

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.17/99

Date of order: 14.1.2003

1. M.M.Srivastava, S/o Sh.Krishan Murari Lal Srivastava, Inspector, Central Excise Commissionerate, Statue Circle, Jaipur.
2. H.K.Assudani, S/o Sh.Duru Kumar, Inspector, Central Excise Commissionerate, Statue Circle, Jaipur.

...Applicants.

Vs.

1. Union of India through its Secretary, Mini. of Finance, Deptt. of Revenue, North Block, New Delhi.
2. Chairman, Central Board of Excise & Customs, North Block, New Delhi.
3. Dy.Commissioner(Personnel & Vigilance) Cadre Control Unit, Central Excise Commissionerate, Statue Circle, Jaipur.
4. Sh.V.K.Gupta, Superintendent, Central Excise Commissionerate, Statue Circle, Jaipur.
5. Sh.Darshan Singh, Superintendent, Customs Divn, Jaiselmer.
6. Sh.Piyus Kumar, Supdt, Central Excise Commissionerate, Statue Circle, Jaipur.
7. Sh.H.R.Gupta, Supdt, Central Excise Range, Beharoad, Alwar
8. Sh.G.R.Arora, Supdt, Customs Divn, Sriganganagar.
9. Sh.V.K.Soni, Inspector, Central Excise Commissionerate, Statue Circle, Jaipur
10. Sh.M.K.Gautam, Inspector, Customs Divn, Bikaner.
11. Sh.P.S.Shukla, Inspector, Central Excise Divn, Udaipur.
12. Sh.R.C.Karnani, Inspector, Central Excise Commissionerate, Statue Circle, Jaipur.
13. S.K.Chhabra, Inspector, Central Excise Commissionerate, Statue Circle, Jaipur.

...Respondents.

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Mr.C.B.Sharma - Counsel for applicant.

Ms.Shalini Sheoran, proxy of Mr.Bhanwar Bagri for respondents.

CORAM:

Hon'ble Mr.H.O.Gupta, Administrative Member

Hon'ble Mr.M.L.Chauhan, Judicial Member.

PER HON'BLE Mr.M.L.CHAUHAN, JUDICIAL MEMBER.

The applicants two in numbers have filed the present application against order dated 25.4.97 (Annex.A1), by which the seniority list in the cadre of Inspector of Central Excise as on 31.12.96 was circulated and orders No.61/98 dated 30.6.98, No.113/98 dt.8.10.98 and No.114/98 dated 8.10.98 (Annex.A2, A3 & A4) respectively whereby respondents Nos.4 to 13 were promoted as Superintendent and has prayed for the following relief:

"the respondent No.1 to 3 may be directed to assign seniority to the applicants above the respondents No.4 to 13 on the post of Inspector and the impugned seniority list dated 25.4.97 (Annex.A1) and allow all consequential benefits including the consideration for further promotions at par with their next juniors and consequently the impugned orders dated 30.6.98, 8.10.98 and 8.10.98 (Annex.A2, A3 & A4) respectively, may be ordered to be modified accordingly."

2. Facts of the case are that the applicants were appointed as inspector of Central Excise against 75% quota meant for direct recruits through Staff Selection Commission and they joined as such on 21.2.83. Respondents No.4 to 13 were promoted on the recommendations of the DPC as Inspector against 25% promotee quota in the month of October 1984, much later than the applicants joined the posts, as they have not earlier put in the requisite period of service and were not eligible for promotion. Further case of the applicants is that respondent

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No.3 issued the impugned seniority list vide letter dated 25.4.97 whereby names of the applicants were shown at Sl.No.52 and 65 of the seniority list but respondents Nos.4 to 13 who were promoted as Inspector, subsequent to the appointment of the applicants were shown at Sl.No.23, 27, 31, 34, 38, 42, 45, 48, 53 and 62 respectively. It is further averred that date of appointment in the grade has also been indicated in the seniority list. The applicants came to know about the seniority list in the first week of July 97 and they immediately submitted their representation dated 11.7.97 and 3.7.97 (Annx.A8 & A9) but the applicants have not received any response from the respondents. The applicants have further alleged that respondents Nos.4 to 13 have further been promoted to the post of Superintendent vide Annxs.A2, A3 and A4, due to wrong assignment of seniority on the post of Inspector and as such the applicants have been kept out of the zone of consideration for promotion and superseded by number of juniors. On these facts, the applicants filed the present O.A praying for the aforesaid relief. The ground of challenge in the O.A is that respondents Nos.4 to 13 had been promoted to the post of Inspector much after the appointment and joining of the applicants to the post of Inspector as such they could not have been shown senior to the applicants from an earlier date especially when they were not eligible for the said post and did not fulfil the condition of minimum experience on the feeder post on the date from which seniority has been assigned to them. Thus, according to the applicants, the quota rota rule could not be maintained due to nonavailability of eligible candidates. Thus, the action of the respondents is discriminatory, arbitrary and the impugned orders deserve to be modified being violative of Articles 14 & 16 of the

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Constitution.

