

50/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 139/2003

R.A/C.P No.

E.P/M.A No.

1. Orders Sheet.....O.A......Pg. 1.....to 7.....
2. Judgment/Order dtd. 13.04.2005.....Pg. 1.....to 22 Adm. Sec.
3. Judgment & Order dtd.....Received from H.C/Supreme Court
4. O.A.....139/2003.....Pg. 1.....to 127.....
5. E.P/M.P.....Pg.....to.....
6. R.A/C.P.....Pg.....to.....
- ✓ 7. W.S.....Pg. 1.....to 8.....
- ✓ 8. Rejoinder.....Pg. 1.....to 16.....
9. Reply.....Pg.....to.....
10. Any other Papers.....Pg.....to.....
11. Memo of Appearance.....
12. Additional Affidavit.....
13. Written Arguments.....
14. Amendment Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

SECTION OFFICER (Judl.)

Kakti
16.11.17

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

Original Application No: 139/02

Misc Petition No: _____

Contempt Petition No:

Review Application No: _____

Applicants: - D. Mishra Jann

Respondants: N.O.T Form

Advocate for the Appellants:- M. Chanda, G.N. Chakravarty
S. Nath.

Advocate for the Respondants:- *case*

Notes of the Registry	Date	Order of the Tribunal
<p>This application is in form but not in time. It is filed for the first time. Dated 26.5.03.</p> <p>26490788</p> <p>112 WJ 26/6/03</p> <p>Dr. Registrar</p>	26.6.2003	<p>Heard Mr. M. Chanda, learned counsel for the applicant. The application is admitted. Call for the records. List again on 1.8.2003 for orders.</p>
<p>Steps taken</p> <p>2 envelopes</p>	<p>mb</p> <p>1.8.2003</p>	<p>It has been stated by Mr. M. Chanda, learned counsel for the applicant that the steps are already taken. Put up again on 1.9.2003 for orders.</p>
	Member	Vice-Chairman

Pl. comply order
dated 25-6-03.

2616103

Notice prepared in 8/10 Respondent
No 1 to 5 and sent to DLS
for review the being 1398
DINO 1394 in 1398
11/1/02

②
O.A. 139/2003

2
Notice prepared in
to respondent N. 6
to 58 in Appellate Sheets
Side D/No 1539/1587

22/7/03

1.9.2003 Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.

The Hon'ble Mr. K.V. Prahaladan
Administrative Member.

On the prayer of Mr. B.C. Pathak, learned Addl. C.G.S.C. further four weeks time is allowed to the respondents to file written statement.

List on 23.9.2003 for orders.

24/9/03

W/s has not been
filed.

25/9/03

Member

Vice-Chairman

mb

26.9.2003 No written statement is forthcoming. List the case on 29.10.2003 for written statement.

Member

Vice-Chairman

bb

No W/s has been
filed.

22.12.03

23.10.03 There is no Bench today.
Adjourned to 5.11.03.

5.11.03 NO Bench today.
Adjourned to 8.12.03.

23.12.2003 Present : The Hon'ble Mr. Justice B. Panigrahi, Vice-Chairman.
The Hon'ble Mr. K.V. Prahaladan, Member (A).

Prayer has been made on behalf of Mr. B.C. Pathak, learned Addl. C.G.S.C. for the respondents to file written statement. Let the written statement be filed positively within four weeks, failing which no written statement will be accepted. Rejoinder, if any, be file within two weeks after the service of copy of the written statement.

Let it appear in the next.

23.12.2003 Present : The Hon'ble Mr. Justice B. Panigrahi, Vice-Chairman.
The Hon'ble Mr. K.V. Prahladan, Member (A)

Prayer has been made on behalf of Mr. B. C. Pathak, learned Addl. C. G.S.C. for the respondents to file written statement. Let the written statement be filed positively within four weeks, failing which no written statement will be accepted. Rejoinder, if any, be filed within two weeks after the service of copy of the written statement.

Let it appear in the next available Division Bench.

K.V. Prahladan
Member

B. Panigrahi
Vice-Chairman

mb

23.1.04

Sri S.Nath, learned counsel for the applicant and Sri A. Deb Roy, learned proxy counsel for the respondents.

Applicant's counsel submits that they have not received the w copy of the written statement so far. Copy of the written statement be served within two weeks and rejoinder if any be filed within two weeks thereafter.

List on 8.3.04 for hearing.

K.V. Prahladan
Member(A)

S. Nath
Member(J)

pg

31.3.04

1.4.2004 Present: The Hon'ble Shri Kuldip Singh Member (J).

The Hon'ble Shri K.V. Prahladan Member (A).

Heard Mr. M. Chanda, learned counsel for the applicant and also Mr. B. C. Pathak, learned Addl. C. G.S.C. for the responder

The matter has been heard earlier while writing the order it was found that the private respondents in this

Contd

12.1.04

W/s filed by
the Respondent Nos.
1 to 5.

P.S.

1.3.04

Rejoinder submitted
by the applicant.

P.S.

Service reports from
the private respondents have
not been received.
Hence placed on order.

mb
31.3.04

Contd.

1.4.2004 case had to enter their appearance, though there is no such order on record. Though notice were served upon them through the Commissioner of Excise, but neither any service was placed on record, nor they have entered appearance before the Court. So whether notices have been served on them or not that cannot be found from the record.

So it is desirable that the private respondents be served ^{with} notice. Accordingly private respondents shall be served ^{through Commissioner Excise} notice ~~along with a copy of this order.~~

List the matter on 29.4.2004.

The case is ready
for hearing.

K.V. Prahlada
Member (A)

June
Member (J)

bb

29.4.2004 List on 10.5.2004 before the Division Bench on the plea of counsel for the applicant.

K.V. Prahlada
Member (A)

mb

10.5.2004 present: The Hon'ble Shri Mukesh Kumar Gupta, Member (J).

The Hon'ble Shri K.V. Prahladan Member (A).

Vide order dated 1.4.2004 in which it is noticed that the factum of service upon the private respondents 6 to 58 is not clear and accordingly it was felt that they private respondents shall be served through the Commissioner, Customs and Central Excise, Shillong, i.e. Respondent No.3 wherein no such reply is forthcoming from the respondents. In view of the above list the matter for hearing on 12.5.2004.

It is stated that the applicant has taken steps to get the private respondent served through respondent No.3 as per for in the memo portion of the petition itself.

Pl. camper order
dated 1/4/04.

AS
11/4/04

220

7.5.04

10.8.2004 Contd

Present: The Hon'ble Shri Mukesh Kumar Gupta, Member (J).

The Hon'ble Shri K.V. Prahlada, Member (A).

in this connection, it is informed that all the private respondents 6 to 58 are serving under respondent No.3 i.e. Commissioner, Central Excise, Shillong. It is accordingly directed that the applicant shall take steps within two weeks from today for service to the private respondent Nos.6 to 58 through respondent No.3. Let the matter be listed on 23.8.2004 for hearing.

Vide order dated 1.4.2004 in which it is noticed that the factum of service upon the private respondents 6 to 58 is not clear and accordingly it was felt that the private respondents shall be served through the Commissioner, Customs and Central Excise, Shillong, i.e. Respondent No.3 wherein no such reply is forthcoming from the respondents. In view of the above, list the matter for hearing on 12.5.2004.

It is stated that the applicant had taken steps to get the private respondent served through Respondent No.3, as prayed for in the memo portion of the petition itself.

Vice-Chairman

Member (A)

[Signature]
Member (A)

[Signature]
Member (J)

bb

12.5.2004 Present : The Hon'ble Sri Mukesh Kumar Gupta, Judicial Member.

The Hon'ble Sri K.V. Prahlada, Member (A).

Adjourned on the request made by the learned counsel for the respondents as he is not keeping well. List before the next Division Bench.

[Signature]
Member (A)

[Signature]
Member (J)

mb

23.8.2004

Heard Mr.M.Chanda, learned counsel for the applicant as well as Mr.B.C. Pathak, learned Addl.C.G.S.C. for respondents.

During the course of argument, learned Addl.C.G.S.C. has filed a report that none of the private respondents No. 6 to 58 have received any notices so far.

Contd.

The case is ready for hearing as requested
w/s 2 Refrain
20/8/04

Contd.

23.8.2004. In this connection, it is informed that all the private respondents 6 to 58 are serving under respondent No.3 i.e. Commissioner, Central Excise, Shillong. It is accordingly directed that the applicant shall take steps within two weeks from today for service to the private respondent Nos.6 to 58 through respondent No.3.

Let the matter be listed on 2.11.2004 for hearing.

As per order dated 23/8/04, Notice & order sent to D/Section for issuing to resp. Nos. 3, 6 to 58 through resp. No-3, by regd. A/D post.

Member (A)

Vice-Chairman

bb

D/Memo NO=1546 to 1598 Dt. 22/9/04.

2.11.2004 Present: Hon'ble Justice Shri R.K. Batta, Vice-Chairman

Hon'ble Shri K.V. Prahladan, Administrative Member.

Mr M. Chanda, learned counsel for the applicant is present. Mr B.C. Pathak, learned Addl. C.G.S.C. has sent an absence note. An additional affidavit alongwith Circular dated 29.7.2004 has been filed by the learned counsel for the applicant. Copy of the same be furnished to the respondents. Stand over to 8.12.04 for hearing.

COPIES OF THE

ORDER FOR THE

IT IS NOT KEPT WELL IN THE NEXT DIVISION BENCH.

16-11-04

An additional affidavit submitted by the Petitioner.

nkm

21.12.2004 The Division Bench is available. List on 27.1.2005 for hearing.

Vice-Chairman

23.11.04

The case is ready for hearing.

27.1.2005

List before the next Division Bench.

Valadimama on

Pl. R.m. 21, 28, 30, 31,

35 & 53 filed

27/1/05

Member

Notes of the Registry Date

Order of the Tribunal

15.2.2005

Present: Hon'ble Shri M.K. Gupta,
Judicial Member
Hon'ble Shri K.V. Prahladan,
Administrative Member.

Heard Mr M. Chanda, learned
counsel for the applicant and Mr S. Das,
learned counsel for respondent. Nos. 27,
28, 30, 32, 35 and 53. There is no
representation on behalf of Union of
India. Hearing concluded. Order reserved.

Member (A)

Member (J)

nkm

18.04.2005

Judgment pronounced in open Court,
kept in separate sheets.

The O.A. is dismissed in terms of
order. No costs.

Member (A)

bb

14.5.05

Copy of the Judgment
has been sent to
the office for
issuing the same
to the applicant as
well as to the
SSD C.S.C. for the
Official Response.
J.S.

Received for Respondent's
No. 1 to 5

12/5/05
Inspector, Central Prison,
Hqs. and Cell, Ghy

Received a copy of
the order for
prison report

12/5/05

9

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

ORIGINAL APPLICATION NO.139/2003

DATED THIS THE 13th DAY OF APRIL, 2005

SHRI MUKESH KUMAR GUPTA

MEMBER(J)

SHRI K.V. PRAHLADAN

MEMBER(A)

Shri Debajyoti Mishra,
Superintendent,
son of Late Jyotirmoy Mishra,
Office of the Commissioner,
Central Excise,
Dibrugarh,
Dibrugarh – 786003

Applicant

(By Advocate Shri M. Chanda)

v.

1. The Union of India,
represented by the Secretary to their
Government of India,
Revenue Department,
Ministry of Finance,
New Delhi
 2. The Chairman,
Central Board of Excise and Customs,
North Block, New Delhi – 110 002
 3. The Commissioner,
Central Excise,
Shillong – 793001
 4. The Secretary to the Government of India,
Ministry of Personnel,
Public Grievance and Pensions,
Department of Personnel & Training,
New Delhi
- fr

5. The Chief Commissioner,
Customs and Central Excise,
Shillong – 793001

Private Respondents

6. Shri Arun Kumar Chaturvedi
7. Shri D.K. Verma
8. Shri Khanindra Neog
9. Shri Susmal Das
10. Shri Jambu Lama
11. Shri Nitya Gopal Burman
12. Shri A. Swami
13. Shri Bapukan Patir
14. Shri Raju Sonowal
15. Shri Gobinda Thabah
16. Shri J. Tuankhsthang
17. Shri Pabitra Kumar Reang
18. Shri Paresh Debnath
19. Shri Bijoy Kr. Deb
20. Shri Jahar Dey
21. Shri N.C. Singh Singjam
22. Shri Ansuman Chakrabarty
23. Shri T.K. Sarkar



24. Shri Partha Sarathi Das

25. Shri Arabinda Dutta

26. Shri Koj Tat

27. Shri D.R. Saha

28. Shri R.K. Sarkar

29. Shri Sukanta Das

30. Shri Biren Saikia

31. Shri Subrangshu Deb

32. Smt. Ninamani Phukan

33. Shri Alok Chakraborty

34. Shri Nalini Mohan Bauishya

35. Shri Ranjit Kr. Sharma

36. Shri Amrit Kr. Saikia

37. Shri Deepak Bhattacharjee

38. Shri Amar Kumar Singha

39. Shri Dinesh Mohanta

40. Shri Partha Sarathi Purkayastha

41. Shri Pranab Kr. Sharma

42. Shri Aswini Kr. Das



43. Shri Manoj Kr. Brahma
44. Shri Padmeswar Pegu
45. Shri Naba Krishna Baruah
46. Shri Binoy Kr. Bashing
47. Shri Subodh Ch. Basumatari
48. Shri Achinta Kr. Sonowal
49. Shri Bidya Bhusan Saikia
50. Smt. M. Synnah
51. Shri M.M. Neog
52. Shri D.N. Doley
53. Shri Gangadhar Das
54. Shri Debendra Moshanhary
55. J. Dohlong
56. Shri Khagendra Nath Daimary
57. Shri Bikash Kr. Saikia
58. Shri Jagadish Chandra Das

Respondents

(All the respondent Nos.6 to 58 are working as Superintendent Group B of Customs and Central Excise under the Commissioner of Customs and Central Excise, Shillong.)

