IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,JAIPUR BENCH,JAIPUR.

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Date of Decision: 25-4-03

1. OA 37/96

Suresh Chandra Gupta, Inspector, Customs Range Phalodi, District Jodhpur.

... Applicant

Versus

1. Union of India through Secretary, Ministry of Revenue, Vitt Bhawan, North Block, New Delhi.
2. Director, Central Board of Excise & Customs, Vitt Bhawan, New Delhi.
3. Commissioner, Customs & Central Excise, Jaipur-I.
4. Dy.Commissioner (P&V), Customs & Central Excise, Jaipur.
5. Shri V.K.Gupta through Collector, Customs & Central Excise Collectorate, Jaipur.
6. Shri S.R.Khandelwal through Collector, Customs & Central Excise Collectorate, Jaipur.
7. Shri R.C.Karnani through Collector, Customs & Central Excise Collectorate, Jaipur.

... Respondents

For the Applicant ... Mr.Mahendra Shan

For Respondents No.1to4 ... Ms.Shalini Sheoran,proxy counsel for Mr.Bhanwar Bagri

None for other respondents

2. OA 328/98

Suresh Chandra Gupta, Inspector, Central Excise Commissionerate-I, NCRB, Statue Circle, C-Scheme, Jaipur.

... Applicant

Versus

1. Union of India through Secretary, Ministry of Revenue, North Block, New Delhi.
2. Chairman, Board of Central Excise & Customs, North Block, New Delhi.
3. Commissioner, Customs & Central Excise Jaipur-I, NCR Building,

Statue Circle, Jaipur.

4. Mrs.Jyoti Meena, Supdt.Gr.B O/o Commissioner, Customs & Central Excise, NCRB, Statue Circle, Jaipur.

5. Shri V.K.Gupta, Supdt.Gr.B through Collector, Customs & Central Excise Collectorate, Jaipur-I, NCRB, Statue Circle, Jaipur.

... Respondents

For the Applicant ... Mr.Mahendra Shah

For the Respondents ... Ms.Shalini Sheoran, proxy counsel for Mr.Bhanwar Bagri

3. OA 373/2000

Suresh Chandra Gupta, Inspector, Central Excise Commissionerate-I, NCRB, Statue Circle, Jaipur.

