

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH : MUMBAI

Date of Decision : 03/04/2002

O.A. No. 13/98.

with

M.P. No. 15/98.

Sukhjinder Jit Singh Kehlon working as Asstt. Commissioner of Central Excise, Mumbai VII CGO Complex, 1st floor, Belapur CBD Navi Mumbai and residing at 95/5 Customs Quarters, Near Five Gardens Matunga, Mumbai 400019.

... APPLICANT

v e r s u s

1. Union of India through the Secretary Department of Personnel and Administrative Reforms, Ministry of Home Affairs, North Block, New Delhi 110 001.
2. Secretary, Union Public Service commission, Dholpur House Shah Jehan Road, New Delhi 110 011.
3. Central Board of Excise and Customs North Block, New Delhi 110 011.

... RESPONDENTS.

Shri G. K. Masand, counsel for the applicant.

Shri V. S. Masurkar, counsel for the respondents No 1 & 2.

Shri S D Bhosle for Shri N I Sethna for Respondent no 3  
CORAM

Hon'ble Mr. M. P. Singh, Administrative Member.

Hon'ble Mr. J. K. Kaushik, Judicial Member.

: O R D E R :  
(per J. K. Kaushik, Judicial Member)

This Original Application has been filed by one Shri Sukhjinder Jit Singh Kehlon, holding the post of Assistant Commissioner of Custom and Excise at Belapur CBD, Navi Mumbai. The following reliefs have been prayed for, as per Para VIII of the Original Application :-

... 2.

"a) That delay in filing this application be condoned.

b) That this Hon'ble Tribunal will be pleased to hold and declare that on the basis of the merit position allotted by the UPSC in respect of Civil Services (Main) Examination 1981 conducted by UPSC in November/December 1981 applicant was entitled to be appointed to Group'A' service and his appointment to Group'B' Service in pursuance of the offer of appointment issued by the Central Board of Excise and Customs was improper.

c) That this Hon'ble Tribunal will be further pleased to hold and declare that non appointment of applicant to Group'A' service in pursuance of the selection by UPSC in the year November/December 1981 in preferences to his juniors in the merit position has resulted in gross injustice being done to the applicant which is not permissible and is in clear violation of articles 14 and 16 of the Constitution of India.

d) That Respondents be directed by a mandatory order to allot the applicant to any Group'A' service with seniority and other benefits from 1982 on the basis of the applicant's selection and commensurate with the merit position allotted by the UPSC in respect of Civil Service (Main) Examination 1981 conducted in November/December, 1981.

e) That in the alternative to prayer clause(d) this Hon'ble Tribunal will be pleased to direct the Respondents to absorb the applicant in the 1982 batch of the Indian Customs and Central Excise Service Group'A' with seniority and other benefits from 1982 in view of the fact that the Applicant, at present belongs to Indian Customs and Central Excise Service Group'A'.

f) That costs of this application be awarded in favour of the applicant; AND

g) That such other and further reliefs as are expedient be granted in favour of the applicant."

2. Alongwith this Original Application, a Miscellaneous Petition No. 15/1998 has also been filed for condonation of delay.

3. The brief facts of the case are that the applicant appeared for Civil Services Examination, 1981, taken by the UPSC in

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November, 1981, for the purpose of filling up the vacancies in 28 posts/services, consisting of 17 Group-A posts/services and 11 Group-B posts/services as mentioned in Para IV (1), of the Original Application. There was a common examination for all the 28 posts/services. The candidates were required to indicate their preferences for particular services in order of preference at the time of submission of application. Due consideration was required to be given to the preferences expressed by a candidate for various services at the time of making appointments as per rules in Vogue. The applicant was successful in the written test and was subjected to interview in April 1982. He was declared successful in the selection on 29.05.1982 and as per his information he got the rank at Sr. No. 469. The applicant was recommended for appointment and was informed the marks secured by him vide Exhibit-A. He secured 1014 marks out of 2050 marks. Thereafter, the applicant was informed by communication dated 21.06.1983 that he was selected for appointment as Custom Appraiser in the Bombay Custom House vide Exhibit-B. Thereafter, an appointment letter was issued to he joined on the said post of Appraiser. The post of Custom Appraiser falls in Group-'B' service. He joined the Group'B' service on the presumption that as per merit position he was only entitled to appointment to Group'B' service. Had he known that as per his merit position, he was entitled for appointment to Group-'A' service, he would never accepted the offer of appointment to the

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Group 'B' service. The applicant has enjoyed his next promotion to the post of Assistant Commissioner of Custom and Central Excise Group 'A' w.e.f. 20.09.1994.