(None appeared on behalf of Res.Nos. 1 to 5
Shri S. Das counsel, for Res.Nos.27, 28, 30, 32, 35 and 53)



O R D E R

SHRI MUKESH KUMAR GUPTA, MEMBER(J)

By the present OA, a challenge has been made to provisional seniority list of Inspectors as on 21st October, 1994, which was finalised on 27.4.95, further seniority list published as on 1.7.99 as well as a direction to respondents to maintain applicant's seniority vis-a-vis Respondent Nos.6 to 58 in the said grade and also to consider the applicant for promotion to the next grade of Superintendent Group B with retrospective effect.

2. The reliefs prayed for are as follows:

8.1 That the impugned seniority list published as on 21.10.1994 vide letter No.C.No.II(34)/ET-I/91/PT-I dated 24.10.94 and the letter No.C. No.II(34)2/ET-I/91/F-I/9466-550(B) dated 27.4.95 whereby draft seniority is declared as final be set aside and quashed.

8.2 That the letter No.C.No.II(34)10/ET-I/93 (Annexure 13) whereby impugned seniority list published as on 1.7.99 and other subsequent seniority list published thereafter be set aside and quashed.

8.3 That the respondents be directed to maintain the seniority position of the applicant and private respondents which was assigned as on 1.1.1984 and also on 1.1.1993 in terms of seniority principles laid down in the Office Memorandum dated 22.12.1959 and also in terms of para 7 of the OM dated 7.2.1986.

8.4 That the direction of the Revenue Boards for re-fixation of seniority communicated vide Telex F.No.23024/5/1/92-AD-IIIA dated 4.10.1994 and the impugned order bearing letter C.No.I(9)/ET-I/2001/PT.I dated 6.1.2003 be set aside and quashed.

8.5 That the applicant be declared senior to the private respondent Nos.6 to 58 in the grade of Inspector as well as in the grade of Superintendent Gr.B in the Department of Customs and Central Excise for all purposes.



8.6 That the promotion of the applicant in the grade of Superintendent Gr.B be antedated at least from the date of promotion of his immediate junior with all consequential service benefits including seniority.

8.7 Costs of the application.

8.8 Any other relief or reliefs to which the applicant is entitled to, as the Hon'ble Tribunal may deem fit and proper."

3. The facts as stated are that the applicant, initially appointed as LDC in the year 1974, promoted as UDC in the year 1977, was promoted as Inspector on ad hoc basis vide order dated 6th March, 1982. The said order stated that the service rendered during the period of ad hoc promotion will not count towards seniority. Vide order dated 16th November, 1982, the applicant along with other officials, was appointed on regular basis to the said grade with effect from the date of the said order. He had further been promoted to the grade of Superintendent Group B vide Establishment Order dated 30th March, 2001.

4. Before proceeding further, it would be relevant to notice certain historical background. OA Nos.62-71/87 were filed before the Cuttack Bench of this Tribunal, for determination of effective date of OM dated 7.2.86, which were allowed vide judgment and order dated 10th April, 1989, holding that: ".....the principles laid down by the Supreme Court have to be given effect to at least from the date of pronouncement of the decision by the Supreme Court and not arbitrarily from some prospective date depending upon the OM gets issued by the Govt.....". Shri N.C. Patra, a direct recruit Inspector of 1981 batch of Shillong Customs and Central Excise Commissionerate made representation seeking extension of the benefit of the said judgment. In the meantime, another OA No.8/1989 was preferred before the Calcutta Bench by Shri Monotosh Goswami, which was also disposed of. Since the representation filed by Shri N.C.

A

Patra was pending before the Government and remained unattended, he instituted OA No.925/92, which was disposed of vide order dated 25.11.93 with a direction to the respondents to consider the pending representation and take a final view into the matter keeping in view the observation made by the Cuttack Bench as well as Calcutta Bench in the aforesaid OAs. Shri N.C. Patra, as noted herein above, was a direct recruit of 1981 batch of Shillong Directorate and had questioned the seniority list published on 1.1.1990. Pursuant to the aforesaid directions, the Board of Customs and Central Excise vide their telex dated 4.10.94 decided to extend the relief to the said official and, therefore, a circular dated 24.10.94 was issued inviting objections/representations, due to such revision of seniority list, by 20th November, 1994. The applicant submitted his representation dated 10th November, 1994, and stated that OA No.141/2002 was pending before this Bench of the Tribunal, in which he was also one of the respondents, and, therefore, the preparation of the draft seniority list was unwarranted. He specifically stated that he "was placed on such a vacant slot as per the then policy of the Government of India". At this stage, we may note that DoPT issued OM dated 7.2.86 on the subject of relative seniority of direct recruits and promotees, which specifically noticed that the seniority adhered to so far was based on MHA OM dated 22nd December, 1959 i.e. according to rotation of vacancy reserved for direct recruits and promotees. While the above mentioned principles was working satisfactorily but there were certain difficulties in determining seniority in cases where there was some delay in direct recruitment or promotion or where enough number of direct recruits or promotees were not available. In such situation, the practice followed was to keep the slots meant for direct recruits or promotees vacant. Since this matter

Q

came up for consideration in various Courts including the Hon'ble Supreme Court, the Apex Court, in several cases, directed the Government to recast the seniority list, it was felt necessary to issue guidelines with illustrations on the said subject of relative seniority of direct recruits and promotees.

5. After considering the objections raised by the applicant as well as other officials and also pursuant to the order passed by this Tribunal on 30th July, 2002, in OA No.141/1992 (K. Neog v. Union of India), the official respondents issued communication dated 27th April, 1995 (Annexure A-6) and disposed of all such representations and the draft seniority list circulated vide communication dated 24.10.94 was made final without any further alteration, however, subject to the outcome of the SLP filed by the Department before the Hon'ble Supreme Court against the judgments of Cuttack Bench as well as Calcutta Bench. Based on the said seniority list, various orders of promotions to the next grade of Superintendent Group B were also issued on 7.6.95, 11.12.95 and so on.

6. Being aggrieved by the communication dated 24.10.94 as well as 27.4.95, the applicant herein, along with other officials, instituted number of applications including OA NO.171/95. The said OAs were disposed of by this Bench on 22nd January, 99. It was an admitted fact that the seniority in the said cadre was used to be maintained on regional basis and the said practice continued till the year 1993. Vide the draft seniority list, the applicant was shown junior in comparison to private respondents. It was the contention of the applicant that during the period 1959-85, the quota rota system was prevalent, which had been abolished after the DoPT OM dated 7.2.86. Since the aforesaid OM was to take effect from 1st March, 1986, the seniority determined prior to the said date was not to be re-opened and disturbed. It was the further



contention of the applicant that he having occupied the particular position for a long time, the seniority position ought not to have been disturbed and the judgment rendered by the Calcutta Bench in the aforesaid OA No.925/92 was not binding on him. On the other hand, the private respondents contended that the quota rota system was never adhered to. In fact, there was a break-down of this system and the procedure as specified in the subsequent OM dated 7.2.86 was, in fact, followed. The aforesaid seniority lists were prepared in accordance with the judgment of the Calcutta Bench, which, in turn, was based on Cuttack Bench order directing the respondents to re-fix seniority of similarly situated employees. The Calcutta Bench in the aforesaid OA noted that the direction issued by the Cuttack Bench had already been implemented and there was no stay granted by the Hon'ble Supreme Court. Since there was a serious dispute as to whether quota rota rule as prescribed under OM dated 22nd December, 1959 had broken down or not and the facts were not available before the Bench, the matter was remanded to the respondents to examine the entire matter afresh in the light of the decision of the Apex Court in A. Janardhana v. Union of India & Ors. (AIR 1983 SC 769 and A.N. Pathak v. Secretary to the Government of India (AIR 1987 SC 716) besides the other judgments as reported in Union of India v. G.K. Vaidyanathan -AIR 1996 SC 688. The respondents were also directed to grant personal hearing before taking a final decision. In compliance of the aforesaid direction, the respondents issued another seniority list dated 11th January, 2001 and stated that after examination of all the relevant judgments of this Tribunal as well as Hon'ble Supreme Court, the Commissionerate decided to adhere to revise seniority list dated 13.7.98, issued consequent to the judgment dated 5.9.95 in OA No.241/91. The said seniority list was challenged



by the applicant by instituting OA No.111/2001, which was disposed of vide judgment dated 16th May, 2002, with the following observations:

"4. We have heard the learned counsel for the parties at length. Upon hearing the parties we are of the opinion that the matter requires further reconsideration at the official level. The order dated 11.1.2001 itself indicated that the respondents failed to apply its mind to the fact situation. In the impugned order dated 11.1.2001 it had mentioned that the authority decided to adhere to the revised seniority list dated 13.7.1998 issued under C.No.11(34) 1/ET.I/96/28968-290(A). We have perused the revised seniority list circulated vide C.No.II(34)/ET.I/96/28968-290(A) dated 13.7.1998 which related to the seniority list of Inspectors subsequently promoted as Superintendents. The applicant was not promoted as Superintendent and therefore, his case could not have been linked with those cases. At any rate, the matter requires reconsideration by the authority. As was earlier ordered by the Tribunal while determining the interse seniority between the applicant and the private respondents, the respondents were also to take note of the decision rendered by this bench including the decision of the Hyderabad Bench in OA No.1323/1993 and also the O.M. Dated 7.2.1986 which was made applicable prospectively. The applicant may also submit a fresh representation, if so advised, within two weeks from the date of receipt of the order and on receipt of such representation, the respondents are directed to redetermine the interse seniority of the applicant vis-a-vis the private respondents as expeditiously as possible, preferably within two months from the date of receipt of such representation. We, however, decline to pass any order on the promotion matter since we have remanded the matter to the authority for determination of the interse seniority between the applicant and the private respondents.


Subject to the observations made above, the application stands disposed of. There shall, however, be no order as to costs."

7. A perusal of the above order will show that the respondents were directed to take into consideration the judgment rendered by the Hyderabad Bench in the OAs noticed therein besides reconsidering the entire matter in view of the earlier judgments and to pass reasoned and speaking order. Once again, the respondents considered the entire matter critically and after examination of all the relevant judgments, the Shillong Commissionerate came



to the conclusion that "the quota rule has failed in the instant case during the period prior to 1.3.86 so far as seniority of the DR Inspectors and PR Inspectors are concerned". It was also observed therein that the judgment rendered by the Hyderabad Bench was distinguishable on facts inasmuch as that was not a case of break-down of quota rota rule. It was also observed that the decision of Hyderabad Bench was not relevant so far as the issue involved in the matter of seniority of Inspectors in Shillong Commissionerate. We may note at this stage that the Hyderabad Bench had rendered a judgment on 13.2.97 in OA No.1323/93 (Srikanth Babu v. Union of India) wherein the seniority of Inspectors appointed from the year 1972 onwards was revised. It was noticed therein that para 7 of the OM dated 7.2.1986, as per the Full Bench Judgment rendered on 21st November, 1996 by the Hyderabad Bench in RA No.103/93 in OA 1019/92 and other connected matters, was prospective in operation. We may note at this stage that the challenge made before the Hyderabad Bench was to the seniority list of Inspectors of Central Excise of Hyderabad, Guntur and Visakapatnam Collectorates as on 1st January, 1992 issued on 30th April, 1993. The Bench specifically held that while issuing the impugned seniority list dated 30th April, 1993, the seniority from 1972 had been re-opened, which is against the principles contained in OM dated 7.2.86, which prohibits unsettling the settled seniority.

8. The contention raised in the present OA is that the applicant is entitled to count his seniority in the cadre of Inspectors from the date of his ad hoc appointment i.e. 6.3.1982, though regularised vide order dated 16.11.82; that number of seniority lists were published assigning seniority to the applicant following MHA OM dated 22nd December, 1959 and he all along had been shown



over and above the private respondents and, therefore, his seniority ought not to have been disturbed belatedly; that the reasons for alteration and re-fixation of seniority vide impugned communicated dated 24th October, 1994, which, in turn, was based on judgments of Cuttack Bench and Calcutta Bench was inapplicable to him as he was not the party in the said cases; that the seniority already determined should not have been re-opened in terms of the mandate of the aforesaid DoPT OM; that the said provisional seniority list was prepared in violation of the DoPT OM and the judgment of Cuttack Bench and Calcutta Bench have to be read as if they were orders and judgments in personam and not judgment in rem. The applicant also contended that there was no break down of quota rota rule during the relevant year and as per the observation made in para 5 of the judgment and order dated 22nd January, 99, while remanding the applicant's earliest OA No.171/95, the respondents had no scope for altering or re-fixing his seniority; that he was not a party to OA No.241/91 pursuant to which the respondents issued revised seniority list circulated on 11th January, 2001 and, as such, there was no scope left to the respondents to club the case of the present applicant along with the aforesaid order passed in OA No.241/91; that there was no indication in the impugned order dated 6.1.2003 whether there was any break down in the quota rota rule during the relevant period.

