

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

PRE DELIVERY JUDGEMENT IN OA.NO. 855/98.

Hon'ble Vice Chairman / Member (J) /
Member (A) may kindly see the above judgement for
approval / signature.

W. G. / Member (J) / Member (A) 18/6/03

Hon'ble Vice Chairman

✓ Hon'ble Member (J)

Hon'ble Member (A)

mrj.

I agree -
S. Ram
M(J)
18/6/03

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI**

ORIGINAL APPLICATION NO. : 855/98

Date of Decision : 18.6.03

VERSUS

Union of India & Ors. Respondents

Advocate for the
Respondents

CORAM :

The Hon'ble Shri V.K.Majotra, Member (A)

The Hon'ble Shri Shanker Raju, 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 Yes .

V. Majotra
(V. K. MAJOTRA)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.855/98

Dated this the 18th day of June, 2003.

CORAM : Hon'ble Shri V.K.Majotra, Member (A)

Hon'ble Shri Shanker Raju, Member (J)

1. All India Customs Officers
(Direct Recruit Appraisers)
Association, New Custom House,
Ballard Estate, Mumbai,
through its President
Shri G.V.Reddy.
2. Amit Jain,
Asstt.Commissioner of Customs,
Directorate of Valuation,
New Custom House, Ballard Estate,
Mumbai.
3. S.N.Prasad,
Asstt.Director, Narcotics
Control Bureau, Mumbai Zonal Unit.

...Applicants

By Advocate Shri G.K.Masand

vs.

1. Union of India
through the Secretary,
Ministry of Finance,
Department of Revenue,
Govt. of India, North Block,
New Delhi.
2. The Chairman,
Central Board of Excise & Customs,
Department of Revenue,
Ministry of Finance,
Govt. of India, North Block,
New Delhi.
3. All India Customs Appraising
Officers' Federation,
New Custom House,
Ballard Estate,
Mumbai.

...Respondents

By Advocate Shri V.S.Masurkar
for Respondents No. 1 & 2 and
Shri R.Ramamurthy for Respondent
No.3.

O R D E R

{Per : Shri V.K.Majotra, Member (A)}

Applicant No.1 is an Association representing Direct Recruit Appraisers in the Customs Department. Applicants No.2 & 3 are officers who are promoted to Group A service from the cadre of Appraisers in Group 'B' service. This application has been made on behalf of the Direct Recruit Appraisers appointed after the promulgation of "The Customs Appraisers Service, Class-II Recruitment Rules 1961 (hereinafter called 1961 Recruitment Rules). These applicants have challenged the All India combined Seniority/Consideration list of Customs Appraiser promoted/appointed as Customs Appraiser upto 30.6.1996 as published on 12.11.1997 (Ex. 'A'). According to the applicants, this list has been formulated in violation of the provisions of the relevant Recruitment Rules as also the principles laid down by the Apex Court in the case of G.B.Yadav vs. Union of India & Ors. in Civil Appeal No.257/88 with Civil Appeals Nos.4004-07/87.

2. Basically, the dispute in this OA. relates to seniority of officers belonging to Group 'B' Service of Appraisers, appointment to which is made by direct recruitment through selection by UPSC on the basis of combined All India Civil Services Examination, and by method of promotion effected from Group 'C' employees. Whereas the applicants are Direct Recruits appointed after selection through UPSC, Respondent No.3, namely, All India Customs Appraising Officers' Federation represents Promotee Appraisers from Group 'C'.

3. Prior to promulgation of 1961 Recruitment Rules, appointment to the post of Appraiser was made 50% by direct recruitment and 50% by promotion and seniority of these appointees was fixed by rotating the vacancies in the ratio of 1:1 between direct recruits and promotees. Ministry of Finance, Department of Revenue had published an All India Combined List of Appraisers on 22.5.1986 which also contained principles regarding Promotion of Appraisers of Customs & Central Excise Service, Group 'A'. Promotees challenged this seniority list before the Principal Bench of C.A.T. which by its order dated 28.5.1987 quashed and set aside it directing the Government to prepare a fresh seniority list on the basis of continuous officiation in the post of Appraisers. The Direct Recruits carried the matter to the Supreme Court in the case of G.B.Yadav vs. Union of India & Ors. reported in 1996 SCC (L&S) 902 decided on 8.5.1996. Among others, the Supreme Court held that the allocation of atleast 50% posts in favour of Direct Recruits must be ensured at all times and Direct Recruits and Promotee Appraisers would be entitled to placement in the joint seniority list on the basis of their continuous officiation.

