs House and he cannot claim seniority on the basis of his earlier service as Preventive Officer at Goa or his earlier service as an Inspector of Central Excise.

On these allegations, the applicants in this O.A. have prayed that the promotions of respondent nos. 4 to 7 in pursuance of the interim order passed by the Tribunal should be quashed and the direction be given to the official respondents to promote the present applicants on the basis of the seniority list which is at Annexure A-1.

3. As already stated, in some of the cases the official respondents have filed reply. Since we have to expedite the hearing of the O.As. in view of the interim order passed in these cases, the

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Learned Counsel appearing for the Government Of India was granted permission to adopt the reply filed in one of the cases as reply in all the cases.

4. The stand of the Government is that the applicants who obtained transfer on compassionate ground are not entitled to count their seniority from their initial appointment at Goa. They are bound by the conditions of order of transfer, guidelines given in the 1980 Board Instructions and further, they are bound by the undertaking given by them agreeing to forego their seniority and they should be treated as new entrants into the service after joining service in the transferred place. Therefore, it is stated that the applicants in the seven cases are not entitled to claim their past services for the purpose of seniority, though it may be a ground for claiming eligibility.

In O.A. No. 675/97, two of the private respondents have filed reply. The reply filed by M.S. Naik, Respondent No. 5, is the same as his contention in O.A. No. 1050/95 but Respondent No. 7, Arun Kumar Sharma, has taken the position that the entire length of service as Inspector of Central Excise and as Preventive Office in Goa and Bombay should be taken into consideration for determining his seniority. His resignation from the post of either Inspector of Central Excise or from the post of Preventive Officer at Goa, should be treated as

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technical resignation for the purpose of joining the new post at Bombay and the earlier service is not wiped out either for the purpose of eligibility or for the purpose of seniority. His other contentions are similar to the contentions taken by him in his O.A. No. 528/97.

5. Some more facts which are not in dispute may be mentioned.

It is common ground that in each case the applicants have got the order of transfer on their own request on compassionate grounds. All the seven applicants have given written undertaking to forego their seniority. It is their further case that there is common seniority for Preventive Officers of Goa and Bombay and therefore, transfer from one Custom House to another will not affect their seniority. It is also an admitted case that the Government has prepared an upgradation scheme under which many posts of Preventive Officers had to be abolished and in their place equal number of posts of Superintendents should be created. In other words, number of posts of Preventive Officers came to be upgraded as Superintendents. The object of this scheme was to prevent stagnation in the level of Preventive Officers for nearly 14 to 18 years. It is also an admitted fact that all these posts of Superintendents is a selection post. The eligibility for consideration for promotion is minimum 8 years service in the feeder cadre, namely; in the post of Preventive Officer.

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6. Mr. Ramamurthy, Learned Counsel, appearing for some of the applicants, contended that Bombay and Goa form one unit so far as Preventive Officers are concerned, with a combined common seniority, therefore, transfer from one Custom House to another will not affect their seniority. The other submission is that the seniority should be counted from the date of initial appointment in Goa, ignoring the undertaking given by the applicants, which is contrary to the 1968 rules. The same argument was adopted by the Learned Counsels appearing for the other applicants. On the other hand, Mr. M.I. Sethna, appearing for the Government Of India and Mr. Masurkar appearing for the applicants in O.A. No. 675/97 contended that seniority should be counted only from the date of joining duty at Bombay Custom House. They also argued that the Bombay Custom House and Goa Custom House are independent and separate units and there is no question of there being any common seniority in the grade of Preventive Officers for both units. It is common ground that so far as eligibility of 8 years is concerned, the applicants are entitled to count their services both at Goa and Bombay for the purpose of showing that they have minimum 8 years service.

7. In the light of the arguments before us, the points that fall for determination are :

(i) Whether in the case of Preventive Officers there is a common cadre with common seniority between Preventive Officers of Goa and Bombay?

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(ii) Whether, ignoring the undertaking given by the applicants, entitle them to count their seniority from their initial appointment in Goa Customs House?

(iii) What order ?

8. In all these cases the common argument is that, in the level of Preventive Officers there is a common cadre between Bombay and Goa, therefore, not withstanding, transfer from one Collectorate/Commissionerate to other Collectorate/Commissionerate will not result in loss of seniority but the Learned Counsel for the respondents seriously refuted the submission and contended that Bombay Custom House and Goa Custom House are independent, distinct and separate Collectorate and hence there cannot be any common seniority of the Preventive Officers of both Collectorates. We may also mention that in all these cases there are references to Collectorates or Commissionerates. We are told that earlier the name given to one unit was Collectorate and now it is changed as Commissionerate, therefore, whenever we use the word 'Collectorate' or 'Commissionerate', it may be read as synonymous with one another. There can be no dispute that the Goa Custom House and Bombay Custom House are independent, distinct and

