Odi in OA 528/97

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NOS.: 528/97, 548/97, 674/97, 771/97, 772/97, 773/97 and 800/97.

Miscellaneous Petition Nos.: 699/97 in O.A. 771/97
710/97 in O.A. 772/97
701/97 in O.A. 773/97
704/97 in O.A. 800/97.

Dated this Pronounced, the 19th day of JANUARY, 1998

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

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

Arun Kumar Sharma,
Preventive Officer,
Mumbai Customs,
Customs Commissionerate,
New Customs House,
Ballard Pier,
Mumbai - 400 038
(By Advocate Shri G.S. Walia)

Applicant in O.A. No. 528/97.

Amrik Singh Bachhal,
Preventive Officer, Office of
Chief Commissioner of Customs,
Mumbai.
(By Advocate Shri M.S. Ramamurthy)

Applicant in O.A. No. 548/97.

A. Vasanthkumar,
Preventive Officer,
Customs House,
Ballard Estate,
Bombay - 400 038.
(By Advocate Shri M.S. Ramamurthy)

Applicant in O.A. No. 674/97.

Suresh Balchand Kanjan,
Preventive Officer,
Customs Commissionerate,
New Custom House,
Ballard Pier,
Mumbai - 400 038.
(By Advocate Shri C.U. Singh, instructed by Shri G.S. Walia).

Applicant in O.A. No. 771/97.

Jaiprakash G.S.,
Preventive Officer in
Mumbai Customs,
Customs Commissionerate,
New Customs House,
Ballard Pier,
Mumbai - 400 038.

(By Advocate Shri C.U. Singh,
instructed by Shri G.S. Walia)

Applicant in O.A. No. 772/97.

Vasudeo Sitaram Alwe,
Preventive Officer in
Mumbai Customs,
Customs Commissionerate,
New Customs House,
Ballard Pier,
Mumbai - 400 038

(By Advocate Shri C.U. Singh,
instructed by Shri G. S. Walia.)

Applicant in O.A. No. 773/97.

Kunwar Veer Pratap Singh,
Preventive Officer in Customs
Department,
New Customs House,
Ballard Estate,
Mumbai - 400 038.

(By Advocate Shri M. S. Ramamurthy)

Applicant in O.A. No. 800/97.

VERSUS

1. Union Of India through
Chief Commissioner of
Customs,
Customs Commissionerate,
New Customs House,
Ballard Pier,
Mumbai - 400 038.

2. Chairman,
Central Board of Excise
and Customs,
North Block,
New Delhi - 110 001.

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

Respondents in O.A. Nos. 528/97, 771/97, 772/97 and 773/97.

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1. Union Of India through
the Secretary,
Ministry of Finance,
Department of Revenue,
Government of India,
North Block,
New Delhi - 110 001.

Respondents in O.A. Nos. 548/97, 674/97 and 800/97.

2. The Chief Commissioner of Customs, New Custom House, Ballard Estate, Mumbai - 400 038.	Respondents in O.A. Nos. 548/97 and 674/97.
3. The Additional Commissioner of Customs (P & E), New Custom House, Ballard Estate, Mumbai - 400 038.	Respondents in O.A. No. 548/97, 674/97 and 800/97.
4. The Commissioner of Customs (I), New Customs House, Ballard Estate, Mumbai - 400 038.	Respondents in O.A. Nos. 674/97 and 800/97.

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

INTERVENORS :

1. Nawal Kishor Singh. 2. Vijay Bahadur Singh.	In O.A. Nos. 771/97, 772/97, 773/97 and 800/97.

(By Advocate Shri M.P. Vashi).

