

In the Central Administrative Tribunal: Hyderabad Bench at
Hyderabad

OA.No. 1019/92

Date of Judgment 18-2-93

Between

Shri S. Padma Rao
Inspector of Central Excise &
Customs on deputation to the
Directorate of Revenue Inte-
lligence, Bombay

.. Applicant

and

1. The Collector of Customs &
Central Excise, Hyderabad.
2. The Deputy Collector (P&E),
Central Excise Collectorate,
Hyderabad

.. Respondents

Counsel for the Applicant: Shri V.Jogayya Sarma

Counsel for the Respondents: Sri N.V.Raghava Reddy

CORAM

Hon'ble Justice Shri N. Neeladri Rao, Vice Chairman

Hon'ble Shri R. Balasubramanian, Member (Admn.)

(Judgment of the Divn. Bench delivered by Shri Justice V.
Neeladri Rao, Vice Chairman)

The applicant herein filed this OA challenging the seniority list dated 28-6-91. The facts which are not in dispute are that some of the Inspectors of Excise in Hyderabad and Guntur Collectorates filed OA. 156/86 challenging the earlier seniority list of Inspectors. The same was disposed of by the Bench of this Tribunal on 5-7-88 by directing the respondents to prepare a fresh seniority list by following the principles adumbrated in the judgment of the Supreme Court reported in ALJ 1983(1) 564.

Kne

But it is a case of revising the seniority list of Inspectors numbering about 500, it is stated for the respondents that it will take considerable period for revision and hence in the meanwhile, the adhoc appointments to the post of Superintendents on the basis of seniority list dated 28-6-91 are required to be made. Keeping in view the various factors, we feel that it is just and proper to pass the following order:

Revised seniority list as per the letter dated 3-11-92 has to be issued by the end of April, 1993. If any adhoc promotions to the posts of Superintendents are going to be made in the meanwhile, it is needless to say that the same will be subject to the final seniority list that is to be issued. If for any reason, the seniority list is not going to be finalised by even adhoc promotions after 30-4-83 to the posts of Superintendents of Central Excise and Customs within the Collectorates in the A.P.State on the basis of existing senioritylist. The applicant has to be given promotion with effect from the date on which his junior is promoted either by way of regular promotion or adhoc promotion with all consequential benefits.

The OA is disposed of accordingly with no costs.

/true copy/

Kran

In the Central Administrative Tribunal: Hyderabad Bench at
Hyderabad

CA.1090/92

Date of decision: 9-6-93

Between

1. M.Umakantham
2. Ahmed Hussain
3. P.Chiranjeevi
4. P.Janakiramaiah
5. R.M.L.Kapoor and
6. S.V.S.S.R. Krishna Rao

.. Applicants

and

1. The Union of India rep. by
the Secretary, M/o Finance
Dept. of Revenue, North Block,
New Delhi.
2. The Central Board of Excise &
Customs rep. by the Secretary,
Government of India, New Delhi.
3. The Collector of Central Excise
Basheerbagh, Hyderabad

.. Respondents

Counsel for the applicants: G.Parameshwara Rao: Advocate

Counsel for the respondents: N.R. Devaraj, Standing Counsel
for Central Government.

CORAM:

Hon. Mr. Justice V. Neeladri Rao, Vice Chairman

Hon. Mr. P.T.Thiruvengadam, Member (Administration)

JUDGMENT

(As per Hon. Mr. P.T.Thiruvengadam, Member (Admn.))

Heard Sri G. Parameshwara Rao, learned counsel for the
applicants and Sri N.R.Devaraj, learned counsel for the
respondents.

2. The six applicants in this OA are working as Inspectors
of Central Excise. The first four applicants were promoted
to the said post prior to 1-3-1986 while the other two were
promoted after 1-3-1986. In this OA they prayed for a direc-
tion for recasting their seniority in the cadre of Inspectors

Khan

: 17 :

on the basis of the principles laid down by this Tribunal in its judgment dated 5-7-1988 in OA. 156/86.

3. The applicants in the OA. 156/86 have also been promoted to the post of Inspectors of Central Excise & Customs & prior to 1-3-1986 just as in the case of the applicants 1 to 4 in this OA. Hence, Judgment in OA. 156/86 will apply in the case of applicants 1 to 4 of this OA. As regards applicants 5 & 6 since they had been promoted after 1-3-1986 there is no dispute about the application of OM.No.35014/2/80-Estt(D), dated 7-2-1986 for fixing of seniority. Hence, this OA has also to be disposed of by passing the very order which has been passed in OA.156/86 dated 5-7-1988, which reads as under:

"The applicants are entitled to get their seniority revised in accordance with the principles laid down by the Supreme Court in the decision reported in 1983(1) SLJ 564 and which was accepted by the Government of India, Department of Personnel and Administrative Reforms OM.No.35014/2/80-Estt(D) dated 7-2-1986."

4. The OA is disposed of accordingly. No costs.

Certified to be true copy

Dated: 16-6-93
Court Officer
Central Administrative Tribunal
Hyderabad Bench, Hyderabad

/true copy/

K. Venk

Office of the Commissioner of Customs and Central Excise
Lal Bahadur Stadium Road: Basheerbagh: Hyd.

Establishment Order (G.o) No.115/95
Dated the 30th June, 1995

Sub: Establishment--Promotions, Postings and Transfers
in the grade of Superintendent of Central Excise
(Group 'B') (Gazetted) -- ordered.

The Commissioner-I of Central Excise, Hyderabad has ordered that the following Inspectors of Central Excise, Hyderabad, Guntur and Vizag Commissionerates are promoted to officiate in the grade of Superintendents of Central Excise (Group 'B') (Gazetted) in the pay scale of Rs. 2000-60-3000 EB-75-3200-100-3500 and such dearness and other allowances as admissible from time to time with effect from the date they take over charge of the higher post.

S/Sri

15. K. Kusa Kumar

19. A.V. Prasada Rao

2. This promotion order is provisional and subject to the final order in the Civil Appeals in OA.No.114/92, OA.No.1028/91 and OA.Nos. 1019/92 and R.No. 103/93 in OA.No.1019/92 pending before the Central Administrative Tribunal, Hyderabad Bench and subject to the review.

3. They are informed that they will be kept on probation for a period of two years on the date of their assumption of charge in the grade of Superintendent of Central Excise (Group 'B') (Gazetted). Their retention/confirmation in the grade of Superintendent of Central Excise (Group 'B') will depend upon their successful completion of the probation period and other appropriate administrative considerations.

K. K.

: 19 :

4. In terms of Board's order F.No.A-11019/102/91-Ad.IV dated 23-2-93 the officers at Sl.No. 1,2,3,4 & 6 who are on deputation at Sahar International Airport, Bombay as Air Customs Officers will have the option either to forgo the promotion or to accept the promotion. The option may be given in written within one month.

5. They are also informed that they may exercise their option within one month from the date on which they take over charge of the post of Superintendent of Central Excise for fixation of pay under F.R.22(a)(i) and F.No.A.26104/1/82-Ad.II-A dt. 15-1-82 read with Ministry's letter F.No.A.261015/17/84-Ad.II-A dt.31-5-84 as amended from time to time. Their inter-se seniority in the grade of Superintendent of Central Excise will be fixed later.

POSTINGS:

6. Consequent on the above promotions, the following posting and transfers in the grade of Superintendent of Central Excise are ordered:

xx

xx

xx

xx


7. Sl.Nos. 20 to 26, 37, 38, 43, 44 & 48 are not entitled for transfer TA and joining time as the transfers are ordered on their request.

8. Necessary posting orders in respect of officers allotted to Vizag and Guntur Commissionerates may be issued by the respective Commissioners.

9. This order shall take effect from 1-7-1995.

Sd./- Ranjan Pradhan
Deputy Commissioner (P&V)

/true extract/



Office of the Commissioner of Customs and Central Excise

Lal Bahadur Stadium Road: Basheerbagh Hyderabad-29.

Establishment Order (G.O) No.126/95

Dated the 31st July, 1995

Sub: Establishment--Promotions--postings and transfers
in the cadre of Superintendent of Central Excise
(Group 'B') (Gazetted) --ordered.

The Commissioner-I of Central Excise, Hyderabad has ordered that the following Inspectors of Central Excise, Hyderabad, Guntur and Visakhapatnam Commissionerates are promoted to officiate in the grade of Superintendents of Central Excise (Group 'B') (Gazetted) in the pay scale of Rs.2000-60-2300-EB-75-3200-100-3500 and such dearness and other allowances as admissible from time to time with effect from the date (s) they take over charge of the higher post.

1. Sri V.V.A.Nagaraja Kumar

2. Sri T.Srikanth Babu

2. This promotion order is provisional and subject to the final order in the Civil Appeals in OA.No.114/92, OA.No.1028/91 and OA.No.1019/92 and R.No.103/93 in OA.No.1019/92 pending before the Central Administrative Tribunal, Hyderabad Bench and subject to the review.

3. They are informed that they will be kept on probation for a period of two years on the date of their assumption of charge in the grade of Superintendent of Central Excise (Group 'B') (Gazetted). Their retention/confirmation in the grade of Superintendent of Central Excise (Group 'B') will depend upon their successful completion of the probation period and other appropriate administrative considerations.

K. N.

4. They are also informed that they may exercise their option within one month from the date on which they take over charge of the post of Superintendent of Central Excise for fixation of pay under FrR.22(a)(i) and F.No.A.26014/1/82-Ad.II-A dated 15-1-82 read with Ministry's letter F.No.A-2615/17/84-Ad.II-A dated 31-5-84 as amended from time to time. Their inter-se-seniority in the grade of Superintendent of Central Excise will be fixed later.

Postings:

5. Consequent on the above promotions, the following postings and transfers in the grade of Superintendent of Central Excise are ordered:

xx

xx

xx

6. Necessary posting orders in respect of officer allotted to Guntur Commissionerate may be issued by the Commissioner concerned.

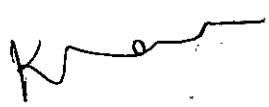
7. These orders shall take effect immediately.

Sd./-
(Ranjan Pradan)
Deputy Commissioner (P&V)

To

The individuals (through the officer concerned) etc.,

/true extract/



Office of the Commissioner of Customs and Central Excise
Lalbahadur Stadium Road: Basheerbagh: Hyderabad-29

C.No.II/34/15/96-Estt.7

Dated: 11-3-96

Sub: Establishment--Seniority--Seniority list of
Superintendents of Hyderabad, Guntur and Vizag
Commissionerates as on 1-1-96--regarding.

Seniority list in the cadre of Superintendents of the common cadre Hyderabad, Guntur and Vizag Central Excise Commissionerates as on 1-1-96 on the basis of the orders in force is forwarded herewith for information and circulation among the officers concerned. The particulars incorporated in the list may please be checked with the Service Books of the individuals concerned and a report of the verification may be sent to this office within one month from the date of receipt of this list. Certain columns in respect of certain officers have been left blank for want of relevant particulars. The requisite information may please be furnished to this office by the Deputy Commissioners/Assistant Commissioners concerned, immediately.

2. The Superintendents, who on perusing the seniority list find it necessary to make a representation, should submit their representations through proper channel within month from the date of receipt of this communication.

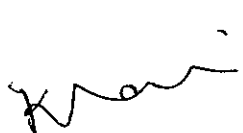
Sd./- IYPE MATHEW

Additional Commissioner

To

The individuals (through the officers concerned) etc.,

/true copy/



: 23 :

SENIORITY LIST OF SUPERINTENDENTS (GROUP 'B') (GAZETTED) OF HYDERABAD GUNTUR AND VIZAG CENTRAL EXCISE COMMISSIONERATES
COMMON CADRE AS ON 1-1-96 SCALE OF PAY Rs. 2000-60-2300-EB-75-3200-100-3500:

S.No.	Name of the Officer	<u>Date of appointment</u> Govt. ser- Present vice Grade	Date of appt. (Inspr. OG/SG)	Date of confir- mation (Inspr. (OG/SG)	Commissionerate in which working
-------	---------------------	--	---------------------------------	--	-------------------------------------

1	2	4	5	7	8	9
---	---	---	---	---	---	---

284.	K. Kusa Kumar	5-10-70 3-7-95	12-7-84	15-12-78 UDC	Guntur
288.	A.V.Prasada Rao	18-1-72 3-8-95	14-12-84	15-12-78 UDC	Guntur
292.	V.V.Nagaraja Kumar	19-1-72 17-8-95	28-1-85	15-12-78 UDC	Guntur

/true extract/

K

29

Office of the Commissioner of Customs and Central Excise
Lal Bahadur Stadium Road: Basheerbagh: Hyderabad-500 029

Establishment Order (G.O) No. 123/96
Dated the 23rd September, 1996.

Sub: Establishment--Promotion posting and transfers
in the grade of Superintendent of Central Excise
(Group B) (Gazetted) --ordered.

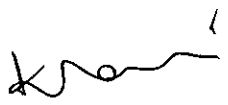
The Commissioner-I of Central Excise, Hyderabad, has ordered that the following Inspectors of Central Excise, Hyderabad, Guntur and Visakhapatnam Commissionerates Common Cadre are promoted to officiate in the grade of Superintendents of Central Excise (Group B) (Gazetted) in the pay scale of Rs. 2000-60-2300-EB-75-3200-100-3500 and such dearness and other allowances as admissible from time to time with effect from the date (s) they take over charge of the higher post.

S/Sri

1. N. Krishna Reddy
2. B. Ramachandra Rao
3. T.S.S.N. Ravi Prasad

2. This promotion order is provisional and subject to the final order in the Civil Appeals in OA.No.114/92, OA.No. 1028/91 and OA.No.1019/92 and R.No. 103/93 in OA.No.1019/92 pending before the Central Administrative Tribunal, Hyderabad Bench and subject to the review.

3. They are informed that they will be kept on probation for a period of two years from the date of their assumption of charge in the grade of Superintendent of Central Excise (Group B) (Gazetted). Their retention/confirmation in the grade of Superintendent of Central Excise (Group B) will depend upon their successful completion of the probation period and other appropriate administrative considerations.



4. They are also informed that they may exercise their option within one month from the date on which they take over charge of the post of Superintendent of Central Excise for fixation of pay under F.R.22(a)(1) and F.No.A.26014/1/82-Ad.II-A dated 15-1-82 read with Ministry's letter F.No. A-26015/17/84-ad.II-A dated 31-5-84 as amended from time to time. Their inter-se-seniority in the grade of Superintendent of Central Excise will be fixed later.

Postings & Transfers

5. Consequent on the above promotions, the following postings and transfers in the grade of Superintendent of Central Excise are ordered:

xx

xx

xx

6. Necessary posting orders in respect of officers allotted to Vizag and Guntur commissionerates will be issued by the concerned Commissioners.

7. This order is with immediate effect. Sl.No. 7 & 8 should be relieved on 30-9-1996 afternoon.

Sd./- Arun Tandon
Deputy Commissioner (P&V)

/true copy/



In the Central Administrative Tribunal: Hyderabad Bench at
Hyderabad

OA 1323/93 with OA.285/94 and OA 986/94 Date of Decision: 13-2-97
OA.No.1323/93

- | | |
|-------------------------|------------------------|
| 1. T. Srikanth Babu | 12. Dulip Abraham |
| 2. S.Dora Reddy | 13. Manju Varma |
| 3. G. Pandurangiah | 14. S.Baquer Ali |
| 4. T.S.S.N.Ravi Prasad | 15. S.Hanumantha Rao |
| 5. Purnachander Rao | 16. G. Man Mohan |
| 6. G.P.Vijay Kumar | 17. S.Prasada Rao |
| 7. H.S.Nasker | 18. Y.Venkata Ratna |
| 8. B.Ramchander Rao | 19. K.Venkatapaiah |
| 9. K. Pundarrika Prasad | 20. V.Srinivasa Rao |
| 10. P.V.Ramana | 21. B.A.John Bhawandas |

.. Applicants

and

1. Union of India represented by its
Chairman, Central Board of Excise
& Customs, Department of Revenue,
Ministry of Finance, New Delhi.