4. Applicants' case is that Direct Recruits are, for all times, entitled to 50% of the post of Appraisers. After the promulgation of 1961 Recruitment Rules, which were in force on 31.12.1987, every year the intake of promotee Appraisers has been far in excess of their entitlement of 50%. As such, promotion of persons which were made beyond 50% has to be reckoned as promotions contrary to the Recruitment Rules and general principles of Seniority, 1959.

5. It has also been stated on behalf of the applicants that Direct Recruits belonging to Chennai Customs House had questioned the validity of continuation of ad hoc promotions of Appraisers in violation of the Recruitment Rules. The Chennai Bench by its judgement dated 30.11.1999 in OA.No.1116/97 upheld the contentions of the Direct Recruits and directed the respondents to make a review with regard to adhoc promotions. Consequently, many promotee Appraisers working on adhoc basis who could not be adjusted against the regular posts meant for promotees were reverted to lower posts. Such officers filed various Original Applications before the Chennai Bench of CAT against the review carried out by the Madras Customs House in pursuance of Chennai Bench order dated 30.11.1999. The Chennai Bench on 19.2.2002 upheld the review exercise and dismissed all those Original Applications. It has further been stated that despite the orders of regularisation issued by the Chennai Customs House dated 16.2.1990 and 24.9.1992, whereby the date of regularisation though shown as much later than the date of adhoc promotion, the impugned seniority list has reckoned the date of adhoc promotion for assigning seniority to these very persons. In the case of All India Federations of 'Central Excise vs. Union of India reported in 1997 SCC (L&S) 159, the Supreme Court ruled that promotion of Group 'B' Officers to Group 'A' in excess of 50% quota meant for promotees after 1980 was bad and ordered the review of all promotions made after 1980. It was ruled that within the said 50% the ratio of 6:1:2, namely, 6 for Central Excise Superintendent, 1 for Custom Superintendent and 2 for

Customs Appraisers should be maintained and nobody is entitled to occupy more than their respective quotas. It has been further stated that in pursuance of the above judgement, the department has carried out the review of the promotions effected to Group 'A' from 1980 onwards and as a result of the said review though the Appraisers were promoted much earlier, on adhoc basis to Group 'A', they have been regularised, within their quota, many years later. However, the Examiners/Preventive Officers promoted against the consequent vacancies in the cadre of Appraisers due to promotions on adhoc basis to Group 'A', continued to be given seniority with reference to the date of their adhoc promotions into Group 'B'. It has been alleged that the respondents have violated the Recruitment Rules and the General Principles of Seniority, 1959 while formulating the impugned seniority.

6. The respondents have rebutted the claims made by the applicants and have contended that this OA. is neither maintainable nor do the applicants have any entertainable cause of action.

7. We have heard the learned counsel of the parties and also perused the material available on record carefully.

8. The learned counsel of the Official Respondents Shri V.S.Masurkar first of all raised the objection that this OA. has been made basically by the Association of Direct Recruits Appraisers and individuals who would get affected in case the reliefs claimed are granted to the applicants have not been impled as parties. We find that the Respondent No.3 is All India Customs Appraising Officers' Federation and in case the

reliefs claimed in the OA. are allowed, only the Members of this Federation would be affected. The settled legal position is that if one respondent is impleaded in its representative capacity, all other individuals who are represented by such an Association, need not be impleaded. This objection of the Official Respondents, therefore, is rejected.