3. The case has been contested by the respondents by filing separate reply affidavit on behalf of official respondents and private respondent No.8. It is admitted by the respondents that the applicants joined as Inspector against the recruitment quota on 21.2.83 whereas respondents Nos.4 to 13 were promoted as Inspector in October 1984, much after appointment of the applicants in the cadre of Inspector. However, according to the official respondents, respondent Nos.4 to 13 were assigned seniority in the cadre of Inspector from an earlier date as per the rotation of vacancies between direct recruits and promotees in accordance with OM No.9/11/55/RPS dated 22.12.59 (i.e. against vacant slot for promotees). It is further stated that this O.A is not maintainable and liable to be dismissed as having been filed after inordinate delay as the applicants chose not to raise the issue of seniority for a pretty long 14 years and raised the matter all of a sudden for the first time in 1997. According to the respondents, the seniority lists were issued and circulated on number of occasions between the period 1984 to 1995 and in all these seniority lists the applicants had been shown junior to all the private respondents. The private respondent in his reply justified the action of the official respondents. He further annexed a copy of the decision of the Jodhpur Bench of the Tribunal in O.A No.554/90, P.P.Sharma Vs. UOI, decided on 20.10.95, which O.A also relates to the seniority dispute between promotees and direct recruits and the same was dismissed on the ground of laches and delay on the part of the applicant. In this case, the applicant has challenged the seniority list of Inspectors as circulated vide letter dated 29.7.88 by filing the O.A on 22.11.90 and the Tribunal held that the O.A is barred by limitation as it has

been filed after more than one year as such it does not pass the test of limitation as laid down in Sec.21 of the Administrative Tribunals Act, 1985.

4. We have heard the learned counsel for the parties and gone through the material on record.

5. The main point which requires our consideration is whether rights interse between the parties i.e. direct recruits and promotees had crystalised can be allowed to reopen after the lapse of such a long period resulting in disturbing the settled position. The answer to this point according to us is negative. The official respondents in its reply to para 4(4) has categorically stated that the issue of seniority list stand settled by issuing repeated seniority list from 1984 till 1995 and in all these seniority lists, the applicants have been shown junior to the private respondents and it is only after 14 years the applicant has all of a sudden raised the issue in the year 1997. It will be relevant to extract para 4(4) of the reply which clinches the point in issue, reads as under:

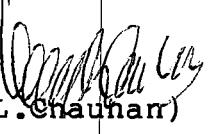
"4(4) That the contents of para 4(4) of the Original application are not admitted in the manner stated. It is denied that the petitioners came to know the fact of their being placed junior to the persons appearing at Sl.No.23, 27, 31, 34, 38, 42, 45, 48, 53 & 62 for the first time after the issue of the seniority list as on 31.12.96. The office of the Commissioner Customs & Central Excise, Jaipur had issued seniority lists of Inspectors for the years 1984, 1985, 1986, 1987, 1988, 1991, 1992, 1993, 1994 & 1995 prior to the list issued in 1997 and in all these seniority lists the applicants had been shown junior to all the persons referred to by them in this para of the application. The petitioners inspite of having been aware

of the full facts chose not to raise the issue of seniority for a pretty long 14 years and raised the matter all of a sudden for the first time in 1997. The original application is, therefore, not maintainable and liable to be dismissed as having been filed inordinately delayed.

6. The applicant has not filed any rejoinder so as to controvert the specific stand taken by the official respondents despite the opportunity given by this Tribunal. It was only on the statement of learned counsel for the applicant that he does not want to file rejoinder, the case was listed for final hearing. Thus, from the portion of reply affidavit as reproduced above which remained uncontested, it can be safely concluded that during the entire period of more than a decade, the applicants were all along treated as junior to the private respondents and rights inter se between the parties have crystallised which cannot be reopened after lapse of such a long period. Thus, no fault can be founded on the action of the official respondents promoting respondents No.4 to 13 as Superintendent vide the impugned Annx.A2, A3 and A4 on the basis of the settled/accepted seniority position. The applicants have failed to place on record any material to show that they came to know about the seniority position only in 1997 when the impugned seniority list Annx.A1 was issued. It is also not the case of the applicants that the seniority list of Inspectors for the years 1984 till 1995 were never circulated or these seniority lists were provisional and never finalised so as to afford them the cause for challenging the seniority list as issued vide Annx.A1 in the year 1997. Thus, we are of the view that in service matters the question of seniority should not be reopened in such situation after lapse of reasonable period because that result in disturbing the settled

position which is not justifiable as held by the Apex Court in the case B.S.Bajwa & Anr. Vs. State of Punjab, 1998(1) SLR 461. In that case also the petitioners were granted relief by the learned Single Judge and Division Bench of the Hon'ble High Court. The matter was carried out by the affected parties to the Apex Court and the Apex Court while allowing the appeal held that the Writ Petition was wrongly entertained and allowed by the Single Judge and therefore, the judgments of the Single Judge and Division Bench have to be set aside. The grievance made in the year 1984, long after when the petitioners entered in the department in the year 1971-72 and during the entire period they were treated as junior to other persons and the rights inter se had crystallised which ought not to have been reopened after lapse of such a long period. There was inordinate delay in the present case for making such a grievance and this alone was sufficient to decline interference under Article 226 and to reject the writ petition.

7. For the reasons stated above, we are not inclined to interfere in the matter at this belated stage and as such whether the seniority between the direct recruits and promotees were rightly assigned as per the quota rota rules and instructions issued by OM dated 22.12.59 does not require our consideration. Accordingly, the O.A is dismissed with no order as to costs.


(M.L.Chauhan)

Member (J)


(H.O.Gupta)

Member (A).