

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OAs 721 & 912 of 1999

DATE OF ORDER : 16.3.2001

OA 721/99

Between:-

1. P.Venkata Surya Prakash 4. A.Anji Reddy
2. P.Shyam 5. V.Phanindracharya
3. T.Krishna murthy

...Applicants

And

1. Union of India rep. by the Secretary,
Central Board of Excise & Customs,
Dept. of Revenue, Min. of Finance,
New Delhi.
2. The Commissioner of Central Excise,
Central Excise Headquarters, Hyderabad-I
Commissionerate, Basheerbagh, Hyd-29.
3. The Dy.Commissioner (P&V),
Central Excise Headquarters,
Hyderabad - I Commissionerate,
Basheerbagh, Hyderabad - 29.
4. K.Rajashekhar Reddy 19.Sudhakar Reddy
5. G.Pandurangaiah 20.N.P.Ratnakar
6. S.Hanumantha Rao 21.M.Prem Kumar
7. P.A.Rao 22.S.Yadagiri
8. Zareena Begum 23.M.B.G.Tilak
9. Syed Hussain Abidi 24.P.Shashidhar
10.Syed Baquer Ali 25.V.Prakash Babu
11.T.Jaya Gopi 26.Ch.Sudhakar Reddy
12.P.V.Ramana Murthy 27.Ch.Nageswara Rao
13.V.Phani Kumar 28.M.Lokeswar Rao
14.P.Suresh Babu 29.Ch.Subba Rao
15.B.Sai Veerender 30.Ch.Rambabu
16.Khaja Hussain 31.D.Sreerama Shastry
17.V.A.Modeen Niaina 32.N.Krishna Reddy
18.A.Jagannatha Prasad

...Respondents

-- -- --

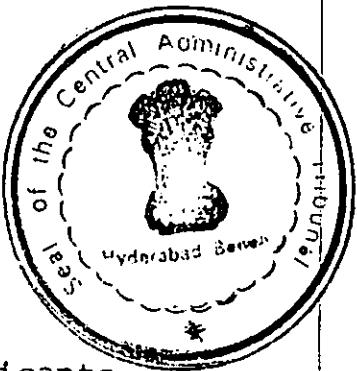
OA 912/99

P.Basava Rao

...Applicant

And

1. Union of India rep. by its Secretary,
Central Board of Excise & Customs,
Dept. of Revenue, M/o Finance,
New Delhi.
2. The Commissioner of Central Excise,
Central Excise Headquarters, Hyderabad-I
Commissionerate, Basheerbagh, Hyderabad-29.



3. The Dy.Commissioner (P&V),
Central Excise Headquarters,
Hyderabad-I Commissionerate,
Basheerbagh, Hyderabad-29.
4. K.Ramachandra Rao 30.B.Sai Veerender
5. G.Venkateswara Rao 31.S.Khaja Hussain
6. M.Pulla Reddy 32.J.Jai raj
7. C.Naganath 33.V.A.Moideen Naina
8. T.Chakradhara Rao 34.P.Vasudeva Rao
9. M.Umakantham 35.A.V.Prasada Rao
10.A.Chandrasekharam 36.V.V.A.Nagaraja Kumar
11.M.Vijaya Kumar 37.P.Rama Murthy
12.E.Appa Rao 38.B.Ananda Rao
13.M.Appala Raju 39.M.Lokeswara Rao
14.M.Appalakonda 40.Ch.Subba Rao
15.K.Rajasekhara Reddy 41.Ch.Rambabu
16.Hari Kishan Rao 42.D.Srirama Sastry
17.G.Pandurangaiah 43.N.Krishna Reddy
18.S.Hanumantha Rao 44.A.Jagannatha Prasad
19.P.A.Rao 45.N.P.Ratnakar
20.K.Kusa Kumar 46.Mohd.Hussain
21.Zareena Begum 47.M.Prem Kumar
22.Syed Hussain Abidi 48.S.Yadagiri
23.Syed Baquar Ali 49.M.B.G.Tilak
24.C.Mangaiah Panthulu 50.G.Mohamood
25.T.Jayagopi 51.P.Sashidhar
26.P.V.Ramana Murthy 52.V.Prakash Babu
27.V.Phani Kumar 53.Ch.Sudhakar Reddy
28.M.S.Wellington 54.P.Mohan Rao
29.P.Suresh Babu 55.Ch.Nageswara Rao

...Respondents

-- -- --

Counsel for the Applicants : Shri N.R.Devaraj,
(in both OAs)

Counsel for the Respondents : Shri B.N.Sarma, Sr.CGSC for RR 1 to
Shri K.Sudhakar Reddy for RR 13, 18,
24 in OA 721/99

Shri K.Venkateshwar Rao for RR 14,16,
20, 32, 34, 37 to 39, 41 & 42.

