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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.263 of 1996

DATE OF ORDER: August, 1998

BETWEEN:

N.V.V.PRASAD .. APPLICANT

AND

1. Union of India,
Ministry of Finance,
Department of Revenue,
Rep. by its Secretary,
North Block, New Delhi,

2. The Secretary,
Central Board of Excise and Customs,
North Block, New Delhi,

3. The Collector of Customs and
Central Excise, Basheer Bagh,
Hyderabad 500 029. .. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr.G.V.R.S.VARA PRASAD

COUNSEL FOR THE RESPONDENT: Mr.N.R.DEVARAJ, Sr.CGSC

CORAM:

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

HON'BLE SHRI B.S.JAI PARAMESHWAR, Member (Judl.)

JUDGMENT

(ORDER PER HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

Heard Mr.G.V.R.S.Vara Prasad, learned counsel for the applicant and Mr.N.R.Devaraj, learned standing counsel for the respondents.

2. The applicant joined the Department in respondents' organisation after having been selected by Staff Selection Commission as Inspector. He was posted to work in the jurisdiction of Bombay-III, Central Excise Collectorate. He reported to duty on 13.3.85. He was

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at Bombay till 8.7.91 when he was relieved on being given inter-collectorate transfer to Hyderabad by the Establishment Order No.112/91 (Annexure IX at page 28 to the OA) as per his request due to his personal domestic reasons. His declaration for inter-collectorate transfer is at Annexure R-4 at page 15 to the reply. As per that declaration, he will be treated as a new entrant and will be adjusted against direct recruitment vacancy of Inspector in the Hyderabad, Guntur Collectorate and his seniority will be fixed accordingly. Further he will keep his lien in the grade of Inspector of Central Excise at Bombay till he was confirmed in any grade in Hyderabad, Guntur Collectortates. It is stated that the applicant was confirmed in the grade of Inspector in Bombay-III Central Excise Collectorate with effect from 12.4.90 by an order NO.F.No.II/(Con)1/90, dated 14.5.90. The applicant reported for duty on 9.7.91 at Hyderabad in the Headquarters' office of Central Excise Collectorate, Hyderabad. A tentative seniority list was issued by the proceedings No.II/34/3/92-Estt. dated 16.10.92 (Annexure VIII at page 22 to the OA) indicating the seniority of the Inspectors of Hyderabad, Guntur and Vizag Collectortates as on 1.1.92 and called for representations against the assigned tentative seniority, if any, within two months of the date of receipt of that communication. The applicant submitted representation dated 4.2.93 (Annexure VII at page 20 to the OA) to R-2. In the said list, the applicant's name was shown at Sl.No.635. In his representation, the applicant submitted that he was confirmed as Inspector on 12.4.90 but his seniority in the list in the grade of Inspectors was shown as 9.7.91, the date on which he joined

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at Hyderabad. He also stated that in terms of the general principle of seniority communicated under the Ministry of Home Affairs, Govt. of India vide Order No.9/11/55-APS dated 22.12.1959 confirmed persons shall be placed in the seniority list above those who were confirmed in respect of their entry in the grade. He also stated in his representation that the first clause in the transfer order stating that the applicant would be treated as a fresh entrant in the cadre of Inspector of Central Excise by fixing his seniority below the last temporary Inspector of Central Excise in the combined cadre of Hyderabad, Guntur and Vizag, Central Excise Collectorates is contrary to the general principle of seniority prescribed by the Ministry of Home Affairs and he requested that his seniority may be refixed and his name shown at Sl.No.415 immediately below the last confirmed Inspector whose name figured at Sl.No.414 in the seniority list. The applicant was informed by R-3 by the letter C.No.II/26/3/93-E8 dated 29.3.93 (Annexure VI at page 19 to the OA) that the applicant's seniority was rightly fixed below the last temporary person working in the cadre as on 9.7.91 basing on the Board's letter F.No.A-23011/3/81-Ad.III-A dated 23.11.81 (Annexure XIII at page 38 to the OA). Thereupon the applicant made a further representation on 25.6.93 (Annexure V at page 14 to the OA) addressed to R-2 for revision of the seniority as stated above. He had also stated in his representation addressed to R-2 that the seniority issue had already been settled by the Central Administrative Tribunal, New Bombay Bench in the case of Atul Dwarakanath Deshpande v. Union of India in T.A.No.511/86 and that judgment has also been upheld by the

Apex Court in C.A.No.1697/88 on 16.1.90 (Annexure XII at page 37 to the OA). The applicant submits that his seniority has to be fixed in terms of the Govt. of India, Ministry of Home Affairs order dated 22.12.59 and also as per the decision of the Central Administrative Tribunal, New Bombay Bench by fixing his seniority at Sl.No.415 in the seniority list issued as on 1.1.92. He was informed by the letter HQ AE No.16/95 dated 7.9.95 (Annexure II at page 11 to the OA) enclosing a copy of the Board's letter No.A.230120/19/95-Ad.III(A) dated 7.6.95 (Annexure I at page 10 to the OA) of the Ministry of Finance, Department of Revenue stating that the refixation of his seniority as requested has been rejected by the Board.

