

Office OA 690/97

CA 705/47

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

O.A.No. 690/97

1. Dhananjay Dahiwalé
2. Rakesh Bihari
3. Sandeep Hedao
4. Avnish Yadav
5. Tribhuvan Yadav

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

O.A.No. 705/97

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

Inspectors Central Excise,
Central Excise Collectorate, Mumbai.

O.A.No. 728/97

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

O.A.No. 774/97

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

O.A.No. 775/97

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

O.A.No.1016/97

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

O.A.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, Chrchgate, 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.

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
Panjir, Goa

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

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 Excise and 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 appointments can be modified by extending the limit of 50% quota. 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

and vi Principal Bench and other orders and judgements 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.

and vi 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.798/97 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."

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

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.

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(P.P. SRIVASTAVA)
MEMBER(A)

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(R.G. VAIDYANATHA)
VICE CHAIRMAN