2. The Collector, Customs and Central
Excise, Basheerbagh, Hyderabad

.. Respondents

Counsel for the Applicants: Mr. L. Nageswara Rao

Counsel for the Respondents: Mr. N.R.Devaraj, Sr.CGSS

with

OA. 285/94

Between

G. Gopala Krishan Rao

.. Applicant

and

1. The Collector of Central Excise-I,
L.B.Stadium Road, Basheerbagh,
Hyderabad.

2. The Deputy Collector (P&V), Central
Excise, Office of the Collector of
Central Excise, LB Stadium Road, Hyd.29.

3. The Secretary, Central Board of Excise
& Customs, North Block, New Delhi.

4. The Secretary, Ministry of Finance,
Department of Revenue, North Block,
New Delhi

.. Respondents

K. N.

: 27 :

Counsel for The applicant: Mr. S.A. Chari

Counsel for the Respondents: Mr. K.Baskar Rao, Addl.SC

with

OA 906/94

Between

1. M. Kumar Ganesh
2. K. Muralikrishna
3. Y.S.V.P.Kameswara Rao
4. K.Manik Rao
5. K. Lakshmipathi
6. V. Soma Sundara Sarma
7. P.V.Ranajee Rao

8. J. Chennakesavulu
9. P.Basava Rao
10. P.V.S.Prasad
11. P.Shyam
12. A.Anji Reddy
13. V.Phaninadracharya
14. T.Krishna Murthy

.. Applicants

and

1. The Union of India represented by its Secretary, Central Board of Excise and Customs, Department of Revenue, Ministry of Finance, North Block, New Delhi.

2. The Collector of Central Excise-I, Central Excise Headquarters, Fathe Maidan Road, Basheerbagh, Hyderabad-200 029.

3. The Deputy Collector (Preventive & Vigilance), % the Collector of Central Excise and Customs, Central Excise, Headquarters, Fateh Maidan Road, Basheerbagh, Hyderabad-29.

4. V.Vijayasekhar Reddy
5. V.Suryaprakash
6. S.Srinivasulu
7. K.Narasimhulu
8. V.Bhaskar Rao
9. K. Ramachandra Rao
10. Syed Bahseer Ahmed
11. N.Venkataramana Rao
12. G.Venkateswar Rao
13. M.Pulla Reddy
14. C.Nagananth
15. T.Chakradhar Rao
16. M.Umakantaham
17. A.Chandra Sekharam
18. E. Appa Rao
19. M. Appala Raju
20. M. Appala Konda
21. Harikrishan Rao
22. K. Kusa Kumar
23. M.S.Willington
24. J.Jayaraj
25. P.Vasudeva Rao
26. A.V.Prasada Rao

27. V.A.Nagaraja Kumar
28. Pudi Rama Murthy
29. P.Ananda Rao
30. M.Lokeswara Rao
31. Ch. Subba Rao
32. Ch.Ram Babu
33. D.Sree Rama Sastry
34. N. Krishna Reddy
35. Md. Hussain
36. G.Mahamood
37. P.Mohan Rao
38. Ahmed Hussain
39. K.Subbaraya Gupta
40. M.Prasada Rao
41. P.Venkateswar Rao
42. R.Krishna Kumar Rai
43. K.Purnachander Rao
44. R.Venkaiah
45. P.Chiranjeevi Rao
46. B.Bhagya Vishnu
47. K.S.Ranganath
48. P.Janakiramaiah
49. N.Pandu Ranga Rao

Kre

50. R.V.Ramana Rao
51. B.Bharathi Rao
52. N.Balavenkatachennu
53. Ch.Chandrasekharam
54. V.Hanumantha Rao
55. R.M.L.Kapoor
56. P. Rama Mohan Rao
57. O.Raghuramaiah
58. S.Nageswar Rao
59. M.Venkateswarlu
60. B.Vithal Rao
61. K.V.Suryanarayana Murthy
62. Ambrose Harry
63. D. Francis Jairaj
64. Smt. M. Ratna Panchali
65. S.V.S.S.R.Krishan Rao
66. A.V.S.Jagannatha Sarma
67. N. Prakash Rao
68. Ch. Narayana Murthy
69. I.Ganapathi Rao
70. A.Parameshwar
71. P.Hanumantah Prasad
72. P.Govinda Rao
73. Smt. V.Lalitha
74. N.Jogeswar Rao
75. D. Madan Gopal
76. B. Prasada Patnaik

77. S.V.Rama Murthy
78. Ch. Kumar Babu
79. J.Seshagiri
80. P. Mahaboob Ali Khan
81. Mohammad Aslam
82. K.Venkateswar Rao
83. V.Venkateswar Rao
84. D.S.Vidyasagar
85. M. Satyanarayana
86. P. Krishna
87. C.B.Prabhakar Rao
88. M.Chandraiah
89. B.Rama Lrosjma
90. T.Vivekananda
91. B.N.Cosika
92. N. Tripruapathi Rao
93. B. Prasada Rao
94. A.L.V.Ramakrishna Murthy
95. Mohd. Ghajali
96. A.Jagannatha Prasad
97. N.P.Ratnakar
98. Premkumar
99. S.Yadagiri
100. M.B.C.Tilak
101. P.Sasidhar
102. V.Prakash Babu
103. Ch.Sudhakar Reddy
104. Ch. Nageswar Rao

.. Respondents

Counsel for the Applicants: Mr. Rama Mohan Rao

Counsel for the Respondents: Mr. N.R.Devaraj, Sr. CGSC

Counsel for the Respondents No.
7 16 21 33 35 37 38 39 45 48 50
to 52 54 to 56 65 70 to 72 74 80
83 84 & 98

: Mr. G. Prameshwar Rao

Counsel for the Respondents No.
19, 23 27 34 41 42 25 26 61 67
76 78 84 90 93 & 96

: Mr. V. Jogayya Sarma

CORAM:

The Hon'ble Mr. Justice M.G.Chaudhari: Vice Chairman

The Hon'ble Mr. R.Rangarajan: Member (Admn.)

JUDGMENT

(Per Hon'ble Mr. Justice M.G.Chaudhari: Vice Chairman)

1. (a) All these matters involve common questions and are therefore being disposed of by this common order.

K


: 29 :

(b) OA 1323/93 is filed by 21 Inspectors of Central Excise working at Excise Collectorate, Hyderabad, who are direct recruits appointed in the years 1984, 85 and 86 respectively. They are aggrieved by the seniority list of Inspectors issued by the respondents on 30-4-93 and pray for setting aside the same and restoring the earlier list dated 16-10-92.

(c) OA 285/94 has been filed by single applicant who is also Inspector, Central Excise at Hyderabad and a direct recruit appointed on 23-11-85. He is also aggrieved by the seniority list dated 30-4-93 and prays for setting aside the same and restoring of his seniority position as reflected in earlier list dated 20-11-86.

(d) The OA 906/94 is filed by 14 direct recruit Inspectors of Central Excise working in Central Excise Collectorate, Hyderabad. They are also aggrieved by the seniority list dated 30-4-93 and seek a direction to the official respondents to recast the it correctly. In this application inspectors working in AP and likely to be affected by the relief sought if granted have been joined as private respondent Applicants Nos. 1 & 2 J.Chakradhar Rao and C. Nagapath from amongst 5 applicants Nos. 1 & 2 J. Chakradhar Rao and C. Nagapah from amongst 5 applicants in OA 156/88 are joined as respondents 14 and 15 Mr. Ram Mohan Rao learned counsel for applicants has not pressed the OA against respondent No. 36 G.Mehmood.

2. The nature of intense controversy of persons concerned in these proceedings and Inspectors who were parties to review applications 29/94 30/94 81/94 RASR 2836 in OA156/86 and RA.Nos. 80/94 82/94 and 103/94 (in OA 1019/92) relates to the correctness of basis followed in preparing the seniority list dt. 30-4-93. Hence to avoid conflicting and inconsitent situations



: 30 :

we are comprehensively examining the questions involved irrespective of orders passed in the above review applications and when the private respondents in all the matters are not same.

3. The Central point raised in these cases in relating to correct fixation of inter-se seniority between direct recruits and promotees under OMs dated 22-12-59 and 7-2-86 as the impugned seniority list has been prepared purportedly in accordance with the decisions of this Tribunal In OA 156/86 and OA 1019/92. In the process the official respondents have revised the seniority of Inspectors from 1972 onwards with which large number of Inspectors are affected and that had led to filing the various review applications and the present proceedings. We do not propose to deal with individual grievances and would only discuss the correct principles in assigning the seniority taking into account the two OAs and the two decisions mentioned above. Apart from the controversy between direct recruits and promotees an incidental question involved is as regards the length of service to be counted for seniority in respect of adhoc promotees.

4. We have heard the elaborate arguments of the counsel appearing for the respective parties in the instant matters and will also draw on the arguments that were advanced at the hearing of review applications earlier to the extent material.

5. OA 156/86 was filed by five promotee Inspectors who were promoted in 1983-84 or thereabout. They had challenged

K. Ravi

: 31 :

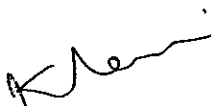
the seniority list dated 8-7-85 on the ground that length of their continuous officiation was not taken into account. The official respondents contended that the list was correctly prepared in accordance with OM dated 22-12-1959 and thus some direct recruits were shown senior to the applicants thereon.

6. The then Division Bench by order dated 5-7-88 allowed the OA and directed official respondents to recast the seniority list in accordance with the OM dated 7-2-86 after following the usual procedure of giving notice to the affected parties. In pursuance thereof revised lists were issued the last being dated 30-4-93. The OA was filed only against the official respondents. The direct recruits whose seniority was adversely affected by the revised seniority lists had therefore filed review applications against the order in the said OA being RA 29/94 RA 81/92 and RASR 2836/93.

7. The then Division Bench which heard OA 1019/92 followed the decision in OA 156/86 and issued similar directions. Thereafter the impugned seniority was issued on 30-4-93. The applicant in that OA was also a promotee. Same was defence of official respondents as in OA 156/88. Affected direct recruits filed Review Application 103/92, 80/94 and 82/94.

8. When all these review applications came for hearing before a Division Bench earlier, the learned members of the Bench entertained a doubt as to whether the view taken in OA 156/86 and 1019/92 required reconsideration. Hence the review applications were referred to the large bench with the following points of reference:

- i) Whether OA.No. 35014/2/80-Estt (D) dt. 7-2-86 of the Govt. of India, Department of Personnel & Training is prospective or retrospective?



: 32 :

- ii) Whether Janardhan's case 1982 (2) SLR 113 lays down that entry into the grade has to be taken as the basis for fixing intense seniority of promotees and direct recruits even when the quota rule does not fail or whether the quota rule is not relaxed in cases where there is power of relaxation.

The reference was answered by a Full Bench of CAT at Hyderabad holding that the OM dated 7-2-86 operated prospectively from 1-3-86. We shall adverted to material observation of the Full Bench in due course.

9. In the light of the said finding we heard all the review applications. We were however constrained to hold that these were not maintainable as on SLIP filed against the decision in OA 156/86 was dismissed by the Supreme Court on 12-3-90 as barred by time and that operates as a bar. In our orders on the review applications we have made it clear that despite the dismissal of the review applications as not maintainable the question of res judicata was left open to be considered in the instant OAs. We, therefore, propose to examine the questions raised in these proceedings comprehensively which will not be confined to parties in the instant OAs but also keeping in mind the rights of all the Inspectors concerned in the various review applications as well. For that purpose the orders separately passed in the review applications shall be borne in mind.

10. With the above background we may firstly summarise the submissions urged by the counsel for applicants in OA Nos. 1323/93 and 285/94 on behalf of direct recruit Inspectors.

1. The official respondents have misinterpreted the decision in applying the OM dated 7-2-86 retrospectively and revising the earlier seniority lists.
2. The respondents have travelled far beyond the direction contained in the said order.

K. M.

: 33 :

3. By revising the seniority of the Inspectors from 1970 the respondents have unsettled a settled position over years thereby adversely affecting the career prospects of several Inspectors including the applicants.
4. The rejection of objections filed by the applicants against the impugned seniority list was mechanical exercise without application of mind.
5. Some promotees who worked in tenure posts in cost recovery posts have been erroneously given benefit of adhoc service rendered prior to 1-3-1986.
6. The wholesale revision of seniority was impermissible as there was no break-down quota-rota rule nor the said rule has been followed.
7. The decision in OA 156/86 does not preclude applicants from challenging the impugned seniority list.
8. There was suppression of the material fact that the applicants in the said OA were adhoc promotees and had no right to claim seniority on that basis.
9. The impugned seniority list has been prepared illegally and in breach of principles of natural justice and is liable to be set aside.
10. There are several other infirmities which vitiate the validity of the impugned list.
11. The learned Counsel for the applicant in OA 906/94, Mr. RamMohan Rao in addition to above contentions submitted that in so far as applicants in this OA are concerned, since the process of direct recruitment was commenced on 22-6-85 from the date of publication of employment notification, their seniority ought to be regulated under OM dated 22-12-1959 notwithstanding that they were appointed after 7-2-86. The learned counsel submitted that the official respondents have wrongly applied the OM dated 7-2-86 to them.
12. The arguments on behalf of the applicants in OA 156/86 and 1019/89 who were also concerned in the Review Applications and are some of the private respondents in OA 906/94 were led by Mr. V. Suryanarayana and supplemented by Mr. K.S.R. Anjaneyulu, Mr. Jogayya Sarma and Mr. G. Parameshwar Rao. They submitted

K. R.

that the impugned seniority list may not be disturbed for the following reasons.

1. The impugned seniority list has been prepared in pursuance of the decision in OA 156/96 which had acquired finality with the dismissal of SLP by the Supreme Court hence it cannot be challenged.

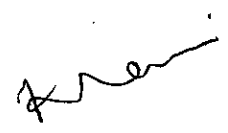
2. The official respondents have acted in the light of several Supreme Court Decisions on the point rendered between 1983 and 1993 and have acted on reasonable considerations hence finality ought to be given to the impugned seniority list.

13. Mr. G. Parameswar Rao in particular urged following points besides the above submissions in reply to OA 906/94:

- (a) instant OAs are not maintainable in view of the decision of the PB of CAT in Johan Lucas case, PBCAT decisions 1986-89 P.135 since review is not permissible of decision in OA. 156/86.
- (b) The applicants in OA 156/86 were not adhoc but promotees in temporary posts.
- (c) The action of the applicants (in OA 1906/94) suffers from laches inasmuch earlier lists issued in the year 1989, 90, 91 were not challenged.

The learned counsel submitted that the OA is therefore liable to be dismissed.

14. Mr. N.R.Devraj, the learned Sr. CGSC appearing for the official respondents although did not dispute that the OM dated 7-2-1986 was prospective in operation however submitted that acting on the directions given by the Tribunal in OA 156/86 and 1019/92 the respondents comprehensively examined the question and adopting a pragmatic approach in the matter in order to avoid compartmentalisation as from 1972 to 1977, 1977 to 1986 and from 1-3-86 onwards and rather with a view to bring about uniformity



and avoid complications had decided to revise the intense seniority of Inspectors in Central Excise only in Hyderabad, Guntur and Visakhapatnam Circles (vide letter dt. 2-4-90) after holding consultations with Ministry of Finance, Ministry of Law and Department of Personnel and Training, Government of India and therefore the impugned seniority list cannot be described as arbitrary or illegal and may not be disturbed. The learned Standing Counsel also submitted that after the decision in OA 156/86 seniority lists were issued on 25-8-89, 28-6-91 and 16-10-92 but to none of them the applicants in present OAs had objected hence their challenge to the list dt. 30-4-92 is hit by laches. He therefore urged for dismissal of the instant OAs.

15. With the elaborate arguments of the respective learned counsel we consider the following points necessary to be decided:

- i. Whether the official respondents have correctly applied the directions given in OA 156/86.
- ii. Whether their action in revising the seniority from 1972 travels outside the scope of directions in the aforesaid OA?
- iii. Whether OM 35014/2/80-Estt(D) dated 7-2-86 of Department of Personnel and Administrative Reforms has been erroneously applied retrospectively while preparing the impugned seniority list?
- iv. Whether adhoc promotees have been erroneously given benefit of higher seniority while that should have been based on the OM dated 7-2-86 applying it prospectively?
- v. Whether benefit of OM No. 9/11/55-RPS dt. 22-12-1959 of the Ministry of Home Affairs would be available to direct recruits in respect of whom the recruitment process had begun prior to 7-2-86?
- vi. Whether the impugned list suffers from various infirmities mentioned in OA 285 of 94 and is vitiated?

