

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 725 of 1997.

Dated this *Monday* the *30th* day of *September* 2002.

Shri M. M. Kazi,

Applicant.

Shri V. S. Masurkar alongwith
Smt. N. V. Masurkar,

Advocate for the
Applicant.

VERSUS

Union of India & Another,

Respondents.

Shri V. D. Vadhavkar for
Shri M. I. Sethna,

Advocate for
Respondents.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).
Hon'ble Shri S. L. Jain, Member (J).

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

} No

B.N.B.

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

OS*

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CORAM : Hon'ble Shri B. N. Bahadur, Member (A).
Hon'ble Shri S. L. Jain, Member (J).

M. M. Kazi,
Superintendent of Central Excise,
Hdqs. Statistics Section,
Mumbai - 400 001.

... Applicant.

(By Advocate Shri V. S. Masurkar
alongwith Smt. N. V. Masurkar)

VERSUS

1. Union of India through
Secretary,
Central Board of Excise and
Customs, Ministry of Finance,
Department of Revenue,
Government of India,
North Block, New Delhi.

2. Additional Commissioner (P&V),
Central Excise, Mumbai - I,
Central Excise Building,
M. K. Road, Mumbai - 400 020.

... Respondents.

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

O R D E R

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

The facts of the case, as put forth by the Applicant, in this O.A. are as follows :

The Applicant was appointed as Sub-Inspector of Central Excise in 1962, promoted Inspector (OG) in February, 1972 and promoted Inspector (SG) on 30.04.1985. He claims that he had, in fact, represented for being provided with proper seniority based on actual officiation date and that he did this in 1984.

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2. A development took place in his career to the effect that a C.B.I. case was registered against him and some others on 05.9.1987 (while he was working as an Inspector of Central Excise in Mumbai) for demanding and accepting illegal gratification. He came to be suspended from service on 13.04.1988, and appealed against the suspension on 16.10.1989; the suspension was revoked on 10.12.1991. Applicant states that he had applied for ad hoc promotion on 30.12.1991 (Annexure A-11), which representation was rejected on 26.03.1992. The Applicant thereafter states, importantly, that the criminal case against him and others were finally concluded in his acquittal on, 23.12.1996, and again he asked for all benefits to be provided to him. The Applicant has, in the O.A. taken certain grounds, especially citing some case law and also contending as to how his entire career was affected by his not getting proper seniority. Certain names of juniors like U. H. Jadhav, etc. are referred to and averments made. These grounds amongst others were argued by his Learned Counsel, Shri Masurkar, and these will be dealt with ahead.

3. The Respondents have filed their reply. The first one being a short reply is with reference to a M.P. and thereafter a detailed reply at page 154 is followed by another statement, which is filed after the Applicant filed a rejoinder. The third reply being available at page No. 183 where certain clarifications are attempted in this additional statement.

4. The salient point made in the first reply is that the benefit to the Applicant vis-a-vis his Junior is provided to him with effect from 19.07.1990. The point regarding Shri B. M. Kadam is further explained in the second affidavit where it is stated

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that, in fact, there are two Inspectors bearing the name B. M. Kadam. The first one is Balkrishna Mallappa Kadam (date of birth - 10.04.1934) appearing at Sl. No. 126 of seniority list. The second person is Baliram Maruthi Kadam whose date of birth is 01.06.1942 appearing at Sl. No. 355 of the combined seniority list of Inspectors of Bombay - I, II, III and Aurangabad Commissionerate (copy at Exhibit-1).

5. The stand taken by the Respondents is that Baliram Kadam at Sl. No. 355 is junior to Applicant. The Applicant, Shri M.M. Kazi, is at Sl. No. 353. Shri Baliram Kadam was considered for promotion to the post of Superintendent by D.P.C. held on 30.06.1990 and promoted vide Office Order of which copy is at Exhibit-2. At this D.P.C. the Applicant's name was considered and kept in sealed cover due to case pending against him. It is further stated that Applicant was declared 'not guilty' by the Court on 23.12.1996. Therefore, in the D.P.C. held on 26.06.1997 the Applicant's case for promotion was considered and he was promoted vide order dated 27.06.1997 to the grade of Superintendent notionally with effect from the date from which his junior Shri Baliram Maruthi Kadam has assumed the charge of Superintendent Grade-II i.e. 19.07.1990. The Respondents also make a statement that in the seniority list of Inspectors (OG) as on 01.01.1977 Balkrishna Kadam is senior to the Applicant. Shri Balkrishna Kadam is appearing at Sl. No. 412 whereas the Applicant's name appear at Sl. No. 597 and Baliram Kadam's name appear at Sl. No. 599.