9. The official respondents contested the applicant's claim and raised the plea of res judicata, limitation etc. It was pleaded that the respondents examined and considered the applicant's representation in the light of the judgments of the Apex Court as well as the directions issued by this Bench including decisions of the other Benches and thereafter passed reasoned and



speaking order. A draft seniority list was prepared and issued on 24th October, 1994, pursuant to the judgment of Calcutta Bench dated 25.11.93 in OA No.925/92 as well as Cuttack Bench judgment dated 10.4.89 in OA Nos.62-71/87. The Cuttack Bench in specific held that the principles laid down by the Hon'ble Supreme Court had to be given effect at least from the date of pronouncement and some prospective date cannot be fixed by the Government arbitrarily. The said draft seniority list was made final on 27.4.95 after disposing of the objections and representations made in that regard. In the meantime, since another judgment and order was passed by this Bench on 5.9.95 in OA No.241/91, another revised seniority list dated 13.7.98 was issued. The plea of break-down of quota rota rule under OM dated 22nd December, 1959, due to large scale deviation prior to 1st March, 1986, was pleaded in specific, which necessitated to issue revised seniority list. Each and every aspect was considered by the respondents prior to issuing impugned communication dated 6th January, 2003, which not only considered the judgment rendered by the Hon'ble Supreme Court but also took note of the judgments of Hyderabad Bench as well as this Bench.

10. The applicant by filing rejoinder controverted the stand taken by the respondents, while reiterating his contentions raised in the OA. According to the applicant the allegation of "deviation" from the quota rule did not mean "break-down of quota rule" as held by the Hon'ble Supreme Court in Union of India v. G.K. Vaidyanathan (supra). According to applicant, there was no scope on the part of respondents to advance such arguments regarding break-down of quota rota rule at this belated stage particularly after the pronouncement of the order dated 16th May, 2002, while remanding the matter once again, as raised in

Q

OA No.111/2001. By filing additional affidavit reliance was also placed on Deptt. Of Revenue communication dated 29.7.2004 issued in compliance with the judgments dated 22.11.96 & 28.5.1996 of the Hon'ble Supreme Court for determination of seniority of officers of the Indian Customs & Central Excise Service Group 'A'.

11. We have heard learned counsel for the applicant as well as private respondents and since none appeared on behalf of official respondents, we had no occasion to avail the valuable assistance to be rendered by them and, therefore, were compelled to peruse the pleadings carefully.

12. Shri M. Chanda, learned counsel appearing for the applicant strenuously urged that the impugned seniority list as well as the order passed, as noticed herein above, are liable to be quashed and the applicant is entitled to restoration of his seniority. The learned counsel basically reiterated the submissions noticed herein above and placed reliance on number of rulings namely:

1. (1996) 33 ATC 74 Para 16 and 17
Association of gazetted officers of the Income Tax Department Vs. U.O.I and others – Holding that DoP&T OM dated 7.2.86 is applicable to Income Tax Department.
2. (1993) Supp (2) SCC 506. Para 15 and 16
K.K.M. Nair and Others v. UOI
3. (1990) 2 SLJ, page 488 Para 16 and 23
Shri K.K. Govil and Others v. UOI and others
4. (1992) 4 SCC 455 p.10
S.B.. DOGRA Vs. State of Himachal Pradesh
5. (1998) 4 SCC Page 65 Para 4
Abraham Jacob & Ors. v. Union of India



6. (1998) 2 SCC Page 523
B.S. Bazwa and another v. State of Punjab
7. AIR 1996 SC 688, Union of India v. G.K. Vaidyanathan
8. (2000) 2 SLJ, CAT P-9
Bhim Sen Joshi v. UOI and others
9. Full Bench (1995) Vol.30 page 341 – H.S. Ramamoorthy & Anr.
v. Union of India – dealing with judgment in rem and judgment in personam.

13. We need not reproduce the entire rulings on which reliance was placed except to note the basic contentions raised like that respondents are estopped to raise the plea of break down of quota rota rule particularly when it was not their stand in the earlier proceedings namely OA No.171/95 as well as OA No.111/2001. Moreover, in fact, there was no break-down of quota rota rule. The plea of laches on the part of respondents in disturbing the applicant's seniority was also raised. It was next contended that the judgments are binding between the parties and has to be read as judgment in personam and not judgment in rem.

Mr. S. Das, learned counsel appearing for respondents Nos.27, 28, 30, 32, 35 and 53, on the other hand, raised the plea of res judicata and controverted the contentions raised by the applicant. Our attention was drawn to para-6 of the order dated 22nd January, 99, passed in OA No.171/95 along with other OAs, wherein this Tribunal had specifically noticed the private respondents' contention regarding break-down of quota rota rule. Our attention was further drawn to para-12 of the aforesaid order wherein it was observed that the basic question was whether the quota rota rule as prescribed under OM dated 22nd December, 1959, was broken down or not. The Bench also observed that as the

A

facts were not available before the Bench on the aforesaid account it was not in a position to decide this and observed that the entire matter required re-examination in detail keeping in view the decision of the Apex Court. It was further contended that the plea of applicant that no such contention was raised, was misplaced and misconceived. The learned counsel for the respondents basically reiterated the stand taken by the official respondents vide their written statement. We may note at this stage that the oral arguments were advanced on their behalf and no reply had been filed prior to the date when the matter was heard and reserved for orders on 15th February, 2005. On the same date, after the hearings were concluded, the aforesaid respondents filed their written statement in the Registry. In the above circumstances, we have taken a view not to take note of the said written statement.

14: On consideration of the pleadings, the following questions need our consideration and determination:

- (1) Whether the applicant was entitled to count his seniority in the Inspector Grade w.e.f. 6th March, 1982?
- (2) Whether there was any illegality in the draft seniority list dated 24th October, 1994, as finalised on 27th April, 1995?
- (3) Whether the applicant's contention that he was not bound by the judgments rendered by the Cuttack, Calcutta Bench of this Tribunal as well as the other judgments, being not party therein, is justified or not?
- (4) Whether there was a breakdown of quota rota rule in the Shillong Directorate particularly for the period prior to 7th February, 1986 or not?

15. After considering the rival contentions of the parties and on examination of the records produced before us, besides the pleadings on records, we are of the considered view that the applicant is not entitled to count


[Signature]

the seniority in the grade of Inspector w.e.f. 6th March, 1982, as he was promoted to the said post on ad hoc basis without following the rules. Moreover, he was regularised in the said post vide order dated 16th November, 1982 with clear stipulation that he is regularised: "with effect from the date of the said order". In other words, the applicant was not regularised in the said grade prior to 16th November, 1982. The reliance placed on Direct Recruits case, 1990(2) SCC 715, for the above purposes, in our considered view, is misplaced and misconceived. When the applicant was regularised vide aforesaid order dated 16th November, 1982, from the said date, how could he contend that he was entitled to seniority prior to the said date. We find no justification in the order dated 3rd September, 1985, appointing the applicant on substantive basis in the said grade of Inspector (OG) w.e.f. 1st August, 1982. It is an admitted fact, as stated by the applicant himself in his representation dated 10th November, 1994, that he "was placed on such a vacant slot as per the then policy of the Government of India". Since the question of keeping slots vacant had not been approved by the Hon'ble Supreme Court in various rulings, necessity to issue OM dated 7th February, 1986, was felt which, in specific, dispensed with such practice particularly when the slots meant for direct recruits or promotees could not either be filled up or there was some delay in filling those slots.

16. The communication dated 24.10.94, issued in the background of DoPT OM dated 7th February, 1986, as well as the judgment rendered by the Cuttack Bench and Calcutta Bench, specifically noticed that the request of Shri N.C. Patra, to extend the benefit of the aforesaid judgments, was acceded to by the Board of Customs and Central Excise vide their letter dated 4.10.94. In other words, the communication dated 24.10.94 only invited objections from the


[Signature]

concerned officials whose position was to undergo change. The decision taken by the Board as on 4.10.94 had not been the subject matter in the proceedings filed before the Court/Tribunal vide OA No.171/95. The applicant's earlier litigation through OA No.111/2001 had not recorded any specific finding for the claim raised for the first time. A bare perusal of the orders passed therein, the relevant portion of which has been extracted herein above, indeed goes to show that the matter was simply remanded with a direction to respondents to consider the entire matter afresh keeping in view the judgments rendered by various Benches of the Tribunal as well as Hon'ble Supreme Court as noticed therein. We may also note that the specific contention raised by the private respondents in OA 171/95 regarding break-down of quota rota rule was also noticed and it was observed that in the absence of any material placed on record, on the said aspect, the matter could not be finally adjudicated. The applicant's contention that the respondents were estopped from raising the point of quota rota at this stage as it was never the stand of the official respondents in earlier proceedings, in our considered view, is misplaced and misconceived, particularly when we find that as early as in proceedings decided in OA No.171/95, such aspects were noticed in specific. Moreover, the respondents, after considering the matter in detail, passed a reasoned and speaking order dated 6.1.2003 wherein a specific stand has been taken about the breakdown of quota rota rule prior to issuance of DoPT OM dated 7th February, 1986. We may note at this stage that apart from making a bald and vague statement that there was no break-down of quota rota rule prior to the said date, no material of any worth has been placed on record by the applicant to record a specific finding on the said aspect. It is well settled law that when a contention is raised by the Department by passing a reasoned and



speaking order and the same is disputed/contested by the delinquent official, material must be placed to discount such stand. In our considered view, the applicant has failed to discharge such burden rested on him. As we have already noticed that this Tribunal as early as on 22nd January, 1999, while remanding the issues raised in OA No.171/95, specifically recorded that "the facts are not available before us" to determine whether the quota rota rule as prescribed under OM dated 22nd December, 1959, had broken down or not as well as no opportunity was given to the other side to rebut the same, it was felt by this Tribunal that the respondents should examine the entire matter afresh in the light of the decision of the Apex Court mentioned therein. Mere observation by the Tribunal in para-12 that on looking to the documents placed before it, it cannot be said that the rule prescribed by 1959 OM had in fact collapsed, would not enable the applicant to contend and plead that the said observation should be equated as final determination of issue or view taken by the Tribunal on the said aspect particularly when, in the next sentence, it was specifically observed that : "due to paucity of the materials available before us we are not in a position to decide this". Therefore, we are of the considered view that the applicant's contention that the official respondents raised a belated plea about the quota rota rule, which should not be taken cognizance of, is untenable, baseless and cannot be accepted and therefore over-ruled.

17. As far as the question that applicant is bound by the judgment rendered by the Cuttack Bench, Calcutta Bench as well as this Bench is concerned, we are of the view that merely because the applicant was not a party to the said judgment and orders, could not be a ground to contend that this Tribunal also cannot look into the said aspect and ignore the same vis-a-vis the



determination of applicant's seniority. The term 'judgment in rem' and 'judgment in personam' has come up for consideration before the Court/Tribunal on number of occasions and we need not too dilate on this point any more than to state that when a judgment rendered in a particular case is accepted by the Government and the benefit of it is acceded to the similarly situated persons, like in the present case, when it was extended to Shri N.C. Patra, a direct recruit Inspector of the Shillong Directorate, it cannot be ruled that the said judgments would have to be construed as judgment in personam. Therefore, we do not find any force in such contention of the applicant.


Shri Chanda, learned counsel appearing for the applicant vociferously contended that the seniority list in the said cadre had been finalised prior to the date when the DoPT issued OM dated 7th February, 1986, and, therefore, the said matter could not have been re-opened. For this purpose, he invited our attention to the contention raised in para 4.7 of the OA wherein the seniority positions "as on 1.1.84", "as on 1.1.93" and lastly "as on 21.10.94" were detailed and pleaded by the applicant. On the query being raised by the Bench as to when and which date precisely the said seniority lists were issued and published and where were the copies of the circular under which such seniority were notified, no material was placed before the Tribunal. Merely because the seniority was prepared as on a particular date, it cannot be concluded that the applicant's seniority had been finally determined prior to DoPT OM dated 7th February, 1986. Determination of seniority is different and distinct than the seniority "as on" i.e. some specific date. Under OM dated 7.2.86 what is important is the determination & finalisation of seniority prior to the date of the said OM and not the issuance of seniority "as on" specific date. We may also



note at this stage that the applicant was appointed on substantive basis in the grade of Inspector vide Establishment Order dated 3rd September, 1985. At the relevant point of time one could not have found placement in the seniority list unless and until he was appointed on substantive basis. In other words, the seniority list issued prior to the said date of 7th February, 1986, could not have included applicant's name. Details of the seniority list issued prior to the said date of 7th February, 1986, is wanting in the present OA.

18. We have carefully perused the impugned circular dated 6th Jan., 2003 along with other materials in the shape of Seniority list issued vide communication dated 24.10.1994 and 27th April, 1995 finalising the said draft list etc, and find that there is no illegality, arbitrariness etc. in the same and the applicant's seniority has been rightly determined particularly with reference to the judgments of the Tribunal as well as of the Apex Court ruling. We as a coordinate Bench of the Tribunal are bound by the judgments on the said subject rendered by other Bench of the same composition, particularly as a precedent on facts and in law. The question framed by us herein above, are accordingly answered against the applicant.

19. On a cumulative consideration of all the facts and discussions made herein above, we are of the considered view that there was no illegality in issuing the draft seniority list dated 24.10.94, as finalised on 27th April, 1995, and further seniority lists issued thereafter. Similarly, we find no justification in the challenge made to Revenue Board's decision taken on 4.10.94 as well as dated 6.1.2003. We may note at this stage that the challenge made to Revenue Board decision dated 24.10.94 had not been the subject matter in the earlier proceedings before this Tribunal except OA No.111/2001 instituted by the

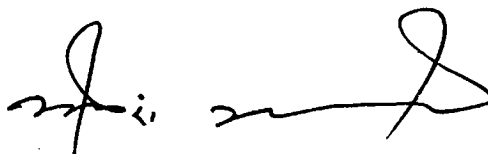


7

applicant and, therefore, the challenge made to the said decision dated 4.10.94 by the present OA, almost after a decade, is untenable and cannot be countenanced. The impugned order dated 6.1.2003 is a detailed, analytical and speaking order and deserves no interference by this Tribunal. None of the judgments cited by learned counsel for the applicant are applicable and relevant in the facts and circumstances of the present case.