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: ORDER :

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

These are seven applications filed by the respective claimants under Section 19 of the Administrative Tribunals Act, 1985. Since an interim order was passed and both the parties wanted the applications to be heard finally, on our directions, the Learned Counsel for the respondents filed reply only in one case and orally adopted the same in other cases. It is therefore quite likely that some of the facts in some of the cases might not have been dealt with in the reply filed only in one case. The Learned Counsel for the respondents, Shri M.I. Sethna, submits that the respondents should not be deemed to have admitted any of the allegations in other cases, on the ground of not filing separate reply in each case. Since the point involved in all these cases is a common point, we have heard common arguments and disposed of all these cases by this common order. We have heard the Learned Counsel Shri M.S. Ramamurthy, Shri C.U. Singh, Shri G.S. Walia, appearing for the applicants and Shri M.I. Sethna alongwith Shri V.D. Vadhavkar, appearing for the respondents. We have also heard Shri V.S. Masurkar, who has filed an independent O.A. No. 675/97, challenging the promotion of Arun Kumar Sharma, who is the applicant in O.A. No. 528/97.

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

All the applicants are working as Preventive Officers in the Bombay Custom House. All of them have some initial service as Inspector Of Central Excise, prior to being appointed as Preventive Officers. After working for sometime as Inspector Of Central Excise, they appeared for examination and were selected as Preventive Officers and accordingly appointed as Preventive Officers at Bombay. One or two applicants were appointed as Preventive Officers in Goa and subsequently, they have joined the Custom House at Bombay. It is also common ground that the Government has now decided to abolish number of posts of Preventive Officers and upgrade them as Superintendents (Preventive). The exercise of upgradation was taken out in order to remove stagnation in the post of Preventive Officers, who could not get promotion for number of years. While taking up the case of promotion of Preventive Officers to the post of Superintendent (Preventive), seniority list was prepared. Now the respondents want to consider promotion of the Preventive Officers on the basis of the seniority of Preventive Officers who are working at Bombay and as mentioned in the seniority list, but the applicants' case is that their prior services as Inspector Of Central Excise should be taken into consideration for deciding the length of service for the purpose of next promotion of Preventive Officers to Superintendent of Customs. Therefore, the applicants have approached this Tribunal for a direction that the respondents should take

into consideration the entire length of service of the applicants, including their services as Inspector Of Central Excise for deciding the eligibility for promotion and for bringing them within the zone of consideration.

3. We now mention the factual aspects of various applicants for considering their claims.

(i) O.A. No. 528/97 - In this O.A., Arun Kumar Sharma is the applicant. He was appointed as Inspector of Central Excise in the Pune Collectorate on 05.12.1978. Subsequently, he was appointed as Preventive Officer in the Goa Custom House. He resigned the job of Inspector of Central Excise and joined the new post of Preventive Officer at Goa on 16.08.1985. Subsequently, he was selected for the post of Preventive Officer at Bombay and accordingly, he joined this post on 17.02.1986 at Bombay Custom House.

(ii) O.A. NO. 548/97 - A. S. Bachhal is the applicant. He was appointed as Inspector of Central Excise at Bombay on 02.06.1982. He was selected and appointed as Preventive Officer and joined Goa Custom House on 31.12.1984, after resigning the post of Inspector of Central Excise. Subsequently he was transferred on request to Bombay and joined the post of Preventive Officer at Bombay on 01.01.1997.

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(iii) O.A. No. 674/97 - In this application, Vasanth Kumar is the claimant. He was appointed as Inspector Of Central Excise on the basis of Sports quota at Madras on 12.09.1979. Subsequently, he appeared for selection examination and was appointed as Preventive Officer on sports quota and joined that post at Bombay on 03.12.1980, after resigning the previous job.

(iv) O.A. No. 771/97 - S. B. Kanjan is the applicant in this O.A. He was appointed as Inspector of Central Excise on 14.11.1980. Subsequently, he was selected and appointed as Preventive Officer of Customs at Bombay. He joined his new posting on 25.04.1986 at Bombay after resigning his previous job.

(v) O.A. No. 772/97 - In this O.A., Jai Prakash G.S., is the applicant. He was appointed as Inspector Of Central Excise at Bombay on 28.08.1982. Subsequently, he was selected and appointed as Preventive Officer of Customs at Bombay, which he joined on 11.03.1986, after resigning his previous job.