We shall now proceed to examine these points:

K

: 36 :

16. The OM dated 22-11-59 provided that relative seniority of direct recruits and promotees shall be determined according to the rotation of vacancies between them which shall be based on the quotas of vacancies reserved for each given in the Recruitment Rules. Thus by application of these provisions there could be cases of direct recruits shown as senior to promoted persons with longer years of service after promotion and vice versa. These principles were modified by the OM dated 7-2-86. The revised principles did away with the system of assigning an earlier year of seniority to persons who were appointed in later years. It is provided in para 7 of the OM that the OM shall take effect from 1-3-86 and seniority already determined in accordance with the existing principles on the date of issue of the OM ie., 7-2-86 will not be reopened. Clearly therefore the said OM was prospectively applicable. That is also so declared by the Full Bench of CAT as mentioned earlier.

17. No question therefore of applying the modified principles to those whose seniority was regulated by OM dated 22-12-1959 upto 1-3-86 could arise. The official respondents must be held to have acted in contravention of rules by revising the seniority of these officials who were governed by OM dated 22-12-59 which they have done while issuing the impugned revised seniority list dt. 30-4-93 for reopening the seniority from 1972 and determining the same in accordance with the modified principles contained in OM dated 7-2-86 applying it retrospectively and unsettling the settled seniority prevailing from 1972 upto 28-2-86.

18. The letter of the office of the Collector of Customs and Central Excise, Hyderabad No.C.No.II/34/3/93-Estt dated 30-4-93 whereunder the impugned seniority list was circulated recites the circumstances leading to the revision and principles followed to be as follows:

K

: 37 :

Sub: Estt--Revision of seniority list of Inspectors of Central Excise of Hyderabad, Guntur and Visakhapatnam Collectorates as on 1-1-1992.

Seniority list as on 1-1-1992 in the cadre of Inspectors of Central Excise of the combined Hyderabad/Guntur and Visakhapatnam Customs and Central Excise, Collectorate is revised from 1-1-72 onwards.

2. The circumstances leading to be revision and principles followed for the purpose are as follows:

-se-

(i) Till 1983 inter-seniority of Inspectors was determined in terms of OM No. 9/11/55 RPs dated 22-12-59 of the Ministry of Home Affairs. This OM envisaged that inter-seniority between direct recruits and promotees shall be determined according to rotation of vacancies (3:1). This office Memorandum was amended by OM No. 35014/2/88 Estt dated 7-2-86 according to which the rosters are to be maintained year-wise. The Central Administrative Tribunal, Hyderabad Bench in OA.No. 156/86 directed the Department to refix the seniority of the petitioners in terms of the amended office Memorandum dated 7-2-1986.

(ii) The instructions contained in Ministry's letter No. 11019/20/72 Ad.IV dated 22-7-72 read with letter F.No.12014/2/84-AdIIIA dated 26-4-84 prescribing the procedure for fixation of seniority have been followed. Accordingly sub-Inspectors upgraded on 1-8-72 are kept enblock senior to the Inspectors joined after 1-8-72.

Following the above principles seniority list of the Inspectors has been revised taking the ratio between the direct recruits and promotees as under:

Period upto 1-8-72	:	SI	:	UDC/STENO	:	DR
		2		1		1

Period after 1-8-72	:	DR	:	Promotee
		3		1

4. In this list the seniority of the officers who have joined and confirmed till 31-12-71 has not been disturbed. From 1-1-72 till 31-7-72 it is revised in the ratio of 2:1:1. The left-over direct recruits are placed enblock at the end. Sub Inspectors who had been upgraded with effect from 1-8-72 are kept enblock above the officers who had joined after 1-8-72. Thereafter the ratio of 3:1 has been followed for each calender year, keeping enblock the remaining Direct Recruitments/Promotees at the end of the particular year.

5. While preparing the above seniority list senior has assumed charge later than one or more his juniors in the same cadre., the earlier date of assumption of charge by the Junior officer has been reckoned as the date of assumption of the senior for making the year-wise demarcation.

K

6. The date of confirmation of the officers who have joined after 1-1-72 is not shown in the list though many of them have been confirmed, as the same is subject to revision. The revised date of confirmation will be incorporated subsequently.

7. All the controlling officers are requested to check with the service books of the individuals concerned and a report indicating the serial No. of the officer and the result of verification may please be sent to this office within the month from the date of receipt of this list. In respect of some officers certain columns have been left blank for want of relevant particulars. The requisite information may also be sent by the controlling offices to this office.

8. Any representation on this seniority list should be submitted through proper channel before 10-6-93. If no representation is received on or before 10-6-93 it will be construed that no individual officer has objection to his seniority and the seniority list shall be finalised.

(B.B.Prasad)
Deputy Collector (P&V)

19. The respondents have purported to give the impression that the revision was made as directed by the Tribunal in OA. 156/86. It is however pertinent to note that the order in the OA never directed to reopen and revise the determination of the seniority position since 1972 or to redetermine the same from that year according to the principles contained in the OM dated 7-2-1986. That OA was filed by the applicants against the seniority list dated 6-7-1985 and seeking a direction to determine their seniority by the length of continuous officiation in service in the grade of Inspectors. There could never arise any question on the face of the OA that the OM dated 7-2-1986 could be applied to them. Their grievance could only be dealt with under the then existing OM dated 22-12-59. The relief sought to the extent of the 5 applicants concerned did not contemplate wholesale revision of seniority of other officials much less from 1972. The division Bench accepted the contention of the applicants that the principles

K

enuniciated by the Hon'ble Supreme Court in Janardhana vs. Union of India & Ors. SLR 1983 (1) P.564 were attracted and the seniority of the applicants was required to be determined on that basis. That could be only with reference to 1985 list. That also is clear when it was noted that the provisional list was published on 6-7-85 and objections were invited and the applicants had submitted their objections. The below noted observations from the judgment have to be necessarily understood in that context. It was held:

"The applicants are entitled to get their seniority revised in accordance with the principle laid down by the Supreme Court in the decision referred to above (Janardhana's case) and which was accepted by the Government of India, Department of Personnel & Administrative Reforms OM 35014/2/80-Estt.(D) dated 7-2-1986."

The provisions in the OM were thus construed as based on Janardhan's case. Even when that was so held having regard to para 7 of the OM to which reference was not made the said OM could not be applied. The reference to the OM was in the limited sense as directing determination of the seniority of those applicants (only) under the pre-existing rules keeping in mind the decision of Supreme Court on Janardhana's case. The direction given in the end was:

"We therefore direct the respondents to recast the seniority list in accordance with the OM referred to above after following the usual procedure of giving notice to the affected parties etc....."

Although there is room to say that the direction was want confusing yet it did never contemplate destruction of seniority of others who were not concerned with the determination of the applicants' seniority vis a vis 1972. much less from 1972.

K

20. We also find that having regard to the subject matter of the OA the direction given which could imply retrospective application of OM dated 7-2-1986 was per incuriam and cannot bind any other parties than the applicants in OA 156/86 and we may add the applicant in OA 1019/92. The stand of the official respondents in the counter in that OA indeed was that the OM was prospective in operation. They also tried to challenge the decision in the Supreme Court but the SLP was dismissed as barred by limitation. The respondents appear to have taken the step of revising the seniority positions from 1972 applying the OM dated 7-2-86, retrospectively possible to avoid contempt proceedings having been unable to maintain the challenge in the Supreme Court. Even though the respondents may have acted reading the operative direction literally they were not entitled to travel beyond considering the position only of the applicants in the two OAs. They could have sought a clarification from the Tribunal as regards the true impact of the direction but they did not. We are of the opinion that as the said direction was per incuriam and as it was contrary to para 7 of the OM given without declaring the OM to be retrospectively applicable after quashing para 7 the decision does not lay down a binding precedent and further as the decision stands implicitly overruled by the decision of the full bench it does not raise a bar of resjudicata against the applicants in the instant OAs and other aggrieved persons who were not parties to that decision. Same considerations apply to the decision in OA 1019/92. We have therefore no hesitation in holding that the basis on which the impugned seniority list was issued as wrongly adopted and that vitiates the same. We are further of the opinion that the decision of

K. Nar

the respondents to revise the seniority of the Inspectors from the year 1972 cannot be correlated with the direction of the Tribunal in OA 156/86 and must be regarded as an administrative decision taken in respect of Hyderabad, Guntur and Visakhapatnam circles and that affords an independent cause of action to the persons aggrieved by the list dated 30-4-1993 including the present applicants to challenge its validity. We hold that the decision in OA 156/86 does not create a bar of resjudicata in the way of the present applicants.

21. The salutary principle being that a settled position should not be ordinarily unsettled applies in this instance with all regour in favour of the applicants rather than the official or private respondents. By altering the seniority since 1972 in 1993 nearly after 21 years it cannot but be described as unsettling a settled position causing enormous hardship to the affected parties and entails evil consequences for them. The impugned senioritylist stands vitiated on that ground also. Since the present applicants were not parties to OA 156/86 and 1019/92 and it was the decision of Government taken after the said decisions differently the cause of action arose to the applicants only on 30-4-93 when the impugned list adversely affecting them was published. Hence there arises no question of laches or delay on their part to approach the Tribunal. We hold accordingly.

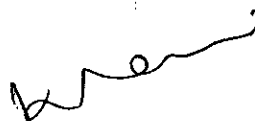
22. Next question is about the applicants in OA 906/94. We are unable to accept the contention that merely because the selection process for direct recruits had started in 1985 and although the applicants were appointed after 7-2-86 which fact is not in dispute they should be governed

K. N.

: 42 :

by OM dt. 22-12-59. Mere consideration for selection does not vest any right in the incumbent obviously if not finally selected or appointed and no right to the post is acquired. It is only after the selection process culminates in appointment that the right to the post is crystallised. By seeking the 1959 OM to be applied the applicants want the official respondents to commit the same wrong other way round as they have already committed in applying the OM dated 7-2-86 retrospectively to pre 1986 inspectors. Hence we reject the claim of these applicants.

23. It is averred by the applicants that the persons who had filed OA 156/86 and OA 1019/86 were mere adhoc appointees. Adhoc service does not avail for seniority till regularisation is granted more so where the adhoc appointment was made dehors the rules. Such of the adhoc appointees whether in regular establishment or in cost recovery posts or in work charged establishment who were appointed regularly after 7-2-86 will necessarily be governed by the OM dated 7-2-86 and their seniority determined from the date of eligibility to count the seniority. It is seen that applicants in the two earlier OAs had not disclosed that they were adhoc appointees. Even on the basis of their adhoc promotion as Inspectors in 1983-84 the seniority of applicants (in OA 156/86) was determined on the basis of principles contained in OM dated 22-12-59 regulating the quota of direct recruits and promotees as was stated by the official respondents in their counter filed in the OA. Those applicants therefore could not steal a march over their seniors. However the nature of adhoc appointment, the intense disputes between such persons etc., are factual questions which the official respondents have to decide in individual cases. We are

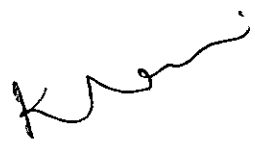


: 43 :

not called upon to carry out that exercise. For instance G. Gopal Krishna Rao (applicant in OA 285/94) has averred that "the seniority fixation of J. Chakradhar Rao (Applicant No.1 in OA 156/86) - adhoc promotee inspector whose services were regularised on 8-4-1986 as shown on page 29 at Sr.No.611 of the seniority list (ie. 1985 list) should be shown below the placement of the applicant who is regularly appointed w.e. from 23-12-85". Such questions are required to be examined by the authorities concerned as these involved determination of facts. Taking the averment as it reads the picture that would emerge would be that seniority of G. Gopal Krishna Rao will be governed by 1986 OM. Whether T. Chakradhar Rao was adhoc or temporary or fail within the ambit of 1959 OM on that basis involves enquiring into the facts the principle being required to be followed that OM dt. 7-2-86 would not apply to cases covered by 1959 OM. We now turn to other glaring irregularities allegedly existing which vitiate the impugned seniority list dt. 30-4-93.

24. It is argued by Mr. Chary that unless there was breakdown of quota-rota rule the respondents could not revise the seniority list inconsistently with that rule and as that has precisely been done the action of revising the seniority is illegal. We are inclined to accept this submission. Neither the preamble to the impugned seniority list nor the counter of official respondents mentions that the quota rota rule had broken down. The impugned list is therefore rendered invalid.

25. In OA 285/94 following infirmities in the impugned list have been pointed out:



- i) The list contains names of several dead officers. Names at Sr.Nos. 955 & 994 are illustratively mentioned.
- ii) The list also contains names who had resigned and were no longer in service. Example of Sr.No.1169 is cited.
- iii) Likewise names of retired persons are included. Sr.Nos. 1,2,1160 are illustratively, mentioned.
- iv) Several persons who were transferred have been included. Sr.Nos. 927, 928, 941 and 945 are mentioned. It is contended that the respondents have gone beyond their territorial jurisdiction in including such persons.

26. There is no rebuttal offered by the official respondents. There infirmities are by itself sufficient to vitiate the impugned seniority list.

27. There is merit in the submission of the applicants that their objections were rejected mechanically without application of mind. At least one reply rejecting an objection shows that it was sent on a date earlier to the date of representation itself. However, it is not necessary to consider this aspect further in view of above discussions.

28. We may now refer to Janardhan's case: SLJ 1983 P.564 (AIR 1983 SC 771) in the context of above narration.

The ratio laid down therein is that where the quota rule did not apply the rota for confirmation also disappears and in the absence of any other rule continuous officiation would be the only available rule for determining inter-se seniority. It was held in that case that recruitments made in relaxation of the quota. The instant cases are clearly distinguishable. Further there was neither failure of quota nor it was relaxed and secondly


K

there was rule applicable namely under OM dated 22-12-59. We are of the opinion that the decision of the Hon. Supreme Court in Mervyan Contino and others v/s. Collector of Customs Bombay 1963 SCR600 as explained by the Supreme Court in Gaya Baksh Yadav vs. Union of India & Ors. 1996 (4) SLR 47 would govern the instant case. Relying on these decisions a Division Bench of Madras Bench of CAT in V. Anusya vs. Union of India and others: OA 1376 of 1995 decided on 17-10-96 has in a similar matter held as follows:

"From the above, we note that the principles laid down in 1959 OM were held to be legal by the five Judge Bench in Mervyan continto's case. These principles are to be followed till such time there is change in recruitment rules doing away with the quota system or the principles themselves are revised. In the case before us neither party was produced and rules to bring out that there has been change in the rules doing away with the quota system. The principles of seniority enunciated in the 1959 OM were altered by the Government in the 1986 OM. This letter OM clearly provided that the new principles would be applied prospectively and the seniority decided earlier would not be disturbed."

We entirely agree with this view. The observations apply to the instant cases. The respondents have therefore acted illegally in revising the seniority from 1972 by applying the principles contained in OM dated 7-2-86 retrospectively and inconsistently with 1959 OM in OM dated 7-2-86 retrospectively and inconsistently with 1959 OM.

19. To sum up our conclusions are as follows:

1. The OM dated 7-2-86 has prospective application.
 2. Inter-se seniority prior to 1-3-86 has to be regulated in accordance with 1959 OM.
 3. There was no break down of quota rule. Hence OM 22-12-59 has to be followed.
- 

4. The cases of those who were officiating as Inspectors prior to 1-3-86 but regularised after that date are acquired to be individually decided after determining the nature of officiation nature of the post to which the officiation related and the provisions of OM 1959 and cannot be generalised.
5. Where the selection process was commenced prior to 1-3-86 for direct recruitment but the appointment was made after that will be governed by the OM dt. 7-2-86.

We held that while the revised seniority list dated 30-4-93 was prepared the above principles were not followed. We further held that the list stand vitiated due to several infirmities mentioned earlier. We therefore declare the impugned seniority list of Inspectors dated 30-4-93 to be illegal and liable to be struck down. We do not consider it necessary to refer to the other rulings cited by the counsel.

20. In the light of the foregoing discussion following order is passed.

ORDER

The impugned revised seniority list of Inspectors of Central Excise of Hyderabad, Guntur and Visakhapatnam Collectorates as on 1-1-92 issued by the Collector of Customs and Central Excise, Hyderabad vide order C.No.11/34/3/93-Estt dated 30-4-1993 is hereby quashed and set aside. The (official) proponent may take such consequential steps as may be called for in accordance with the law.