20. In view of the discussions made herein above, the present OA, found to be devoid of any merit, is liable to be dismissed. Accordingly, the OA is dismissed. No costs.


(K.V. PRAHLADAN)
MEMBER(A)


(MUKESH KUMAR GUPTA)
MEMBER(J)

ua.

Filed by The Applicant
Through Sugit Choudhary
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

O.A. No. 139 /2003

Shri Debajyoti Mishra.....Applicant.

-Versus-

Union of India & Others.....Respondents

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

DATES

SYNOPSIS OF EVENTS

- 06.03.1982- Applicant promoted as inspector on ad-hoc basis against regular vacancy Prior to that he was initially appointed as LDC in 1974 and got promotion as UDC in 1977
- 16.11.1982- Applicant was appointed on regular basis in the grade of Inspector vide order-dated 16.11.1982 wherein the seniority in the grade of inspector was also indicated and his name was placed above the private respondents. Subsequently such seniority lists were published every year wherein the applicant's seniority was fixed above all the private respondents in terms of the O.M. dated 22.12.1999¹⁹⁵⁹, issued by the Govt. of India.
- 21.10.1994- A revised seniority list was issued by the respondents re-fixing the seniority of the inspectors in violation of O.M. dated 7.2.1986, wherein the name of the petitioner, for the first time, was shown below that of the private respondents.
- 10.11.1994- applicant agitated against the revised seniority list and submitted representation but no result. Applicant filed O.A. No. 171/95 and then O.A. No. 111/2001 before the Hon'ble CAT for restoration of his seniority as on 01.01.1993.
- 27.04.1995- Draft seniority list published on 21.10.94 was finalized in total violation of the rule of seniority which adversely affected the service prospects of the applicant.
- 07.06.1995- Respondents promoted some of the private respondents who are junior to Applicant on the basis of the revised seniority list dated 21.10.94 during

the pendency of the O.A. No.171/95. Such promotions were made thereafter also.

- 03.09.1985-** Respondents issued order confirming the services of the Inspectors wherein the applicants name appeared at Sl. No. 24 and his date of confirmation shown as 01.08.1982, whereas his date of seniority as Inspector ought to have been counted from his initial date of promotion on adhoc basis i.e. from 06.03.1982 as per rules prevalent at the relevant time.
- 22.01.1999-** Hon'ble CAT pronounced its judgment and order dated 22.01.99 in O.A. No.171/95 directing the respondents to examine the case afresh and decide the matter within a period of 3 months of the date of receipt of the order.
- 28.04.1999-** Applicant submitted representation on 28.04.99 to the Commissioner of Central Excise, Shillong for implementation of the judgment dated 22.01.99.
- 02.08.1999-** Applicant served Lawyer's notice.
- 20.08.1999-** Respondents published once again the seniority list of Inspectors as on 01.07.99 placing the applicant below the private respondents even after pronouncement of the judgment dated 22.01.99.
- 30.08.1999-** Applicant submitted reminder on 30.08.99, followed by further reminders on 31.08.99, 02.09.99 and 14.09.99.
- 14.09.1999-** Applicant submitted representation and sent further reminders on 01.02.2000.
- 11.01.2001-** The Commissioner rejected the claims of the applicant.
The applicant filed O.A. No. 111/2001.
- 30.03.2001-** Applicant submitted promoted belatedly to the grade of Superintendent.
- 16.05.2002-** Hon'ble CAT disposed of O.A. No. 111/2001 directing the applicant to submitted representation within 2 weeks and further directing the respondents once again to redetermine the inter -se- seniority of the applicant vis-à-vis the private respondents within 2 months from the date of receipt of the order. Respondents did not take any action. Hence applicant filed contempt petition No. 61/2002.

06.01.2003- Respondents issued impugned letter rejecting the claim of the applicant for restoration of his seniority in an arbitrary manner.

Hence this O.A.

PRAYERS

- 8.1 - That the impugned seniority list published on 21.10.94 vide letter No. C. No. II(34)I/ET-I/91/PT-I dated 24.10.94 and letter No. C. No. II(34)2/ET-I/91/F-I/9466-550(B) dated 27.4.95 whereby draft seniority is declared as final be set aside and quashed.
- 8.2 - That the letter no. C. No. II(34)10/ET-I/93 (Annexure-13) whereby impugned seniority list published as on 1.7.1999 and other subsequent seniority list published thereafter be set aside and quashed.
- 8.3 - That the Respondents be directed to maintain the seniority position of the applicant and private respondents which was assigned as on 1.1.1984 and also on 1.1.1993 in terms of seniority principles laid down in the O.M. dated 22.12.1959 and also in terms of para 7 of the O.M dated 7.2.1986.
- 8.4 - That the direction of the Revenue Boards for refixation of seniority communicated vide telex F.No 23024/5/92-AD-III A dated 4.10.1994 and the impugned order bearing letter C. No. I(9)I/ET-I/2001?PT.I. dated 6.1.2003 be set aside and quashed.
- 8.5 - That the applicant be declared senior to the Private Respondents Nos. 6 to 58 in the grade of Inspector as well as in the grade of Superintendent Gr. B. in the department of Customs and Central Excise for all purposes.
- 8.6 - That the promotion of the applicant in the grade of Superintendent Gr. B be antedated at least from the date of promotion of his immediate junior with all consequential service benefits including seniority.
- 8.7 - Costs of the application.
- 8.8 Any other relief or reliefs to which the applicant is entitled to, as the Hon'ble tribunal may deem fit and proper.

(2)

<u>Dates</u>	<u>Synopsis of events</u>
10.11.94	- Applicant agitated against the revised seniority list and submitted representation but to no result. Applicant filed OA No. 171/95 and then OA No.111/2001 before the Hon'ble CAT for restoration of his seniority as on 1.1.93.
27.04.95	- Draft seniority list published on 21.10.94 was finalised in total violation of the rule of seniority which adversely affected the service prospects of the applicant.
07.06.95	- Respondents promoted some of the private respondents who are junior to Applicant on the basis of revised seniority list dtd. 21.10.94 during the pendency of the OA No.171/95. Such promotions were made thereafter also.
03.09.95	- Respondents issued order confirming the services of the Inspectors wherein the applicant's name appeared at Sl. No.24 and his date of confirmation shown as 01.08.1982, whereas his date of seniority as Inspector ought to have been counted from his initial date of promotion on adhoc basis i.e. from 06.03.82 as per rules prevalent at the relevant time.
22.01.99	- Hon'ble CAT pronounced its judgment and order dated 22.01.99 in OA No. 171/95 directing the respondents to examine the case afresh and decide the matter within a period of 3 months of the date of receipt of the order.

contd....p/3

55

(3)

<u>Dates</u>	<u>Synopsis of events</u>
28.4.99	- Applicant submitted representation on 28.4.99 to the Commissioner of Central Excise, Shillong for implementation of the judgment dated 22.1.99.
02.08.99	- Applicant served Lawyer's notice.
20.08.99	- Respondents published once again the seniority list of Inspectors as on 1.7.99 placing the applicant below the private respondents even after pronouncement of the judgment dated 22.1.99
30.08.99	- Respondents published once again the seniority list of Applicant submitted reminder on 30.8.99, followed by further reminders on 31.8.99, 2.9.99 and 14.9.99.
14.09.99	- Applicant submitted representation and sent further reminders on 1.2.2000.
11.01.2001-	The Commissioner rejected the claims of the applicant. The applicant filed OA No.111/2001
30.03.2001	- Applicant promoted belatedly to the grade of Superintendent.
16.05.2002	- Hon'ble CAT disposed of OA No.111/2001 directing the applicant to submit representation within 2 weeks and further directing the respondents once again to redetermine the inter-se-seniority of the applicant vis-a-vis the private respondents within

contd...p/4

(4)

DatesSynopsis of events

- 2 months of the date of receipt of the representation. Respondents did not take any action. Hence applicant filed contempt petition No.61/2002.

06.01.2003- Respondents issued impugned letter rejecting the claimd of the applicant for restoration of his seniority in an arbitrary manner.
Hence this O.A.

PRAYERS

- 8.1 - That the impugned seniority list published on 21.10.94 vide letter dtd. 24.10.94 and letter dtd. 27.4.95 be set aside.
- 8.2 - That the seniority list published as on 1.7.99 and other subsequent seniority lists be set aside.
- 8.3. - That the Respondents be directed to maintain the seniority position of the applicant and private respondents as on 1.1.1984 and on 1.1.1993 in terms of seniority rules laid down in O.M. dated 22.12.1959 and also para 7 of the OM dtd. 7.2.1986.
- 8.4. - That the direction of the Revenue Board communicated vide Telex dtd. 4.10.94 and the impugned order dtd. 06.01.2003 be set aside.

38

(5)

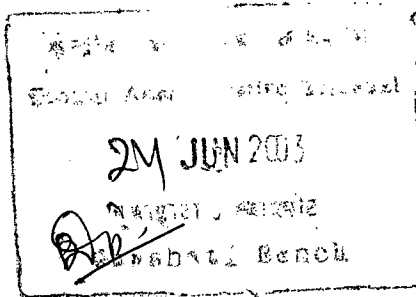
Synopsis of events

- 8.5 - That the applicant be declared senior to the Private Respondent Nos. 6 to 58 in the grade of Inspector as well as in the grade of Superintendent Gr. B.
- 8.6 - That the promotion of the applicant in the grade of Superintendent Gr.B be antedated at least from the date of promotion of his immediate junior with all consequential service benefits including seniority.
- 8.7 - Costs of the application.

INTERIM PRAYERS

- 9.1. - That the Hon'ble Tribunal be pleased to make an observation that pendency of this application shall not be a bar for the respondents to consider the claim of the applicant as prayed for.

@@@@@



**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

(An Application under Section 19 of the Administrative Tribunals Act, 1985)

Title of the case : O. A. No. 139 /2003

Sri Debajyoti Mishra : Applicant

- Versus -

Union of India & Others: Respondents.

INDEX

SL. No.	Annexure	Particulars	Page No.
01.	—	Application	1-63
02.	—	Verification	64
03.	1	Copy of Establishment Order dated 6.3.1982	65
04.	2	Copy of the promotion order dated 16.11.1982	66-67
05.	3	Copy of confirmation order dated 3.09.85	68-69
06.	4	Copy of the draft seniority list as on 21.10.1994	70-75 (70-75) 1/2
07.	5	Copy of representation dated 10.11.1994	76-77
08.	6	Copy of the seniority of Inspectors letter dtd. 27.4.95	78-79
09.	7	Copy of the promotion order dated 7.6.1995	80-82
10.	8	Copy of promotion order dated 11.12.1995	83-85
11.	9	Copy of judgment and order dated 22.1.1999	86-98
12.	10	Copy of Representation dated 28.4.1999	99
13.	11	Copy of Representation dated 30.8.1999	100
14.	12	Copy of Representation 14.9.1999 dt. 14.9.1999	101-102
15.	13	Copy of extract of seniority list as on 1.7.1999	103-107
16.	14	Copy of the rejection order dated 11.1.2001	108
17.	15	Copy of judgment and order dated 16.5.2002	109-114
18.	16	Copy of the impugned order dated 06.01.2003	115-116
19.	17	Copy of judgment and order of Hyderabad Bench	117-119
20.	18	Copy of judgment and order of Full Bench	120-127

Filed by

Sri Debajyoti Mishra
Advocate

Date 23-6-2003.

Filed by the applicant
through advocate Sri
C. H. Chakravarty
23-6-2003
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**GUWAHATI BENCH: GUWAHATI**

(An Application under Section 19 of the Administrative
Tribunals Act, 1985)

O. A. No. 139 /2003

BETWEEN

Sri Debajyoti Mishra
Superintendent
Son of Late Jyotirmoy Mishra
Office of the Commissioner
Central Excise, Dibrugarh
Dibrugarh-786003, Assam.

Applicant

-AND-

1. The Union of India,
Represented by the Secretary to the
Government of India, Revenue Department,
Ministry of Finance,
New Delhi.
2. The Chairman
Central Board of Excise & Customs
North Block, New Delhi-110002
3. The Commissioner,
Central Excise,
Shillong-793001

Debajyoti Mishra.

4. The Secretary to the Government of India,
Ministry of Personnel,
Public Grievance and Pensions,
Department of Personnel & Training,
New Delhi.