... Applicant

Versus

1. Union of India through Secretary, Ministry of Revenue, North Block, New Delhi.

2. Chairman, Central Board of Excise & Customs, North Block, New Delhi.

3. Commissioner, Customs & Central Excise Jaipur-I, NCRB, Statue Circle, Jaipur.

4. Dy,Commissioner (P&V), Customs & Central Excise, NCRB, Statue Circle, Jaipur.

5. Shri V.K.Gupta, Supdt. through Commissioner, Customs & Central Excise, Jaipur-I, NCRB, Statue Circle, Jaipur.

6. Shri Darshan Singh, Supdt. through Commissioner, Customs & Central Excise, Jaipur-I, NCRB, Statue Circle, Jaipur.

7. Piyush Kumar, Supdt. through Commissioner, Customs & Central Excise, Jaipur-I, NCRB, Statue Circle, Jaipur.

8. H.R.Gupta, Supdt. through Commissioner, Customs & Central Excise, Jaipur-I, NCRB, Statue Circle, Jaipur.

9. G.R.Arora, Supdt. through Commissioner, Customs & Central Excise, Jaipur-I, NCRB, Statue Circle, Jaipur.

10. V.K.Soni, Supdt. through Commissioner, Customs & Central Excise, Jaipur-I, NCRB, Statue Circle, Jaipur.

11. M.K.Gautam, Inspector through Commissioner, Customs & Central Excise, Jaipur-I, NCRB, Statue Circle, Jaipur.

12. P.S.Shukla, Supdt. through Commissioner, Customs & Central Excise, Jaipur-I, NCRB, Statue Circle, Jaipur.

13. R.C.Karnani, Inspector through Commissioner, Customs & Central Excise, Jaipur-I, NCRB, Statue Circle, Jaipur.

14. Smt.Jyoti Meena, Supdt. through Commissioner, Customs & Central Excise, Jaipur-I, NCRB, Statue Circle, Jaipur.

15. S.K.Chabra, Inspector through Commissioner, Customs & Central Excise, Jaipur-I, NCRB, Statue Circle, Jaipur.

16. M.K.Verma, Inspector through Commissioner, Customs & Central Excise, Jaipur-I, NCRB, Statue Circle, Jaipur.

17. Anoop Alexander, Inspector through Commissioner, Customs & Central Excise, Jaipur-I, NCRB, Statue Circle, Jaipur.

18. R.P.Nagar, Inspector through Commissioner, Customs & Central Excise, Jaipur-I, NCRB, Statue Circle, Jaipur.

19. Mahadev Lakhani, Inspector through Commissioner, Customs & Central Excise, Jaipur-I, NCRB, Statue Circle, Jaipur.

20. S.R.Khandelwal, Inspector through Commissioner, Customs & Central Excise, Jaipur-I, NCRB, Statue Circle, Jaipur.

... Respondents

For the Applicant ... Mr.Manendra Shah

For Respondents No.1to4 ... Mr.Arun Chaturvedi

None for other respondents

CORAM:

HON'BLE MR.H.O.GUPTA, ADMINISTRATIVE MEMBER

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER

O R D E R

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

By this common order we propose to dispose of OAs 37/96, 328/98 & 373/2000, filed by the applicant Suresh Chandra Gupta. OA 37/96 has been filed by the applicant against the seniority list dated 31.12.91 (Ann.A/2). The applicant has made representation against this seniority list, which has been finally rejected vide impugned order dated 27.10.95. The applicant has initially challenged both these orders. Subsequently, another seniority list dated 1.3.96 (Ann.A/5), showing the position as on 31.12.95, was issued. The applicant has also challenged this tentative seniority list by filing an amended OA. OA 328/98 has been filed by the applicant against the impugned order dated 30.6.98 (Ann.A/1), thereby making promotion of Smt.Jyoti Meena and Shri V.K.Gupta as Superintendent Group-B on the ground that these two persons were promoted as Inspector subsequent to the appointment of the applicant as Inspector by way of direct recruitment and they have been wrongly assigned seniority over and above the applicant. Thus, the ultimate decision of this OA will depend upon the decision in OA 37/96, where the dispute is regarding seniority between the applicant who is a direct recruit of 1984, vis-a-vis promotees who though promoted as Inspector subsequently but were assigned seniority earlier to appointment of the applicant in accordance with OM dated 22.12.1959. In OA 373/2000 the applicant has challenged the appointment of private respondents therein as Inspectors, Customs & Central Excise, on the ground that they were not eligible for promotion as Inspectors as they have not put in the requisite years of service as required under RMP Rules and their appointment is void ab-initio. It may be incidentally pointed out here that the private respondents were promoted as Inspectors against promotion quota of 1984-85, whereas the present application has been filed in the year 2000. The applicant has also not moved any application for condonation of delay.

2. Now few relevant facts may be noted. The applicant was initially

appointed as Inspector against direct recruitment quota and he joined Collectorate, Customs & Central Excise, Jaipur, on 16.5.84. The seniority of the applicant was determined according to the rotation of vacancies between direct recruitees and promotees as per memorandum dated 22.12.1959 and some of the candidates who were promoted as Inspector after the appointment of the applicant were also placed in the seniority list of Inspectors against vacant slots for promotees. Resultantly, some of promotees who were promoted as Inspector later to the appointment of the applicant were assigned higher seniority against vacant slots for promotees. It is the case of the applicant that the respondents issued a provisional seniority list dated 31.12.91 (Ann.A/2) and as soon as the applicant came to know that he has been ranked junior to the persons who stand from S.No.72 to 131, he represented the matter to the authorities concerned time and again. He has also placed copy of representation dated 5.10.92 and subsequent reminder dated 19.3.93 on record as Ann.A/3 and Ann.A/4 respectively. According to the applicant, the respondents took the decision on the representation of the applicant only in the year 1995 vide their letter dated 27.10.95 (Ann.R/1) and thereafter he has filed the present OA thereby challenging the impugned seniority list (Ann.A/2) and the order of rejection of his representation against the seniority list dated 27.10.95 by way of OA 37/96. Subsequently, the respondents also issued another seniority list thereby showing the position of the applicant and other persons in the cadre of Inspector as on 31.12.95 vide order dated 1.3.96 (Ann.A/5). The applicant has also challenged this order by amending the OA. The main contention of the applicant in this OA is that the seniority list is not in consonance with the general principle of determination of seniority between direct recruits and promotees as laid down in the Government of India, Ministry of Home Affairs, Office Memorandum dated 22.12.1959, as amended vide OM dated 7.2.86. The applicant has also stated that in view of the law laid down by the Apex Court in the case of Direct Recruited Class-II Engineering Officers Association v. State of Maharashtra, AIR 1990 SC 1607, the seniority will