(vi) O.A. No. 773/97 - Shri V. S. Alwe is the claimant, who was appointed as Inspector Of Central Excise on 08.01.1982. Subsequently he was selected and appointed as Preventive

Officer of Customs, which post he joined at Bombay on 23.04.1986, after resigning the previous job.

(vii) O.A. No. 800/97 - K. V. P. Singh is the applicant. He was appointed as Inspector Of Central Excise at Indore on 15.04.1982. Subsequently, he appeared for the examination conducted by the Staff Selection Commission and was appointed as Preventive Officer of Customs at Calcutta on 23.10.1987. Subsequently, at his request, on compassionate grounds he was transferred to Bombay Custom House, which he joined on 28.04.1983.

4. In all these cases, the applicants version is that, though they have resigned the post of Inspector of Central Excise in order to take up the post of Preventive Officer, it is a case of technical resignation. In case of technical resignation, the previous service counts for all purposes like fixation of pay, pension, gratuity, leave, etc. According to the applicants, the said previous services should also be counted either for the purpose of seniority or for the purpose of length of service, which is the consideration for promotion.

5. The respondents have filed a reply stating that the past services of the applicants in the Collectorates of Excise in the Inspector grade

cannot be taken into consideration either for the purpose of eligibility or for seniority for the purpose of promotion. The applicants came to be selected after they attended a fresh examination conducted by the Staff Selection Commission and posted as Preventive Officers. There is no provision for treating the previous service as a continuation of service for the purpose of promotion. By virtue of resignation, the past service comes to an end. However, by special rules like Pension Rules and some of the other rules, the past services will count only for the purpose of pension, fixation of pay, leave, etc. but there is no rule or provision of law to extend the said benefit of past service for the purpose of promotion or seniority. It is the date of selection by the Staff Selection Commission which is the crucial date to decide seniority for the purpose of promotion. The two posts - Inspector of Central Excise and Preventive Officers are different and distinct. It is not a case of continuous service at all. The zone of consideration is decided on the basis of seniority and not on the total length of service. It is, therefore, stated that the applicants are not entitled to their past services in the Excise Collectorates for the purpose of promotion to the cadre of Superintendent of Customs.

6. At the time of argument, the Learned Counsel appearing for the applicants, contended that the past services should be counted both for purpose of eligibility and seniority. They further argued

that even if seniority is ignored, since this is a case of promotion to upgraded post, the applicants total length of service, both from the Excise Department and the Customs Department, should be taken into consideration for the purpose of promotion. According to them, it is a case of technical resignation by the Inspector Of Excise to take over the post of Preventive Officer and in such cases, the past service remains in tact for all purposes, including seniority, etc.

On the other hand, the Learned Counsel for the respondents argued that both the departments are different and distinct and the officers will have separate training and that the services in one department cannot be tagged on to the services of other for the purpose of eligibility and promotion. It was submitted that though the past services will be taken into consideration for certain purposes like retirement benefits, leave, fixation of pay, etc., it is because of there being rules to govern the same. It was maintained on behalf of the respondents that there is no rule or provision for treating the past services as a continuation of service for the purpose of promotion in the new cadre. Shri V.S. Masurkar, who has filed O.A. No. 675/97, challenging the promotion of Arun Kumar Sharma, who is the applicant in O.A. No. 528/97, supported the arguments of the learned Counsel for the respondents that the past services cannot be taken into consideration for the purpose of eligibility or seniority.

At this stage, we may point out that we need not go into the question of considering the past services for the purpose of eligibility. The eligibility criteria as per 1983 Rules is 8 years as a Preventive Officer. From the dates given above, all the applicants have completed 8 years as Preventive Officers, hence, they need not take the help of past service for the purpose of eligibility.

7. In the light of the arguments addressed before us, the only point that falls for consideration is, whether the applicants are entitled to add their past services in the Collectorate of Excise to the present service as Preventive Officers for the purpose of promotion to the upgraded post or not ?