5. The Chief Commissioner,
Customs & Central Excise,
Shillong-793001

Private respondents

- ✓6. Shri Arun Kumar Chaturvedi
- ✓7. Shri D.K. Verma
- 8. Shri Khanindra Neog
- ✓9. Shri Susmal Das
- 10. Shri Jambu Lama
- 11. Shri Nitya Gopal Burman
- ✓12. Shri A. Swami
- ✓13. Shri Bapukan Patir
- 14. Shri Raju Sonowal
- 15. Shri Gobinda Thabah
- 16. Shri J. Tuankhsthang
- 17. Shri Pabitra Kumar Reang
- 18. Shri Paresh Debnath
- ✓19. Shri Bijoy Kr. Deb
- ✓20. Shri Jahar Dey
- 21. Shri N.C. Singh Singjam
- ✓22. Shri Ansuman Chakrabarty

Debayyoti Mishra

- ✓ 23. Shri T.K.Sarkar
- 24. Shri Partha Sarathi Das
- ✓ 25. Shri Arabinda Dutta
- 26. Shri Koj Tat
- ✓ 27. Shri ~~D.R.~~ Saha
- ✓ 28. Shri R.K.Sarkar
- ✓ 29. Shri Sukanta Das
- ✓ 30. Shri Biren Saikia
- ✓ 31. Shri Subrangshu Deb
- ✓ 32. Smt. Ninamani Phukan
- ✓ 33. Shri Alok Chakraborty
- ✓ 34. Shri Nalini Mohan Baishya
- ✓ 35. Shri Ranjit Kr. Sharma
- ✓ 36. Shri Amrit Kr. Saikia
- ✓ 37. Shri Deepak Bhattacharjee
- 38. Shri Amar Kumar Singha
- 39. Shri Dinesh Mohanta
- ✓ 40. Shri Partha Sarathi Purkayastha
- 41. Shri Pranab Kr. Sharma
- 42. Shri Aswini Kr. Das
- ✓ 43. Shri Manoj Kr. Brahma
- 44. Shri Padmeswar Pegu
- 45. Shri Naba Krishna Baruah
- 46. Shri Binoy Kr. Bashing
- 47. Shri Subodh Ch. Basumatari
- ✓ 48. Shri Achinta Kr. Sonowal
- ✓ 49. Shri Bidya Bhusan Saikia
- 50. Smt. M. Synnah
- ✓ 51. Shri M.M.Neog

Debayyoti Mishra

- 52. Shri D.N.Doley
- 53. Shri Gangadhar Das
- 54. Shri Debendra Moshanhary
- 55. J, Dohlong
- 56. Shri Khagendra Nath Daimary
- ✓ 57. Shri Bikash Kr. Saikia
- 58. Shri Jagadish Chandra Das

(All the respondent Nos. 6 to 58 are working as Superintendent Group B of Customs and Central excise, under the Commissioner of Customs and Central Excise, Shillong. Therefore notices may kindly be served upon the Private Respondents through Respondent No.3 i.e. Commissioner, Customs and Central Excise, Shillong).

...Respondents.

DETAILS OF THE APPLICATION

1. Particulars of order(s) against which this application is made.

This application is made against the impugned order dated 06.01.2003 issued by the Commissioner, Central Excise, Shillong in total violation of the direction passed by this Hon'ble Tribunal for re determining the seniority of the applicant vis a vis private respondents in O.A. 111/2001 dated 16.5.2002 (and) also praying for quashing and setting aside of the impugned seniority list published as on 21.10.1994 by the Commissioner, Customs and central Excise, Shillong and also setting aside the letter No. C. No. II(34)1-

Debajyoti Misra

43

ET.1/91/ET.1-9446-550 dated 27.4.95 passed the impugned seniority list in respect of the Inspectors of the Customs and Central Excise was finalized and subsequent seniority list published thereafter as well as the impugned order dated 6.1.2003 be set aside and quashed and also praying for a further direction to anti date the promotion of the applicant.

2. Jurisdiction of the Tribunal.

The applicant declares that the subject matter of this application is well within the jurisdiction of this Hon'ble Tribunal.

3. Limitation.

The applicant further declares that this application is filed within the limitation prescribed under section-21 of the Administrative Tribunals Act, 1985.

4. Facts of the Case.

- 4.1 That the applicant is a citizen of India and as such he is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India.

4.2 That the applicant initially appointed as L.D.C. in the year 1974 in the Customs and Central Excise Department and thereafter the applicant was appeared in the Examination conducted by the Customs and Central Excise Department, Shillong for the post of Upper Division clerk (for short UDC) and he came out successfully and appointed as Upper Division Clerk in the Customs and Central Excise Department in the month of November, 1977. Thereafter the applicant was again promoted on ad hoc basis as Inspector vide Estt. Order No. 84/82 dated 6.3.82. The applicant was promoted on ad hoc basis vide Estt. Order dated 6.3.1982 against a regular vacancy.

A copy of the Estt. Order dated 6.3.1982 is annexed as Annexure-1.

4.3 That the applicant was thereafter appointed on regular basis in the grade of Inspector with effect from 16.11.1982 and it is also stated that the seniority in the grade of Inspector was indicated in the said order dated 16.11.1982. In this connection it may be stated that the applicant earlier approached this Hon'ble Tribunal through Original Application No. 171/95 and thereafter through O.A. No. 111/2001 for restoration of his seniority in the cadre of Inspector as on 1.1.1993 which was subsequently re fixed by the respondents on 21.10.1994 by issuing a draft seniority list and the same was finalized vide order dated ✓

Debayyoti Misra

27.4.1995 in total violation of the rule of seniority and as a result the service prospect of the applicant has adversely affected. In this context, it may also be stated that the applicant now promoted in the cadre of Superintendent Group B, vide Establishment Order No.50/2001 dated 30th March 2001. Be it stated that during the pendency of the aforesaid cases, a large number of juniors to the applicant, more particularly the private respondent nos. 6 to 58 are already promoted to the cadre of Superintendent, Group B much earlier to the applicant in supersession of his claim. Hence the present application.

Copy of the order of promotion dated 16.11.1982 is annexed as **Annexure-2**.

- 4.4 That the office of the Customs and Central Excise, Shillong under their Estt. Order No. 17/Con/85 dated 3.9.1995 issued confirmation order in the grade of Inspector of Central Excise where the applicant was placed at serial No.24 and his date of confirmation shown as 1.8.1982.

A copy of the confirmation order is annexed as **Annexure-3**.

- 4.5 That at the relevant time when the applicant was promoted as Inspector at that time recruitment rule provided 75% posts/vacancies of Inspector were required to be filled up by Direct Recruitment and 25% of the

Debayyoti Misra

vacancies by promotion from the next lower ranks in terms of the recruitment rules.

- 4.6. That the applicant begs to state that his seniority was assigned from the date of appointment as Inspector following the then seniority rules in terms of the Office Memorandum No. 9.11 55- R & P dated 22.12.1959 wherein the principle of relative seniority of direct recruits and promotees laid down according to vacancies. Be it stated that the applicant was appointed/promoted against the regular vacancies of the recruitment year 1981-82 and his appointment/promotion although termed as ad hoc but the same was regularized without any interruption. Therefore, the applicant is entitled to count his seniority from the (date) i.e. initial appointment to the post of Inspector in the Customs and Central Excise Department. | ?

- 4.7. That after his appointment in the grade of Inspector in the year 1980 number of seniority lists published by respondent no. 3 assigning seniority of the applicant following the then seniority rules/instructions laid down in the O.M. No. 9/11/55.R.S.P. dated 22.12.1959 issued by the department of Personnel & Training, Ministry of Home Affairs, New Delhi showing the applicant above the private respondents all along and as such the seniority position of the applicant was settled long back in the cadre of Inspectors since 1982 in the Department of Customs and Central Excise. Be it stated that the seniority of cadre of Inspectors used
- details ?

Debayyoti Misra

to maintain on regional basis. A table is prepared below to show the seniority position of the applicant as on 1.1.1984, 1.1.1993 and also the seniority position assigned as on 21.10.1994 to the applicant on the basis of impugned seniority list.

Sl. No.	Name of the applicant	Seniority as on 1.1.84	Seniority as on 1.1.93	Seniority as on 21.10.94
1	Sri D.Mishra	383	68	79

Whereas the private respondent nos. 6 to 58 also assigned seniority since 1984 below the applicant but surprisingly the seniority position of the private respondents have been re fixed and shown above the present applicant. A comparative chart showing the position of seniority of the private respondent nos. 6 to 58 as on 1.1.84, 1.1.93 and the seniority position assigned on the basis of the impugned seniority list as on 21.10.94 given below :

Sl. No.	Name of the applicant	Seniority as on 1.1.84	Seniority as on 1.1.93	Seniority fixed as on 21.10.94
1	Sri Arun Kr. Chaturvedi	390	72	11
2	Sri D.K.Verma	397	77	13
3	Sri Sri Khanindra Nag	407	83	15
4	Sri Susmal Das	398	78	14
5	Sri Jambu Lamba	425	90	16
6	Sri Nitya Gopal Barman	428	93	18

Debayyoti Mishra

7	Sri A Swami	429	94	19
8	Sri Bapukan Patir	431	96	20
9	Sri Raju Sonowal	434	99	21
10	Sri Gobinda Thabah	437	100	22
11	Sri J. Tuankshthang	439	102	23
12	Sri P. Kumar Reang	440	103	24
13	Sri Paresh Debnath	443	105	25
14	Sri Bijoy Kr. Deb	446	107	26
15	Sri Jahar Dey	447	109	27
16	Sri N.C.Singh Singjam	449	110	29
17	Sri A Chakraborty	452	112	30
18	Sri T.K.Sarkar	454	114	31
19	Sri Partha Sarathi Das	456	116	33
20	Sri Arabinda Dutta	456	116	33
21	Sri Koj Tat	467	120	35
22	Sri B.M.Saha	468	121	36
23	Sri R.K.Sarkar	470	123	37
24	Sri Sukanta Das	471	124	39
25	Sri Biren Saikia	472	125	41
26	Sri Subrangshu Dcb	474	127	42
27	Smt. Ninamoni Phukan	476	129	43
28	Sri Alok Chakraborty	477	130	45
29	Sri Nalini Mohan Baishya	479	131	46
30	Sri Ranjit Kr. Sharma	482	133	
31	Sri Amrit Kr. Saikia	484	135	49
32	Sri Deepak Bhattacharjee	486	136	50
33	Sri Amar Kr. Singha Roy	487	138	51
34	Sri Dinesh Mohanta	490	140	54
35	Sri Partha Sarathi Purkayastha	491	141	55
36	Sri Pranab Kr. Sharma	494	142	57
37	Sri Aswini Kr. Das	497	143	58
38	Sri J.Ch. Das	500	144	59

Debayyoti Misra

39	Sri Majoj Kr Brahma	502	145	61
40	Sri B. Kr. Bashing	503	145	62
41	Shri P.Pegu	505	147	63
42	Sri Naba Kr. Baruah	507	148	65
43	S.C.Basumatary	508	149	66
44	Sri A.Sonowal	512	150	67
45	Sri B.B.Saikia	516	152	69
46	Smt. M.Synnah	518	153	70
47	Sri M.M.Neog	519	154	71
48	Sri D.N.Doley	521	155	79
49	Sri Gangadhar Das	522	156	74
50	Sri D.Moshahary	525	158	76
51	Sri James Dohlong	526	159	77
52	Sri K.N.Daimari	527	160	78

Therefore it appears that the seniority of the applicant and private respondents were rightly settled up to 1.1.1993 by the respondent No.3 taking into consideration the fixed quota of the promotees and the direct recruits in terms of Office Memorandum dated 22.12.1959. The reason for alteration and re fixation of seniority vide impugned draft seniority published as on 21.10.1994 vide letter No. C. No. II(34)I /ET-I-91 Pt. I dated 24.10.1994 stated that following two decisions of the Hon'ble Cuttack Bench and Calcutta Bench in the case of Monotosh Goswami and Ors. Vs. U.O.I. & Ors. And Nimai Chandra Patra and Ors. Vs. U.O.I. & Ors. In O.A. Nos. 62, 63 and 71/87 of Cuttack Bench. The Board of Revenue vide their Telex No. F. No. A-23024/5/92-Ad-III A dated 4.10.1994 have decided to

Debayyoti Misra

extend the relief as requested by Shri Patra, Inspector. Consequently, the relative seniority between Direct Recruit and promotees Inspectors appointed before 1.3.1986 have been re fixed and accordingly the impugned seniority list prepared by the Respondent No.3 placing the applicant at serial No. 79 whereas the seniority position of the private respondent nos. 6 to 58 were placed above the applicant on 21.10.1994 in the impugned seniority list as per the above Table, the private respondent nos. 6 to 58 are shown senior to the applicant as on 21.10.1994 and thereby the present applicant is adversely affected by the impugned draft seniority list as on 21.10.1994 published under letter dated 24.10.1994.

A copy of the draft seniority list as on 21.10.1994 is annexed as Annexure-4. The applicant urged to produce the seniority list as on 1.1.1983, and 1.1.1993 as and when the same are required by the Hon'ble Tribunal. ?

- 4.8. That the applicant begs to state that at the time of his initial appointment the seniority of the applicant was determined on the basis of the principle laid down in Office Memorandum No. 9/11/55-RSY dated 22.12.1959 which was a valid Office Memorandum issued by the department of Personnel and Training, Ministry of Home Affairs, New Delhi and laid down the criteria for assigning seniority on definite quota basis of direct recruit and promotees. According to the Office

Debayyoti Mishra

Memorandum dated 22.12.1959 the relative seniority of direct recruits and promotees are determined on the basis of quotas of vacancies reserved for direct recruits and promotees respectively in terms of Recruitment Rules. The relevant portion of the aforesaid Memorandum is quoted below :

"Relative seniority of Direct Recruits and Promotees : - The relative seniority of direct recruits and of promotees shall be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on the quotas of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules".

The seniority of the applicant was assigned following the above principle which at the relevant time applicable for determining the seniority of direct recruits and promotees. Therefore the seniority of the applicant was rightly determined in terms of Office Memorandum dated 22.12.1959 and the same cannot be now altered or re fixed after a decade when the promotion of the applicant is due for the grade of Superintendent Group B depriving from the promotion of the applicant. Moreover, Office Memorandum No. 35014/1/80-Estt(D) should not be reopened which was fixed prior to 1.3.1986 and in view of the aforesaid O.M. dated 7.2.1986 issued by the Govt. of India, Department of Personnel and training the seniority position of the

Debajyoti Misra

applicant should not be disturbed after a decade and especially when the applicant is expecting his legitimate promotion to the post of Superintendent Group 'B'.