CORAM:

THE HON'BLE JUSTICE SHRI V.RAJAGOPALA REDDY : VICE-CHAIRMAN

THE HON'BLE SHRI S.K.AGRAWAL : MEMBER (A)

(Order per Hon'ble Justice Shri V.Rajagopala Reddy, VC).

-- -- --

...2.

(Order per Hon'ble Justice Shri V.Rajagopala Reddy, VC).

-- -- --

Both the OAs arise out of common question of law and hence they are disposed of by common order.

2. This OA is filed aggrieved by the fixation of seniority of the applicants in the seniority list dated 15.1.1997 of the Inspectors of Central Excise in the Commissionerates of Hyderabad, Guntur and Vizag as on 1.1.1992. The applicants are the direct recruit Inspectors in the Customs, Central Excise Department. They were appointed in 1987. It is submitted by the applicants that though the Department indented for 71 candidates, the Staff Selection Commission ~~had~~ made only 22 candidates available. Out of 41, 22 candidates were the Staff Selection Commission Direct Recruit. candidates, 9 belongs to Sports quota, 5 candidates are compassionate ground appointees and four are inter commission- erate transferees. As per the extant rules the candidates sponsored by the Staff Selection Commission have to be placed enblock over and above other categories belonging to direct recruitment. In fixing the seniority in the seniority list published on 30.4.1993 the applicants were however shown below the candidates appointed against sports quota, compassionate/appointees and inter commissionate transferees. The applicants therefore moved the Tribunal in OA 906/94 to quash the seniority list published on 30.4.1993 and to place them over the Inspectors appointed against sports quota, compassionate appointments and intercommissionate transferees. The OA was allowed. The seniority list was quashed by order dt.13.2.97. The Tribunal held ^{ground} interalia that the seniority list of Inspectors from 1972

~~which took place~~ to 1992 ~~was~~ prepared by applying the principles in OM dated 7.2.86 retrospectively ~~which~~ was illegal as the OM dated 7.2.86 is prospective. Further it was directed that the inter seniority between direct recruits and promotees ~~is~~ to be regulated as per 1959 OM and that there was no breakdown of rota-quota rule and consequently the OM dated 22.12.59 had to be followed.

3. The applicant submits that inspite of their OA having been allowed, the respondents onceagain fixed the seniority of the applicants showing them as juniors to the direct recruits viz., appointment against sports quota, ~~and~~ compassionate ground appointments quota and inter commissionerate transferees and their interse seniority has not been corrected properly in the impugned seniority list issued on 15.10.97 revising the earlier seniority list as on 1.1.1992. The applicants therefore brought the present OA to quash the seniority list and to place the applicants as seniors to the above employees who were employed against sports quota, compassionate appointment quota and intercommissionerate transferees, etc.,.

4. Learned ~~standing~~ counsel for the ~~respondents~~ sri K.Narahari contends that the respondents having admitted their mistake in their counter affidavit that the sports quota appointees have to be placed below the staff selection commission direct recruits (the applicants) the respondents should have revised the seniority list correcting their mistake and showing the correct position of the applicants over the sports quota appointees in that order.

It is also contended that there was excess recruitment of sports quota and compassionate appointments quota. Hence the excess appointments have to be quashed and the applicants should have been given their proper seniority.

5. The learned standing counsel for the respondents Sri B.N.Sarma and the counsel for private respondents Sri K.Sudhakar Reddy have taken ⁱⁿ plea of limitation. It is argued that the applicants having been shown as juniors to the direct recruits appointed against the sports quota in the seniority list of Customs Inspectors of 1989, 1990, 1991 and 1992, the applicants had not made any grievance about their placement in the seniority list. ⁱⁿ ~~as~~ ⁱⁿ ~~Inspectors~~. They filed the OA 1994 for the first time taking the objection as to the placement of the appointees against sports quota over them but no relief has been granted even in OA 906/94. He further argues that in the absence of any relief granted in OA 906/94, the applicant cannot raise the objection as to their placement in the seniority list of 1997 i.e. the impugned seniority list. The settled seniority list of the private respondents, it is argued, should not be disturbed after a period of 16 years. Learned counsel also contend that the judgement in OA 906/94 operates as constructive res-judicata as the applicants had raised the same plea in the said OA and the OA having been disposed of on merits, it is not permissible for the applicants to file the instant OA for the same relief. The learned counsel for the respondents therefore contend that the OA is highly belated and has to be dismissed on the grounds of limitation alone. Though in the counter filed by the official respondents the placement of the applicants is sought to be justified

below the sports quota appointees, learned counsel for the respondents advanced ~~in this~~ ^{in no} arguments to justify the placement of the sports quota candidates ^{over the applicants,} _{on} merits.