8. Out of these cases, in O.A. Nos. 528/97 and 548/97, apart from working as Inspector of Central Excise for some time, these two applicants had been appointed as Preventive Officers at Goa and subsequently transferred or appointed at Bombay Custom House as Preventive Officers. As far as the service in Goa Custom House is concerned, we find that Goa and Bombay form one unit for purposes of Preventive Officers with a common cadre and combined Seniority List and therefore, the transfer from one place to another will not take away their past service. We have given our detailed reasons in O.A. No. 1050/95 and other connected cases in which we have pronounced judgement today. There we have held that

Bombay and Goa form one unit so far as the cadre of Preventive Officer is concerned, having a combined seniority list and in view of the 1968 Government Orders, it is an amalgamated and merged cadre and therefore, there is no loss of past service when a Preventive Officer is transfered from Goa to Bombay or vice-versa. The same reasoning holds good here also. Therefore, for the same reasons, we hold that the applicants in these two cases i.e. O.A. Nos. 528/97 and 548/97 are entitled to count their past service as Preventive Officer in Goa Custom House alongwith their service in Bombay Custom House, both for the purpose of eligibility and seniority.

9. In all these cases, including the first two cases mentioned above, the applicants have worked for some time as Inspectors of Central Excise in different places. The applicants applied for the post of Preventive Officers and were appointed as such. Therefore, the applicants had to resign their post of Inspector of Central Excise in order to take up the new appointment as Preventive Officer. This is what is known as 'technical resignation' from one post in order to take up another post under the same Government. The Learned Counsels appearing for the applicants contended that in case of such technical resignation, the past service is not wiped out either for eligibility or for seniority. Reliance was placed on Pension Rules and some other Government notification or orders which give the benefit of past service for certain purposes.

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10. In the very nature of things, the word 'resignation' means the officer severs his connections from the Government by resigning the job. An officer who resigns the job cannot claim any benefit from the past service for any purpose, that is the meaning of resignation. No rule is brought to our notice that inspite of resignation that person could have the past service for all purposes. On the other hand, the applicants' counsels are themselves relying on certain rules or certain Government Orders, which gives some benefit of past service for limited purpose. This clearly indicates that normally resignation puts an end to the services and the past service is of no consequence and is absolutely of no use to the person who resigns the job. But however, the Government has made some rules to give certain limited benefits in the case of technical resignation but in these Government Orders or Rules, a person who resigns the job, whether it is technical or otherwise, can claim no other benefit from the past service.

11. The applicants have placed strong reliance on Rule 26 of the Central Civil Services (Pension) Rules, 1972. As the name itself states, these rules apply only to pension matters. Infact, Rule 26 (1) clearly says that resignation from a service or post entiles forfeiture of past service. Therefore, it is seen that resignation puts an end to the Government service and the past service is forfeited for all purposes. Having said so in sub-clause (1), the

sub-clause (2) says that if a resignation is given in order to take up another appointment under the Government, then the past service is not forfeited.

As already stated, Rule 26 appears in the Pension Rules. Though sub-clause (1) of Rule 26 says that resignation entail forfeiture of past service, sub-clause (2) says that it is not so in case of technical resignation. But since this is a Pension Rule, what sub-clause (2) means is - resignation will not affect past service for the purpose of pension. The Pension Rules cannot make any provision regarding seniority, fixation of pay or leave, etc. The Pension Rules can provide only regarding pension. Since Rule 26 appears in Pension Rules, the effect and meaning of Rule 26 (2) is that, past service is not forfeited for the purpose of pension if it is the case of technical resignation. Thus, Rule 26 (2) can have no application so far as the question of seniority, leave, fixation of pay, etc. is concerned.

12. Both Counsels have relied on some Government orders and commentries in Swamy's Compilation and also some provisions in F.R. S.R. In Swamy's Compilation of F.R. S.R. Part-I General Rules, 1989 Edition, we may refer to note 6 at page 76. It refers to the Government of India Order dated 17.06.1965 and it provides that in case of technical resignation like the present one, where an officer

resigns one job to take up another job under the Government, in such case, it is provided as follows :-

> " ..... the benefit of past service may, if otherwise admissible under rules, be given forpurpose of fixation of pay in the new post treating the resignation as a technical formality."