- 4.9. That the respondents published a Draft Seniority list vide letter No. II(34)1/ET-1-91/Pt.I dated 24.10.94 wherein it is stated inter alia that following two decisions of the Hon'ble Cuttack Bench and Calcutta Bench in the case of Monotosh Goswami & Ors. Vs. U.O.I. & Ors. And Nimai Chandra Patra Vs. U.O.I. & Ors. In O.A. Nos. 62, 63 and 71 of 1987 of Cuttack Bench the Board of Revenue vide their Telex No. F. No. A 23014/5/Ad-III A dated 4.10.1994 have decided to extend the relief to Sri Patra, Inspector. Consequently the relative seniority of Direct recruits and promotee Inspectors appointed before 1.3.1986 have been re fixed. The relevant portion of the letter dated 24.10.1994 through which impugned draft seniority list published by the respondent no.3 as on 21.10.1994 in respect of the Inspectors is reproduced below :

"Subject : Re fixation of Seniority of
Inspectors appointed before
01.03.1986.

Prior to the issuance of Ministry of Personnel, Public Grievance and Pension's Office Memorandum No. 35014/2/80-Estt(D) dated 7.2.1986 which came into force with effect from 1.3.1986 the relative seniority of Direct Recruits and

Debajyoti Misra

Promotees in Central Services were determined as per Ministry of Home Affairs O.M. No. 9/11/55-RPS dated 22.12.1959 i.e. according to rotation of vacancies reserved for Direct Recruits and Promotees respectively as per Recruitment Rules. While the above mentioned principle was working satisfactorily in cases where direct recruitment and promotion kept pace with each other and recruitment could also be made to the full extent of the quota prescribed, there was difficulty in determining seniority in cases where there was delay in direct recruitment or promotion or where enough number of direct recruits or promotees was not available. In such situation, the practice followed was to keep the slots meant for direct recruits or promotees, which could not be filled up, vacant, and, when direct recruits or promotees were available through later examinations or selections, such persons occupied these vacant slots thereby becoming senior to some of the officers already in position.

This matter has come for consideration in various Court cases both before the Hon'ble CAT and the Supreme Court and in several cases the Courts on the ground of inappropriateness, directed the Government to re cast the seniority already fixed on the basis of O.M. dated

Debayyoti Mishra

22.12.1959 in the light of the principles given in para 3 and the illustration of O.M. dated 7.2.1986 are enclosed herewith.

Now, referring to decisions in two such cases viz., Monotosh Goswami & Ors. Vs. U.O.I. & Ors. In Hon'ble CAT, Calcutta Bench and O.A. Nos. 62,63 and 71 of 1987 in Hon'ble CAT, Cuttack Bench, Shri Nimai Chandra Patra, a direct recruit Inspector of 1981 batch of the Collectorate represented sought for relief in the light of the above mentioned judgments. Accordingly, the Board vide their Telex F. No. A-23024/5/92-AD-III A dated 4.10.1994 have decided to extend the relief as requested by Shri Patra, Inspector. Consequently, the relative seniority between direct recruit and promotee Inspectors appointed before 1.3.1986 have been re-fixed, a draft copy of which is enclosed herewith which may be circulated to all concerned Inspectors working under your charge immediately on receipt of this letter. These may also be informed that they may take their representations, if any, such revision by 20.11.1994, any representation received after this date will not be entertained."

From above, it is quite clear that the Draft Seniority List published as on 21.10.1994 vide letter

Debayyoti Misra

dated 24.10.1994 has been prepared in violation of the Office Memorandum dated 7.2.1986, issued by the Government of India, Department of Personnel, Public Grievance and Pensions etc. The Government of India had taken a decision through O.M. dated 7.2.1986 after considering the decision of various Court cases both before the Administrative Tribunals and Supreme Court cases and it is very specifically stated in para 3 and 7 are as follows :

3. "This matter which was also discussed in the National Council has been engaging the attention of the Government for quite sometime and it has been decided that in future, while the principle of rotation of quotas will still be followed for determining the inter-se seniority of direct recruits of later years, thereby giving them unintended seniority over the promotees who are already in position, would be dispensed with." Balance of paragraph 3 with illustration and paragraph 4 and 5 incorporated as paragraphs 2.4, to 2.4.4 of consolidated orders.

7. These orders shall take effect from 1st March, 1986. Seniority already (determined) in accordance with the existing principles on the date of issue of these order will not be re-opened. In respect of vacancies for which recruitment action has already been taken, on the date of issue of these orders either by way of direct recruitment or

Debayyoti Mishra

56

promotion, seniority will continue to be determined in accordance with the principles in force prior to the issue of this O.M. (Deptt. Of Per & Trg. O.M. No. 35014/2/80-Est(D) dated 7th February 1986".

But the respondents in total violation of the O.M. dated 7.2.1986 decided to re fix the seniority of the applicant on the plea of implementation of two judgments of the Hon'ble Cuttack Bench and Calcutta Bench of the C.A.T. in the cases of Sri Monotosh Goswami and Ors. Vs. UOI & Ors. And Nimai Chandra Patra Vs. U.O.I. & Ors. Be it stated that the present applicant was never informed regarding the decision of any cases filed in the Cuttack Bench and Calcutta Bench. Therefore, the seniority of the present applicant cannot be re fixed/alterd following the judgments of Cuttack and Calcutta Benches of the CAT as because the present applicant was not a party in those cases. The judgment of Cuttack Bench and Calcutta Bench as regard of seniority of Inspectors of Customs and Central Excise are in personam and not the judgment in rem. Therefore the Revenue Boards decision as regards refixation of seniority of Inspectors of this region who was promoted prior to 1986 and seniority also assigned on the basis of the fixed quota of direct recruits and promotees in terms of O.M. dated 22.12.1959 is arbitrary, illegal and unfair, and

✓

Debayyoti Mishra

also contrary to the existing rules of seniority and the decision is also against the Central Government Policy. Therefore, the impugned seniority as on 21.10.1994 published by the Respondent No.3 is liable to be set aside and quashed.

4.10. That the Draft seniority list published as on 21.10.1994 under letter dated 24.10.1994 invited objections from the Inspectors concerned and accordingly the present applicant also submitted his objection vide representation dated 10.11.1994 whereby the present applicant raised objection regarding revision of seniority at this belated stage after a lapse of 13 years. It was also pointed out in the said representation that the applicant is entitled to the benefit of ad hoc service in the grade of Inspector in view of the principles laid by the Hon'ble Supreme Court in the case of the Direct Recruit Class II Engineering Officers Association Vs. State of Maharashtra reported in AIR 1990 (2) SC 264. It is further stated in the said representation that the above principle also followed by the Hon'ble CAT Principal Bench, New Delhi in their judgment and order passed in O.A. No. 3072/91, 3110/91 and 3111/91 passed by the Principal Bench, New Delhi.

A copy of the representation dated 10.11.1994 is annexed as Annexure-5.

Debjyoti Misra

4.11. That most surprisingly the respondents, Customs and Central Excise, Shillong vide their letter No. C.No. 11(34)1/Et 1/91 Et.I/9466-550(B) dated 27.04.95 which was addressed to the Assistant Collector of Central Excise, Digboi, Central Excise Division whereby it is stated that pendency of O.A. 141/92 at the relevant time cannot be a bar for disposal of the representation of the applicant. It is further stated that continuous officiation on ad hoc basis in the grade of Inspector cannot be taken into consideration for the purpose of seniority and accordingly the objections raised by the applicant and his representation dated 10.11.1994 has been rejected by the respondents and the impugned draft seniority list published as on 21.10.1994 has been declared as final without any further alteration. Moreover it is further stated that his fixation of seniority would be subject to the outcome of the SLP filed by the Department before the Hon'ble Supreme Court against the judgment of the Hon'ble CAT Calcutta Bench in O.A. No. 925/92 and various other cases filed before the Hon'ble CAT, Guwahati in this issue. The decision of the respondents declaring the impugned seniority list published as on 21.10.1994 as final is highly arbitrary, illegal and in violation of the Office Memorandum dated 7.2.1986. Therefore, the letter dated 27.4.1995 is liable to be set aside and quashed.

Debarajyoti Misra

A copy of the order of the re fixation of seniority of Inspectors appointed before 1.3.1986 is annexed as **Annexure-6**.

4.12. That most surprisingly after declaration of the Draft Seniority list as final vide letter dated 27.4.1995 the respondents under their Estt. Order No. 167/1995 dated 7.6.1995 have promoted some of the private respondents on the basis of the impugned seniority list published as on 21.10.1994 who are junior, to the present applicant has adversely affected the promotion prospect of the present applicant and the applicant also suffers irreparable loss thereby. Therefore the illegal promotion order issued by the respondents on the basis of impugned seniority list as on 21.10.1994 be set aside and quashed. Be it stated that private respondent No.6 to 58 were junior to the present applicant since 1983 on the basis of the seniority list published as on 1.1.1983 and 1.1.1993. Therefore the illegal promotion of private respondents 6 to 58 be set aside and quashed which is issued under Estt. Order dated 7.6.1995. ✓

A copy of the impugned promotion order dated 7.6.1995 is enclosed as **Annexure-7**.

4.13. That the draft seniority list published by the respondents since 1983 showing the present applicant senior to the private respondent nos. 6 to 58 and the same was all along admitted by the private respondents

Debayyoti Misra

as well as by the official respondents. Therefore now the same cannot be altered at this belated stage.

- 4.14 That it is stated that the applicant all along treated senior to the private respondents and the seniority of the applicant is fixed in terms of O.M. dated 22.12.1959 during the period of 1959 to 1985 the quota rota system was prevalent at the relevant time. Inspectors were recruited either by way of promotion or by way of direct recruitment as per fixed quota, as the decision of Calcutta Bench rendered in O.A. No. 925/92 is not binding upon the applicant in as much as the applicant was never served with a notice. Moreover, the applicant had no knowledge whatsoever about it. The applicant for the first time come to know about the aforesaid decision only from the written statement submitted by the Respondent No. 16 in O.A. No. 101/95. The written statement filed by the official Respondents in O.A. No. 171/95 was silent in this regard. It is relevant to mention here that your applicant earlier approached this Hon'ble Tribunal through O.A. No.171/95. It is further stated that Commissionerate of Customs and Central Excise, Shillong at the relevant point of time determined the seniority of the applicant as well as the private respondents following the principle laid down in the statutory seniority rule/circular dated 22.12.1959 issued by the Government of India, Ministry of Home Affairs. In terms of the said statutory rule of seniority the relative seniority

Debajyoti Misra.

has been determined according to the rotation of vacancies between direct recruits and promotees which was based on the fixed quota of vacancies reserved for direct recruits and promotees respectively since the inter se seniority of the applicant (promotee vs. direct recruit) has been determined by taking recourse to the aforesaid O.M. dated 22.12.1959 issued by the Government of India, Ministry of Home Affairs. Therefore any alteration or revision of seniority after a lapse of twelve years is unsustainable in law and accordingly the impugned seniority list which was otherwise is liable to be set aside and quashed.

- 4.15. That your applicant further categorically states that at any point of time since appointment by way of promotion to the cadre of Inspector there was no break down of quota rule during the relevant years. The rule of rotation was strictly followed in terms of the relevant seniority rule issue under O.M. dated 22.12.1959 and there was no deviation from the quota rule at the relevant point of time when the rule of seniority under O.M. dated 22.12.1959 holding the filed. It would further be evident from the statement made by the learned counsel that the official respondents in O.A. 171/95 (D.Mishra Vs. Union of India & Ors. Which is recorded in paragraph 5 of the said judgment and order dated 22.1.1999. The relevant portion of paragraph 5 of the judgment dated 22.1.1999 is quoted below :

Debaipriya Mishra

"Mr. Deb Roy, learned Sr. C.G.S.C. submits that prior to office memorandum dated 7.2.1986, the quota rota system was in vogue. This system was abolished by the said office Memorandum dated 7.2.1986. He, however very fairly submits that the relative seniority of Inspectors between Direct Recruits and Promotees was maintained as per Circular dated 22.12.1959."

In view of the above statements of the official respondents there is no scope for alteration or revision of the seniority of the applicant which was settled for more than a decade. In this connection it is also relevant to mention here that Office Memorandum dated 7.2.1986 issued modifying the earlier general principles of seniority laid down in the O.M. dated 22.12.1959. But in the said O.M. dated 7.2.1986 it is specifically stated that the revised principles of seniority laid down in the O.M. dated 7.2.1986 shall take effect from 1.3.1986. Seniority already determined in accordance with the existing principles on the date of issue of this orders will not be reopened. The relevant portion of the O.M. dated 7.2.1986 is quoted below ;

" III. Determination of relative seniority of direct recruits and promotees when adequate number of direct recruits not available in any year - According to paragraph 6 of the Annexure above (Item 1) the relative seniority of direct recruits

Debayyoti Misra

and promotees shall be determined according to rotation of vacancies between the direct recruits and the promotees, which will be based on the quota of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules. In the Explanatory Memorandum to these Principles, it has been stated that a roster is required to be maintained based on the reservation of vacancies for direct recruitment and promotion in the Recruitment Rules. Thus where appointment to a grade is to be made 50% by direct recruitment and 50% by promotion from a lower grade, the inter se seniority of direct recruits and promotees is determined on 1:1 basis.