OA 1323/93, OA 235/94 and OA 906/94 are accordingly allowed. No order as to costs.

Each OA however shall be treated as separately decided and copy of this order ~~will~~ shall be separately kept on record of each OA.

/true copy/



Sub: Estt--Revision of Seniority in the grade of
Inspectors - Reg.

The Commissioner-I, Hyderabad vide note orders dated 2-5-97 constituted a "Special Cell" for the re-fixation of the seniority in the cadre of Inspectors, adverting to the decision taken in the JCM on 1st May, 1997 and ordered that the "Special Cell" may be supervised by Sri P. Subbaraya Sastry, Superintendent and Administrative Officer (Estt), Sri V.Joji Reddy. It is also ordered that as far as the Inspectors are concerned, the Inspectors to work in the cell may be got nominated by their Association.

Accordingly, as per the consent of the Association,

S/Sri G. Gopala Krishna Rao,	Inspt.
V. Soma Sundara Sharma	Inspt.
N. Panduranga Rao	Inspt.
K. Subbaraya Gupta	Inspt.

all working in Selective Audit, were drafted to render their services in the "Special Cell" till the completion of the above aspect of work, as ordered by the Deputy Commissioner (P&V) vide file C.No.II/34/12/97 Estt.7 on 6-5-97.

Thus a "Special Cell" with the assignment of refixing the seniority in the cadre of Inspectors, started functioning from 9-5-97. The refixation of seniority is consequent on the decision of the Hon'ble CAT, Hyd. vide their order dated 13-2-97 quashing and setting aside the seniority list of Inspectors of CE and directing the department to take such consequential steps as may be called for in accordance with the law and as per the instructions issued by the Board in file No. A-23024/33/93 ADIII.A dated 22-4-97 directing to take necessary implementation action.

To implement the orders of the Hon'ble CAT, Hyd. in light of the instructions issued by the Board, a brief

K

history of the issue of the fixation of seniority and the disputed aspects of the same and the related Hon'ble CAT orders are to be looked into.

The seniority lists in the cadre of Inspectors are being issued at regular intervals, more or less every year right from 1972 onwards and the last list issued in 1993, was communicated vide Collector's letter dated 30-4-93 issued from file C.No.II/34/3/93 Estt. - informing the seniority of officers as on 1-1-92, which formed the basis for the contests versions of the Direct Recruit Inspectors and promotee Inspectors regarding their claims in relation to the fixation of the seniority which culminated in the Hon'ble CAT order dated 13-2-97. The seniority list, issued on 30-4-93 was named as Revised seniority list of the Inspectors and the seniority was recast from the year 1972 onwards, after revising the positions of the officers. The reasons for such revision of seniority and refixing of the seniority of the Inspectors are very much provided for in the letter to which the list is enclosed.

Some of the Direct Recruit Inspectors, the applicants in different cases, ie., OA 1323/93, OA 285/94 and OA 906/94 filed before the Hon'ble CAT Hyd. who are the aggrieved officers agitated before the Hon'ble CAT, the way their seniority is recast by revision vide the said list issued on 30-4-93 whereby promotees were given an advantage over the Direct Recruit officers; in implementing the instructions issued by the DOP&T in OMs dated 22-12-59 and 7-2-86. The Dept. while revising the seniority in the cadre of Inspectors

Kran

from 1972 till 1-1-92 had taken a stand that the said revision was necessitated because of the implementation of the orders of the Hon'ble CAT, Hyd. in another OA.No.156/86 which supposedly was in contravention of the earlier system followed in fixing the inter se seniority of Direct Recruit Inspectors and promotee Inspectors as the SLP filed by the Dept. against the order in OA 156/86 before the Hon'ble Supreme Court was dismissed (as time barred). The said consequential revision resulted in re-fixing the seniority, had given undue advantage to the promotee officers providing for a gain to the promotees, undeserving seniority over the Direct Recruits of relevant and related periods: as contested in the three OAs mentioned earlier.

The Hon'ble CAT considering the submissions urged by the Applicants in these three OAs and the contentions put forth by the Dept. delivered the said order dated 13-2-97 ordering ---

"The impugned seniority list of Inspectors of C.Ex. Hyd. Guntur and Visakhapatnam Collectorates as on 1-1-92 issued by the Collector of Customs and Central Excise, Hyderabad vide order C.No.II/34/3/93 Estt. dated 30-4-93 is hereby quashed and set aside. The official respondents may take such consequential action as may be called for in accordance with law.

OA 1323/93, OA.285/94 and OA 906/94 are accordingly allowed. No order to costs."

The applicants in the three OAs against which the Hon'ble CAT has delivered the order urged that: (as per the version of the CAT)

OA 1323/93 - filed by 21 Inspectors of C.Ex. working at Excise Collectorates, Hyderabad who are direct recruits appointed in the year 1984, 1985 and 1986 respectively. They are aggrieved by the seniority list of Inspectors issued by the respondents on

[Signature]

30-4-93 and pray for setting aside the same and restoring the earlier list dated 16-10-92.

OA 285/94 has been filed by a single applicant who is also an Inspector, C.Ex. at Hyderabad and a direct recruit, appointed on 23-12-85. He is also aggrieved by the seniority list dated 30-4-93 and prays for setting aside the same and restoration of his seniority position as reflexed in earlier list dated 20-11-86.

OA 906/94 is filed by 14 direct recruit Inspectors of Central Excise working in Central Excise Collectorate, Hyderabad. They are also aggrieved by the seniority list dated 30-4-93 and seek a direction to the official respondents to recast the list correctly.

These personal submissions are based on different issues involved in fixing the seniority and as such the Hon'ble CAT has categorised such relied upon issues in support of their individuals submissions and delivered a common order. (As per the version of the Hon'ble CAT)

The judgment of the Hon'ble CAT Hyd. can for the sake of convenience of appraisal and better understanding be made into five parts:-

(As per the own versions of the Hon'ble CAT, Hyd. itself).

1) Submissions urged by the counsel for applicants in OA 1323/93 and 285/94 on behalf of Direct recruits and additional submissions urged by the applicants in OA 906/94.

2) Issues considered necessary to be decided by the Hon'ble CAT, Hyd.

3) Reasoning, discussions and observations of the Hon'ble CAT, Hyd.

Kno

- 4) Conclusions and
- 5) Order (operative portion)

The above 5 different aspects of judgment are reproduced in the following pages (either as a whole or in the form of extracts depending on the requirement of the situation) for ready reference and perusal.

xxxxxx

CONCLUSIONS

1. The OM dated 7-2-86 has prospective application.
2. The interse seniority prior to 1-3-86 has to be regulated in accordance with 1959 OM.
3. There was no breakdown of quota rule. Hence OM dated 22-12-59 has to be followed.
4. The cases of those who were officiating as Inspectors prior to 1-3-86 but regularised after that date are required to be individually decided after determining the nature officiation, nature of the post to which the officiation is related and the provisions of OM 1959 and cannot be generalised.
5. Where the selection process was commenced prior to 1-3-86 for direct recruitment but the appointment was made after that date that will be governed by the Om dt. 7-2-86.

We hold that while the revised seniority list dated 30-4-93 was prepared, the above principles were not followed. We further hold that the list stands vitiated due to several infirmities mentioned earlier. We therefore declare the impugned seniority list of Inspectors dated 30-4-93 to be illegal and liable to be struck down.

[Handwritten Signature]

We do not consider it necessary to refer to other rulings cited by the counsel.

In the light of the foregoing discussions following order is passed:

ORDER

The impugned seniority list of Inspectors of Central Excise of Hyderabad, Guntur and Visakhapatnam Collectorates as on 1-1-92 issued by the Collector of Customs and Central Excise, Hyderabad vide order C.No.II/34/3/93 Estt. dated 30-4-93 is hereby quashed and set aside. The Official respondents may take such consequential steps as may be called for in accordance with the law.

OA 1323/93, OA 285/94 and OA 906/94 are accordingly allowed. No order to costs.

Each OA however shall be treated as separately decided and copy of this order shall be separately kept on record of each OA.

Thus: --

It was held by the CAT at the end of the conclusions that the principles mentioned in summed up conclusions were not followed while preparing the revised seniority list dated 30--4--1993.

Ultimately it was ordered for the above reason and for some other infirmities, the said list was quashed and set aside and the official respondents may take such consequential steps as may be called for in accordance with the law.

In light of the observations made, conclusions drawn and the order issued, it is to be construed the principles

[Signature]

enumerated in the "conclusion portion" are to be complied with to take consequential steps which shall be in accordance with the law, keeping in view the observations made in relation to different situations.

Therefore, to implement the order of the Hon'ble CAT the following aspects shall be taken care of/considered.

- (A) Seniority prior to 6-2-1986 shall not be altered, if in accordance with the provisions of OM dated 22-12-1959.

-inasmuch as it is observed by the Hon'ble CAT that -

"It is provided in para 7 of the OM dated 7-2-86 that the OM shall take effect from 1-3-86 and seniority already determined in accordance with the existing principles on the date of issue of OM ie. 7-2-86 will not be reopened". (Para 16)

- (B) Seniority list issued in 1985 shall not be disturbed, implying to indicate there is no reason to think of disturbing the seniority from 1972 onwards.

inasmuch as the Hon'ble CAT observed that -

"Although there is room to say that the directions were somewhat confusing (wrt the decision in OA No. 155/86) yet it did never contemplate disturbing the seniority of the others who were not concerned with the determination of the applicants seniority vis-a-vis 1985 list much less from 1972" (Para 19).

- (C) The Seniority from 1972 to 6-2-86 is settled

inasmuch as the Hon'ble CAT observed that -

"No question therefore of applying the modified principles to those seniority was regulated by OM dated 22-12-1959 upto 7-2-86. The official respondents must be held to have acted in contravention of rules by revising the seniority of those officials who were governed by OM dated 22-12-1959 which they have done while issuing impugned seniority list dated 30-4-93 for reopening the seniority from 1972 and determining the same in accordance with the modified principles contained in OM dated 7-2-86 applying it retrospectively and unsettling the settled seniority prevailing from 1972 up to 6-2-86.

K

: 54 :

From the foregoing three observations of the Hon'ble CAT cited, it is to be understood that the seniority prevailing from 1972 upto 6-2-86 is settled (in other words the seniority list issued as on 1-1-1986 which could be in all probability is in accordance with the provisions of OM dated 22-12-59) and hence, need not be disturbed. Hence, in making an attempt to recast the seniority of Inspectors, in list issued as on 1-1-86 shall be taken as the basis; and the seniority of the officers later to that date is to be fixed as directed by the Hon'ble CAT. Therefore, it is construed that the seniority list as on 31-12-1985 without revision shall form basis for the present exercise.

To proceed further in conducting the exercise of fixation of interse seniority of direct recruit Inspectors and promotee Inspectors the "Cell" felt relevancy of perusal and examination of the undermentioned files and correspondence.

1. Register indicating the vacancy position; and quota for direct recruits and promotees to be maintained as contemplated under OM dated 7-2-86. Even as per OM dated 22-12-1959 a roster is expected to be maintained, on the above times.
2. Files containing correspondence relating to vacancy position, intimations given to SSC (year wise or at regular intervals, or as and when found necessary) (and CBSE if any, and clarifications received from the Board) and nominations in respect of selected candidates for direct recruitment and related appointments as maintained by the Establishment section.
by the Establishment Section.
3. Files relating to DPC panels and selected lists with reference to the promotion orders to UDCs/Stenographers of the department to the grade of Inspector.
4. Appointment orders issued to the promotees and related regularisation orders in cases where the promotions were on adhoc basis.

The above files and correspondence were felt significant and crucial by the "Special Cell" to arrive at the vacancy positions, the ratio between the DRs and promotees, which are

pre-requisite for fixation of the quota and ultimately fixation of seniority, in consonance with the OMs dt. 22-12-59 and 7-2-86.

Of these records/files ---

- (1) the register indicating vacancy position etc. is not maintained/available.
- (2) Inasmuch as the seniority earlier to that of 6-2-86 list as on 31-12-85 is felt not to be revised, the vacancy position in total vis-a-vis the direct recruits and promotee quotas is to be ascertained before fixing the positions of direct recruits and promotees in 3:1 ratio. At this juncture, the files mentioned at Sl.No.(2) above were a pre-requisite. Though, the files made available to the "Special Cell" are for the years 1983 onwards uptill 1991, the information contained therein is not exhaustive. These files could give only a broad idea of vacancy position intimated to the SSC yearwise/at frequent regular or irregular intervals.
- (3) Files relating to DPC panels for the years 1983 to 1991 (except 1989 where no DPC was held) as made available were perused and examined to ascertain the position of yearwise number of promotions given to UDCs/Stenographers working in the department, to the cadre of Inspectors.
- (4) Appointment orders issued to promotee officers and the regularisation orders when they are promoted on Adhoc basis were also perused and examined.

The records mentioned at Sl.No.(4) above are of more specific relevancy inasmuch the Hon'ble CAT in its order dated 13-2-97 in the portion termed "to sum up our conclusions" opined that ---

"The cases of those who were officiating as Inspectors prior to 1-3-86 but regularised after that date are required to be individually decided after determining the nature of officiation nature of the post to which the officiation related and the provisions of OM 1959 and cannot be generalised."

To proceed ahead with the exercise mentioned above, a file bearing C.No. II/39/42/88 Estt. containing the information about the regularisation of the promotee officers who



were given promotion on Adhoc basis, which serves a very good purpose, was examined. The contents in the note file and correspondence file and correspondence file of this file need elaborate analysis for the reason, the major issued ordered to be decided by the Hon'ble CAT is examination of adhoc promotions to the cadre of Inspectors and their regularisation on individual basis.

In the cited file an establishment order EO (NGO) No. 151/88 dated 27-10-88 is available at page No. 4 on correspondence side whose subject reads as -

"Sub: - Establishment-regularisation of the services of Inspectors who were promoted on "adhoc" basis ordered."

and the order portion reads as -

"In supersession of all the earlier orders of this office in respect of regularisation of Inspectors promoted on purely 'adhoc' basis, the following Inspectors promotees are regularised in the cadre of Inspector with effect from the dates mentioned against their names ie. the date on which they have joined as Inspectors."

This order contains names of 137 promotee Inspectors promoted on adhoc basis from 21-6-1983 to 12-10-1988.

As can be seen from the order itself, it is to be understood, as it is very clear that the officers figuring in that order were originally promoted to the cadre of Inspectors on adhoc basis, later regularised on different dates and ultimately regularised vide this order with effect from those dates on which they have joined as Inspectors.

The back ground for issuance of this order is provided for in the page I of the note portion of the same file. The note found therein briefly reads as -

K. S. S.

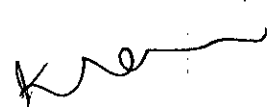
"The usage of the word viz., "ad hoc" may be with a view that posts were temporary. But it may lead to confusion and complications in future. The orders of promotions of Inspectors and UDCs are still continued as 'ad hoc' basis though the vacancies are not of short period and the candidates found fit by the regular DPCs. Continuation of this practice may not be correct and may lead to confusion/administrative inconvenience in fixation of seniority etc., on regularisation of their services in a later period i.e. after 1 to 1 1/2 years. In view of the above we may issue an order regularising the services of the ad hoc promotees from the date of their joining in the cadre, in supersession of all the earlier orders in respect of regularisation and the usage of the word "ad hoc" may be discontinued in future."--

This note was approved and the cited order was issued.

This situation generates all doubts and creates a situation of confusion, keeping a stumbling block in going ahead with the assigned exercise.

An attempt is made to clear the block by looking into the DPC panels concerned. As a result the situation of confusion gets confounded; for the reason, majorly the DPC observations and notings do not speak about the ad hoc nature of the promotions, on the contrary clearcut notings/mentions are made that the vacancies for which promotions are proposed to be given to the UDCs/Stenographers, are existing or anticipated which speak of the fact that these vacancies are regular but not otherwise. When such is the situation, it is not understood why the appointment orders issued to promotees are indicative of the aspect they are on "ad hoc" basis and why they need regularisation at all; as was done at regular intervals, ultimately superseded by one time sweeping order, regularising 137 officers, with the dates on which the promotee inspectors joined.

