

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

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|--|-----------------------|
| 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.Rajashekar 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

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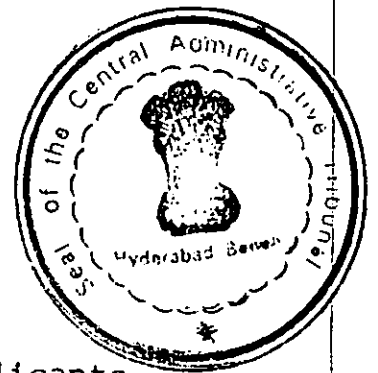
OA 912/99

P.Basava Rao

...Applicant

And

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| 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.

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|------------------------|-------------------------|
| 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.Pandurangaiiah | 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

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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

CORAM:

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

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).

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

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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 ~~and~~ ^{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 commissionerate 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/^{ground}appointees and inter commissionerate 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 inter commissionerate transferees. The OA was allowed. The seniority list was quashed by order dt.13.2.97. The Tribunal held ~~that~~ ^{held} inter alia that the seniority list of Inspectors from 1972

which ~~to be~~ was
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 interse
seniority between direct recruits and promotees ~~to~~ ^{way} 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 recruit s viz.,
appointed ~~and~~ against sports quota, ~~and~~ compassionate ground appoint-
ments 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~~ ^{applicant} 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, ~~as juniors~~. They filed the OA ⁱⁿ 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 ^{no} ~~in his~~ 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 was prepared, ^{OA} in ~~906/94~~. 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} ~~cannot~~ be allowed after a period of 7 years and ~~the claim of the seniority cannot~~ ^{only not}

~~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 ^{have been} ~~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 forgoing 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} ~~are~~ batch cases decided along with the OA 906/94 ^{filed by} ~~as far as~~ the applicants ^{are} ~~concerned~~. They however

not chosen 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 ^{LS} ~~to~~ rejecting the OA ^{if} ~~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 ^{is} 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 ^{is the} case of fixation of seniority and if the OA is allowed, the respondents seniority which has been settled and crystalised 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 ^{not} ~~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 ^{why} 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. ^L ~~It is stated,~~ As extracted in the preceeding 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 ^e 'accordingly' allowed. The expression 'accordingly' ~~should be given~~, if it is given some meaning, ^{means} ~~that~~ the OAs ^{were} ~~are~~ 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 ⁱⁿ ~~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 ^{review} 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 ^{why} ~~is~~ 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 specefic issue of interse seniority between Direct Recruits and the candidates appointed against sports quota, compassionate ground appointees and inter commissionerate transfers ^{why} ~~is~~ heard and finally decided on merit and the OA has been allowed. Whether the applicants infact 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

CPR

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/resjudicata. Thus the OAs have to be rejected both on the grounds of limitation ^{as well as} and resjudicata.

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

प्रमाणित प्रत
CERTIFIED TRUE COPY
कम संख्या
CASE NUMBER 0007212912/99
दिनांक 16-3-2001
DATE OF JUDGEMENT 16-3-2001
प्रति न्यायिक प्रमाणित
COPY MADE READY ON 16-3-2001

अनुमोदित
अधिकारी
Section Officer/Chief Officer
केंद्र प्रमुख/अधिकारी
Central Administrative Tribunal
अनुमोदित/अधिकारी
APPROVED/BENCH