3. This OA is filed for setting aside the impugned letter F.No. A-23020/19/55-Adm.III(A) dated 7.6.95 of R-1 and for consequential direction to the respondents to refix the seniority of the applicant herein in the grade of Inspector of Central Excise in the combined cadre of Hyderabad, Guntur and Vizag Central Excise Collectorates by placing him at the bottom of the permanent persons in that grade as on 9.7.91 in accordance with Clause-V of the instructions contained in letter NO.6/97/57 Adm.III(A) dated 12.2.1958.

4. The contentions raised by the applicant for fixing his seniority as prayed for by him as above are as follows:-

(i) The applicant was confirmed initially in the Bombay Central Excise Collectorate. On his transfer,

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though he has given a declaration that he will accept the position as a new entrant in Hyderbad collectorate and fixing his seniority accordingly as the same had to be given for inter-collectorate transfer as he was in need of coming to Hyderabad. Without such a declaration the request transfer ^would not have been accepted. Such a declaration is not warranted and cannot be treated as legal. He submits that his seniority on his transfer to Hyderbaad has to be fixed in accordance with the general rules and in accordance with Clause-V of the instructions contained in the letter dated 12.2.58. The said Clause-V of the said letter is reproduced below:-

"(v) Ordinarily, only non-permanent (temporary and quasi-permanent) persons should be permitted to be transferred from one charge to another. In exceptional cases, permanent persons may be transferred, but they are liable to be placed at the bottom of the seniority list of permanent persons in that grade. It is possible that in the new charge there are several persons who are senior to the transferee, on the basis of length of service, but have not been confirmed. On the other hand, it is also possible that the juniormost confirmed person in the new charge is far junior to the transferee. It will therefore be necessary to fix the seniority of the permanent transferee, on an ad hoc basis, considering the length of his service, date of confirmation, etc. vis-a-vis the length of service etc. of the persons already working in the grade concerned, in the new charge.

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This should be done under the orders of the Board, before the transfer is effected."

As per this clause, the persons permitted to be transferred from one charge to another should ordinarily be non-permanent (temporary and quasi-permanent employees). However in exceptional cases permanent persons may be transferred but they are liable to be placed at the bottom of the seniority list of permanent persons in that grade. As per that rule, the applicant submits that his seniority should be fixed while joining Hyderabad on 9.7.91 below that of those Inspectors who were confirmed on that date. He cannot be placed below that of all the Inspectors including temporary Inspectors working under R-3. He also submits that the above view of his has been upheld by the Bombay Bench of this Tribunal in TA 511/86 which judgement is enclosed at Annexure XI at page 30 to the OA. He further submits that the above judgment when challenged was dismissed by the Apex court. The Apex Court judgment is at Annexure XII at page 37 to the OA.

(ii) The applicant submits that the letter dated 12.2.58 has not been cancelled or superseded. The letter bearing S.No.A-22015/34/80-Ad.III.B dated 20.5.80 (Annexure R-1 at page 9 to the reply) relied upon by the respondents is not a proper letter as the earlier letter dated 12.2.58 was not superseded by the later letter dated 20.5.80. That letter dated 12.2.58 is still in existence and that letter having been held as valid for deciding the seniority of the transferee by the Bombay Bench of the Tribunal, the

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respondents cannot quote any other letter to fix his seniority. That clarificatory letter No.A-23011/3/81-Ad.III-A dated 23.11.81 (Annexure XIII at page 38 to the OA) cannot also be relied upon to fix his seniority for the reasons stated above.

5. A reply has been filed in this OA. Merely "Generality" is dished out in the reply. Hence, we have studied the purpose of issuing various circulars and contents of those circulars and after perusal of those documents came to the conclusion regarding the method to fix seniority in the case of Inspector Transferees from one collectorate to the another collectorate on request.