6. Respondents assert that it is clear that Balkrishna Kadam was always senior to Applicant and it is Baliram Kadam who is junior; that averments made to the contrary by the Applicant

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are not true and that there is no support to the claim made by the Applicant for promotion to Superintendent w.e.f. 25.05.1988. It is also mentioned that the Applicant was confirmed in the grade of Inspector (OG) w.e.f. 01.02.1976.

7. In a short rejoinder made by the Applicant, the point is made that positions in seniority list given to the Applicant as on 01.01.1977 and 01.01.1988 count his seniority from the date of confirmation rather than date of continued officiation, which is the rule of seniority approved by the Hon'ble Apex Court in the matter of U.N. Jadhav and Direct Recruits' case and also in the case of Nandu Sekhar, which has been decided by this Tribunal and followed by Respondents in the case of other Inspectors. Thus, Applicant states in this rejoinder that he is wrongly assigned seniority at 353 in the seniority list of 01.01.1988 inspite of his representation dated 01.06.1984. Hence, applicant claims seniority to Balkrishna Kadam also and states that it is wrong on the part of Respondents to compare him with Baliram Kadam. His claim for seniority and promotion should go with reference to Balkrishna Kadam, who is also from Mumbai-I Collectorate and who is in fact junior to the Applicant in Mumbai-I Collectorate.

8. We have seen all papers in the case and heard Learned Counsel for the Applicant, Shri V. S. Masurkar, who appears alongwith Smt. N. V. Masurkar. We have also heard Learned Counsel for the Respondents, Shri V. D. Vadhavkar for Shri M. I. Sethna. Both Learned Counsel argued their case in detail, taking us over the relevant papers, the appended case law as also the relevant portions of averments and replies, respectively. The gist of their argument is reproduced below :

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Shri V.S. Masurkar made the following points after drawing our attention to the facts of the case :

- (A) That the Applicant has been acquitted fully from the charges and his period of suspension has also been ordered as duty for all purposes. Under the circumstances, the promotion of the Applicant cannot be notional and it has to be on the actual basis.
- (B) The point was reiterated that the junior of the Applicant was, indeed, promoted in 1988, and there was no justification for giving promotion to him only from 1990. The point regarding the fact that there were two Kadams' bearing the same initial B. M. was discussed with reference to their individual facts and separate identity of each made clear.
- (C) Learned Counsel argued that there was no point in talking of the 1997 judgement when what should be seen is the judgement in U.H. Jadhav's case. Rights had crystalized in 1985, in fact, when one person as on ad hoc promotion gets regularised, the rights of the Applicant would also accrue from the date of ad hoc promotion (Page 150 of the Paper Book, para 6).
- (D) The Learned Counsel raised the question for decision as to whether the right of the Applicant will be from the date of ad hoc promotion of Shri Balkrishna Kadam or regular promotion, contending that it has to be the former.

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- (E) Argument of delay and laches are not valid and the judgement in the matter of C. V. Kuvalekar V/s. Union of India & Others (page 82) provided support. The well-known case of Union of India V/s. K.V. Jankiraman was also quoted for support.
- (F) The point regarding date of confirmation not being relevant for seniority was reiterated, and the various judgements in the cases of U. H. Jadhav, Supreme Court judgement in the matter of Subba Rao, etc. were cited and gone over at length by Shri Masurkar, in support of his contentions/arguments.
- (G) Counsel for Applicant took support from the facts cited by him in rejoinder stating that there was no explanation to these facts.

9. Arguing the case for the Respondents, their Learned Counsel Shri V. D. Vadhavkar again explained, at length, the position regarding the two persons who bore the name of B. M. Kadam. The position in respect of Balkrishna Kadam and Baliram Kadam was explained. Baliram had got promotion to Superintendent on 30.06.1990 and this formed the basis for providing seniority of 1990 to the Applicant, albeit, notionally. It was reiterated by Shri Vadhavkar that Shri Balkrishna Kadam was very senior in the 1977 list, and there can be no case or right with reference Balkrishna's seniority position.

10. Learned Counsel for Respondents drew our attention to the portion of the judgement in the Criminal Case at page 135 of the

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Paper Book stating that it is not as if the acquittal is totally clean for accused No. 2 therein, (the present applicant Shri M. M. Kazi). The involvement of such nature was relevant as per relevant case law and in this regard Shri Vadhavkar sought support from two case laws, namely - (i) 1997 SC (SLJ) 37...Rachhodji Chaturji Thakore V/s. The Superintendent Engineer, Gujarat Electricity Board, Himmatnager (Gujarat) & Another and (ii) State of Maharashtra & Others V/s. Pratapsingh Dayal Singh Rajput (AIR 1998 SC 1054). Hence, it was argued by Shri Vadhavkar that there was no case for any arrears and granting of notional promotion only from 1990 was fully justified.