6. We have given careful consideration to the arguments advanced on either side. The first question that falls for consideration in this case is whether the OA is belated and has to be rejected on the ground of limitation in view of section 21 of A.T.Act. It is not in controversy that 22 persons were selected and empanelled in the year 1986 in pursuance of the competitive examination held in 1985 and all of them were appointed in 1987. However, the applicants who are 6 in number in both the cases are shown as juniors to the remaining 15 persons of that batch and not only that, the 8 employees who were recruited against sports quota, 1 against compassionate appointment quota and one more appointed by way of transfer from other divisions, are shown as seniors to the applicants. Thus the above people were inserted above the applicants and below the remaining 15 direct recruits empanelled along with the applicants. Thus the applicants are shown juniors by 10 places to their batch-mates who were empanelled ⁱⁿ ~~by~~ the said examination. It is also not in dispute that the applicants were shown as juniors to the above sports quota candidates ⁱⁿ the seniority list from 1989, 1991 and 1992. They have questioned about their seniority/placement only when the seniority list of 1993 ⁰⁴ was prepared, in 1996/94. In their counter the official respondents in the above OA have also taken the plea of limitation stating that the claim of the applicants ^{cannot} be allowed after a period of 7 years and ~~the claim of the seniority cannot be allowed~~ ^{the claim of the seniority cannot be allowed}

~~be maintained after a period of 2 years~~ and that their OA should be dismissed on the ground of limitation. However the respondents had admitted their mistake in showing the applicants as juniors to the appointees in the sports quota. It is seen from the common judgement passed in OA 906/94 that the Tribunal ~~was~~ considered the challenge made to the seniority list on 1993 mainly on the ground that the OM dated 7.2.1986 had no application in the fixation of interse seniority between direct recruits and promotees retrospectively and that 1959 OM ~~was to be~~ followed.

Though a case was made ^{out} as to the claim of the applicant in OA 906/94 and the OA was stated to have been allowed, in the conclusions or in the directions issued, we do not find any conclusion or direction as to the correctness of the applicants placement in the impugned seniority list in that case. The following conclusions are arrived at in the said OA :

“ 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 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.
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 dated 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. 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 D.No.II/34/3/93-Estt dated 30.4.1993 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 as 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 we find that the Tribunal has directed the respondents to revise the interse seniority between direct recruits and promotees in the seniority list as on 1.1.1992 in accordance with the OA 1959 upto 1.3.86 and thereafter as per OM dated 7.2.86. As far as the applicants are concerned, though their OA was allowed, no relief was granted to them but as stated supra the OA was allowed accordingly.'

7. In pursuance of the above conclusions and directions, the official respondents have prepared the impugned seniority list following the OMs of 1959 and 7.2.1986 in preparation of the interse seniority between direct recruits and promotees to the post of Inspectors of Customs & Central Excise.

8. It is also seen from the material papers filed by the respondents that review applications have been filed in OA 1323/94 and OA 285/94 which were the batch cases decided along with the OA 906/94 as far as the applicants are concerned. They however

not choosen to file any review application. The present OA is again filed for the same relief as was claimed in the earlier OA.

It is the contention of the learned counsel for the respondents that this OA is not only barred by limitation, it cannot also be maintained on the ground of 'resjudicata'. Learned counsel for the respondents however submits that they had questioned their placement in the seniority list of 1993 in the earlier OA itself in 1994. Hence the respondents cannot raise the plea of limitation. The learned counsel also refutes the objection of resjudicata. It is contended that the claim of the applicant having been decided on broad principles of interse seniority between direct recruits and promotees, the judgement in the earlier OA would not operate as resjudicata.