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separate collectorates. Even in such case there is no bar for the Government to have a common cadre at a particular level, for e.g. although there are number of Collectorates/Commissionerates in India and each Collectorate or Commissionerate is independent of each unit, still the rule is, from the stage of Superintendent and onwards, there is an All India seniority list and not separate seniority list at the Collectorate level, that means, upto a certain cadre the seniority is inter-Collectorate but from Superintendent and onwards, the seniority is on All India basis. This clearly shows that the Government can provide a common cadre or common seniority for a particular cadre. In the present case, we will straight away consider the Government Order 1968, which clearly and unequivocally provides common cadre of Preventive Officers in the Custom House of Bombay and Goa.

9. In O.A. No. 535/97 at page 16, we have a copy of the circular issued by the Ministry of Finance dated 12.09.1968, which reads as follows :-

"Government Of India
Ministry Of Finance
(Department of Revenue & Finance)
New Delhi, 12th Sept. 1968.

From, Shri T. Ramaswamy,
Under Secretary to the Government Of India.

To, The Collector of Customs,
Bombay.

Subject : Preventive cadres in the Bombay and Goa Custom Houses Amalgamation of Regarding.

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Sir,

In modification of para 3 of the Ministry's letter No 2/20/63- Ad.II dt. 23.3.63, the president is pleased to decide that the cadres of Inspector/ Additional Chief Inspector and Preventive Inspectors in Goa and Bombay (including Kandla) Custom Houses should be amalgamated and organised into one Cadre with effect from 1.9.68. Consequent on the amalgamation of the Cadre, the Preventive Inspectors/ Additional Chief Inspectors of Goa and Bombay Custom Houses will be liable to be posted to any of the Custom Houses at Goa, Bombay or Kandla. Combined Seniority list of Addl. Chief Inspectors & Preventive Inspector of this Custom houses have accordingly been prepared and these are sent herewith. This list will be the bases for further promotions to the grade of Chief/Addl. Chief Inspectors in this three Custom Houses. Further promotion to the grade of Preventive Inspector in the Goa, Bombay, Kandla Custom Houses will be made from a single panel and for the preparation of this panel, the names of the Preventive Officers of GrI of all this Custom Houses will be combined seniority list with reference to the date of continuous service in this grade and subject to maintainance of Custom House Seniority and considered by the DPC subject to their being eligible otherwise.

The President is also pleased to decide that the Collector of Custom Bombay will administer the cadre of Preventive

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Inspector, Chief Inspector/
Addl. Chief Inspector of the Bombay/
Goa cadre in consultation with the
Collector of Custom Goa.

Yours faithfully

(T. Ramaswamy)
Under Secretary to the Govt. Of India

(Underlining is ours).

It is, therefore, seen that the Government has taken a policy decision as early as 1968 that there should be a common cadre for the purpose of posting and next promotion. The words used in the Government order is that the cadres in all the three Custom Houses of Goa, Bombay and Kandla are "amalgamated" and "organised into one cadre" and the officers can be posted in any of the three Custom Houses and there should be a "combined seniority list".

If once there is such Government Order in force, which shows common seniority and common cadre of Preventive Officers in the three Custom Houses, then the transfer from one Custom House to

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another Custom House will not and cannot affect his seniority. On transfer, the officer carries his position in the common seniority list wherever he goes in these three Custom Houses. For the purpose of promotion, the Order provides continuous service in this grade on the bases of combined seniority should be the criteria for the purpose. As long as this order stands, there is common cadre of Preventive Officers in the three Custom Houses mentioned above, including Bombay and Goa, and therefore, transfer from Goa to Bombay or from Bombay to Goa will not affect the seniority position of the officers, since it is a case of common combined seniority list.

Even if the applicants have been transferred on their own request from Goa to Bombay and they have given an Undertaking to forfeit their seniority, it will not have any effect, since Bombay and Goa Custom House have common cadre of Preventive Officers with a combined common seniority and hence transfer from one Collectorate to the other will not affect the seniority position. The undertakings given by the applicants will not have any effect in law, since it will run contrary to the circular of 1968. In this connection, we may make reference to Deshpande's case in Transfer Application No. 511/86 of a Division Bench of this Tribunal, where by order dated 19.11.1987 it is held that any undertaking

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given contrary to the rules will have no effect and has to be ignored. The said order of the Tribunal was confirmed by the Supreme Court by judgement dated 16.01.1990 in Civil Appeal No. 1697/88 where also it is held that undertaking taken by the officer contrary to the Government Order produced, in that case, the same will have no force and has to be ignored.

