CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 690, 705, 728, 774, 775, 794, 799, 802,
Transfer Application No. 804, 806, 808, 809, 810, 811, 813, 842,
874, 875, 877, 1008, 1016, 1026 of 1977.

Date of Decision 18/3/1998

D. Dahiwale & Ors.
Petitioner/s

Shri G.K.Masand, Shri M.S.Ramamurthy, ~~Shri P.A.Prabhakaran, Shri D.V.Gangal~~ Shri Suresh Kumar, Shri Y.R.Singh.
Advocate for the Petitioners

Versus

Union of India & Ors.
Respondent/s

Shri M.I.Sethna & Shri V.S.Masurkar
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 other Benches of the Tribunal ? No

(P.P.SRIVASTAVA)
Member (A)

(R.G.Vaidyanatha)
Vice Chairman

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NOs.690, 705, 728, 774, 775, 794, 799,802,
804, 806, 808, 809, 810, 811, 813, 842,
874, 875, 877, 1008, 1016, 1026 of 1997.

Wednesday this the 18th day of March, 1998

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri P.P.Srivastava, Member (A)

OA.NO.690/97

1. Dhananjay Dahiwale
2. Rakesh Bihari
3. Sandeep Hedaoo
4. Avnish Yadav
5. Tribhuvan Yadav

Examiners at Bombay Customs House,
Ballard Estate, Bombay 400 039.

OA.NO. 705/97

1. Mukesh Prakash
2. Sudhir Kumar
3. Kumar Anshuman
4. Satishchandra Sinha
5. Sanjeev Prasad Gupta
6. Rajesh Kumar Sahu
7. Shubhangi Shantaram Sarode

Inspectors Central Excise,
Central Excise Collectorate,
Mumbai.

OA.NO. 728/97

1. Rajkishore Mahto
   Inspector of Central Excise,
   Central Excise Commissionerate,
   Dadar, Mumbai.

OA.NO. 774/97

1. Sunil Kumar Nair,
   Inspector of Income tax,
   Director of Income-Tax
   (Exemption), Parel, Mumbai.

OA.NO. 775/97

1. Birender Singh,
   Inspector of Income-tax,
   Dy.Commissioner of Income-tax,
   Special Range-54, Parel, Mumbai.

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OA.NO. 794/97

1. Dharmendra Sharma
2. Virendra Singh

Inspectors of Income-tax
Chief Commissioner of Income-tax,
Ayakar Bhawan, M.K.Road, Mumbai.

OA.NO. 799/97

1. Chitranjan Prasad
   Inspector of CentralExcise,
   Range-6, Division VIII,
   Glory House, Andheri (W),
   Mumbai.

OA.NO. 802/97

1. P.M.Rajendran
   Inspector,
   Income-tax
   R/at 601-DI Lokdhara,
   Kalyan.

OA.NO. 804/97

1. Chandrakant Vitthalrao Guthe,
   Inspector of Central Excise,
   R/at, Chawl No. 41, Room No.318,
   Kurla Transit Camp, Opp.Kamgar Nagar,
   Kurla (E), Mumbai.

OA.NO. 806/97

1. Mahendra Kashinath Niranjane
   Inspector, Income-tax,
   R/at S/3, B-Wing, Indrayani Apts.,
   TMT Depot, Kalwa, Dist. Thane.

OA.NO. 808/97

1. Bam Bam Kumar,
   Inspector Income-tax,
   O/o the Commissioner of Income-tax,
   DTRTI, Mahalaxmi Chambers,
   Mahalaxmi, Mumbai.

OA.NO. 809/97

1. Sita Ram Meena,
   Inspector Income-tax
   O/o the Ward TRO 30
   Bldg. No. C.12,
   Pratayakashkar Bhavan,
   Bandra Kurla Complex,
   Bandra, Mumbai.

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OA.NO. 810/97

1. Sanjeev Kumar
Inspector Income-tax,
O/o the DDIT Investigation,
H.Q.NO. IV, 4th Floor,
Aayakar Bhavan, M.K.Road,Mumbai.