have to be reckoned from the date of appointment. The applicant has also placed reliance on the judgement of the Central Administrative Tribunal, Jabalpur Bench, dated 7.2.91 in OA 372/87 (Abhilash Kumar Dixit v. Dy.Collector (P&V), Cental Excise Collectorate, Indore) and OA 619/88 (R.S.Kadiyan v. Dy.Collector (P&V), Cental Excise Collectorate, Indore (MP), whereby general principle of seniority between direct recruits and promotees have to be decided on the basis of date of joining. Further case of the applicant is that he had made a representation to the authorities concerned thereby raising these points but the respondents have by cryptic order rejected his representation.

3. The respondents have contested the case by filing reply affidavit to the effect that the applicant joined as Inspector against direct recruitment quota on 16.5.84, prior to the promotion of some of the candidates who have been shown senior to him has not been disputed. Their main case is that seniority between the direct recruitees and promotees has to be fixed in terms of the instructions contained in OM dated 22.12.1959 where enough number of direct recruits or promotees did not become available, the vacancies or 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 subsequent examinations or selections, such persons occupied the vacant slots thereby became senior to persons who were already working in the grade on regular basis. It has further been made clear in the reply affidavit that in some cases where there was shortage of candidates for direct recruitment in two or more consecutive years, this resulted in direct recruits of later years taking seniority over some of the promotees with fairly good numbers of years of regular service already to their credit. The respondents also pleaded that some of the promotee Inspectors whose name find mention at S.No.112, 114, 117, 120, 123, 125, 129, 133, 136 and 140 in the seniority list (Ann.A/2), who were promoted as Inspector during the year 1979 were assigned seniority amongst the candidates who were recruited as Inspector in the year 1980 by direct

recruitment. Thus, according to the respondents, not only the direct recruit Inspectors but also promotee Inspectors were assigned seniority according to the slot available for them according to rotation of vacancies and no injustice has been caused to the applicant if he has been assigned seniority below the persons mentioned in para 4.9 of the OA. The respondents have also pleaded that the instructions dated 3.7.86 have to be applied prospectively and prior to 1.3.86 the seniority was to be considered by applying rotation between direct recruitees and promotees keeping in view the quota of vacancies reserved for each of them and these instructions did not provide that they have over-riding effect over the previous instructions in that regard. It is further stated that the issue in the case of Direct Recruited Class-II Engineering Officers Association v. State of Maharashtra (supra) was entirely different and the issue involved was whether the seniority should be reckoned w.e.f. the date of confirmation or the date of joining, which is not the subject matter of the present OA. The respondents have further submitted that office of the Customs and Central Excise had issued the seniority lists of Inspectors in the years 1984, 1985, 1986, 1987 and 1988 prior to the list issued in 1991 and in all these seniority lists the applicant had been shown junior to all the persons who have been at S.No.72 to 131 in the seniority list dated 31.12.91. The applicant even after knowing the full facts did not raise any objection regarding seniority position assigned to him for pretty long period and suddenly woke up in 1992 after the judgement of Hon'ble CAT Jabalpur Bench in the case of A.K.Dixit and R.S.Kadia v. Dy.Commissioner (P&V), Indore, therefore, the present application being highly belated is not maintainable.