2. While the above mentioned principle was working satisfactorily in cases where direct recruitment and promotion kept pace with each other and recruitment could also be made to the full extent of the quotas and prescribed, in cases where there was delay in direct recruitment or promotion, or where enough number of direct recruits or promotees did not become available, there was difficulty in determining seniority. In such cases, the practice followed at present is that the slots meant for direct recruits or promotee, which could not be filled up, were left

Debajyoti Mishra

vacant, and when direct recruits or promotees became available through later examinations for selections, such persons occupied the vacant slots, thereby became senior to persons who were already working in the grade on regular basis. In some cases, where there was shortfall in 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 long years of regular service already to their credit. This matter has also come up for consideration in various Court cases both before the High Courts and the Supreme Court and in several cases the relevant judgment had brought out the inappropriateness of direct recruits of later years becoming senior to promotees with long years of service.

3. This matter, which was also discussed in the National Council has been engaging the attention of the Government for quite some time and it has been decided that in future, while the principle of rotation of quotas will still be followed for determining the inter se seniority of direct recruits and promotees, the present

Debayyoti Mishra

practice of keeping vacant slots for being filled up by direct recruits of later, thereby giving them unintended seniority over promotees who are already in position, would be dispensed.

6. The General Principles of seniority issued on 22nd December, 1959 (Item I above) referred to, may be deemed to have been modified to that extent.

7. These orders shall take effect from 1st March, 1986. Seniority already determined in accordance with the existing principles on the date of issue of these orders will not be re-opened. In respect of vacancies for which recruitment action has already been taken, on the date of issue of these orders either by way of direct recruitment or promotion, seniority will continue to be determined in accordance with the principles in force prior to the issue of this O.M. (Deptt. Of Per & Trg. O.M. No. 35014/2/80-Est(D) dated 7th February 1986").

In view of the above rule of seniority there is no scope on the part of the Respondents to re-open and revise the seniority of the applicant which is settled long back that too after a decade in total violation of the aforesaid O.M. dated 7.2.1986. More so, when it is conceded by

Debajyoti Misra

the official respondents that prior to the O.M. dated 7.2.1986 the seniority of the cadre of Inspectors were determined on the basis of O.M. dated 22.12.1959.

It is further submitted that at any point of time the private respondents never objected the seniority of the applicant determined by the respondents on the basis of O.M. dated 22.12.1959 where the applicant was placed above the private respondents as per the relevant seniority rule. As such the claim of the private respondents during the year 1993-1994 was hopelessly barred by limitation and the official respondents ought not to have conceded the prayer of the private respondents for refixation of seniority in violation of O.M. dated 7.2.1986 issued by the Ministry of Personnel & Training, Government of India. On that score alone the impugned order refixing the seniority dated 27.4.1995 as well as the impugned order dated 11.1.2001 and the arbitrary order of promotion of private respondents on the basis of impugned seniority list are liable to be set aside and quashed.

That your applicant begs to state that when the O.A. 171/95 was pending before the Hon'ble Tribunal and also after the decision of the said O.A. on 22.1.1999 many of the juniors of the applicant has been arbitrarily promoted to the cadre of Superintendent Group B vide

Debayyohi Misra

Estt. Order 362/95 dated 11.12.1995, 69/96 dated 29.3.96, 184/96 dated 29.9.96, 156/97 dated 8.7.97, 206/97 dated 3.10.97 and 238/97 dated 8.12.97 even when the matter was subjudiced before the Hon'ble Tribunal and even after the communication of the final decision of the Hon'ble Tribunal following the judgment and order dated 22.1.1999 in O.A. No. 171/95 and specially on the ground of the aforesaid promotion orders have been issued on the basis of the impugned seniority list which is not sustainable in the eye of law. As such all these promotion orders are liable to be set aside and quashed.

Copy of the promotion order dated 11.12.1995 is annexed as Annexure- 8.

4.17

That your applicant further begs to state that the seniority of the present applicant cannot be revised or altered or reopened on the basis of any judgment where the present applicant was not a party and also never received any notice or provided any opportunity to represent his case in O.A. No. 62, 63 and 71 of 1987 filed before the Calcutta Bench and Cuttack Bench of the Hon'ble Tribunal and as such decision of those cases cannot be enforced in the case of the present applicant as because same was in violation of cardinal seniority rule and also in violation of principles of natural justice. As such the decision of the Board of Customs and Central

Debijyoti Misra

Excise communicated through Telex message No. F. No. A-23024/5/92-Ad-III A dated 4.10.94 to extend the relief as requested by Nimai Chandra Patra, Inspector of Calcutta Commissionerate, by unsettling the settled position of law, by reopening the seniority of the applicant which was settled long back in the year 1983 and also in violation of OM dated 22.12.1959 and 7.2.1986 cannot be sustained in the eye of law. More particularly in view of the fact that the seniority of the applicant was determined after his appointment of promotion to the cadre of Inspector following the statutory rule of seniority enunciated in the order of Ministry of Home Affairs dated 22.12.1959. The Memorandum which at the relevant time deals with relative seniority of direct recruits and promotees which stipulates that the relative seniority shall be determined according to the rotation of vacancies between the direct recruits and promotees which shall be based on the quota of vacancies reserved for direct recruits and promotees respectively.

4.18

That it is stated that after the pronouncement of the judgment and order dated 22.1.1999 wherein it is directed to the respondents to examine the entire matter afresh in the light of the decision of the Apex Court referred therein the Judgment and also stated that if the applicants claim

Debayyoti Misra

personal appearance/hearing before any decision is taken they may be given such opportunity and the same must be done as early as possible within the period of three months from the date of receipt of the order. The relevant portion of the judgment and order dated 22.1.1999 is quoted below.

"In view of the above, we send back the cases to the respondents to examine the entire matter afresh in the light of the decisions of the Apex Court referred to above. If the applicants claim personal hearing before any decision is taken, they may be given such opportunity of personal hearing if they so claim and they should be given at least seven days notice. This must be done as early as possible at any rate within a period of three months from the date of receipt of this order.

14. The applications are accordingly disposed of.

15. Considering the facts and circumstances of the case, we however, make no order as to costs."

The applicant immediately after receipt of the order dated 22.1.1999 submitted a representation dated 28.4.1999 addressed to the Commissioner, Central Excise, Shillong, inter alia

Debayyoti Misra

praying for implementation of the judgment and order dated 22.1.1999 as early as possible in the manner indicated in the judgment and order dated 22.1.1999. The applicant thereafter served Lawyer notice on 2.8.1999 upon the respondents and finding no response submitted another representation dated 30.8.1999. Reminder was also served on 31.8.1999 and 2.9.1999. Finding no response the applicant submitted another representation dated 14.9.1999 wherein the applicant stated that his seniority was all along up to the period of 1.1.1993 was maintained by the respondents placing the applicant above the private respondents in terms of the O.M. dated 22.12.1959 issued by the Government of India, Ministry of Home Affairs and prayed for restoration of his seniority over the private respondents. It is also submitted by the applicant in his representation dated 14.9.1999 that the seniority of Inspectors published as on 1.7.1999 is contrary to the rule and the said impugned seniority list of 1.7.1999 where the applicant shown junior to the private respondents which had been prepared contrary to the rule of seniority laid down by the Govt. of India in the O.M. dated 7.2.1986 and the same is also contrary to the Judgment and order passed in O.A. No. 171/95 on 22.1.1999. It is also stated that the same is not acceptable to him and prayed for holding a review

Debayyoti Misra

DPC to consider his promotion to the post of Superintendent Group B with all consequential service benefits. It is stated that the seniority list as on 1.7.1999 has been prepared in total violation of statutory seniority rule laid down in O.M. dated 22.12.1959 and also the O.M. dated 7.2.1986 and also unsettling the settled position of the applicant's seniority. As such on that score alone the impugned seniority list published as on 1.7.1999 and thereafter, are liable to be set aside and quashed.

A copy of the judgment and order dated 22.1.1999, representations dated 28.4.1999, 30.8.1999, 14.9.1999 and extract of the seniority list published as on 1.7.1999 are annexed as **Annexure-9,10,11,12 and 13** respectively.

4.19

That it is stated that in the said O.A. 171/95 the applicant challenged the re-fixation of seniority sought to be made by the respondents vide order dated 27.4.95 confirming the impugned draft seniority list prepared and published vide letter dated 24.10.1994 whereby seniority of the applicant has been re-fixed placing the applicant below the private respondents after a lapse of 12 years in violation of O.M. dated 22.12.1959 as well as O.M. dated 7.2.1986. The said OA was duly contested by the official respondents as well as

Debarjyoti Misra

the private respondents before this Hon'ble Tribunal. The Hon'ble Tribunal however decided the said three OAs namely O.A. No. 101/95 and 147/95 on 22.1.1999. In the said judgment and order the Hon'ble Tribunal after careful consideration of the submission of the parties and the decision referred therein observed and decided as follows :

"From the decisions cited above, it appears that if there is no rule regarding fixation of seniority, as in this case, O.M.'59 is to be adhered to for the period for which the particular O.M. was in force. It is also stated that the O.M.'86 does not have any retrospective effect. Now, the question is, as Mr. B.K.Sharma has strenuously argued, as to whether the quota-rota rule as prescribed in O.M. dated 22.12.1959 had broken down or not. The facts are not available before us.

The applicants have submitted a seniority list prepared by the office for the period before 1986. No opportunity was given to the other side to rebut. The applicants have drawn our attention to the list; we cannot ignore looking into this. On looking to this list it cannot be said that the rule prescribed by O.M.'59 had in fact collapsed. If it had collapsed then the decision has to be taken in the light of the decision of A

Debjyoti Misra

Janardhana's case (Supra) and also the other decisions cited above. Due to the paucity of the materials available before us we are not in a position to decide this."

The Hon'ble Tribunal after considering the matter remanded the matter to the official respondents to examine the matter afresh in the light of the decision of the Apex Court cited in the judgment. In the said judgment and order is specifically observed by the Hon'ble Tribunal that on looking to the seniority list it cannot be said that the rule prescribed by the O.M. dated 22.12.1959 is in fact collapsed and further observed if it has collapsed then the decision has to be taken in the light of the A Janardhana case and also the other decision cited in the judgment. In this connection it is relevant to mention here that there was no breakdown in the quota rule at any point of time since 1959 to 1985. As such the decision of the Additional Commissioner (P & V), Customs and Central Excise, Shillong communicated under impugned letter No. C. No. I (34)1/Et-1/99/28-29 dated 11.1.2001 is highly arbitrary, illegal and unfair and the same is also contrary to the judgment and order dated 22.1.1999 passed in O.A. No. 171/95, 101/95 and 147/95. It is further stated that the contention of the Additional Commissioner (P & V), Customs and

Debayyoti Misra

central Excise, Shillong stated in the impugned letter dated 11.1.2001 that he has examined critically the matter of seniority in terms of the judgment of the Hon'ble Tribunal dated 22.1.1999 is incorrect and a mere reading of the impugned order makes it clear that the same has been passed without application of mind and also without examining the cases of the applicant ignoring the direction of the Hon'ble Tribunal in O.A. No. 171/95, but deliberately false statement has been given in the said impugned letter dated 11.1.2001 that the respondents have examined the case of the applicant in the light of the judgment referred in the decision of the Hon'ble tribunal in O.A. No. 171/95. It is surprising to note that in the said impugned order the Additional commissioner (P & V), Customs and Central Excise, Shillong stated that after examination of relevant judgment of the Hon'ble Tribunal and Supreme Court, this Commissionerate has decided to adhere the revised seniority list dated 13.7.1998 issued under C. No. 11(34)1/Et.I/96/28968 - 29010 (A) which has been issued consequent to the judgment dated 5.9.1995 passed in O.A. No. 241/91 by the Hon'ble Tribunal. In this connection it is stated that the present applicant was not a party to OA No. 241/91 and as such a decision taken by the respondents in connection with other seniority case of the same department has no relevancy at all with the case

Debajyoti Misra

of the present applicant and specially when there is specific direction passed by the Hon'ble Tribunal in the earlier case of the applicant in O.A. No. 171/95 to decide the matter of seniority of the applicant afresh in a specific manner after considering the judgment of the Apex Court rather it can rightly be said that this Hon'ble Tribunal issued the guidelines for deciding the issue of seniority by the respondents after examining entire matter afresh in the light of the judgment of the Apex Court. A mere reading of the impugned order dated 11.1.2001 it appears that the office of the Commissioner, Central Excise, Shillong without examining the case of the applicant in terms of the judgment of the Apex Court and also without recording any reasons determined the seniority rejecting the claim of the applicant placing him below the private respondents of O.A. 171/95 in a most arbitrary and illegal fashion and the said impugned order has been passed in total disregard to the judgment and order dated 22.1.1999 in order to avoid any contempt proceeding. But the illegal action of the respondents now again forced the applicant for third round of litigation only due to callousness of the official respondents. When the law has already been settled by the various decision of the Hon'ble Tribunal, High Courts and Apex Court indicated in the earlier judgment in O.A. No.

Debajyoti Misra

171'95 passed by this Hon'ble Tribunal. Therefore the impugned order dated 11.1.2001 is liable to be set aside and quashed on this score alone as the same is contrary to the judgment and order passed in O.A. NO. 171/95 and the decision of placing the private respondents above the applicant or in the other words to continue the determination of the relevant seniority of the applicant and private respondents in terms of the impugned order dated 27.4.1995 is violative of office memorandum dated 22.1.1959 as well as 7.2.1986 and also contrary to the various decision passed by the different Benches of the Hon'ble tribunal, High Courts as well as Apex Courts. On that score alone the impugned orders dated 27.4.1995 and 11.1.2001 passed by the office of the Commissioner, Customs and Central Excise, Shillong are liable to be set aside and quashed.

A copy of the impugned order dated 11.1.2001 is annexed as **Annexure-14**.