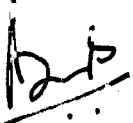
11. After taking the contention regarding the weakness in the O.A. in the seeking multiple reliefs, the Shri Vadhavkar also made a point regarding the various case law referred to by the Applicant to say that in the decision of the Tribunal and other Courts cited, neither of the two Kadams are made parties. Some 185 seniors will be affected vis-a-vis Shri Balkrishna, if this kind of contention was allowed. Thus, the claim of higher seniority was questioned by Learned Counsel.

12. Rejoinding briefly, Learned Counsel Shri Masurkar stated that there was no infirmity of multiple reliefs, as would be clear from perusal of Establishment Order No. 111/97 of Commissioner of Central Excise, Mumbai-I (page 153). Both aspects are covered in this order, namely - those of seniority and of promotion. As regards delay and laches, Shri Masurkar stated that the seniority list was based on date of confirmation and again sought support from the case law of U.P. Nandusekar (copy at page 91).



13. The first thing that becomes clear after consideration of all facts and arguments is that the Applicant has been acquitted in the criminal case and that is not the issue that affects the rights of his career. In fact, the Respondents state that the benefits that were due to him have been provided. By this, they mean to say that the Applicant has been provided with promotion, etc. from 01.07.1990, which is the date on which his junior, Shri Baliram Kadam, has been provided with such promotion. The issue of there being two Kadams has also become clear now, with the assistance of Learned Counsel on both sides, and no longer forms any confusion. In the seniority list/s cited, the said Baliram Kadam is clearly junior. The contentious issue, however, that comes up before us now is that Applicant states that the providing of benefits on the basis of position shown to Applicant in the seniority list used for support by Respondents is not correct. The stand and contention raised and emphasized by Learned Counsel, Shri Masurkar, is that the seniority has to be provided with reference to the date of continuous officiation. This, in fact, is the crux of the issue to be decided now as to whether the benefits sought for are available in the facts and circumstances of the case to the Applicant, and relevant case law. In fact, the Applicant has in his very prayer at para 8(a) prayed for the benefit to be provided as per the judgement in the case of C. V. Kuvalekar V/s. Union of India & Others (O.A. 879/92.. copy at page 82 of Paper Book). Consequential benefits have also been sought.

14. We note here that the Applicant's main claim is for providing him benefits by first providing him seniority on the basis of date of officiation. He, indeed, made representation in



1984 (Annexure A3), but he did nothing to pursue the matter from 1984 onwards. Even if we assume that after 1987 when he involved in a criminal case and was suspended, he could not pursue the matter. This three years delay is unexplained.

15. We have gone through the judgements of U.S. Jadhav and that of Shri C. V. Kuvalekar on the basis of which reliance has been placed by the Applicant and it was argued strenuously by the Learned Counsel. We have also gone through the judgement made by a Bench of this Tribunal in O.A.Nos. 1181/92, 496/94, 1020/95, 1021/95, 1023/95, 916/94, 586/95, 1072/95, 230/97, 363/97, 366/97, 515/97, 531/97, 621/97, 736/97, 779/97, 797/97 and 798/97 decided on 20th July, 2001. We have also seen the orders made by Hon'ble Apex Court in SLP No. 7519/92 in the matter of Chief Commissioner of Income Tax & Ors. Vs. Shri Subba Rao & Ors. From these, it become clear that the issue has not been decided by the department i.e. regarding consideration of date of officiation on the basis of the persons who had gone to court. It seems from the judgement dated 20th July, 2001 that the other judgements have not yet been implemented. We would like to state that any action taken by the department in pursuance of orders of court, it will be open to them to consider the case of the present Applicant also and provide him benefits, in case he is entitled while implementing the orders made in the judgements referred to above.

16. It may also however be made clear that given peculiar facts of the case of the Applicant, in that, he was involved and proceeded against in a criminal case, he will not be entitled to



monetary benefits for the period the case was pending against him. Seniority has been provided in view of acquittal, but he cannot claim and cannot be provided the monetary benefits like arrears, etc.

17. With the above observations, we hereby dismiss the O.A. with no order as to costs.

P. S. Jain
(S. L. JAIN)
MEMBER (J).

OS*

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