9. Shri V.S.Masurkar next contended that the OA. is barred by the principles of res-judicata. He stated that the applicants' Association has been repeatedly raising the same issues before the Courts and the Supreme Court in various cases, such as, G.B.Yadav (supra), Direct Recruit Class-II Engineering Officers' Association (supra) and Aghore Nath Dey (supra) has laid down principles of inter-se seniority of Direct Recruits and promotee Officers. As such, the OA. is barred by res-judicata. In this connection, the learned counsel of the applicants Shri G.K.Masand stated that in the case of G.B.Yadav the Supreme Court has given direction for preparation of seniority list in a particular manner. The respondents have not followed the principles laid down in the said judgement and have implemented the same wrongly and come out with the impugned seniority list. According to him, it is the first time that the applicants have agitated against the seniority list. This seniority list, according to the learned counsel, has been made in violation of the Rules, principles laid down by the Apex Court as also the general principles of seniority. He contended that a party if aggrieved by the seniority list made out by way of implementation of the judgement, whereas no contempt may lie, a fresh petition

does certainly lie. We are in agreement with the learned counsel of the applicants and hold that this OA. is not barred by res-judicata as while assailing the impugned seniority list, it has been alleged that it is in violation of the principles settled by the Supreme Court, provisions of Rules and general principles of seniority. In this view of the matter, objection of res-judicata raised by the Official Respondents too, is held as untenable.

10. It is relevant to reproduce here the provisions of Rule 4 (c) of 1961 Recruitment Rules :-

"The percentage of posts to be filled by direct recruitment by competitive examination or by selection otherwise than by competitive examination shall not be less than 50 percent of the total cadre of appraisers. The remaining posts may be filled by any other method mentioned in Rule 3."

11. Learned Counsel of the applicants stated that in the case of All India Federation of Central Excise vs. Union of India 1997 SCC (L&S) 159, the Supreme Court has held that no promotion can be granted beyond the quota of promotees and also no promotion can be granted beyond the quota in respect of Direct Recruits. He stated that the case of the applicants is that the promotion to be granted to the post of Appraisers beyond the quota could be legally gone through as per Rule 4 (c) ibid. After formulating the seniority list in the Group 'A' post as per directions of Supreme Court in the case of All India Federation

of central Excise, it was obvious that there were a large number of promotee Appraisers promoted from the Appraisers' Cadre and therefore their promotion has been termed as adhoc. He emphasised that these persons on promotion can only occupy substantial posts. As the Department has filled all the posts of Appraisers by promotion from Group 'C' cadre, it needs to be rectified as the percentage of promotee Appraisers in the post of Appraisers has gone beyond prescription under Rule 4 (c) ibid. The seniority list requires to be prepared in the post of Appraisers as per the directions of the Supreme Court in the case of G.B:Yadav (supra). Whereas at least 50% posts have to be ensured at all times for Direct Recruits, promotee Appraisers can not avail of promotion beyond the percentage applicable to them as per Rules. All India combined seniority list should have been prepared on the basis of continuous officiation of the incumbents in the post of Appraisers which means that the same should have been done on the basis of promotion granted to Appraisers as per 1961 Recruitment Rules which were then in force. Promotions granted to the promotee Appraisers beyond the prescribed limits is certainly de-hors the rules. Learned counsel contended that while Direct Recruits for all times are entitled to not less than 50% of the posts of Appraisers, it also means that promotees can at best occupy posts upto 50% and not more. Drawing our attention to Ex. 'L' to Chart at page 347 of the Papber Book, he pointed out that prior to coming into force of 1961 Recruitment Rules, out of 72 Appraisers figuring at Sr.Nos.1 to 72 only 14 were direct recruits while 58 were promotees. After the

promulgation of the said Rules for the year ending 31.12.1962 57 more were added which included 15 Direct Recruits and 42 promotees. In the following year out of 22 added to the cadre, 5 were direct recruits and 17 promotees. In the year ending 31.12.1964, 32 Direct Recruits against 8 promotees were added to the cadre and for the year ending 31.12.1965, 18 Direct Recruits and 2 promotees were added to the cadre. In the year ending 31.12.1969 all the 81 additions to the cadre were only by promotees and not a single Direct Recruit was added. Again in the year ending 31.12.1970 all the 20 additions were promotees. The Chart indicates that positions which should legitimately belong to the Direct Recruits have been illegally assigned to the promotees far in excess of limits prescribed for them, even though their promotion was by way of stop gap arrangement.