Therefore, by this 1965 Government Order limited benefit is given, normally that in such cases past service can be taken into consideration for purpose of fixation of pay. Under the Pension Rules, past service can be taken into account for the purpose of fixing pension

Then we may make reference to Swamy's Pension Compilation, 13th Edition, page 53, where there is a reference to Government official Memorandum dated 19.12.1969. It is stated that in case of resignation from one department to join a new post in another department, the resignation will not entail forfeiture of past service for the purpose of pension. Then it is further mentioned as follows :-

> "As the consequence of this decision, continuity of service benefit should be allowed in the matter of leave also."

In the same Swamy's book at page 55, note 8 refers to release of Government servant on resignation for accepting posts in any Central Public enterprises or Central Autonomous Body. It is stated that in

such a case resignation will not entail forfeiture of the service for the purpose of retirement/ terminal benefits. In such a case, the official shall be deemed to have retired on the date of resignation and eligible to the retirement/terminal benefits as per rules.

13. From the above discussion we find that there is no rule or provision brought to our notice which provides that in the case of technical resignation the past service will hold good for all purposes, as if he has continued in service. On the other hand, the intention of the Government of India is to treat the past service from time to time for limited purpose. It could be used for the purpose of pension in view of Rule 26 of the Pension Rules. It could be used for the purpose of fixation of pay or leave in view of separate Government Orders issued by the Government of India. The fact that the Government has issued different orders from time to time giving the benefit of past service for limited purpose in the case of technical resignation clearly indicates that it was never the intention of the Government of India to treat the past service for all purposes in such cases. Therefore, our considered view is that, in the case of technical resignation, the past service cannot be counted for the purpose of seniority in the absence of specific rules issued by the Government of India under Article 309 of the Constitution of India.

14. A submission was also made at the bar that the posts of Inspector of Central Excise and Preventive Officer are inter-changeable post and therefore, the service of Central Excise should be counted as service as a Preventive Officer. No rule is brought to our notice stating that the service of Inspector of Central Excise is as good as the service of a Preventive Officer for all purposes. On the other hand, the allegations in the applications and the materials on record show that these applicants who were working as Inspector of Excise appeared for a fresh examination and then selected as Preventive Officers. If really both were of one and the same kind, there was no necessity for an Inspector of Central Excise to appear for another examination and then get selected as Preventive Officer. It may be possible that in the exigencies of service sometimes an Inspector of Excise may be posted as a Preventive Officer at a particular place on administrative grounds. This does not make an Inspector of Excise a Preventive Officer of Customs Department identical in all respects. Let us quote one example. A District Judge can be posted as Registrar of this Tribunal. Can it be said that the nature of work and the service condition of District Judge is same as that of the Registrar of Central Administrative Tribunal ? Similarly, in many States, a District Judge is posted as Law Secretary or Additional Law Secretary. It cannot be said that the nature of duties of a

District Judge and the service conditions of a District Judge are same as that of a Law Secretary or Additional Law Secretary. It may be in the exigencies of service a Officer may be transfered or posted to a particular post in another department. It cannot make both services identical. Therefore, we are not prepared to hold that the Inspector of Central Excise Department and a Preventive Officer of a Customs Department have same duties and common service conditions for all practical purpose. The Leard Counsel for the respondents brought to our notice that the nature of training given to an Inspector of Central Excise is different from the nature of training to Preventive Officer in the Customs Department. He also pointed out that normal duties of an Inspector of Excise is quite different and distinct from the normal duties of a Preventive Officer in the Customs Department. Even granting for a moment that the post of Inspector of Excise and that of Preventive Officer of Custom Department are identical, still the past service as an Inspector of Excise comes to an end on his submitting resignation to take up the job of Preventive Officer. But by virtue of a legal fiction and in view of different Government Orders, the benefit of past service is given for certain specified purpose, but there is no rule or provision of law giving the benefit of past service in such a case for the purpose of seniority in the new department. Therefore, we

reject the contention of the Learned Counsels for the applicants that in case of technical resignation the past services should be counted for the purpose of seniority or promotion in the new department.