4. It has been stated by the applicant that he ~~had~~ no occasion to have access to the seniority list of Group 'A' officers and for the first time he come across in January 1997, a seniority list of Group 'A' officer of Indian Custom and Central Excise Service. He found that Shri P. Ayyam Parumal, Shri Kamal Jyoti, Shri C. F. Murugan, Shri Bhikoo Ram, Shri Brojen Thamar, Shri Tongmang Haokip and Shri B. Syed Mohamed, were lower in the merit but they were appointed in Group 'A' service in Customs and Central Excise Department. He also come to know that these persons belong to Scheduled Caste Category. The applicant also gathered information regarding number of other persons belonging to the same batch and who were lower in the merit to him, were appointed in Indian Railway Traffic Service Group 'A', Indian Railway Accounts Service Group 'A', Indian Postal Service Group 'A', Indian Railway Personal Service Group 'A', Indian Civil Accounts Service Group 'A', etc., but the applicant was appointed in Group 'B' service, despite having higher merit then the said persons. He submitted a representation vide letter dated 05.05.1997 to the Government of India, Department of Revenue, Department of Personnel and also to UPSC, requesting therein for absorption in the 1982 batch of Indian Custom and Central Excise Group 'B' with seniority and other benefits from 1982. The matter was remanded number of times but of no avail. After waiting for

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about six months he took recourse to filing of this Original Application. As regards, the M.P. for condonation of delay, it has been said that even though the cause of action pertains to the applicant's selection in pursuance of Civil Examination (main) 1981 conducted by UPSC, but he come to know only in January, 1997, and, therefore, the application is within limitation. However, it has been said that in the event respondents contend that Original Application is filed beyond the period of limitation, this Hon'ble Tribunal will be pleased to condone the delay as otherwise there will be serious failure of justice to the petitioner as he has been denied appointment to Group 'A' service in the year 1982 apart from heavy mandatory loss, also loosing his seniority as well as his status to those who were junior to the petitioner in the merit or other.

5. The notices for admission for both O.A. as well as M.P. were issued to the respondents on 16.01.1998. After hearing both the parties, the OA was admitted on 10.07.1998, subject to the question of limitation, delay and latches to be heard at the time of final hearing. Counter affidavit has been filed on behalf of the respondent No. 1. No separate reply has been filed on behalf of Respondent No. 2 and 3.

6. In reply, the respondents have reproduced the relevant rules regarding the appointment in the Civil Services. They have taken

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serious objection about the delay and latches in filing of the Original Application. It has been specifically asserted that the applicant was given appointment as per his merit position in accordance with the preferences given by him. His preference have been indicated in Para 9 of the counter affidavit as under :

"Serial No.	Preferences	Rank of the last general candidate allocated to this.
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1.	IAS	127
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2.	IPS	303
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3.	IC&CES	370
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4.	IRTS	436
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5.	IFS	66
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6.	CAS	the applicant has been allotted.
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6. The respondents have fairly disclosed the complete facts and have said that the applicant secured 472 rank in the merit.

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As records, the Group'A' service in Indian Custom and Central Excise Service, he could not be appointed due to his low merit position. Seven persons named in Para IV(1) of the Original Application, belong to Scheduled Caste, Whereas the applicant belongs to general category. No comparison can be made with the Scheduled Caste Persons. As regards the other services, the respondents have categorically stated that since he has not given any prefernce to the other categories for Group'A' mentioned in the Original Application, his candidature could not be considered for same. They have also averred that had he given his preference for Group'A' service for which vacancies were available he could have been considered and allocated to one of those Group'A' services. But it seems that he gave sixth preference to Custom Appraiser Group'B' service. His rank was not high enough so as to be considered for any of his first five preferences. no injustice or illegality has been done to him. They have also brought out the rule position that there is a provision to request for change of preferences for services but that could be done if request is made within a period of thirty days of the publication of the result of the written part of the examination, but no such request was ever made. Therefore, the applicant has no case and the Original Application is devoid of merits and deserves to be dismissed with costs.

7. The applicant has not filed any rejoinder to the reply and the facts brought out in the reply remained un-contraverted.

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8. We have heard the learned counsel for the parties and have carefully examined the records of this case.

9. We would first like to dealt with the preliminary objection of delay and latches in filing of this application. counsel for the respondents has vehemently argued on this point and our attention was drawn to take the judicial notice of the fact that the applicant is an educated person and the details of the appointments made to various services are published in Government of India gazette and there was no question of having no information regarding the appointment of persons in various services as contended by the applicant. He has also stressed that the applicant intended to make a calculated score for jumping to the Group'A' service of Indian Custom and Central Excise Service on one pretext or the other. The Original Application thus is not within the limitation as prescribed under Section 21 of AT Act 1985 ,and there is no reason at all, least to say of good and sufficient reason for condoning the delay of about seventeen years. Learned counsel for the applicant has submitted the judgment of this Bench of Hon'ble the Tribunal in T.A. No. 11/92, Shri Kishorilal Bablani vs. U.O.I. & Ors, in support of his contention in condonation of delay. In this case, the matter was relating to the wrong calculation of vacancies. The applicant therein belonged to 74 batch of I.A.S. His case was that, had the vacancies for direct recruit calculated been correctly he would have been appointed to the post of Assistant Collector of Custom / Central Excise in Class I service

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instead of Custom Appraiser Group 'B' in Custom and Central Excise Department. The delay was condoned, keeping in view the facts and circumstances of that case and the application was partly allowed in his favour. On this, the learned counsel for the respondents submitted the judgment of Hon'ble the Supreme court in U.O.I. & Ors. vs. Kishorilal Bablani (1999) 1 SCC 729 (i.e. Appeal in the aforesaid case referred to above by the counsel for the applicant). Para 6, 7 and 8 of this judgment are relevant and the contents of the same are reproduced as under :-