OA.NO. 811/97

1. Pratap Chandra Sah,
Inspector Central Excise,
O/o the Commissioner of
Central Excise, Mumbai-VI,
Nav Prabhat Chambers,
Ranade Road, Dadar, Mumbai.

OA.NO. 813/97

1. Ashok Kumar Gupta
Inspector Central Excise,
O/o the Commissioner of
Central Excise, Mumbai-VI,
Dadar, Mumbai.

OA.NO. 842/97

1. Sanjay Nafesingh Seelay,
Inspector Income-tax,
O/o the DDIT-INV, Unit-IV,
R.No. 619, 4th Floor,
Aayakar Bhavan, M.K.Road,Mumbai.

OA.NO. 874/97

1. Manish Syamgopal Chaurasia,
Income-tax Inspector,
O/o the DDIT (HQ),Inv.Wing,
Aayakar Bhavan, Mumbai.

OA.NO. 875/97

1. Sudhakar Hiraman Nirbhavane,
Inspector of A.D.I.T. (Inv.),
Unit VI(3), Mahalaxmi Chambers,
Mumbai.

OA.NO. 877/97

1. Sudhir Kumar
Inspector of Central Excise,
R/at Anand Rahivasi Sangh,
Babu Tukaram Chawl, Devi Pada
Road, Borivali (E), Mumbai.

OA.NO. 1008/97

1. Sanjay Kashiram Bhagat
Inspector Income-tax,
O/o the Director of Income-tax,
Kolhapur.

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OA.NO. 1016/97

1. Ranjit Kumar Gupta,
   Inspector of Central Excise,
   R/at ES-59, Housing Board,
   Durga Wadi, Talegaon, Goa.

OA.NO.1026/97

1. Mahesh Kumar
2. Surender Kumar
3. Kanhaiya Poddar

All working in the o/o
the Commissioner of Customs
and Central Excise, Panjim,Goa. ... Applicants

By Advocates Shri G.K.Masand, Shri M.S.Ramamurthy, Shri P.A.Prabhakaran, Shri D.V.Gangal, Shri Suresh Kumar, Shri Y.R.Singh and Shri Sanjay Seelay (applicant in person in OA.NO. 842/97).

V/S.

1. Union of India through
   The Secretary, Ministry
   of Finance, Deptt. of Revenue,
   New Delhi.

2. Secretary,
   Department of Personnel
   & Administrative Reforms,
   New Delhi.

3. Chairman,
   Staff Selection Commission,
   Army & Navy Building,
   Kala Ghoda, Mumbai 400 001.

4. Chief Commissioner of Customs,
   New Customs House, Ballard Estate,
   Mumbai - 400 039.

5. Commissioner of Central Excise,
   Mumbai I Commissionerate,
   M.K.Road, Churchgate, Mumbai.

6. Commissioner of Central Excise,
   Mumbai II Commissionerate,
   Piramal Chambers, IXth Floor,
   Lalbaug, Parel, Mumbai.

7. Commissioner of Central Excise,
   Mumbai III Commissionerate,
   Nav Prabhat Chambers, IVth Floor,
   Ranade Road, Dadar, Mumbai.

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8. Chief Commissioner of Income-Tax
Mumbai, 3rd floor,
Aayakar Bhavan
M.K. Road, Mumbai

9. Commissioner of Income Tax
Bombay City I,
3rd floor, Aayakar Bhavan,
M.K. Road, Mumbai

10 The Secretary,
Block No.12
Staff Selection Commission
CGO Complex
New Delhi

11 Deputy Commissioner of
Income Tax, H.Q. Personnel
Mumbai
Aayakar Bhavan,
M.K. Road
Churchgate, Mumbai

12 Commissioner of Central Excise
Mumbai VI Prabhat Chambers
Ranade Road
Dadar (West), Mumbai

13 The Chairman
Central Board of Direct Taxes
North Block
New Delhi

14 The Under Secretary (Conf.)
Staff Selection Commission
CGO Complex
New Delhi

15 Director of Income Tax (Inv.)
Pune, Sadhu Vaswani Chowk
Aayakar Bhavan
Pune

16 Deputy Director of Income Tax(Inv.)
Kolhapur
1146 Vihar Building
Skyes Ext. Takala
Kolhapur

17 Commissioner of Customs
and Central Excise,
Custom House
Post Box No.139
Panjim, Goa

(By Mr. M.I. Sethna, Special Counsel
with Mr. V S Masurkar, Central Govt.
Senior Standing Counsel) ..Respondents