15. Another argument that was addressed by the Learned Counsel for the applicants is that the Government has prepared the upgradation scheme in order to give benefit to many officers who were stagnating as Preventive Officers for 15 to 16 years without promotion and therefore, the past service of an Inspector of Excise should be taken into account for promotion to the upgraded post even if the past service cannot be counted for purpose of seniority. We find no merit in the submission. Today we are pronouncing judgement in O.A. No. 581/97 and other connected cases where we have rejected this type of argument by giving detailed reasons. As we have pointed out therein, it is open to the Government to relax rules in case of promotion to the upgraded post. In this case, it is not brought to our notice that for these upgraded posts the Government has relaxed the normal rule of promotion on the basis of seniority. It may be a selection post but for limiting the zone of consideration, seniority is the basis. We have given detailed reasons in that judgement and for the same reasons, we reject this argument that for the purpose of upgradation, the total length of service should be the sole criterion for purpose of promotion.

16. The Learned Counsel for the applicants also placed strong reliance on the decision of the Principal Bench dated 19.06.1991 in O.A. No. 651/91, (I.C. Joshi & Others V/s. Union Of India & Others) In our view, that was a case where the question was about loss of seniority in case of officers transfered on compassionate grounds. The question of loss of seniority due to technical resignation was neither raised nor decided in that case. Hence, that decision has no application to the facts of the present case. Even otherwise, we have held today in our judgement in O.A. No. 581/97 and other connected cases, that the said decision of the Principal Bench cannot be accepted in view of Law declared by the Apex Court in many cases and the judgement of the Full Bench in Balasubramaniam's case.

17. In four cases some intervenors have filed Miscellaneous Petitions praying for permission to intervene in the matters. These are M.P. No. 699/97 in O.A. No. 771/97, M.P. No. 710/97 in O.A. No. 772/97, M.P. No. 701/97 in O.A. No. 773/97 and M.P. No. 704/97 in O.A. No. 800/97. These M.Ps. are filed by the third parties to come as intervenors with a prayer that the interim order passed in these cases are affecting them and they should be vacated. We have permitted Mr. M.P. Vashi on behalf of these intervenors to submit arguments for the limited purpose of opposing the continuation of interim order. Now, today we have reached the conclusion that all these Original Applications have

to fail and therefore, the interim orders are to be vacated. The Miscellaneous Petitions mentioned above are disposed of accordingly.

18. In the result, all the seven O.As. (O.A. No. 528/97 .. Arun Kumar Sharma, Applicant, O.A. No. 548/97 .. A.S. Bachhal, Applicant. O.A. No. 674/97 .. Vasanth Kumar, Applicant. O.A. No. 771/97 .. S. B. Kanjan, Applicant. O.A. No. 772/97 .. Jai Prakash G.S., Applicant. O.A. No. 773/97 .. V. S. Alwe, Applicant. O.A. No. 800/97 .. K.V.P. Singh, Applicant) are disposed of with the following directions :-

(i) The applicants in O.A. No. 528/97 and 548/97 are entitled to count their previous service as Preventive Officers at Goa in addition to their service as Preventive Officer at Bombay, both for the purpose of eligibility and seniority.

(ii) The prayer of all the seven applicants that their past service as Inspector of Excise should be counted both for purpose of eligibility and seniority for promotion to the post of Preventive Officer is rejected.

(iii) M.P. Nos. 699/97, 710/97, 701/97 and 704/97 are disposed of subject to observations in para 17 above.

(iv) The interim order earlier granted in these cases is hereby vacated.

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

MEMBER (A). VICE-CHAIRMAN.

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