Here it needs to be considered/decided whether in fact the vacancies in the cadre of Inspectors for which promotions



were given are regularised (based on DPC notings) or the promotions were given on 'ad hoc' basis (based on posting orders given at the beginning, orders given at regular intervals regularising the services of 'ad hoc' promotees and lastly single order regularising all the 137 officers at one stroke: superceding earlier orders). To arrive at conclusive decision, the entire situation needs further analysis.

Here it is to be mentioned that as per the posting orders given to the promotee Inspectors, their promotions are on 'ad hoc' basis, as such naturally they require to be regularised. Accordingly the promotion orders issued on ad hoc basis were considered and regularisation orders were issued at a later date, as per relevant regularisation orders. In this process, it is observed that officers promoted in 1983 were regularised in 1986, officers promoted in 1984 were regularised in 1987 and 1988 and so on; indicative of the fact that the respective regular vacancies arose only in those years against which regularisation orders were originally issued. If this logical situation is accepted, there would not be any necessity for issuance of the order No. 151/88 dated 27-10-1988 which supercedes all the earlier orders, and which regularises the services of those promotee officers, with the dates on which they have joined. Here it is to consider that no regularisation could be made without a regular vacancy; as per the prevalent law. When once the regularisations were ordered with effect from the dates of their respective appointment. It is implied that the vacancies were available on regular basis on those dates. Hence, there would not be any ground to issue orders



of promotion and related appointment, which speak of adhoc nature. As such all the three aspects mentioned ie., DPC observations indicative of regular nature of vacancies; orders of promotion and appointments on adhoc basis and their related regularisation orders issued at regular intervals; and omnibus single order regularising promotees with their respective dates of joining, run against each other in their interests.

In light of the cited available factual situation, even if it is considered that the promotions were not on adhoc basis, but against regular vacancies, taking DPC observatory notes as standard (with an implied compliance to the quota of DRs and promotees as 3:1 as per recruitment rules) that the usage of the word adhoc was by mistake and off-shoot regularisation orders are superfluous; a proportionate quota of Direct Recruit officers vis-a-vis the promotions ordered in the respective years, should have been maintained as required by the Recruitment Rules, 1979; this was also not done as can be seen from the available statistics. The details are enumerated hereunder:-

Yearwise promotions ordered are as follows:

1983	-- 23
1984	14
1985	21
1986	38
1987	10
1988	41
1989	23
1990	37
1991	55

To maintain the proportions of DRs and promotees, the selecting agency SSC must have been informed of the vacancy position for getting in turn nominations of selected candidates for Direct Recruitment, before going ahead with the process of promoting Departmental officers to the cadre of Inspectors. As against the above mentioned number of promotees appointed yearwise,

K. R.

: 60 :

there should have been intimations given to SSC seeking the undermentioned number of Direct Recruits on selection year-wise.

1983	..	69
1984		42
1985		63
1986		114
1987		30
1988		123
1989		69
1990		111
1991		165

Inasmuch as the number of officers given promotion is factually available, an attempt is made to look into the correspondence made with SSC and Vice-versa, to know the actual number of direct Recruit candidates sought for appointment by the department.

Unfortunately, the number of Direct Recruits sought for as sponsored by the SSC, year-wise, is totally disproportionate, disturbing the balance of ratio of DRs and promotees viz., 3:1 as illustrated below:

1983
1984
1985
1986
1987
1988
1989
1990
1991

The number of candidates sought for from SSC are worked out basing on the available record. As it is felt the available record in that particular direction may not be exhaustive, an attempt is made to arrive at such numbers based on actual appointment made in the respective years and the worked out details are as below:

K. S. S.

1983	=	5
1984		20
1985		35
1986		45
1987		40
1988		29
1989		11
1990		85
1991		18

Even this exercise leaves us in a situation where it is to be considered that the number of promotions ordered year-wise during the cited period are far more than the required number of 3:1 (DRS: Promotees) as per the ratio expected to be maintained. Giving allowance to a presumptive situation, the perusal of files of correspondence with SSC, is not exhaustive, the factual number of DRs appointed is taken as standard and ratio worked out.

The statistical data of yearwise promotions to the cadre of Inspectors, from the cadre of ministerial officers, year-wise number of appointments of Direct Recruit Inspectors, as sponsored by SSC and their proportions are tabulated hereunder:

Year	DRS appointed	Promotions ordered	Quota for promotion	Promotions in excess of quota	Available Ratio of DRS:P
1983	5	23	2	21	1:5
1984	20	14	7	7	3:2
1985	35	21	12	9	5:3
1986	45	38	15	23	9:8
1987	40	10	13	(1)3	4:1
1988	29	41	10	31	3:4
1989	11	23	4	19	1:2
1990	85	33	28	5	5:2
1991	18	69	6	63	1:4

=====

(Here it is to make a mention that year 1983 is taken as the starting point for the reason:-

There were no appointments either on Direct Recruitment side or on promotees side, during the period from 1980 to 1982.



Only in 1983 promotions to Ministerial officers are ordered and DRs from SSC are sought for from SSC.

Therefore, the No.175 of promotions ordered are to be considered in excess of the eligible quota for promotees vis-a-vis direct recruit appointments and such excessly promoted officers shall have to be placed as juniors to the Direct Recruit Inspectors in the respective years/later years as per the 3:1 positioning; giving allowance to bunching "enblock" depending on the context/situation, as per the OMs dated 22-12-1959 and 7-2-1986.

In support of the above opinion, extracts of OM dated 7-2-86 and of relevant case law are furnished alongwith.

"With a view to curbing any tendency of under reporting/ suppressing the vacancies to be notified to the concerned authorities for direct recruitment, it is clarified that promotees will be treated as regular only to the extent to which direct recruitment vacancies are prescribed in the relevant recruitment rules. Excess promotees, if any, exceeding the share falling to the promotion quota based on the corresponding figure, notified for direct recruitment would be treated only adhoc promotees". (Para 5)

"Similarly, when the promotees came to be promoted in accordance with the rules in excess of their quota, this Court stated in K.C.Joshi and others vs. Union of India and others (AIR 1991 SC 284) through a bench of three Hon'ble Judges that -

'the promotees in excess of the quota cannot be given seniority from the respective dates of their promotions. They have to be considered only from the respective dates on which their respective quota is available."

M.S.L. Patil vs. State of Maharashtra

- Supreme Court Judgment reported in SLR 1997(1)

Basing on the version of OM dated 7-2-86, reproduced above and the order of the Supreme Court cited supra the mentioned opinion of the cell in revising the seniority of those officers promoted on adhoc basis, is put up for consideration and specific orders.

K. N.

Further to the above analysis conducted in respect of DRs and promotees with reference to fixation of their respective seniority, there is one particular issue relating to certain promotee officers whose seniority is to be fixed, based not only on the above analysis, but also considering the orders of CAT issued severally at different contexts and the OM dated 7-2-86. The orders of the CAT issued originally are with reference to OA 156/86 and OA 1019/92 and the officers concerned there are:-

S/Shri

1. T.Chakradhara Rao
2. C.Naganath
3. K.V.Someshwara Rao All are applicants in OA 156/86
4. P.Vijaya Sarathi
5. K.Satyanarayana

6. S.Padma Rao Applicant in OA 1019/92

The order of the Hon'ble CAT in 156/86 reads as follows:

"The applicants are entitled to get their seniority revised in accordance with the principle laid down by the Supreme Court in the decision referred to above (Janardhana's case 1982(2) SLR - inserted now for ready reference) and which was accepted by the Government of India Department of Personnel and Administrative Reforms OM No. 35014/2/86 Estt. dated 7-2-1986. We therefore direct the respondents to recast the seniority list in accordance with the OM referred to above after following the usual procedure of giving notice to the affected parties etc., With these directions, the application is allowed."

The Hon'ble CAT in OA 1019/92 observed as follows:

"This OA is similar to OA 156/86 which was disposed by the Bench of this Tribunal on 5-7-88 by directing the respondents to prepare a fresh seniority list by following the principles adumbrated in the judgment of the Supreme Court reported in SLJ 1983(1)564 and it was ordered that:-

"Revised seniority list as per the letter dated 31-1-92 has to be issued by the end of April, 1993"

The applicant has to be given promoted with effect from the date on which his junior is promoted either by way of regular promotion or adhoc promotion with all consequential benefits.

The OA is disposed off accordingly."

[Signature]

Both the mentioned judgments run in line with each other and the directions given there in nutshell are -

The applicants in both the OAs are to be given seniority as per the Supreme Court judgment and also as per the Om dated 7-2-86.

With this impression the seniority of these 5 officers was revised by applying those principles thereby these promotee officers became seniors to the Direct Recruits of later years.

This situation is challenged by certain direct recruits in several RAs. The points referred are (as per the version of full Bench of Hon'ble CAT):--

- "(i) Whether OM No.35014/2/80-Estt (D) dated 7-2-1986 of the Government of India, Department of Personnel and Training, is prospective or retrospective.
- (ii) Whether Janardhana's case 1982 (2) SLR113 lays down that entry into the grade has to be taken as the basis for fixing interse seniority of promotees and direct recruits even when the quota rule does not fail or whether the quota rule is not relaxed in cases where there is power of relaxation."

and it was observed that:

"Coming to the Second question first we may observe that Janardhana's case will have to be understood on its own and not as understood by the Tribunal in OA.No.156/86. No elucidation is required on this point.

"We answer the reference by stating that the office memorandum (dated 7-2-86) particularly paragraph 7 thereof is prospective in this operation."

It was also ordered that - "We have also not pronounced on the question whether an original application will lie against the seniority list which is the bone of contention between the parties. These are matters which will be considered by the appropriate Bench hearing the applications from which the review applications arise.

Reference is answered accordingly."

Accordingly the issue of those five applicants in these OAs 156/86 and 1019/92 are taken up for discussion by the Hon'ble CAT while delivering their order dated 13-2-97 and observed that:

Kre

"That OA was filed by the five applicants against the seniority list dated 3-7-85 and seeking a direction to determine their seniority by the length of their continuous officiation in service in the grade of Inspector. There could never arise any question on the face of the OM dated 7-2-86 could be applied to them. Their grievance could only be dealt with under the then existing OM dated 22-12-59."

"The relief sought to the extent of five applicants concerned did not contemplate wholesale revision of seniority of other officials much less from 1972". (As was done while issuing the seniority list on 30-4-93)

"Although there is room to say that the directions was somewhat confusing, yet it did never contemplate disturbing of the seniority of the others who were not concerned with determination of the applicants seniority vis-a-vis 1985 list much less from 1972". (Para 19 of CAT order)


We also find that having regard to the subject matter of the OA, the decision given which could imply retrospective application of OM dated 7-2-1986 was per incurium and cannot bind any other parties than the applicants in OA 156/86 and we may add the applicants in OA 1019/92." (para 20 of CAT order).

The above observation of the honourable CAT gives us an impression that those five applicants may have to be given the seniority as per the cited Supreme Court judgment and as per the OM dated 7-2-1986 placing them as seniors to DRs appointed in the later years.

Contrary to these observations, the Hon'ble CAT has observed at a later stage that --

"the decision stands impliedly overruled by the decision of full bench, it does not raise a bar of resjudicata against the applicants in the instant OAs and other aggrieved persons who were not parties to that decision. Same considerations apply to the decision in OA 1019/92" (this observation is with reference to OA 156/86 -- para 20 of CAT order).

"Adhoc service does not avail for seniority till regularisation is granted more so where the adhoc appointment was made dehors the rules. Such of the adhoc appointees whether in regular establishment or in Cost Recovery posts or in work charged establishment who were appointed regularly after 7-2-86 will necessarily be governed by the OM dated 7-2-1986 and their seniority determined from the date of eligibility to count the



: 66 :

seniority. It is seen that applicants in the two earlier OAs had not disclosed that they were adhoc appointees. Even on the basis of their adhoc promotion as Inspectors in 1983-1984 the seniority of applicants (in OA 156/86) was determined on the basis of principles contained in OM dated 22-12-1959 regulating quota of DRs and promotees as was stated by the official respondents in their counter filed in that OA. Those applicants therefore could not steal a march over their seniors". (para 23 of CAT order)

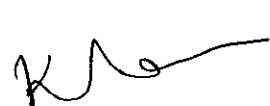
From the above mentioned two observations it is to be understood that the Hon'ble CAT has observed as above in contrast to their earlier observations (vide paras 19 & 20) reproduced to the extent necessary; giving us an impression those five applicants in those OAs. 156/86 and 1019/92 cannot be given seniority over the later year direct recruits.

As such there is an apparent contradiction of views by the Hon'ble CAT --

- 1) It could imply retrospective application of OM dated 7-2-1986 to those applicants
- 2) those applicants therefore could not steal a march over their seniors

Thus the situation of these five applicants is not directly answered by the Hon'ble CAT either while making observations or while delivering the order. The decision is left to be taken by the department with the comments--

"For instance the seniority fixation of Shri T. Chakradhar Rao (applicant No.1 in OA 156/86) adhoc promotee Inspector whose services are regularised on 8-4-1986 as shown in page 29 at Sl.No.611 of the seniority list (Ie. 1985 list) should be shown below the placement of Shri G.Gopalakrishna Rao, the applicant in the present OA who is regularly appointed with effect from 23-12-1985 as averred by the applicant. Such situations are required to be examined by the authorities concerned as these involve determination of facts. Taking the averments as it reads the picture that would emerge would be that seniority of Shri G. Gopalakrishna Rao will be governed by 1959 OM whereas



: 67 :

that of Shri T. Chakradhar Rao will be governed by 1986 OM. Whether Shri T. Chakradhar Rao was adhoc or temporary or fall within the ambit of 1959 OM on that basis invites enquiry into facts the principles being required to be followed that OM dated 7-2-1986 would not apply to cases covered by 1959 OM." (Para 23 of CAT order).

The situation of Sri G. Gopalakrishna Rao vis-a-vis Shri Chakradhar Rao as discussed by the Hon'ble CAT cannot only be confined to those two officers but also to be extended to other applicants in OA 156/86 and 1019/92 and their concerned others, as the discussion undertaken and observations made by the Hon'ble CAT is only "for instance". At the same time it cannot be extended to similarly placed other promotee officers, as it was opined by the retrospective application of OM dated 7-2-1986 in respect of those applicants in those two OAs.

Inasmuch as the CAT has observed two divergent opinions and directed to look into the actual position, it may not be out of context to consider the version mentioned in the OM dated 7-2-1986 while issuing the amendment to OM dated 22-12-1959 as was given there, to see whether it helps in sorting out the stalemate. The version reads as follows:

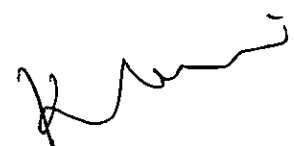
".....the practice followed at present is that the slots meant for direct recruits or promotees, which could not be filled up, were left vacant and when direct recruits or promotees became available through later examination or selection, such persons occupied the vacant slots, thereby become seniors to persons who were already working in the grade or regular basis. In some cases, when there was shortfall in direct recruitments in two or more consecutive years, this resulted in direct recruits of later years taking seniority over some of the promotees with fairly long years of regular service already to their credit. This matter had also come up for consideration in various court cases both before the High Courts and Supreme Court and in several cases, the relevant judgments had brought out the inappropriateness of direct recruits of later years becoming seniors to promotees with long years of service (para 2 of OM dated 7-2-86).

: 68 :

Seniority already determined in accordance with the existing principles on the date of issue of these orders will not be re-opened. These orders shall take effect from 1st March, 1986. (Para 7 of OM dt. 7-2-1986).

However, as at present, the seniority list which was issued on 30-4-93 (in revision of the earlier list issued on 1-1-1992) is set aside and quashed by the Hon'ble CAT. It is considered there is no seniority list and the seniority is to be re-fixed in total and the cut off date is taken as on 1-1-1986 as per the reasons given earlier. Therefore, there may not be anything improper in fixing the seniority of those five applicants in those two OAs 156/86 and 1019/92 in light of the views expressed by the DOPT, while discussing the necessity of the amendment to OM dt. 22-12-1959, though the OM dated 7-2-1986 is effective from 1-3-1986 as this exercise is not coming under the category of reopening of the seniority already determined for the reasons, this re-fixation would be in the spirit of the OM as it is against their specific request before the CAT. This situation can be confined only to those five officers and it cannot be extended to others as there are no specific requests from others. This view is felt to be taken for the reasons, in the orders in OA 156/86 and 1019/92, it is impliedly observed that those five applicants shall be given seniority over the later year recruits; and in the order dated 13-2-1997 the Hon'ble CAT (in the present order) had observed that the orders in respect of OA 156/86 is impliedly overruled by the full Bench and CAT has opined that the seniority of these five applicants is to be decided on individual merits.