10. The only argument on behalf of the Government is that the 1968 Government Order is not in force or in view of the subsequent promotion in each Collectorate, it must be deemed that the Order of 1968 has lapsed. No Government Order is brought to our notice superseding the 1968 Order or modifying the 1968 Order. It may be that some promotions are made and posting orders are issued in each Collectorate separately, we are not concerned with that position, we are only concerned about the amalgamation of the cadre in the three Collectorates and above all, there being a common combined seniority in the Custom House of Bombay and Goa in respect of Preventive Officers, we will presently point out that there is abundant intrinsic material on record, which clearly demonstrates that the Government has always been treating the Preventive Officers of Bombay and Goa being in one cadre.

11. Admittedly, the promotions to the post of Superintendent of Customs is done under the 1983 Recruitment Rules. The Recruitment Rules of 1983 are at page 47 of O.A. No. 782/97. Rule 4 says

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that the post of Superintendent shall be divided into 4 cadres. For our present purpose, sub-clause (ii) is relevant, which reads as follows :-

(ii)	Bombay Custom House of Customs (Preventive)		Cadre comprising Superintendents of Bombay and Goa Custom House.

It is, therefore, seen that though on the left side it is shown as Bombay Custom House, the entry on the right side shows that Bombay and Goa Custom Houses are shown as one unit for the purpose of promotion to the post of Superintendent.

Again in the Schedule to the 1983 Rules, the number of posts are shown. In Column no. 3, six posts are shown against Bombay and in the bracket it is shown as including Goa, that means, six posts are allotted to Bombay including Goa. This also gives a clear indication that the administration is treating Bombay and Goa as one unit for the purpose of feeder cadre for the post of promotion to the post of Superintendent.

12. In O.A. 536/97 at page 16 we have a circular dated 22.03.1993 issued by the Office of the Collectorate of Bombay Custom House stating that the combined seniority list of Preventive Officers of Bombay Custom House and Goa Custom House is published. If the two Custom Houses of Bombay and Goa are separate and distinct, there was no

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necessity for preparing a common combined seniority list of Preventive Officers for both Custom Houses. It may be re-called that the 1968 Government Order clearly mentions that the cadre of Preventive Officers is common to both the Custom Houses and a combined seniority list should be prepared. The fact that even in 1993 the Government is issuing combined seniority list of Preventive Officers for both Bombay Custom House and Goa Custom House clearly shows that the Government is treating the cadre of Preventive Officers as common to both the Custom Houses.

As already stated, the present exercise of promotion to the upgraded post has been undertaken and the applicants want promotion to the upgraded post. The Government circular dated 10.09.1996 is at page 26 of O.A. No. 536/97, under which 429 posts of Superintendents have been upgraded. Then there is an annexure to this Government letter which is at page 284 in the same O.A., where the number of upgraded posts are allotted to different Commissionerates. So far as Superintendent (Preventive) Customs are concerned, 296 posts are allotted to the Custom Houses of Goa and Bombay, therefore, here also both Bombay and Goa are taken as one unit for the purpose of allotting upgraded posts of 296 in the cadre of Supterintendent of Customs.

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Then in the same O.A. at page 29, we have an order of promotion dated 30.09.1996, order of promotion to the post of Superintendent of Customs. It is a common order of promotion to the post of Superintendent of Customs of both Goa and Bombay. The order is issued by the Commissioner of Customs of Bombay, therefore, the fact that the Commissioner of Customs has issued a Common order for both Bombay and Goa is also a clear indication that the 1968 Order is very much in force and on that basis common seniority list is maintained and common orders of promotion are made to the post of Superintendent of Customs.

13. In our view, in view of the 1968 Circular andthe subsequent events pointed out above, clearly shows that for Bombay and Goa, there is a common seniority list in the cadre of Preventive Officers and hence the transfer from one Collectorate to another will not affect the seniority of the Officer. The question of seniority being affected due to transfer from one Collectorate to another generally cannot apply to the case of Collectorates of Bombay and Goa in view of a common seniority and amalgamation of the cadre of Preventive Officers as per the 1968 Orders.

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The Learned Counsel for the respondents has strongly relied on 1980 Circular and the undertakings given by the applicants. In our view, the 1980 Circular applies only to transfers from one Collectorate to another Collectorate on compassionate grounds when the transferee losses his past services, but so far as Bombay and Goa are concerned, for the reasons mentioned above, our considered view is, it is almost a common Collectorate in the cadre of Preventive Officers in view of the 1968 Government Orders. In view of this, there will be no loss of seniority if a Preventive Officer is transferred from Bombay to Goa or vice-versa. It is one amalgamated cadre with common seniority only so far as Preventive Officers are concerned. Hence, the 1980 Circular or the Undertakings given by the applicant have no relevance to decide the question of seniority in the cadre of Preventive Officers of Bombay and Goa, since they have amalgamated and merged the cadre with common combined seniority.