"6. The appellants submitted before us with some justification, that in a writ petition which was filed in the year 1985, appointments which were made as far back as in the year 1974, ought not to have been disturbed. If a similar relief is to be granted to all those who were in the merit list of 1974 of the IAS and Allied Services Examination and who were placed in Class II posts because of wrong notification of vacancies in the year 1974, there would be a complete disruption in the postings and positions of persons appointed as far back as in the year 1974 who are now occupying various posts not merely in this Department but in other various Allied Services as well. The same would be the position if the vacancies for any subsequent years from 1975 to 1990 are now recalculated and the initial posting given to a large number of candidates during these years are now disturbed. They are, undoubtedly, right about this apprehension. Delay defeats equity is a well known principle of jurisprudence. Delay of 15 and 20 years cannot be overlooked when an applicant before the court seeks equity. It is quite clear that the applicants for all these years had no legal right to any particular post. After more than 10 years, the process of selection and notification of vacancies cannot be and ought not to be reopened in the interest of the proper functioning and morale of the services concerned. It would also jeopardise the existing positions of a very large number of members of that service. The respondent, however, submitted that he has, in fact, been given the relief by

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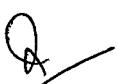
the Tribunal. As a result, various orders have been issued granting him Group 'A' appointment and subsequent promotions, though these are made subject to the outcome of this appeal. The only question is, whether having upheld the merits of his connection, we should now take away the benefit which the respondent has actually obtained under the orders of the Tribunal.

7. We do not think that it would be fair to the respondent to take away the benefit which he has secured on the basis of the contentions which are accepted as justified. We, therefore, maintain the relief which has been granted to the respondent. But obviously after this lapse of time, such relief cannot be granted to anybody else.

8. One intervention application is before us which was filed in the year 1996 by a person who was recruited in the year 1975. The appellants have also pointed out that after the decision of the Tribunal in the present case, they have received a number of representations from other persons who were appointed during the period 1974 up to 1990. Such belated applications cannot now be considered. We, therefore, dismiss the intervention application. We make it clear that the present order will operate only in respect of the respondent for reasons which we have set out earlier. We also make it clear that in notifying vacancies available to direct recruits, the appellants are bound to take into account permanent as well as temporary vacancies of long duration as per the office memoranda of 20-4-1953 and 8-6-1967. However, this will not affect the right of the appellants to decide in accordance with the law on the number of vacancies which are required to be filled up or not filled up, while maintaining the ratio of 50:50 between promotees and direct recruits."

10. It has been specifically made clear that after more than ten years of the process of selection, a notification of vacancies cannot be and ought not to be reopened in the interest of proper functioning and morale of the service concerned and, therefore, the ratio of the judgment cannot be applied to this case. The contention of the learned counsel for the respondents is that

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there is no good and sufficient reason. He has also indicated the fact that there is a gazette notification for every appointment to Group'A' and Group'B' service and one would have the knowledge of the same. It was not pleaded before the Hon'ble Tribunal in the aforesaid case and the said judgment of this Hon'ble Tribunal is per incurrium and has no application to the present case.

11. We are impressed with and accept the arguments of the learned counsel for the respondents and have <sup>come to the</sup> conclusion that the Misc Petition for condonation of delay <sup>in</sup> merits rejection. Therefore, the OA also is liable to be dismissed on this count alone. (6)

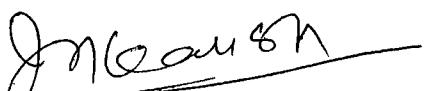
12. As regard the merits of the case, the respondents in their counter affidavit have been fair enough to bring the correct picture of the controversy, they have specifically asserted that the applicant has been given appointment to the Group'B' service as per his rank in accordance with his preferences. None of the candidate lower in the merit than him belonging to general category has been appointed to any of the post in Group'A' for which the applicant gave preferences. They have also fairly communicatd the various preferences which were submitted by the applicant at the time of declaration of written test as per the

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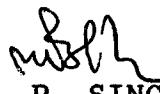
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rules in force. They have specifically asserted that the appointments are done strictly in accordance with the merits and as per the preferences submitted by the candidates. The contentions averred in the counter affidavit have not been contraverted by the applicant inasmuch as neither any rejoinder to the reply has been filed nor any affidavit has been filed refuting the contentions of the respondents. We have no reason to disbelieve the averments made by the respondents, rather we have no option expect to accept the stand of the respondents. The O.A., therefore, merits rejection on the merit also, since the applicant has no case at all.

13. In view of the aforesaid discussion, the Original Application No. 13/98 and Miscellaneous Petition No. 15/98 are hereby dismissed. There shall be no order as to costs.

  
(J. K. KAUSHIK)

MEMBER (J)

  
(M. P. SINGH)

MEMBER (A)

dl 314/2  
Order/Judgement despatched  
to Appellant/Respondent(s)  
on 18/4/92