Thus in the light of background of contradictory views it is to be decided whether



1) The order in OA. 156/86 could imply retrospective application of OM dated 7-2-1986 to those applicants including the applicant in OA.1019/92 as was done while issuing the list on 30-4-95.

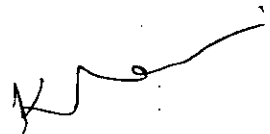
2) Those applicants in those two OAs cannot steal a march over their seniors, or

3) To decide the issue of their seniority on factual examination, whether the spirit behind in issuing OM dated 7-2-1986 is considered or not, when once it is decided, on any of the above aspects, the situation that emerges would be as follows:

Now that it is felt that some of the promotions given to the UDCs/Stenos during the years 1983 to 1991 are to be considered in excess of their quota, which implies that though the promotions are on regular/basis, they will have to sit in 3:1 ratio till the end of 1986 and thier promotions are not regular after 1-3-1986, it is to be examined whether these five applicants are promoted against regular vacancies or otherwise. Even if it is found they are promoted against regular vacancies, it is to be looked into whether the quota is maintained or not at the time of their appointment. If for the above two questions the answer is 'yes' their would be governed by OM dated 22-12-1959 and if the answer is 'No' their seniority is to be governed by OM dated 7-2-1986.

Next the issue of fixation of seniority of officers appointed under Sports quota and compassionate grounds is to be taken up for consideration.

In this context the instructions issued by Government of India Ministry of Home Affairs, Department of Personnel



: § 70 :

and Administrative Reforms in their file No. 14015/1/76/Estt (D) on 4-8-1980 are the latest issued guidelines.

In para 4 of these instructions it is laid down that --

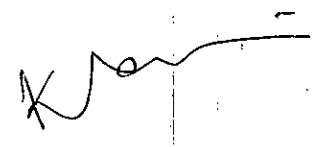
"Where Sportsmen are recruited through employment exchange or by direct readvertisement and are considered along with other general category candidates, they may be assigned seniority in the order in which they were placed in the panel for selection.

Where recruitment to a post is through a selection made by the SSC, whether by competitive examination or otherwise, the sportsmen recruited by the department themselves should be placed enbloc junior to those who have already been recommended by the SSC. The interse seniority of sportsmen will be in the order of selection."

This system was not followed in assigning the seniority of those officers appointed under sports quota, as is admitted by our own department, in the counter filed against the OAs against which the order of the honourable CAT is delivered on 13-2-1997. In that context it was admitted by the department that ----

"As per the relevant instructions, sports quota appointed is to be placed below the Staff Selection Commission direct recruits of that year in the seniority list. To that extent seniority of 8 candidates have been wrongly fixed." This admission of the committed mistake in fixing their seniority is with reference to para 4 of the instructions dated 1-8-1980 cited.

However, in this situation, it may not be out of context to look into the para 3 of the cited instructions, which may be of immense significance, in attempting to revise the wrongly fixed



seniority of officers of sports quota, to give proper placement to them.

Para 3 reads as follows:

"(a) Ministries/departments of Government of India can recruit meritorious sportsmen in any year in relaxation of the recruitment procedure to the extent these including all other reservations under existing orders do not exceed 5% of the total number of vacancies proposed to be filled by direct recruitment."

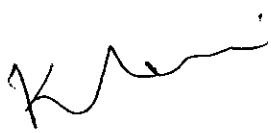
"(b) For the purpose of making appointment of meritorious sportsmen, the appointing authorities may at their discretion notify to the staff selection commission in all cases where the recruitment to the post have been entrusted to that commission, vacancies reduced by upto 5 per cent thereof and may fill such vacancies so held back by appointing meritorious sportsmen subject to the overall limitations mentioned in sub-para (a) above."

Therefore, in light of the above guidelines, it is required to be looked into whether the appointments made under sportsmen quota are in excess of the percentage prescribed in that direction. This exercise was conducted and it was found that in those years when appointments were made under sports quota the percentage exceeded the prescribed quota. As such the officers in excess of quota, against the direct recruits for the respective years. Will have to be brought down in the seniority, to a place where the prescribed percentage of quota is met with. Here it is to be noted that one year recruits may be placed in another year, though they do not belong to the later year. By this later year recruits under sports quota will stand to lose their seniority. In addition, it is to be noted that the percentage of quota

K. Ne

: 72 :

prescribed under para 3 of the cited reference speaks that the 5 per cent mentioned therein shall also include otherway round appointments also, in addition to sports quota, meaning that appointments under compassionate category shall also be reckoned with to calculate the 5 per cent limit. In this situation, the position would be that the appointment made under compassionate grounds, sports quota etc., are to be clubbed together to work out the percentage against the number of direct recruits and to see that whether the quota of 5 per cent is exceeded nor not. The situation is analysed as follows -- for example in the year 1986 the direct recruits were appointed to the tune of 25 numbers. As such the quota for sportsmen and compassionate appointees works out to 2 numbers; as prescribed. Hence 6 numbers of Inspectrs appointed under these categories become excess and they have to go down in finding the place of seniority. The same is situation in the year 1987 also, where 40 officers were appointed under direct recruitment, as such the quota for these categories would be numbers here also but 14 numbers were appointed, the rest 12 numbers would become excess of the quota, and they also will have to go down in their places of seniority. If this method is adopted, technically an irregularity, for the reason an appointee under sports quota/compassionate grounds of 1986 will have to be adjusted against 1987 appointments under direct recruitment. Therefore, it is suggested that the excess number of officers appointed under sports quota/compassionate grounds in an year shall be bunched at the end of the year. Of course, adopting this method is also not proper, for the reason there would not be vacancies for those appointees in those years. However,



To
The Commissioner-I,
Central Excise Commissionerate,
Hyderabad

Vijayawada: Dt. 27-6-97

/Through proper channel/

Sir,

Sub: Establishment--Seniority List of Inspectors of
Central Excise--Refixation of seniority--prayer
for justification--representation of VVA.Nagaraja-
kumar, Inspector of CE (Now Superintendent, CE,
Vijayawada)--Reg.

It is learnt that the Committee was constituted by the
Department to re-fix the 'inter-se-seniority' of Inspectors
of Central Excise in accordance with the judgment dt. 13-2-97
of the Hon'ble CAT of Hyderabad Bench delivered in disposing of
OA.No.1323/93, 285/94 and 906/94 with the following members who
are appellants/Respondents.

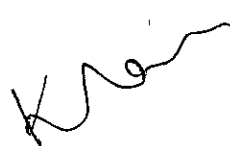
1. Shri P.S.Sastry, Superintendent of CE as Chairman (a promotee
from DR Inspector)

MEMBERS

2. S/Shri G. Gopalakrishna/ RAO, DR Inspector -- Appellant in
OA.Nos.285 & 906/94
3. Somasundara Sarma -do-
4. N.Panduranga Rao, Promotee Inspector -- Respondents in OA.
No. 906/94
5. K.S.Gupta, Inspector -do-

The above OAs were disposed off by the Hon'ble CAT on
13-2-1997 and seniority is being re-fixed by the above Co-
mmittee basing on the above CAT judgment read with OM 1959.

The Committee consisting of Appellants/Respondents may
not do justice in the matter in revising the inter-se-seniority
list fairly and unbiased. Hence, I request that the Committee
may be re-constituted with the senior officers who are well



versed with the service matters and not connected with the above issued to be headed by an higher official of other Department like Income-tax/Postal/Railways etc., as orders on service matters like seniority are common to all Central Government offices.


I request that early action may please be taken on this issue to avoid further legal complications and issue early orders for constitution of another body for revising the seniority list of Inspectors fairly.

Yours faithfully,

Sd./- V.V.A.Nagarajakumar
Superintendent of CE: Vijayawada

Advance copy submitted to the Commissioner of Central Excise, Hyderabad to save delay.

/true copy/



To
The Commissioner of Central
Excise, Hyderabad-I Commissionerate,
Hyderabad.

Sir,


I have been drafted to work in the "Seniority Cell" vide Commissioner's letter C.No.II/34/12/97-Establishment dated 6-5-1997. Accordingly, I worked in the Cell from 12-5-1977 to 7-7-1997 and assisted in the preparation of a note containing 27 pages.

2. I came to know that a seniority list of Inspectors has been prepared and submitted to the Commissioner for approval. The seniority cell has not taken my services for the preparation of the seniority list.

3. It is understood that while preparing the list three irregularities have been committed.

a) In respect of direct recruits the date on which the nominations were sent to the department by the Staff Selection Commission is taken as their date of appointment into the department. This proceedings makes no difference prior to 7-2-1986 but it makes a lot of difference after issue of OM.No.35014/2/80 Estt (D) dated 7-2-1986. This procedure is irregular on account of the following reasons.

The conditions prescribed under the recruitment rules for the post of Inspector (OG) is not only getting a rank in the written test but they should compulsorily possess the physical standards and also they should pass physical tests prescribed (vide MF (DR) F.No.A-12018/22/80-Ad-III B dated 28-2-1985). The Staff Selection Commission conducts written test and they nominate the names to the department as per rank. After receipt of the nominations, this department check the physical standards



: 77 :

and ~~also~~ conducts physical tests to the nominated persons. The persons who possess the physical standards and PASS the physical test will be offered the post of Inspectors. In view of the above position the date of nomination made by the Staff Selection Commission should not be taken as their entry into the department with effect from 7-2-1986. The date of entry into the department should be taken only the date of completion of the physical tests.

(b) In respect of the persons appointed under compassionate grounds/sports quota appointments were made in excess of prescribed limit of 5% during the year 1986 and 1987 even though there were no vacancies under compassionate/sports quota. While preparing the seniority list they were placed in the seniority list as though there were vacancies on the date of their appointment, which is factually not correct.

(c) The other irregularity is that while preparing the seniority list, the regularisation order issued by the Collector's office in EO (NGO) No. 151/88 dated 27-10-86 in respect of promotees has not been taken into consideration which was issued in supersession of all the earlier regularisation orders. In the regularisation order it is very clearly stated that the Inspectors (Promotees) are regularised in the cadre of Inspectors with effect from the date of joining.

4. I, therefore, request the Commissioner to kindly take the above points into consideration before publishing the seniority list.

Yours faithfully
Sd./- K.S. Gupta
Inspector, Staff Selection
Commission

/true copy/

Office of the Commissioner of Customs and Central Excise
Hyderabad-I Commissionerate

Lal Bhadur Stadium Road: Basheerbagh Hyderabad - 500 004

C.No. II/34/12/97-E.7(PF)

Dated 15-10-97

Sub: Estt--Revised Seniority list of Inspector of
Hyderabad Guntur and Vizag Commissionerates as
on 1-1-1992--communication of

A revised seniority list of Inspector of Central Excise in the Commissionerates of Hyderabad, Guntur and Vizag as on 1-1-1992 is communicated herewith for information and circulation among the officers concerned.

2. The revision of the seniority list is necessitated because of the fact that:

- i) the seniority list communicated vide the Hyderabad Collectorate's letter dated 30-4-93 issued from file C.No.II/34/3/93-Estt was challenged/questioned in the Hon'ble CAT of Hyderabad by certain officers in the grade of Inspectors vide different OA.No.1323/93, 235/94 and 906/94;
- ii) Consequentially Hon'ble CAT ordered that the seniority list as on 1-1-92 issued on 30-4-93 is hereby quashed and set aside;
- iii) The (official) Respondents may take such consequential steps as may be called for in accordance with the law.

3. In principle it was observed by the Hon'ble CAT that:

- i) The OM No. 9/11/55/RPS dated 22-12-59 of the Ministry of Home Affairs and OM No.35014/2/80-Estt(D) dated 7-2-86 of DOP&T are to be strictly adhered to in fixing the inter-se seniority of the Direct Recruits and Promotees in the cadre of Inspector, with a stress that OM dated 7-2-86 is prospective in nature and also that these aspects were not observed in the seniority list issued on 30-4-93 and;
- ii) The ratio between direct recruits & promotees in placing them in the seniority fixation shall be 3:1 either before or after the OM dated 7-2-86.

K

4. In light of the above observations of the Hon'ble CAT to refix the seniority in accordance with law, a "Special Cell" was constituted to study the issues concerned/related to the fixation/revision of seniority in the cadre of Inspector and report it to the Commissioner.
5. The report given by the "Special Cell" was circulated among the Associations of Supdts. & Inspectors of Central Excise in all the Commissionerates, calling for their views/opinions.
6. The response of the Associations, with reference to this cell is also considered while revising/refixing the seniority. The said response of the Associations was only in suggesting that the revision/refixing be done in accordance with the law governing fixation of seniority and the same is in line with the observations of CAT.
7. Accordingly the revised seniority list of Inspectors of Central Excise of Hyderabad, Guntur and vizag Collectorates as on 1-1-1992 is prepared and is being communicated herewith.
8. The salient features that constitute the ingredients of the principles of refixation of seniority are as under:
1. The 3:1 ratio of DRs & Promotees is maintained.
 2. The instructions issued vide OM No. 9/11/55/RPS dated 22-12-59 of the Ministry of Home Affairs and OM No. 35014/2/30-Estt(D) dated 7-2-36 of Department of Personnel & Training were complied with.
 3. The adhoc promotees were given placement with reference to the date of regularisation as per settled law and OM dated 7-2-36.
 4. Instructions issued from the Board from time to time with reference to fixation of seniority of officers, appointed on compassionate grounds, sports quota and inter-collectorate transfers were adhered to.

9. All the controlling officers are requested to check with the service books of the individuals concerned and a report indicating the serial number of the officer and the result of verification may please be sent to this office within one month from the date of receipt of this list. In respect of some officers certain columns have been left blank for want of relevant particulars. The requisite information may also be sent by the controlling officers to this office.

10. Any representation on this seniority list should be submitted through proper channel before 12th December, 1997. If no representation is received on or before the said date it will be construed that no individuals officer has objection to his seniority and the seniority list shall be finalised.

Sd./- M.V.S.Prasad
Commissioner

To

1. a) All the Asst. Commissioners of C.Ex. in charge of Divisions in Hyderabad-I/II/III, Guntur and Vizag Commissionerates.

They are required to circulate this seniority list amongst the officers working under their charge. If any representations are received from the individuals in this matter, the same may be submitted to Addl. Commissioner (P&V) Hyderabad-I Commissionerate etc.,

/true copy/



SENIORITY LIST OF INSPECTORS OF HYDERABAD-I/II/III GUNTUR AND VIZAG CUSTOMS AND CENTRAL EXCISE COMMISSIONERATES
COMMON CADRE AS ON 1/1/1992.

S.No.	Name of the officer	Date of Birth	Date of entry in Govt. service	Present Grade	Date of confm. & Cadre in which confm.	Direct recruit/ Promotee	Remarks
1	2	3	4	5	6	7	8
306.	K.Kusa Kumar	15-07-49	05-10-70	12-07-84	15-12-78 UDC	P	--
326.	A.V.Prasada Rao	18-04-51	18-01-72	14-12-84	15-12-78 UDC	P	--
330.	V.V.A.Nagarja Kumar	08-06-50	19-01-72	28-01-85	15-12-78 UDC	P	--
344.	N. Krishna Reddy	14-03-50	29-12-71	12-09-85AN	15-12-78 UDC	P	--
=====							

/true extract/

Ku

81

To
The Commissioner of Central Excise,
Hyderabad-I Commissionerate,
Hyderabad.

Sir,

Sub: Establishment--Revision of seniority of Inspectors
of CE--regarding.

I was nominated as a member of the "Special Cell" constituted vide DC's C.No.II/34/12/97 Estt. dated 6-5-97 headed by Shri P.S.Sastry, the Seniority list being prepared is not in consonance with my suggestion of fixation based on continuous officiation in the cadre on ones appointment on promotion as per OM dated 22-12-59 (upto 28-2-96) and as per OM dated 7-2-86 thereafter. This revision may invite more and more litigations.

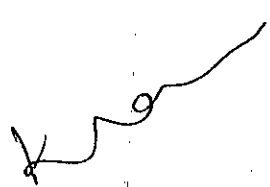
Therefore, I request the Commissioner to once again look into the seniority of Inspectors afresh based on the directions in Board's F.No.32022/9/89-Ad.III A dated 2-4-90, for the sake of conformity as was done in Madras Commissionerate.