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

5. The main issue involved in OA 37/96 is regarding inter-se seniority between the applicant who is direct recruitee of 1984 vis-a-vis promotees

who though promoted as Inspector after the joining of the applicant on 16.5.84, in the year 1984-85, were assigned seniority over and above the applicant against vacant slot meant for promotees in terms of rotation of vacancies between direct recruitees and promotees keeping in view the quota of vacancies for each of them. Before going into the merit of the case, we see considerable force in the submission made by the respondents that the seniority lists of Inspectors were published in the years 1984, 1985, 1986, 1987 and 1988 and in all these seniority lists the applicant was shown junior to all the persons whose name find mention at S.No.72 to 131 in the impugned seniority list (Ann.A/2). The applicant even after knowing these facts preferred not to raise any objection regarding seniority position assigned to him for considerable long time and he suddenly woke up in the year 1992 and as such the application deserves to be dismissed solely on this ground. The official respondents have taken this plea in para 4.5 to 4.9 in the original reply. The applicant has filed rejoinder whereby he has not disputed the fact that the aforesaid seniority list was not brought to his notice but he has stated in the rejoinder, in reply to para 4.5 to 4.9, that criteria adopted by the respondents for determination of seniority was declared illegal by the Jabalpur Bench only in the year 1991 an as such the applicant filed representation immediately in the year 1992 the seniority being the recurring cause of action. The applicant is justified to challenge the impugned senioritylist at this stage. It will be useful to quote the relevant part of para 4.5 & 4.9 of the rejoinder, which reads as under :

> "That the contents of this para are not admitted as stated. After having gone through the note about long assignment of seniority, the petitioner has immediately represented the matter because after the judgement of the Hon'ble CAT at Jabalpur, the criteria applied by the respondents determining the seniority has been declared illegal, therefore the determination of the seniority as per the practice is also wrong. Since the criteria as adopted by the respondents has been declared illegal only on 8.4.1991, as such earlier to that even by no stage of imagination, the petitioner could have represented the matter before the respondents for the reason that it was not effected the promotion avenues at the relevant point of time. Since it has effected the promotion of the applicant in the year 1992, the petitioner has immediatelysubmitted his representation and prior to that he was not in a position to

move the representation because the criteria adopted by the respondents have not been declared illegal by any court of law."

The applicant has also filed rejoinder to the amended application as he has subsequently challenged the seniority list dated 1.3.96 and in reply to para 4.5 to 4.9 the applicant has taken entirely different stand that the applicant was not circulated the seniority lists in 1984, 1985, 1986, 1987 and 1988 and when he came to know about the seniority list of 1991, he immediately represented the matter and his representation came to be rejected vide impugned order which is under challenge. As already stated above, this was not the case of the applicant either in the OA or even in the rejoinder filed to the un-amended OA, the relevant portion of which has been quoted above. Further, in order to do justice between the parties, this Tribunal vide order dated 8.1.2003 directed the respondents to file affidavit clearly stating whether the seniority lists said to have been published during the year 1984 to 1988 were brought to the notice of the applicant. The respondents have filed additional affidavit which has been placed on record in OA 328/98, in which they have categorically stated that the seniority list of Inspectors working in Jaipur Collectorate as on 1.12.84, 1.6.86, 1.3.87 and 1.7.88 though available but the circulation letter in respect of seniority lists of Inspectors issued as on 1.12.84 and 1.6.86 are not traceable. However, they have placed the circulation letter in respect of seniority lists issued as on 1.3.87 and 1.7.88, whereby the concerned officers were directed to bring the same into notice of the concerned staff and NOC was also called. The respondents have also placed on record the letter dated 29.8.88, with reference to the letter dated 18.8.98, informing that the seniority list issued on 1.7.88 has been circulated amongst all Inspectors working under their charge and no objection has been received of the seniority list issued as on 1.7.88 from any Inspector. The applicant was working as Central Excise Range-I, Bhiwadi, at that time under Central Excise Division, Jaipur. Copy of this letter has also been placed on record as Ann.MA/2 and Ann.MA/3. Thus, from the material placed on record, we are satisfied that the applicant has not