6. In the letter dated 12.2.58 in Clause-V, the method for fixing seniority of tansferees has been indicated. As per this letter, the transferred official is liable to be placed below in the seniority list of permanent persons in that grade. That letter was issued in the year 1958. That letter was an executive instruction. It is not informed to us that those instructions were issued under the statutory rules. After issue of the letter dated 12.2.58, lot of changes had taken place. The transfer of an employee on request from one unit to another has been demanded for various reasons. Hence the concerned Departments had issued local instructions for inter-departmental transfer. One of the usual conditions fixed for the inter-departmental transfer on request is that the transferred employee in the new unit should accept the bottom seniority below that of all the employees including temporary employees in that transferred unit. These

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instructions might have been issued to prevent unrest from number of temporary employees who will lose seniority in the transferred unit if one from another unit is given seniority above the temporary employees and there is always resistance while bringing employees from one seniority unit to another for obvious reasons. In that view, issue of the letter No.A-22015/34/80-Ad.III.B dated 20.5.80 (Annexure R-1 at page 9 to the reply) is to be examined. This letter of 20.5.80 delegated the powers to the Heads of the Department for permitting inter-collectorate transfers of Group-C officers. With the back ground of the conditions prevailing not only in the cases of Customs and Excise Department but also in the other Departments, the instructions under Para 2(ii) of the letter dated 20.5.80 have to be examined. This para reads as below:-

"The transferee will not be entitled to count the service rendered by him in the former Collectorate for the purpose of seniority in the new charge. In other words, he will be treated as a new entrant in the Collectorate to which he is transferred and will be placed at the bottom of the concerned cadre in the new charge."

Further in para 2(iv) of the said letter, it is stated as follows:-

"If he is a permanent employee, he will retain his lien in the old charge till he is confirmed in the news charge."



The above provisions are made to ensure that the transferee does not retard the career promotional chances of the employees in the transferred unit by gaining seniority over them. As stated earlier, there is cry in all the Departments to prevent tranferees from other units by giving them higher seniority. In view of that only it appears that para 2(ii) which is also similar to the practice followed in other departments has been included in the letter dated 20.5.80. In view of that position, it cannot be said that para 2(ii) of the letter dated 20.5.80 is irregular or inconsistent under the situation prevailing in the Central Government Departments.

7. The next question arises whether the letter dated 20.5.80 can be taken note of when clause-V in the earlier letter dated 12.2.58 is not superseded. Both the letters dated 12.5.58 and 20.5.80 are ~~an~~ executive instructions and did not have any statutory support. The Department has got full powers to replace the earlier executive instructions by the later instructions, if it is found essential. Even statutory rules can be amended by the appropriate competent authority. Hence the letter dated 20.5.80 has to be viewed from that angle. The seniority position to be fixed by the earlier letter dated 12.2.58 is contrary to the later instructions contained in the letter dated 20.5.80. When contradiction is there, it has to be held that the later letter will prevail and not the earlier letter. In that view, in our opinion, the fixation of seniority should be in accordance with the later letter dated 20.5.80 and the clarificatory letter issued on 23.11.81. Hence we feel that even though the letter dated 20.5.80 does not indicate

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specifically that it superseded the earlier letter dated 12.2.58, it is to be presumed that the later letter dated 20.5.80 is in supersession of the earlier letter dated 12.2.58.

8. The general rule position which the applicant wants to follow may not be appropriate as the instructions given therein do not give any definite ruling in the fixation of seniority of a transferred employee from one seniority unit to another seniority unit on request. Hence following departmental instructions in this case is correct and appropriate.

9. The Supreme Court in the reported case reported in SLR 1994(1) SC 262 (Smt. Renu Mullick v. Union of India) observed in para 10 of the judgment that "The transferee is to be treated as a new entrant in the collectorate to which he is transferred for the purpose of seniority". The applicant submits that the above observation was not a pointed reference for fixing seniority position. Smt. Renu Mullick, the applicant in that reported case, was denied of her earlier service in the collectorate from which she was transferred for counting her earlier service for the purpose of service eligibility for promotion in the transferred unit. The Supreme Court held in that connection that the earlier service rendered by the applicant in the earlier unit before her transfer should also be taken into account for counting the number of years of service while deciding the service eligibility condition for promotion. In that context, the Apex Court perused para 2(ii) of the instructions dated 20.5.80 and gave a passing observation

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as indicated above. The reported judgment in no way gives a decision in regard to fixation of seniority after analysing the earlier letter dated 12.2.58, submits the learned counsel for the applicant.

10. No doubt, in the case of Mrs.Renu Mullick, a direction is given in regard to counting of earlier service before the transfer for the purpose of promotion in the transferred unit. But it is to be noted that the Apex Court had perused the letter dated 20.5.80 and after analysing the pros and cons only had observed that the transferee should be treated as a new entrant in the transferred unit for the purpose of seniority. Hence it cannot be said that the above observation cannot be quoted to come to a decision in regard to the seniority of the applicant herein. We are of the opinion that the Apex Court had positively held that the transferred employee should be treated as a new entrant and hence his seniority should be fixed accordingly. If the Apex Court is of the view that the transferred employee cannot be treated as a new entrant in the new transferred unit, it could have clearly stated so and on that basis the Apex Court could have ordered for counting of service in the earlier unit. That judgment had made distinction between counting of service and seniority. In the first instance, it held that an employee in the transferred unit should be treated as a fresh entrant and further held that the previous service should be counted for the purpose of counting service eligibility condition for promotion in that transferred unit. Hence, we feel that the Apex Court had come to the conclusion that a transferred employee is to be treated as

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a new entrant in the transferred unit.