Yours faithfully,

Dt: 3-11-97

Sd. /- N.Pandu Ranga Rao
Inspector of Central Excise
Hqrs. Hyd. I Commissionerate

/true copy/



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO. 1591/97

DATE OF ORDER : 26-11-1997.

Between :-

- 1.V.V.A.Nagaraja Kumar
- 2.A.V.Prasada Rao
- 3.K.Kusa Kumar
- 4.N.Krishna Reddy

... Applicants

And

1. The Union of India rep. by its
Chairman, Central Board of Excise
& Customs, Dept. of Revenue,
M/o Finance, New Delhi.
2. The Chief Commissioner of Central
Excise & Customs, Basheerbagh, Hyd.
3. The Commissioner of Central Excise
& Customs-I, Basheerbagh, Hyderabad.

... Respondents

-- -- --

Counsel for the Applicants : Shri M.Pandu Ranga Rao

Counsel for the Respondents : Shri N.R.Devaraj, Sr.CGSC

-- -- --

CORAM:

THE HON'BLE SHRI R.R. ANGARAJAN : MEMBER (A)

THE HON'BLE SHRI B.S.JAI PARAMESHWAR : MEMBER (J)

(Order per Hon'ble Shri R.Rangarajan, Member (A)).

-- -- --

Je

1

(Order per Hon'ble Shri R.Rangarajan, Member (A)).

-- -- --

Heard Sri M.Pandu Ranga Rao, counsel for the applicants and Sri N.R.Devaraj, standing counsel for the respondents.

2. There are four applicants in this O.A. The prayer in this O.A. reads as follows :-

It is prayed that this Hon'ble Tribunal may be pleased to declare that the applicants herein were regularly promoted as Inspectors of Central Excise in the years ranging from 1984 by a duly constituted Departmental Promotion Committee and thereafter regularly promoted as Superintendents of Central Excise in the years 1995 and 1996 as the case may be and further declare that the "Special Cell" constituted ought not to have gone into the question of revision of seniority when serious allegations or bias were made against it and in any event the steps now being taken to constitute a Departmental Promotion Committee for effecting promotions to the category of Superintendent of Central Excise without finalising the seniority list issued in C.No.II/34/12/97-E.7 (PF) dt.15-10-97 and considering the objections of the applicants and others are illegal, arbitrary and in contrast to the judgment of the Supreme Court stating that because of quota, rota will also apply and that the persons promoted much earlier than direct recruits cannot be shown as juniors; and also contrary to the guidelines issued by this Hon'ble Tribunal.

The learned counsel for the applicant in this O.A. submits that the provisional seniority list issued by ^{the} impugned letter No.II/34/12/97-E.7 (PF) dt.15-10-97 should not be operated for promotions to the higher grades ~~from~~ from the category of Inspector of Central Excise in the commissionerates of Hyderabad, Guntur and Vizag until the provisional seniority list issued by order dt.15-10-97

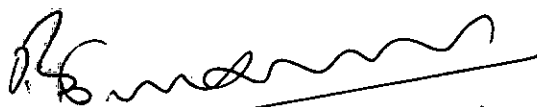
Tr

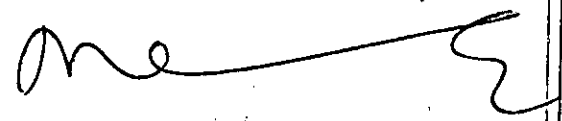
N

is finalised.

3. The learned counsel for the respondents submits that the representations, if any submitted within the stipulated date i.e. 12-12-97 will be considered and on that basis the provisional seniority list issued by letter dt.15-10-97 ^{would} be finalised. Only after finalising the seniority list, further promotions from the post of Inspector of Central Excise in the above said commissionerates will be ordered. In view of the above submission of the respondents, no further orders are necessary. The promotions from the seniority list of Inspectors of Central Excise in the Commissionerates mentioned above will be made only after finalisation of the seniority list dt.15-10-97.

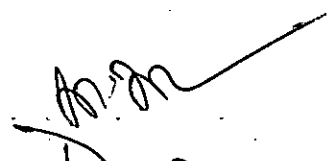
4. Thus the O.A. is ordered accordingly at the admission stage itself. No order as to costs.


(B.S. JAI PARAMESHWAR)
Member (J)


(R. RANGARAJAN)
Member (A)

26.11.97

Dated: 26th November, 1997.
Dictated in Open Court.


J.R.

avl/

DA.1591/97

Copy to :-

1. The Chairman, Central Board of Excise & Customs,
Dept. of Revenue, Ministry of Finance, New Delhi.
2. The Chief Commissioner of Central Excise & Customs,
Basheerbagh, Hyderabad.
3. The Commissioner of Central Excise & Customs-I,
Basheerbagh, Hyderabad.
4. One copy to Mr. M. Pandu Ranga Rao, Advocate, CAT., Hyd.
5. One copy to Mr. N.B.Devaraj, Sr.CBSC., CAT., Hyd.
6. One copy to D.R.(A), CAT., Hyd.
7. One duplicate.

srr

G. 1/2/97

(2)

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD

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

AND

THE HON'BLE SHRI B.S. JAI PARAMESHWAR :
M (J)

Dated: 26/11/97

ORDER/JUDGMENT

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

in

O.A. NO. 1591 / 97

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

II Court

केन्द्रीय प्रशासनिक अधिकरण Central Administrative Tribunal प्रेषण / DESPATCH - 2 DEC 1997 हैदराबाद न्यायपीठ HYDERABAD BENCH
--

High Court File No. 9/98

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD

WRIT PETITION NO. 33684 of 1997

Petition was filed in the High Court of Andhra Pradesh
by Sri VVA. Nagappa Kumar & ors Against Chairman, C.B.E.
~~Department~~ Customs & C.S.
against the Order/Judgment of this Hon'ble Tribunal
dated 26-11-97 and made in O.A.No. 1591/97

The High Court was pleased to dismiss/~~the~~ the petition/
~~stay the operation of judgment of~~ withdrawn with liberty to file
fresh application before C.A.T. Hyd. Bench. on 23-3-98.

The Judgment of the Tribunal in O.A.No. 1591/97
and the letter/order of the High Court of Andhra Pradesh
enclosed herewith for perusal.

Submitted.

2/4/98 Deputy Registrar (J)

~~Registrar~~

~~Hon'ble Vice-Chairman~~

and Hon'ble Member (A) I

I/C HVC Hon'ble Member (A) II

Hon'ble Member (A) III

IN THE HIGH COURT OF JUDICATURE: ANDHRA PRADESH: AT HYDERABAD.
(SPECIAL ORIGINAL JURISDICTION)

MONDAY THE TWENTY THIRD DAY OF MARCH
ONE THOUSAND NINE HUNDRED AND NINETY EIGHT.

PRESENT
THE HONOURABLE MR. JUSTICE: D. REDDEPPA REDDI.
AND

THE HONOURABLE MR JUSTICE: K.B. SIDDAPPA.

WRIT PETITION NO. 33684 OF 1997.

Between:-

1. V.V.A. Nagaraja Kumar.
2. A.V. Prasada Rao
3. K. Kusa Kumar
4. N. Krishna Reddy. .. Petitioners

and

1. The Union of India represented by its Chariman, Central Board of Excise & Customs, Department of Revenue, Ministry of Finance, New Delhi.
2. The Chief Commissioner of Central Excise & Customs, Basheerbagh, Hyderabad.
3. The Commissioner x2 of Central Excise & Customs-I, Basheerbagh, Hyderabad.
4. The Central Administrative Tribunal, Hyderabad Bench at Hyderabad represented by its Registrar, Hacca Bhavan, Hyderabad.
5. P. Gopichand SKXRYXX
6. Venkateswarlu.
7. K. Vishnudeva Reddy
8. K. Seshagiri Rao .. Respondents.

RRs 5 to 8 impleaded as
Per Court Order dt. 27-1-98 in WPMP
1908/98.

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue a writ or order or direction particularly one in the nature of writ of certiorari after calling for the records from the Central Administrative Tribunal, Hyderabad Bench at Hyderabad relating to the Judgment in O.A.No.1591 of 1997 dated 26.11.1997 and quash the same in so far as it does not determine the question about the Committee which was directed to go into the seniority is biased; and without determining that question giving a handle to the authorities to prepare a seniority list as illegal and arbitrary and violative of Articles 14 and 16 of the Constitution of India.

For the petitioner: Mr. M. Pandurangarao, advocate.
For the Respondents 1 to 4: Mr. B. Adinarayanarao, S.C. for C.G.
For the Respondents 5 to 8: Mr. Nooty Ramamohanarao, advocate
The Court made the following order:-
(PER HON'BLE SHRI JUSTICE D. REDDEPPA REDDI).

On the representation made by the learned counsel for the petitioners, the writ petition is dismissed as withdrawn with liberty to the petitioners to file afresh application before the Central Administrative Tribunal, Hyderabad Bench, at Hyderabad, with comprehensive reliefs. No costs.

:: TRUE COPY ::

Sd/-AD KELKAR,
ASST. REGISTRAR.

SE

Secretary

Ind
1490

Sd/-Sekar
1490

RECEIVED
1 APR 1998
HYDERABAD BENCH

188
14/98
G/2

To:

1. The Chairman, Central Board of Excise and Customs,
Department of Revenue, Ministry of Finance, New Delhi.
2. The Chief Commissioner of Central Excise, Basmirabad, Hyd.
3. The Commr. of Central Excise and Customs-I, Basmirabad, Hyd.
4. The Registrar, Central Adm. Tribunal, Hyderabad Bench,
Hacca Bhavan, Hyderabad.
5. 2 od copies.
6. cc to Mr. N. Panduranga Rao, Advocate/opuc/
7. one cc to Mr. J. R. Hanoharrao, Advocate/opuc/

High Court File No. 9/98

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD

W.P.M.P. No. 39625 of 1997

WRIT PETITION NO. 33684 of 1997

Petition was filed in the High Court of Andhra Pradesh
by Sri V.V.A. Nagalakshmi & Ors. Against U.O.I. Sec. by
Chairman, Min. of Finance, New Delhi
~~Department~~ against the Order/Judgment of this Hon'ble Tribunal
dated 26-11-97 and made in O.A.No. 1591/97.
The High Court ~~was pleased to dismiss the petition~~ while ordering Notice was placed to direct
~~stay the operation of Judgment on order status-quo with regard~~
to the posts of the petitioners. Notice, on 23-12-97.

The Judgment of the Tribunal in O.A.No. 1591/97
and the letter/order of the High Court of Andhra Pradesh
enclosed herewith for perusal.

Submitted.

Deputy Registrar (J)

Registrar

~~Hon'ble Vice-Chairman~~

Hon'ble Member (A) I
Dl HVC

Hon'ble Member (A) II

Hon'ble Member (A) III

IN THE HIGH COURT OF JUDICATURE: ANDHRA PRADESH AT HYDERABAD.

WMP. 39625 OF 1997
IN WP 33684 OF 1997.

BETWEEN

1. V.V.A. Nagarajakumar,
2. A.V. Prasada Rao
3. K. Kusakumar
4. N. Krishna Reddy

.. PETITIONERS (Petitioners in WP.
No. 33684/97 on the file of the High
Court)

AND

1. The Union of India rep. by its Chairman, Central Board of Excise and Customs, Depart. of Revenue, Ministry of Finance, New Delhi
2. The Chief Commissioner of Central Excise and Customs, Basheerbagh, Hyderabad
3. The Commissioner of Central Excise and Customs, Basheerbagh Hyderabad
4. The Central Administrative Tribunal, Hyderabad Bench at Hyderabad rep. by its Registrar, Haccas Bhavan, Hyderabad

.. RESPONDENTS
(Respondents in do)

Counsel for Petitioners: M. Panduranga Rao

TUESDAY THE TWENTYTHIRD DAY OF DECEMBER 1997

CORAM: THE HONOURABLE MR. JUSTICE: B. SUBHASHAN REDDY
AND

THE HONOURABLE MR. JUSTICE: Y.V. JAYARAMA

Petition filed under section 151 of CPC praying the High Court to issue an order directing the respondents that the petitioners should be continued as Superintendents of Central Excise without finalising the seniority list until the writ petition is disposed of and pass such other order or orders as may deem fit pending WP 33684/97 on the file of the High Court.

The court while directing issue of notices to the respondents herein to show cause why this application should not be complied with made the following order (The receipt of this order will be deemed to be the receipt of notice in the case).

ORDER

Until further orders, status quo shall be maintained with regard to the posts of the petitioners. Notice.

Sd/- S.S.R.N. Sarma,
Asst. Registrar

//true copy//

Section Officer

- To.
1. The Union of India rep. by its Chairman, Central Board of Excise and Customs, Dept. of Revenue, Ministry of Finance, New Delhi (RPAD)
 2. The Chief Commissioner of Central Excise and Customs, Basheerbagh, Hyderabad (RPAD)
 3. The Commissioner of Central Excise and Customs-I, Basheerbagh, Hyderabad (RPAD)
 4. The Central Administrative Tribunal, Hyderabad Bench at Hyderabad rep. by its Registrar, Haccas Bhavan, Hyd. (RPAD)
 5. CC to Mr. M. Panduranga Rao, Advocate (OPUC)
 6. One spare copy.

*CRR.

12 JAN 1998

RECEIVED

LEGAL SECTION

Hearing Date

RETURN OF THE WRIT OF CERTIORARI ORDER : NISI

(To be endorsed on writ to appear)

The Process of the writ of Certiorari where of mention is within made was served on respondent this _____ day of _____ on thousand nine hundred and ninty _____

This should be served urgently on the respondent
No _____ and returned to the High Court
(Sd)

Writ and Rule Nisi

W. P. No. _____ of 199 _____

Certified that the required conveyance charges and the process for the service of the process have been collected it is requested that English Translation of the process Service, Report, it is in Vernacular, my be sent along with the Rule Nisi returned,

FORM No. 8

RETURN OF THE WRIT OF CERTIORARI ORDER NISI

(To be endorsed on writ to produce)

The process of the writ of certiorari where of mention is within made wite all things touching the same in the several papers hereto annexed as within commanded.

The Answer of

The

respondent herein

Date _____ day of _____
(Sd) _____

199 _____

(writ of court orders - Order List (To Produce and or to appear

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

day the

23rd

day of

December

One Thousand nine hundred and ninty

seven

WRIT PETITION

33684

of 199

ETWEEN

1. V.V.A. Nagaraja Kumar
2. A.V. Prasada Rao
3. K. Kanna Kumar
4. N. Krishna Reddy

Petitioners

AND

1. The Union of India, rep. by its Chairman, Central Board of Excise & Customs, Dept. of Revenue, Ministry of Finance, New Delhi.
2. The Chief Commissioner of Central Excise & Customs, Basheerbagh, Hyderabad.
3. The Commissioner of Central Excise & Customs-I, Basheerbagh, Hyderabad.
4. The Central Administrative Tribunal, Hyderabad Bench, at Hyderabad, rep. by its Registrar, H.A. Bhavan, Hyderabad.

Respondents

Respondent No

4

Mr. N. Panduranga Rao

- upon motion this day made In to this Court by bring of opinion that the record relating to and touching upon all the matter and contentions reised in the memorandum of Representaion petition, a copy of which is annexed here to together with the desision there in should be called for and pursued : IT IS HEREBY COMMANDED.

(1) That your aforesaid Respondent No 4 do sent of our in High court of Jndicature of Andhrapradesh Hyderabad all and singlar the said record and other with all the things touching the same as full and perfectly as they have been made by you and now remain in your custody or power together with this, Rule Nisi before the day of 26/2/1998 and

That you intend to oppose the petition you the a foresaid Respondent. No 4 do appear personally OR dy Advocate on the 20th day of February 1998 at 10-30 a.m. be fore the Court show why this petition should not be complied with and that we may cause futher to be done there on what of right and according to law we shall see fit to be done.

WITNEESS the Hon'ble Chief justice of High Court of Judicature. Andhra Pradesh at Hyderabad, the year one thousand nine hundred ninty.

Chief justice of High Court of day of January 1998

Assitant Registrar (P.T.O.)

STATION AND BENCH

16 FEB 1998

16 FEB 1998

16 FEB 1998

file 7
within 6 Mon
directed by the
Serial Paper relied
should be filed in
stitched giving

numbers
each document.