For the reasons stated above, our finding is that, for Bombay and Goa there is a common cadre of Preventive Officers and hence the transfer of the applicants from Goa to Bombay will not affect their seniority and it will not affect their past service in Goa Collectorate. Therefore, these applicants can certainly add their past services in Goa for purpose of both eligibility and seniority

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for the purpose of promotion to the post of Superintendent of Customs. Point No. 1 is answered accordingly.

14. Point No. 2 - In view of our findings in point no. 1, the applicants are entitled to succeed, hence point no. 2 strictly does not survive for consideration. Even otherwise, our considered view on point no. 2 is against the applicants. However, we need not give our reasons in these cases, since even if Point No. 2 is held against the applicants, they are entitled to succeed in view of our findings on Point no. 1. We are giving considered reasons for Point no. 2 in O.A. No. 762/97 and other connected cases, in which we are pronouncing judgement today.

15. Point No. 3 - In view of the above discussions, all the seven applications will have to be allowed.

O.A. No. 675/97 is filed by Vivek Samant and 4 other Preventive Officers who were aggrieved by the interim order passed by this Court in some of the other cases and on the basis of which some of the applicants in the other cases came to be promoted. In these O.As., the applicants are challenging the promotion given to Respondent Nos. 4 to 7 on the basis of interim order passed by this Tribunal.

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In view of our above discussion, the applicants in the above seven cases are entitled to count their service at Goa both for the purpose of eligibility and promotion. Therefore, the promotion of Respondent Nos. 4 to 6 on the basis of interim order passed in this case is justified and does not call for our interference.

As far as Respondent No. 7, Arun Kumar Sharma, is concerned, he has made two claims of past service for the purpose of seniority. One is, his past service as an Inspector of Central Excise, which he resigned and then he took up the new post of Preventive Officer at Goa. Then he was transfered to Bombay in 1986. He wants, therefore, his service both as Inspector of Central Excise and his service as Preventive Officer at Goa to be added to his service at Bombay Custom House both for the purpose of eligibility and seniority. Now, in view of our finding in the above 7 cases, this Arun Kumar Sharma, who himself has filed O.A. No. 528/97, is entitled to the benefit of past service as Preventive Officer of Goa to be counted both for purpose of eligibility and seniority. He was appointed at Goa as Preventive Officer on 16.08.1985. He was transfered to Bombay on 17.02.1986, therefore, he is entitled to count his seniority from 16.08.1985 till now both for purpose of eligibility and seniority for the purpose of promotion. In view of our detailed reasons given today by another judgement in O.A. No. 528/97 and

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other connected cases, Arun Kumar Sharma, is not entitled to the benefit of his past service as Inspector of Central Excise either for the purpose of eligibility or for seniority for the purpose of promotion as Superintendent of Customs. Hence, O.A. No. 675/97 will have to be allowed partly.

16. It may be noted that some Preventive Officers have filed M.P. No. 702/97 in O.A. No. 782/97 for the purpose of coming on record to press for vacating the interim order. We have permitted Mr. M.P. Vashi, on behalf of these third parties to address arguments on merits of the case. We have already given our conclusion that all the seven applicants are entitled to the benefit of counting their past service at Goa as Preventive Office to be counted both for purpose of eligibility and seniority. Therefore, the interim order will have to be confirmed. M.P. No. 702/97 is disposed of accordingly.

17. In the result, it is ordered as follows :

(i) O.A. Nos. 1050/95, 1130/96, 1131/96, 535/97, 536/97, 547/97 and 782/97 are hereby allowed by declaring that all the seven applicants in these O.As. are entitled to the benefit of past service as Preventive Officers at Goa to be counted alongwith the service at Bombay both for the purpose of eligibility

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and seniority for the purpose of promotion to the post of Superintendent of Customs.

(ii) O.A. No. 675/97 is partly allowed as follows :-

The prayer challenging the promotion of Respondent Nos. 4 to 6 in this O.A. is rejected. However, as far as the prayer challenging promotion of Respondent No. 7, Arun Kumar Sharma, is concerned, it is hereby declared that for the reasons given in these O.As. and in O.A. No. 528/97 and other connected cases, it is declared that Arun Kumar Sharma is not entitled to count his past service as Inspector of Central Excise both for the purpose of eligibility or seniority. However, he is entitled to count his past service as Preventive Officer at Goa in addition to his service as Preventive Officer at Bombay both for the purpose of eligibility and seniority for the purpose of promotion. The Administration will have to now decide, whether Arun Kumar Sharma's promotion on the basis of interim order should be confirmed or vacated in the light of the finding given in these cases.

(iii) M.P. No. 702/97 is disposed of subject to the observations made in para 17 above.

(iv) In the circumstances of the case, there will be no order as to costs.

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

19/11/98
(R.G. VAIDYANATHA)
VICE-CHAIRMAN.

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