8.A. But, it should be noted as seen from the above facts that the applicants, being aware of their position in the seniority lists of 1988, 89, 90, 91 and 92, had admittedly not questioned them. Those seniority lists have been finalised. Even by the time the applicants filed OA 906/94, 7 years had elapsed from the time when they were shown as juniors to the sports quota appointees. Though such a plea has been raised in OA 906/94, in the absence of any finding given by the Tribunal in the above OA, the official respondents cannot be found fault for maintaining the same placement as was being maintained right from 1989. The Tribunal quashed the seniority list of 1993 only on the ground that OM dated 7.2.86 was applied retrospectively; hence the interse seniority list prepared upto 1986 was not in accordance with the law. The position of the applicants in the said seniority list vis-a-vis the appointees under sports quota etc. was not directed to be altered. Consequently the respondents had shown the applicants as juniors to the appointees under the sports quota. Under section 21 of Administrative Tribunal's

Act, the limitation prescribed is one year from the date when the grievance arose. The said provision also obligates the Tribunal ^{to} ~~reject~~ ^{if} the OA ~~that~~ the OA was not within the limitation unless the delay was explained properly by filing a proper application. In the present application the applicant's ^{prayer} for fixation of seniority from 1989 onwards and no attempt is made to justify or to explain the delay by filing any application. In the circumstances we have to ~~be~~ necessarily hold that the OA is barred by limitation. Further it is to be seen that this/case of fixation of seniority and if the OA is allowed, the respondents seniority which has been settled and crystallised would be disturbed. The Supreme Court in B.S.Bazwa & Others Vs. Union of India & Others reported in 1998 (2) SCC 523 has observed as follows :-

"During this entire period of more than a decade they were all along treated as juniors to the other aforesaid persons and the rights inter se had crystallised which ought not to have been reopened after the lapse of such a long period. At every stage others were promoted before B.S.Bajwa and B.D.Gupta and this position was known to B.S.Bajwa and B.D.Gupta right from the beginning as found by the Division Bench itself. It is well settled that in service matters the question of seniority should not be reopened in such situations after the lapse of a reasonable period because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present case for making such a grievance. This alone was sufficient to decline interference under Article 226 and to reject the writ petition.

9. In view of the above decision, it is ^{un}~~im~~possible for us to entertain the OA on the ground of limitation.

10. Further we find this OA is also barred by principles of constructive resjudicata. It is not in dispute that the

applicants raised the same plea as ^{WZ} raised in OA 906/94 claiming seniority over sports quota appointees and their OA had been allowed along with other OAs which were dealt with. ~~It is stated~~, As extracted in the preceding paragraphs ~~that~~ the seniority list of 30.4.1993 was quashed and the respondents were directed to take consequential steps as may be called for in accordance with the law and the OA 906/94 and other OAs were accordingly allowed.

The expression 'accordingly' ~~should be given~~, if it is given some meaning, ~~that~~ the OAs ^{were} allowed as per the conclusions arrived at in paragraph-19, ^{where} ~~since~~ no direction was given to correct the seniority of the applicants, ~~though the OA was allowed~~, An embarrassing situation must have arisen for the applicants to question that order as the OA was ^{Moved} in their favour. In this curious situation the remedy for the applicants ^{why} to file review seeking clarification or seeking any other relief as would follow the order passed in the OA but unfortunately no such ^{rehearing} application was filed though others have filed. Section-11 of CPC which deals with resjudicata, ~~the~~ bars the maintainability of a suit or other issue when the issue ^{WZ} substantially agitated in a competent court which has been heard and finally decided by such court.

In the instant case also we find that the specific issue of inter seniority between Direct Recruits and the candidates appointed against sports quota, compassionate ground appointees and inter commissionate transfers ^{WZ} heard and finally decided on merit and the OA has been allowed. Whether the applicants in fact got any relief or not is not a matter relevant to be considered to decide as to the question of resjudicata. It is well settled that the principle of resjudicata as contained in

Section-11 of CPC is applicable to the cases before the Tribunal as held in the case of Sri P.Seshagiri Rao & Others Vs. Union of India & Others (1997 (35) ATC 276). Hence it is to be held that the judgement in OA 906/94 bars the maintainability of this constructive OA on the principle of res judicata. Thus the OAs have to be rejected both on the grounds of limitation ^{as well as} ~~and~~ res judicata.

11. The OA is accordingly dismissed. In the circumstances we do not award any costs.

मानि त्र प्राप्त
CERTIFIED TRUE COPY
कानूनी संस्था
CASE NO. ER 0005724/29/2009
विवरण का 1
DATE OF JUDGEMENT 16.3.2009
प्रति अधिकारी का 14
COPY MADE READY ON 1.4.2009
अधिकारी का नाम
Section Officer Court Office
कानूनी संस्था का नाम
Central Administrative Tribunal
कानूनी संस्था का नाम
संकेत