55
6/2/98

in the years 1984 and 1985. It is also necessary to submit here that originally five persons viz., T. Chakradhara Rao, C. Naganath, K.V.V. Somaswara Rao, P. Vijaya Sarathi and K. Satyanarayana filed OA.No.156/85 in the Central Administrative Tribunal, Hyderabad Bench at Hyderabad seeking to determine the seniority of the applicants by the length of continuous officiation in service in the grade of Inspector and to reflect their correct position in the revised seniority list for confirmation with all attendant benefits. This O.A. came up before the Hon'ble Mr. B.J. Jayasinha, Vice Chairman and the Hon'ble Mr. D. Surya Rao, Member (Judicial). On the basis of the judgment of the Supreme Court in SLP 1983(1) Page 554 (A. Janardhana vs. Union of India and others), the Central Administrative Tribunal on 5-7-83 held that "the applicants are entitled to get their seniority revised in accordance with the principle laid down by the Supreme Court in the decision referred to above and which was accepted by the Government of India, Department of Personnel and Administrative Reforms O.M.No.53014/2/30-Estt(D) dated 7-2-1985." There was a direction to recast the seniority list in accordance with the judgment of the Hon'ble Tribunal. Thereafter, another Division Bench of the Central Administrative Tribunal consisting of Hon'ble Justice Shri H. Heeladri Rao, Vice Chairman and Hon'ble Shri R. Balasubramanian, Member (Adm.) in O.A.No. 1019/82 dt. 18-2-83 gave a direction in the following terms:

"Revised seniority list as per the letter dated 5-11-82 has to be issued by the end of April, 1983. If any ad-hoc promotions to the posts of Superintendents are going to be made in the meanwhile, it is needless to say that the same will be subject to the final seniority list that is to be issued. If for any reason, the seniority list is not going to be finalised by even adhoc promotions after 30-4-83 to the posts of Superintendents of

2nd page:

Corrections

Deponent

00000

In the High Court of Judicature: Andhra Pradesh at Hyderabad

W.P. No. 33684 of 1997.

Between

V.V.A. Nagaraja Kumar and others

..

Petitioners

and

The Union of India rep. by its
Chairman, Central Board of Excise
and Customs, Department of Revenue,
Ministry of Finance, New Delhi and
others

..

Respondents

ANNEXURE-I

<u>Date</u>	<u>Description of the events</u>	<u>Page Nos.</u>
1934 & 83	Petitioners were selected and appointed as Inspectors of Central Excise	1
27-10-83	Their services regularised in the cadre of Inspectors	1
1935 & 95	Promoted as Superintendents of Central Excise	1
03-07-83	Judgment of the CAT holding that the applicants' seniority (OA.155/83) should be revised in accordance with the principles laid down by the Supreme Court	2
13-02-93	Judgment in OA.1019/92	2
09-03-93	Judgment in OA10920/92	3
13-02-97	Common Judgment in OA.Nos. 1325/93 etc.,	4
31-10-97 03-11-97	Dissenting Notes submitted by the Members against Special Cell constituted for revision of seniority	5
27-05-97	First petitioner made objection against the Special Cell	5
15-10-97	Revised Seniority list basing on the report of the Special Cell	6
March, '96	Seniority list prepared in the cadre of Superintendents of Central Excise wherein the petitioners figured	7
09-10-97	Letter calling Superintendents/Inspectors for interview for selection as Air Customs Superintendents/Air Customs Officers	8
12-11-97	Reply given to the concerned Inspectors saying that they are the junior most as per the seniority list	8
25-11-97	CAT's judgment in the petitioners' OA	8 & 10 & 11

persons who were appointed in 1983 and 1984 by purported direct recruitment on compassionate ground and in the Sports quota and inter-Collectorate transfers. They were not subjected to any selection process and cannot be treated as if they could be fitted into any direct recruitment. Some of the direct recruits and persons appointed in Sports Quota and compassionate grounds have filed OA.Nos.1525/93, 235/94 and 935/94 and this Hon'ble Tribunal by common judgment dt. 13-2-1997 while clubbing certain Review Applications posed two questions viz., (1) Whether OA.No.55014/2/30-2att.(D) dt. 7-2-85 of the Govt. of India, Department of Personnel & Training is prospective or retrospective and (ii) whether Janardhan's case 1982 (2) SLR 113 lays down that entry into the grade has to be taken as the basis for fixing inter-se seniority of promotees and direct recruits even when the quota rule does not fail or whether the quota rule is not relaxed in case where there is power of relaxation? In this connection, it is necessary to submit here that against the judgment in OA. 156/86, a Special Leave Petition has been filed in the Supreme Court and the Supreme Court dismissed it. It is necessary to submit here that this Hon'ble Tribunal appears to have held that the quota rule has not failed and further held that the judgment in Janardhan's case is per incuriam without considering the judgment of the Constitution Bench reported in 1990 3C. This Hon'ble Tribunal did not consider the judgment of the Supreme Court in 1977 2C (1) SLR which held that the quota rule does not mean that the rote rule also has to be followed. However, this Hon'ble Tribunal has summed up its conclusions as follows:

4th page:

Corrections:

Deponent

Central Excise and Customs in the A.P. State on the basis of list. The applicant has to be given effect from the date on which his junior either by way of regular promotion or with all consequential benefits."

Another CA viz., 1070/92 dated 9-5-1933 was disposed of the Bench consisting of Hon'ble Mr. Justice V. Raghavai Rao, Vice Chairman and Hon'ble Mr. J. T. Khirwongian, member (Adm.) following the earlier judgment in CA No. 135/35 to the following effect:

"2. The six applicants in this CA are working as Inspectors of Central Excise. The first four applicants were promoted to the said post prior to 1-3-1933 while the other two were promoted after 1-3-1933. In this CA they prayed for a direction for rectifying their seniority in the cadre of Inspectors on the basis of the principles laid down by this Tribunal in its judgment dated 2-7-1933 in CA. 135/35.

3. The applicants in the CA. 135/35 have also been promoted to the post of Inspectors of Central Excise & Customs prior to 1-3-1933 just as in the case of the applicants 1 to 4 in this CA. Hence, judgment in CA. 135/35 will apply in the case of applicants 1 to 4 of this CA. As regards applicants 5 and 6 since they had been promoted after 1-3-1933 there is no dispute about the application of CA No. 33014/2/33-Ext(1), dated 7-2-1933 for fixing of seniority. Hence, this CA has also to be disposed of by passing the very order which was passed in CA. 135/35 dated 2-7-1933, which reads as under:

"The applicants are entitled to get their seniority revised in accordance with the principles laid down by the Supreme Court in the decision reported in 1933(1) CLJ 534 and which was accepted by the Government of India, Department of Personnel and Administrative Reforms CA No. 33014/2/33-Ext(1) dated 7-2-1933."

4. The CA is disposed of accordingly. "No costs."

5. It is necessary to submit here that as there was no direct recruitment during the years 1933 and 1934 as already stated, the first direct recruitment through Staff Selection Commission to the posts of Inspectors of Central Excise took place only in 1935 except with respects for

justice in the matter of revising the inter-se seniority list fairly and unbiased and requested that the Special Cell may be reconstituted.

6. However, without considering any of the objections raised, acting on the report of the said Special Cell, the Commissioner issued the revised seniority list of Inspectors vide D. No. 11/54/12/97-S.7(2) dt. 15-10-1997 and also called for representations of the aggrieved persons. He understood that the time has been given upto 12th December, 1997 for receiving objections. In the mean time, APC is being constituted for the purpose of effecting promotions to the category of Superintendents of Central Office. It is necessary to submit here that in the proposed Revised Provisional Seniority List, persons who have been appointed two or three years later to the petitioners are all shown as seniors though the petitioners have been promoted by the duly constituted APC and on the basis of selection and merit on the ground that in the original order of promotion it was mentioned as adhoc. It is necessary to submit here that the Full Bench of the Madras Pradesh High Court in 1971 W P 1 held that where two processes of selection took place irrespective of the term used, the promotion will be a regular promotion. On the basis of promotion in the cadre of Inspector, as already mentioned, their services were regularized and they were further promoted as Superintendents of Central Office in the years 1993 and 1994 and have presently been working as Superintendents since about two years. On the basis of the impugned seniority list dt. 15-10-97, if the APC considers promotions to the posts of Superintendents, we

pages

officers

Deponent

- [illegible]

1. The first of these is the fact that the Government has not yet decided whether or not it will accept the offer of the United States to purchase the rights in the patent. This is a matter of great importance, as the patent is one of the most valuable assets of the Government. It is also a matter of great interest to the public, as the patent is one of the most important inventions of the century.

2004

of seniority especially when serious allegations of bias were made against it. It is necessary to submit here that CA.No.1349/97 was filed in the Central Administrative Tribunal by persons who were serving as Inspectors of Central Excise in Central Excise Commissionerates I and III, Hyderabad when their names were not found in the letter No. II/o/12/97-3.3. dated 9-10-1997 whereby names of the Superintendents/Inspectors were called for interviews for selection as Air Customs Superintendents/Air Customs Officers on 13-10-1997 and that the respondents were directed by the Central Administrative Tribunal to consider them for selection. In that case, even though it was the provisional seniority list, that was treated as final seniority list for the purpose of selection of Air Customs Superintendents/Air Customs Officers. A reply was given to the Inspectors of Central Excise who approached the Hon'ble Tribunal saying that as they are the Junior-most as per the revised provisional seniority list, their cases cannot be considered. This reply was on 12-11-97. This was specifically pointed out before the Hon'ble Tribunal. But the Hon'ble Tribunal disposed of the CA saying that the promotions from the seniority list of Inspectors of Central Excise would be made only after finalization of the seniority list dated 13-10-1997 i.e., the Tribunal did not consider our case that the so-called Special Coll. constituted for going into the question of revision of seniority itself was biased and that serious allegations were made by two members of the said Special Coll. We have also undertaken to file affidavits of those members as already stated. Without going into that question, the Tribunal held by its judgment dt. 23-11-97 that the promotions from the seniority list of Inspectors of Central Excise would be made only after finalization of

will be reverted. The petitioners reliably learnt that steps are being taken for effecting promotions to the category of Superintendents now.

7. It is also necessary to submit here that in fact, a seniority list in the cadre of Superintendents of Central Excise was also communicated by order in March, 1995 vide C.No.11/54/15/95-List.7 in which we are shown at Serial Nos. 204, 213, 292 etc., It is also necessary to submit here that the Report of the Special Cell is clearly biased as it is the report given by the direct recruits. The total number of members being 9, three of which are direct recruits and two are the promoters and the two promoters have given their dissent notes separately. But, because the report was given by the majority members, the respondents are going ahead with the Report. The objections of the two members of the Cell were not at all taken note of by the respondents. In fact, if necessary, the affidavit to that effect by the said two members shall also be filed.

8. We reliably understand that basing on the revised provisional seniority list in the cadre of Inspectors, the respondents are proceeding ahead even without finalising the same after considering the objections to effect promotions to the cadre of Superintendents of Central Excise. In these circumstances, we were constrained to file CA.No.1591 of 1997 before the Central Administrative Tribunal, Hyderabad Bench at Hyderabad.

9. It may, therefore, be seen that what has been seriously objected in the CA was that the Special Cell constituted was biased and ought not to have gone into the question of revision

7th page

Corrections

Deponent

Inspected received similarly late on 12-12-1947 with their letter S.O. XI/2/12/47-1.2. dated 12-12-1947 even before receiving the request as filed by us and as they received Inspectors which clearly indicated the attitude of the respondents.

11. It is also necessary to state here that the censor affidavit filed in the S.O. 12/47, the Department of India has clearly stated that the office previously existed in 1943 and subsequent years which have been affected by the application was not against the direct receipt vouchers and that the office granted as per the order of the temporary nature of the post including the date of entry post and later on, the services of office personnel were regularized by order No. 2/-12-1947 and the services were regularized S.O. 12. The date of their joining as Inspectors and that these regular vouchers were available for production. It is necessary to state here that in view of the censor affidavit filed by the respondents, our production to them were regularly made as Inspectors and the receipt as respondents to the and a half-year order should not be so disturbed.

12. It is submitted that the Madras High Court in the case of S. V. Ramanaiah Chettiar vs. Union of India reported in AIR 1957 1. 2712 at the time the the issue of continuous officialship arose. It was held that the issue for the purpose of officialship continuity. It is submitted that in this case we were regularized from the date of entry our joining as Inspectors of Central India in the cadre of Inspector of Central India and officialship officialship should be taken for the purpose of continuity and our continuity should be fixed accordingly.

10/11/48

10/11/48

10/11/48

the seniority list dt. 15-10-1997, giving an handle to the respondents to effect reversions to us after the stipulated date of 12-12-1997.

10. It is necessary to submit here that while the matter was being argued before the Hon'ble Tribunal, the Hon'ble Tribunal was of the opinion that because of the earlier judgment of the Hon'ble Tribunal that the seniority list is now sought to be prepared and that it cannot go into the question of validity of the method of preparing the seniority list.

In this connection, it is necessary to submit here that the Special Cell in its report clearly mentioned that the concerned records such as Rosters/Registers showing vacancy position which are required to be maintained as per orders were not maintained and the correspondence made with Staff Selection Commission was not exhaustive. Hence actual number of Direct recruits joined/appointed was taken as standard and ratio worked out which is gross violation of the principles laid down in O.A dt. 22-12-59 and 7-2-1985 issued by the Govt. of India. It is also submitted that the seniority list is prepared without the basic record and therefore, it is liable to be quashed. Further it was clearly mentioned in the last para of the Report that some of the Direct Recruits under category of compassionate grounds and sports quota were appointed in excess of their quota of 5% and special consideration was shown on them to fix their seniority under direct recruit quota of that year which clearly shows that the list is biased one. Further, it is submitted that the Chief Commissioner of Customs and Central Excise, Hyderabad and Commissioner of Central Excise, Hyderabad-I are proceeding further to conduct interviews for Air Customs Officers selection on 18-12-1997 and 19-12-1997 from the 9th page.

Corrections:

Deponent

For the reasons stated in the order of the court, the petitioners herein pray that this Hon'ble Court be pleased to issue a writ of certiorari after calling for the nature of writ of certiorari after calling for records from the Central Administrative Tribunal, Bench at Hyderabad relating to the judgment of 1997 dated 11-11-1997 and quash the same for as it does not raise the question about the seniority of which was decided into the seniority of the petitioners without stating that question giving a final order and authority prepare a seniority list as illegal and arbitrary violative of articles 14 and 16 of the Constitution of India pass such other order or orders as the Hon'ble Court may deem proper in the circumstances of the case.

Hyderabad

Dec 14-12-1997

W
for petitioners

12. At that we have no other effective alternative except to approach this Hon'ble Court for maintaining its jurisdiction under Article 226 of the Constitution of India.

13. It is further stated that he had previously filed an application before the Central Administrative Tribunal, Hyderabad and the same was dismissed on 20-11-67.

14. It is further stated that the same is being questioned in this writ petition.

15. It is further stated that this Hon'ble Court is empowered to issue writs of direction, mandamus, etc. in the nature of writs of certiorari after giving an opportunity to the Central Administrative Tribunal, Hyderabad to show cause against the same. In the case of 1967 No. 20-11-1967, the Court has held in so far as it does not interfere with the jurisdiction of the Committee which is directed to give effect to the seniority list and without determining that seniority list, giving a chance to the authorities to prepare a seniority list as illegal and arbitrary and violative of Articles 14 and 16 of the Constitution of India and pass such order or orders as this Hon'ble Court deems fit and proper in the circumstances of the case.

16. It is further prayed that this Hon'ble Tribunal may be directed to direct the respondents that the petitioners should be considered as seniority list as per the seniority list and the seniority list until the writ petition is disposed of and pass such order or orders as deemed fit and proper.

Solemnly affirmed at Hyderabad
this 14th day of December, 1967
and signed and filed before me.

Signature

Arissona District
In the High Court of A.P. at
Hyderabad

b.P.No. of 1997

wf pot — 33684/97
M. Pandurangarao
23/12/97
4 kg
20/2/98

Memorandum of Petition

M/s. M. Pandurangarao
M.V. Rama Rao
K. Ravi
M. Srikanth &
K. Praveen Kumar

Counsel for petitioners