chosen to challenge the seniority lists which were publised in the year 1984 to 1988 and it is only in the year 1992 that he has filed objection regarding the seniority list dated 31.12.91 (Ann.A/2) for the first time. Thus, we are of the view that in service matters the question of seniority should not be reopened in the situation after the lapse of considerable period because that may result in disturbing the settled position, which is not justifiable as held by the Apex Court in the case of S.S.Bajwa & Ors. v. State of Punjab, 1998 (1) SLR 467. That apart, the respondents have also placed on record copies of the judgements passed by various Tribunals by way of MA in OA 37/96. The issue regarding determination of seniority of Inspectors between direct recruitees and promotees came for consideration before the Jodhpur Bench of the Tribunal in OA 554/90 (Prem Prakash Sharma v. Union of India & Ors.), decided on 20.10.95, where the seniority list dated 29.7.88 was in issue and the OA was dismissed. The applicant has also placed on record copy of the order dated 20.2.2002, passed in OA 253/99 (Kamal Kumar Jain & Anr. v. Union of India & Ors.). This OA was also decided by the Jodhpur Bench both on the ground of limitation as well as on merit and the issue involved in this OA was also regarding dispute of seniority between direct recruitee and promotee Inspectors. In this case the applicant had challenged the seniority list dated 25.4.97 and the Tribunal held that the promotee Inspectors, who are respondents No.4 to 10, have ranked senior to the applicant on account of the fact that they have assigned the position on the slot meant for them within their quota and the claim of the applicant has, therefore, found to be meritless. Similarly, the Jaipur Bench in OA 17/99 (M.M.Srivastava & Anr. v. Union of India & Ors.), decided on 14.1.2003, declined to interfere in the matter at the belated stage as the applicants have not challenged the seniority lists of Inspectors from the years 1984 to 1995. Thus, we are of the view that the applicant is not entitled to any relief at this belated stage and the rights inter-se had crystalised and the applicant never objected to the seniority assigned to the persons shown at S.No.72 to 131 in the impugned seniority list dated 31.12.91, more particularly when

different Benchs have also upheld the seniority lists of Inspectors determined on the basis of quota rota rules and instructions issued vide OM dated 22.12.1959. Consequently, OA 37/96 is dismissed.

6. In OA 328/98, the issue is regarding promotion of Smt.Jyoti Meena and Shri V.K.Gupta to the post of Superintendent Gr.B made vide impugned order dated 30.6.98 (Ann.A/1). Contention of the applicant in this OA is that these two persons have been promoted ignoring his better claim and they should have been promoted on the basis of impugned seniority list dated 30.6.98 (Ann.A/2). Since we have not set aside the impugned seniority list dated 31.12.91 (Ann.A/2) and these two private respondents are admittedly senior to the applicant on the basis of the impugned seniority list dated 31.12.91, as such the applicant is not entitled to any relief and resultantly, this OA (328/98) is also dismissed.

7. In OA 373/2000, the applicant has challenged the initial appointment of the private respondents No.5 to 20 as Inspector on the ground that their promotion against quota of 1984-85 was illegal and assignment of seniority against the vacant slots is also illegal. The ground taken by the applicant is that these persons were not eligible for consideration for promotion and as such they were illegally promoted. It may be mention here that these private respondents were promoted in the year 1984-85 whereas the present application has been filed in the year 2000. The department also published seniority lists in the years 1984 to 1988 showing these private respondents as senior to the applicant but at no point of time the applicant woke up from his slumber and made representation either against the seniority list or challenging the appointment of the private respondents as Inspector. The application is hopelessly time barred and the applicant has not moved even an application for condonation of delay in case he was prevented from filing the application within the time prescribed under Section 21 of the Administrative Tribunals Act, 1985. Thus, the present application is time barred in view of the provisions

contained in Section 21 of the Administrative Tribunals Act, 1985 and is dismissed accordingly.

8. Resultantly, all these OAs are dismissed with no order as to costs.

(M.L.CHAUHAN)
MEMBER (J)

(H.O.GUPTA)
MEMBER (A)