12. He further contended that the same chart also shows that against the total cadre strength of 129 as on 31.12.1962, Direct Recruits occupied only 29 placed positions vis-a-vis 100 occupied by promotees. Again for the year ending 31.12.1963 Direct recruits were occupying 30 posts out of cadre posts of 157 while promotees occupied 117 post. For the Calender year 1964 Direct Recruits occupied only 66 posts while promotees occupied 125 posts. For the year ending 31.12.1965 similar position obtained with 85 Direct Recruits and 127 promotees. Thus, the entire chart indicates that every year the intake of promotees has been far in excess of the positions which could be occupied by them



legitimately under the Recruitment Rules which prohibit their intake beyond 50%, while Direct Recruits can under the same Recruitment Rules get appointed to more than 50% posts of the cadre of Appraisers.

13. Learned counsel stated that vide judgement of G.B.Yadav (supra), Supreme Court ruled that promotion of group 'B' officers to Group 'A' in excess of 50% quota meant for promotees after 1980 was bad and ordered the review of all promotions made after 1980. The Supreme Court further ruled that within the said 50% the ratio of 6:1:2 has to be maintained among Central Excise Superintendent, Customs Superintendent and Customs Appraisers respectively. The Department carried out the review of the promotions effected to Group 'A' from 1980 onwards and as a result of the said review, though the Appraisers were promoted much earlier on adhoc basis to Group 'A', they were regularised within their quota many years later ranging between 5 to 8 years later. The Examiners/Preventive Officers continued to be given seniority with reference to their adhoc promotion in Group 'B'.

14. It has been contended on behalf of the applicants that it is for the first time that the applicants have agitated against the seniority list, i.e. impugned seniority list. It is alleged that the same has not been prepared in terms of the directions of Supreme Court in G.B.Yadav's case (supra) and also in direct violation of Rule 4 (c) of 1961 Recruitment Rules. In that case, the Supreme Court has ruled that promotion of Group 'B' officers

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to Group 'A' in excess of 50% quota meant for promotees after 1980 was not in order and it was directed that all promotions made after 1980 be reviewed, so that within the said 50% quota meant for promotees in the ratio of 6:1:2, namely, 6 for Central Excise Superintendent, 1 for Custom Superintendent and 2 for Customs Appraisers is maintained and no category is entitled to occupy more than its quota. It was further held that as per Rule 4 (c) of 1961 Recruitment Rules, the allocation of 50% posts favouring Direct Recruits is ensured at all times. It has to be seen whether in the impugned seniority list provisions of Rule 4 (c) ibid have been borne in mind. If not then the impugned seniority list would not be sustainable to the extent of deviation from the requirements prescribed under Rule 4 (c) ibid. In the case of Direct Recruit Class II Engineering Officers' Assn. vs. State of Maharashtra, the Apex Court inter alia has held as under :-

"(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority."

"(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted."

The Apex Court later on interpreted the above ratios in its subsequent judgement in the case of State of W.B. & Ors. vs. Aghore Nath Dey & Ors. 1993 (3) SCC 371. It was ruled that corollary under conclusion (A) disallows benefit of adhoc appointment made as a stop gap arrangement, while conclusion (B) allows benefit of service in cases where there was procedural irregularity.

15. We have gone through the contents of Chart (Ex. 'L' page 347) which have not been denied by the respondents. Particulars stated in the Chart establish that promotees had been assigned positions far in excess of limits prescribed for them, despite the fact that their promotion was by way of stop-gap arrangement. When provisions of Rule 4 (c) ibid have to be followed, it has to be concluded that positions legitimately belonging to Direct Recruits in terms of Rules have been allotted to the promotees wrongly, which in the interest of justice, relevant Rules and law as discussed above have to be restored to them on review.

16. Having regard to the discussion made and reasons recorded above, this OA. is partly allowed and the impugned seniority list dated 12.11.1997 (Ex. 'A') is quashed and set aside directing the respondents to review positions of those who had been promoted beyond 50% of their quota on adhoc basis which is violative of the terms of Rule 4 (c) 1961 Recruitment Rules and General Principles of Seniority, 1959. The respondents are further directed to complete the above exercise within a period of six months from the date of communication of these orders. No costs.

S. Raju
(SHANKER RAJU)

MEMBER (J)

mrj.

V.K. Majotra
(V.K. MAJOTRA)

MEMBER (A)