.. 6/-

ORDER
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[PER: P.P. SRIVASTAVA, MEMBER(A)

1. Since the issue involved in all these applications is the same, all these applications are being disposed of by a common order. All these applicants appeared for a common examination conducted for Examiners of Customs, Inspectors of Customs and Inspector of Exciseand Income Tax etc. in the year 1994. On being successful, all these applicants were recommended for appointment according to their merit position and the choice given by the applicants. Some of the applicants who had appeared in this examination and were unsuccessful filed an OA. before the Principal Bench of this Tribunal in OA.No.442/96, O.A.No.446/96 and OA.No.95/96. The main challenge in these OAs. was that the selection made by the Staff Selection Commission was not according to the principles of reservation laid down by the Supreme Court in the matters of INDRA SAWHNEY Vs. Union of India, AIR 1993 SC 477. The applicants in these OAs. had challenged the selection of SC/ST and OBC beyond 50% of the vacancies. The Principal Bench of the Tribunal after considering the OA. came to the conclusion that the reservation for SC and OBC was in violation after the law laid down by the Apex Court in INDRA SAWHNEY's judgement. The Principal Bench of the Tribunal therefore quashed the selection in which all these applicants were also selected. The Principal Bench further directed that the judgement did not mean that the selection had to be

done again and directed that in the existing select list <u>appointments can be modified by extending the limit of 50% quota.</u> The Staff Selection Commission revised the results on the basis of judgement of Principal Bench. As a result of this, some of the applicants before us do not find any place in the list while some of the applicants the department to which they have been selected has changed, e.g. the applicant in OA.No. 690/97 Mr.D.Dahiwale & Ors. who were working as Examiners in the Custom House have been included in the new list in the Department of Central Excise and Income Tax.

2. Based on the new list the various departments of Customs, Excise and Income Tax have issued orders of termination of service of those who do not find place in their department. Aggrieved by the termination orders in some cases and in some cases under the apprehension that such termination order would be issued, the applicants in all these OAs. have approached the Tribunal. The termination orders have been stayed by the Tribunal in various OAs. where the termination orders have been issued and in some cases where the applicants have approached the Tribunal under the apprehension that termination order would be issued, the respondents department have been directed to maintain status quo.

3. The applicants challenged the termination order on various grounds including the ground that the applicants were not parties in the judgement rendered by the

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Principal Bench and therefore that judgement cannot be applied to the applicants without hearing. The applicants have also challenged the findings of the Principal Bench on merits. The respondent department, i.e. Customs, Central Excise and Income tax have pleaded that since the Staff selection Commission has revised the list, they have no other alternative but to terminate the services of those who do not find place in the list. Even in the case of those applicants where the applicants have been allotted different department than where they are at present working, the concerned department where they are working at present have issued termination order.

4. Respondent Staff Selection Commission have pleaded that they are bound to follow Principal Bench judgement and in compliance of Principal Bench judgement they have issued the new list and till the Principal Bench judgement is not set aside, the respondent Staff Selection Commission are bound to implement the same, which they have done.

5. It has been argued on behalf of the applicants that even if the Principal Bench judgement is required to be implemented, the applicants' services cannot be terminated. In various judgements given by the Hon'ble Supreme Court in the case of reservation for SC/ST and OBC, such as INDRA SAWHNEY SABBARWAL and other judgements following the INDRA SAWHNEY judgement, it has been held

that if as a result of implementation of these judgements, some reserved community candidates are found in a particular category, the same should be adjusted against the future reserved vacancies. It has been argued on behalf of the applicant by all the Counsels that even if it is accepted for the sake of argument that the Principal Bench judgement is required to be implemented, then also the services of the applicants cannot be terminated and they are required to be adjusted against the future vacancies.