11. We have perused the judgment of the Bombay Bench of this Tribunal in TA 511/86. No doubt, it is stated after analysing the clause-V of the letter dated 12.2.58 that obtaining declaration from an employee when he requests for inter-collectorate transfer to the effect that he will be treated as a fresh entrant is illegal and also held that the seniority should be fixed as per Clause-V of the letter dated 12.2.58. But it has to be seen in the light of the facts of that case. It is stated by the respondents that the applicant therein joined as a Supervisor in the Bombay Central Excise collectorate in the year 1956. He was confirmed as Sub Inspector in 1966 and thereafter he was promoted as Inspector (Ordinary Grade) on officiating basis. In 1959, the Bombay Collectorate of Central Excise was divided into two separate collectorates namely Bombay and Pune. At that time, the applicant in that TA was working at Pune. Due to his family situation, he requested from 1966 onwards for transferring him to Bombay. That was finally accepted in January 1972. A declaration that he will accept the bottom seniority was also obtained by him while ordering inter-collectorate transfer and his seniority was also fixed below the last temporary Inspector in Bombay collectorate. In that context, the Bombay Bench of the Tribunal held that fixing of seniority and getting declaration from him as a fresh entrant in the new Collectorate is not correct. But that observation has to be viewed in the light of the rules that were available on that date. The rule that was available on that date was the instructions issued by the letter

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dated 12.2.58. The later letter dated 20.5.80 came very much later. Hence the Bombay Bench took a note of the rule position in that letter dated 12.2.58 which governs the fixation of seniority in the year 1972 and came to the conclusion that the letter dated 20.5.80 should not be pressed into service for an employee who came to Bombay

instructions were that of letter dated 12.2.58. Further, it is stated by the respondents that while the applicant was retained at Pune when the Bombay collectorate was bifurcated, no option from the applicant in that TA either to serve in Bombay Collectorate or Pune Collectorate was taken. In that view, the decision of the Bombay Bench of the Tribunal in the said TA may be appropriate as the principle of natural justice has not been followed fully in that case. But in the present case, the facts are different. The applicant came on his own volition to Hyderabad and gave his option and at the time of his posting at Hyderabad the letter dated 20.5.80 was very much in force and hence he cannot challenge the rejection of his representation for higher fixation of seniority under R-3. We feel that the decision of the Bombay Bench of the Tribunal in TA NO.511/86 cannot be quoted as a supportive material in this case for the reason that the facts in both the cases are different and also the instructions prevailing in 1972 and 1991 are different.

12. The concept of fixation of interse seniority on the basis of date of confirmation has been badly commented upon by the Apex Court in the reported case in 1990 SCC (L&S) 339 (Direct Recruit Class II Engineering Officers'

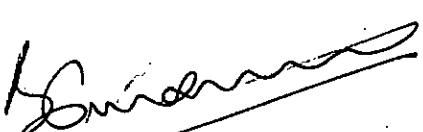
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Assn. v. State of Maharashtra). It was held therein that the seniority is to be counted from the date of appointment and not from the date of confirmation. It was also held that while deciding inter-se seniority it has to conform to the principles of equality spelt out by Article 14 and 16 of the Constitution of India. Hence if the seniority is fixed on the basis of date of entry in a cadre, it cannot be said to be irregular. In that view also, we are of the opinion that fixation of seniority of the applicant as per the tentative seniority list issued on 16.10.92 cannot be questioned.

13. In view of what is stated above, we feel that the applicant has not made out a case to grant him seniority position as prayed for in the relief column. The applicant has been given seniority in accordance with the rules in force at the time of his transfer and hence the applicant cannot demand any higher fixation of seniority.

14. In view of the foregoing, the application is liable only to be dismissed and accordingly it is dismissed. No order as to costs.


(B.S. JAI PARAMESHWAR)

MEMBER (JUDL.)

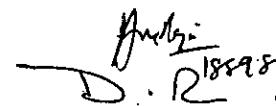
18/1/98

DATED: 18th AUGUST, 1998



(R. RANGARAJAN)
MEMBER (ADMN.)

vsn


D.R. 18/8/98

DA.263/96

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN : M(A)

AND

THE HON'BLE SHRI G.S. JAI PARAMESWAR :
M(J)

DATED: 18/8/96

ORDER/JUDGMENT

M.A/R.A/C.P.NO.

in

C.A. NO. 263/96

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS

YLKR

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केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
प्रेषण / DESPATCH

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HYDERABAD B