6. Learned counsel for the Staff Selection Commission has argued that it will not be correct and proper and lawful if those persons who do not find place on the panel are still continuing as it will be giving benefit to those who have not found place on the panel and this will be violative of Articles 14 and 16 of the Constitution.

7. We have heard all the counsels at length. We are inclined to dispose of all these OAs. on the ground that even if the Principal Bench judgement is required to be implemented, the applicants' services cannot be terminated but are required to be adjusted against future reserved vacancies. In this connection, our attention has been drawn to the Circular issued by the Department of Personnel after the Hon'ble Supreme Court judgement in the case of Sabarwal & Ors. vs. Union of India & Ors.

.. The first para of Circular dated 2.7.97 placed at Annexure-F in O.A.No.799/97 reads as under:

> "The undersigned is directed to say that under the existing instructions, vacancy-based rosters have been prescribed in order to implement the Government's policy relating to reservation of jobs for the Scheduled Castes, the Scheduled Tribes and the other Backward Classes. The application of reservation on the basis of these rosters was called into question before Courts. The Constitution Bench of the Supreme Court, in the case of R.K.Sabharwal Vs. State of Punjab as well as J.C.Mallick Vs. Ministry of Railways has held that the reservation of jobs for the backward classes SC/ST/OBC should apply to posts and not to vacancies. The Court further held that the vacancy based rosters can operate only till such time as the representation of persons belonging to the reserved categories, in a cadre, reaches the prescribed percentage of reservation. Thereafter, the rosters cannot operate and vacancies released by retirement, resignation, promotion etc., of the persons belonging to the general and the reserved categories are to be filled by appointment of persons from the respective category so that the prescribed percentage of reservation is maintained."

.. After this, the Circular lays down as to how the new roster is required to be prepared.

.. In para 6 of the Circular the Government has laid down that the surplus staff are required to be adjusted against the future vacancies. The para reads as under:-

> "Excess, if any, would be adjusted through further appointments and the existing appointments would not be disturbed."

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. The first para of Circular dated 2.7.97 placed at Annexure-I in O.A.No.794/97 reads as under:

> "The understanding is directed to say that under the existing instructions, vacancy-based rosters have been prescribed in order to implement the Government's policy relating to reservation of jobs for the scheduled castes, the Scheduled Tribes and the other Backward Classes. The application of reservation on the basis of these rosters was called into question before Courts. The Constitution Bench of the Supreme Court in the case of R.K.Sabharwal Vs. State of Punjab as well as J.C.Mallick Vs. Ministry of Railways has held that the reservation of jobs for the Backward classes SC/ST/OBC should apply to posts and not to vacancies. The Court further held that the vacancy based rosters can operate only till such time as the representation of persons belonging to the reserved categories, in a cadre, reaches the prescribed percentage of reservation. Thereafter, the rosters cannot operate and vacancies released by retirement, resignation, promotion etc., of the persons belonging to the general and the reserved categories are to be filled by employment of persons from the respective category so that the prescribed percentage of reservation is maintained."

. After this the Circular lays down as to how the roster is required to be prepared.

. In para 6 of the Circular the Government has laid down that the surplus staff are required to be adjusted against the future vacancies. The para reads as under -

> "Cases, if any, would be adjusted through transfers, promotions and the existing promotees would not be disturbed."

8. We are, therefore, of the view that the Government policies are quite clear on this issue. If as a result of latest judgement of Hon'ble Supreme Court on reservation issues, any staff is found surplus in a recruitment or in a selection, all these surplus staff are required to be adjusted against future reserved vacancies.

9. We, therefore, hold on this ground alone that the termination order issued by the respondent department to the applicants cannot be sustained. They are in violation of the observations made by Hon'ble Supreme Court in the case of Sabarwal and other similar judgements on the issue of reservation. These are also against the guidelines laid down by the Government of India in their Circular issued by Department of Personnel quoted above.

10. It is made clear that all the issues raised in these OAs. questioning the correctness of the Principal Bench judgement are left open. All the OAs. are, therefore, disposed of with the direction that the termination orders issued by the department in the case of applicants are illegal and are, therefore, quashed.

11. It is made clear that this order would not come in the way of the department's obligation to comply with the order of Principal Bench. No observation made herein in

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the judgement would construe to restrict the implementation of the Principal Bench judgement. The department is obliged to obey the Principal Bench judgement as required by the law and the departments are obliged to issue appointment letters to those who have been selected in the new list which has been framed after the Principal Bench judgement without terminating the services of applicants in all these cases as mentioned in para 9. All the O.As. are disposed of with the above directions. There will be no orders as to costs.

(P.P.SRIVASTAVA) 18/3/98
MEMBER(A)

18/3/98
(R.G.VAIDYANATHA)
VICE CHAIRMAN

mrj

contd..

Reply to C.P. by 29.01.1999.

(D.S. Baweja)
Member (A).

(R. G. Vaidyanatha)
Vice-Chairman.

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O.A. 690/97 .. (77) 29.01.1999.

Both Counsels present.

On the request of respondents' Counsel, adjourned to 05.02.1999.

(D.S. Bawej
M(A).

(R.G. Vaidyanatha)
V/C.

os*

Affidavit of applicant dt 27/1/99 is without the leave of tribunal hence it cannot be taken on record kept in 'I' folder

29/1

59) 05.02.1999 C.P.: 01/99

This is a contempt petition filed by the applicants in O.A. 690/97. Reply has been filed on behalf of Respondent No. 4. The applicant has filed an additional affidavit dated 27.1.1999 but the Learned Counsel for Respondent No. 4 says that they have not yet filed any reply to the additional affidavit. We have heard Shri G. K. Masand for the applicant and Shri M.I. Sethna alongwith Shri V. D. Vadhavkar on behalf of R-4.

2. The applicants are alleging that Respondent Nos. 1 and 2 in the contempt petition have violated the order of this Tribunal dated 18.03.1998 in relieving all the applicants from their present post in the Customs Department and directing them to report to the Income-Tax Commissioner's Office.

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Reply has been filed on behalf of the Chief Commissioner of Customs stating that the Respondent No. 4 i.e. the Chief Commissioner of Customs in the Contempt Petition, has not committed any contempt. After hearing both sides, we find that no case is made out for initiating any action under the law of contempt. Some of the arguments addressed by the Learned Counsel for the applicant is on the merits of the case, which ~~does~~ is not germane at this stage. The final order passed by this Tribunal only protected the termination of the services of the applicants. A clear direction is given in the order of the Tribunal that the applicants in all the cases should be adjusted against future vacancies. Now it is pointed out in the reply affidavit that in view of the re-allocation of posts on the instructions of Staff Selection Commission, the applicants have been relieved and directed to report to Income-Tax and Central Excise Office. In our view, this action of the respondents does not amount to contempt of our order dated 18.03.1998. Infact, we have made this position clear in our subsequent clarificatory order dated 27.03.1998 that if the applicants are aggrieved by any future order, they may have to challenge according to law.

We have already given ~~a protection~~ a direction that the Government has to comply with the judgement of the Principal Bench with a rider added by us that the services of the

contd..

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applicants should not be terminated and they should be accomodated against future vacancies. If on the basis of the Principal Bench judgement and on the basis of the instructions of the Staff Selection Commission, some re-adjustment has to be done regarding giving of posting or re-allocation of department, this certainly does not amount to disobedience, much less willful disobedience of the order of this Tribunal dated 18.03.1998.

For these reasons, we find that no action is called for in the present contempt petition.

In the result, C.P. No. 01/99 is discharged. No costs.

(D. S. BAWEJA)
MEMBER (A).

(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

ps*

dtd. 5/2/99
order/Judgement despatched
to Applicant/Respondent (s)
on 16/2/99

17/2/99