4.20

That your applicant further begs to states that there is no scope on the part of the respondents to club the case of the present applicant regarding determination of seniority with O.A. No. 241/91 and the respondents escaped their duties and responsibilities merely saying that they have decided the issue of determination of seniority of

Debajyoti Misra

the present applicant in terms of fixation of seniority of the present applicant in terms of the fixation of seniority made in the revised seniority list dated 13.7.1998 under letter No. C. No. 11(34)1-Et.1/96/28968-29010(A) which has been alleged to have been issued consequent to the judgment and order dated 5.9.95 in O.A. No. 241/91. The case of O.A. 241/91 in any way one cannot be tagged with the case of the present applicant. The materials placed by the present applicant before the Tribunal in O.A. No. 171/95 and the decision of the Apex Court as well as the other Benches of the Tribunal referred by the present applicant cannot be ignored by the respondents in this manner by throwing out direction passed by this Hon'ble Tribunal in the basket in order to avoid the contempt proceeding. The earlier case of the applicant has been decided independently by the Tribunal in O.A. No. 171/95, as such it is mandatory on the part of the respondents to decide the entire matter afresh taking into consideration the various decision cited in the judgment and order and also by examining the necessary records whether there was any break down of quota rota rule at the relevant of time in between the period from 1981 to 1986 as because the applicant was appointed to the cadre of Inspector during the year 1982 and his seniority was fixed above the private respondents

Debajyoti Misra

following the Office Memorandum dated 22.12.1959 issued by the Government of India, Ministry of Home Affairs. It is also on records in the earlier judgment that the official respondents earlier followed the Office Memorandum dated 22.12.1959 while fixing the seniority between the promotee and direct recruit Inspectors in the Commissionerate, Customs and Central Excise, Shillong. As such there is no indication in the impugned order whether there is any break down of quota rule at the relevant period. It is simply mechanically stated in the impugned order dated 11.1.2001 that the respondents decided to adhere to the revised seniority list dated 13.7.1998 which has been issued consequent to the CAT judgment dated 5.9.95 in O.A. No. 241/91. As such the respondents are liable for contempt of court for violation of the judgment and order dated 22.1.1999 passed in O.A. No. 171/95. Moreover in the O.A. No. 171/95 the present applicant prayed for the following reliefs :

"1. That the impugned seniority list as on 21.10.94 published vide letter No. C. No. II(34)I/ET-I/91/PT-I dated 24.10.94 be set aside and quashed.

2. That the letter No. C. No. II(34)I/ET-I/91/PT-I/9466-550 dated 27.4.95

Debajyoti Misra

whereby draft seniority is declared as final be set aside and quashed.

3. That the Respondents be directed to maintain seniority position of the applicant and private respondents which was assigned as on 1.1.84 and also on 1.1.93 in terms of seniority principles laid down in the Office Memorandum No. 9.11.55 RSP dated 22.12.1959 and also in terms of para 7 of the O.M. No. 35014/2/80Estt(D) dated 7.2.1986.
4. That the decision of the Revenue Boards for refixation of seniority communicated vide Telex F. No. 23024/5/5/92-AD-III A dated 4.10.94 be set aside and quashed.
5. That the applicant be declared senior to the private respondent no.5 to 57 in the grade of Inspector in Customs and Central Excise for all purposes.
6. That the impugned promotion order issued under Estt Order No. 167/95 dated 7.6.95 be set aside and quashed in respect of private respondents.

Debayyoti Misra

7. That the respondents be directed to hold Review DPC to consider the promotion of the applicant with all consequential benefits to grade of Superintendent Group 'B' in respect of the applicant, as Inspector.
8. That the period of ad hoc service be counted for the purpose of seniority and promotion in the cadre of Inspectors.
9. That impugned promotion orders issued under Estt. Order No. 362/95 dated 11.12.1995, 69/1995 dated 29.3.1996, 184/1996 dated 29.9.1996, 156/1997 dated 8.7.1997, 206/1997 dated 3.10.1997, 228/1997 dated 19.11.1997 and 238/1997 dated 8.12.1997 be set aside and quashed (Any other promotion order/orders promoting the juniors to the applicant during the pendency of this application also be set aside and quashed.)

Therefore decision of the respondents that they have decided to adhere to the revised seniority list dated 13.7.1998, which has been issued consequent to the judgment and order dated 5.9.1995 in O.A. 241/91 is not relevant either

Debayyoti Misra

with the prayer of the applicant or with the judgment and order dated 22.1.1999 passed in O.A. No. 171/95. The case of the applicant requires to deal with independently and on the strength of the judgment and order dated 22.1.1999 and the direction of the Hon'ble Tribunal cannot be disregarded in the style and manner by issuing the order dated 11.1.2001. On that score alone the impugned order dated 11.1.2001 is liable to be set aside and quashed which has been issued in total violation of the O.M. dated 7.2.1986 as well as the various decision of the Hon'ble Tribunal and the decision of the Apex court.

4.21

That your applicant further begs to state that even after passing the judgment and order dated 22.1.1999 the respondents vide their letter No. C. No. II(34)10/ET-I/93/35703-44 dated 20.8.1999 issued the impugned seniority list in the grade of Inspector as on 1.7.1999 and by the said impugned order liberty is granted to the serving Inspectors for filing objection if any against the said impugned seniority list. It is stated that the said seniority list the applicant has been placed below the private respondents and the said seniority list as on 1.7.1999 has also been prepared in violation of OM dated 7.2.1986 in the same manner like the order dated 27.4.95. The applicant being highly aggrieved by the impugned

Debayyoti Misra.

seniority list published as on 1.7.1999 submitted his representation dated 14.9.1999. The applicant finding no response from the respondents under the compelling circumstances again submitted another reminder dated 1.2.2000 referring his earlier representations dated 20.4.1999, 30.8.1999 and 14.9.1999. However the respondents vide impugned order dated 11.1.2001 disposed of all his representations including representation dated 1.2.2000 rejecting the claim of the applicant for placing him above the private respondents in the seniority list in the grade of Inspector and his promotion to the cadre of Superintendent Group 'B'. Being highly aggrieved by the aforesaid impugned order dated 11.1.2001 the applicant finding no other alternative approaching the Hon'ble Tribunal again for redressal of his grievances. In this connection it is relevant to mention here that the present applicant filed a contempt petition No.10/2000 in O.A. No. 171/95 for non compliance of the judgment and order dated 22.1.1999.

In the facts and circumstances stated above, the impugned order of seniority list issued under letter dated 20.9.1999 as on 1.7.1999 is also liable to be set aside and quashed as the same is also issued in total violation of rule of seniority more specifically in violation of Office Memorandum dated 22.12.1959 as well as O.M. dated

Debajyoti Misra

7.2.1986 issued by the Government of India and the applicant prays that the Hon'ble Tribunal be pleased to direct the respondents to set aside the impugned orders of promotion to the post of Superintendent Gr. 'B' dated 27.4.95, 20.8.99, 11.1.2000 and the promotion orders issued on the basis of impugned seniority list during the pendency of the O.A. 171/95 and subsequent promotion orders were issued in respect of the juniors of the applicant on the basis of impugned seniority list and further be pleased to direct the respondents to promote the applicant with retrospective effect. Be it stated that the applicant now promoted to the post of Superintendent vide Order bearing letter No. 50/2001 dated 30th March 2001. However, in the instant case, applicant praying for restoration of his seniority in the grade of Inspector as well as in the grade Superintendent Gr. B and praying for antedating his promotion in the cadre of Superintendent Gr. B at least from the date of promotion of his immediate junior to the cadre of Superintendent Gr. B with all consequential service and monetary benefits.

4.22 That it is stated that the applicant being highly aggrieved by the impugned order issued under letter bearing No. C. No. 11(34)1-ET-1/99/28-29 dated 11.1.2001, which was issued by the Office of

Debayyoti Misra

the Commissioner, Central Excise, Shillong whereby rejected the earlier representation dated 1.2.2000 of the applicant for restoration of his seniority in the cadre of Inspector, approached this Hon'ble Tribunal through O.A. No. 111/2001 (D. Mishra Vs. Union of India & Ors.), the said Original Application was duly contested by the official respondents before this Hon'ble Tribunal by way of filing a written statement. However the said matter was decided by this Hon'ble Tribunal on 16.5.2002 with the following direction and observation :

"4. We have heard the learned counsel for the parties at length. Upon hearing the parties we are of the opinion that the matter requires further reconsideration at the official level. The order dated 11.1.2001 itself indicated that the respondents failed to apply its mind to the fact situation. In the impugned order dated 11.1.2001 it had mentioned that the authority decided to adhere to the revised seniority list dated 13.7.1998 issued under C. No. 11(34)1/ET.1/96/28968-290(A). We have perused the revised seniority list circulated vide C. No. 11(34)1/ET.1/96/28968-290(A) dated 13.7.1998 which related to the seniority list of Inspectors subsequently promoted as Superintendents. The applicant was not

Debayyoti Mishra

promoted as Superintendent and therefore, his case could not have been linked with those cases. At any rate, the matter requires reconsideration by the authority. As was earlier ordered by the Tribunal while determining the inter se seniority between the applicant and the private respondents, the respondents were also to take note of the decision rendered by this Bench including the decision of the Hyderabad Bench in O.A. No. 1323/1993 and also the O.M. dated 7.2.1986 which was made applicable prospectively. The applicant may also submit a fresh representation, if so advised, within two weeks from the date of receipt of the order and on receipt of such representation, the respondents are directed to re determine the inter se seniority of the applicant vis-à-vis the private respondents as expeditiously as possible, preferably within two months from the date of receipt of such representation. We, however, decline to pass any order on the promotion matter since we have remanded the matter to the authority for determination of the inter se seniority between the applicant and the private respondents.

Debayyoti Misra

5. Subject to the observations made above, the application stands disposed of. There shall, however, be no order as to costs.

Sd/- Member (A)

Sd/- Member (J)''

It is quite clear from the direction passed by this Hon'ble Tribunal that the respondent authority should re determine the inter se seniority of the present applicant vis a vis the private respondents and also directed to take note of the decision earlier rendered by this Bench in O.A. No. 171 of 1995 including the decision rendered by the Hyderabad Bench in O.A. No. 1323 of 1993 dated 13.2.1997 and also the O.M. dated 7.2.1986 which was made prospectively. In the aforesaid judgment dated 16.5.2002 the applicant was given the liberty to submit a fresh representation if so advised within two weeks from the date of receipt of the order.

A copy of the judgment and order dated 16.5.2002 passed in O.A. No. 111 of 2001 is annexed as Annexure-15.

4.23 That it is stated that the Respondents did not take any step pursuant to the order passed by this Hon'ble Tribunal in O.A. No. 111 of 2001 for re determining/restoration of the seniority of the applicant, in such a compelling circumstances, the

Debayyoti Misra

applicant preferred a Contempt Petition before this Hon'ble Tribunal, which was registered as C.P. No. 61 of 2002. However, Commissioner, Central Excise, Shillong after receipt of the notice of the Contempt Petition, from this Hon'ble Tribunal issued the impugned order bearing letter No. C. No. 1(9)1/ET-I/2001/Pt. I, dated 6th Jan. 2003, rejecting the claim of the applicant for restoration of his seniority and/or the prayer made by the applicant in the Original Application i.e. O.A. No. 111 of 2001 in a most arbitrary manner, without application of mind. A mere reading of the impugned order dated 6.1.2003 it appears that the Commissioner, respondent NO.3, did not examine the issues involved in the O.A. No. 111/2001 in the manner directed by this Hon'ble Tribunal rather it appears that the Commissioner, Central Excise, Shillong made a deliberate attempt to avoid implementation of the order dated 16.5.2002 passed by this Hon'ble Tribunal, as was done earlier. It is alleged in the said impugned order that the Commissioner has critically examined the direction passed by this Hon'ble Tribunal and in pursuance of Para 29 of the Judgment dated 13.2.1997 passed by the Hyderabad Bench it is seen that there was no break down of quota rule and hence the judgment of the Hyderabad Bench is not applicable in the instant case of the applicant as because there was a break down of quota rule in the instant case of the applicant and therefore, it is alleged that the benefit of Hyderabad Bench judgment dated 13.2.1997 is not applicable in the

Debajyoti Misra

instant case but the Commissioner might have lost the sight of the fact that there was a specific direction from the Hon'ble Tribunal to take note of the O.M. dated 7.2.1986, the application of which is prospective in nature but the Commissioner deliberately ignored the said Office Memorandum dated 7.2.1986 issued by the D.O.P.T., Govt. of India, more over there is no para 29 as alleged in the judgement and order dated 13.2.1997 passed by the Hyderabad Bench. As such, the question of break down and examination of the case in detail as claimed by the Commissioner is totally false and misleading rather the Commissioner committed injustice with the applicant by way of rejecting the direction passed by this Hon'ble Tribunal for re-determining the seniority of the applicant vis-a-vis the private respondents.

It is further submitted that the question of break down of quota is not for the first time alleged by the Commissioner, as such the question of break down of Quota Rule at this stage is barred by law of estoppel, however the applicant categorically denies the allegation of break down of quota rule in the instant case of the applicant. The judgement of the Hyderabad Bench in O.A. No. 1323/93 is applicable in the instant case of the applicant. Moreover, the decision of the Full Bench of CAT Hyderabad Bench in the following cases.

R.A. 103/93 in O.A. 1019/92

Debjyoti Misra

M.A. 21/94 in RASR 3836/93

R.A. 80/94 in O.A. 1619/92

R.A. 81/94 in RASR 156/86

R.A. 82/94 in RASR 1019/94

R.A. 29/94 in RASR 156/86

R.A. 30/94 in RASR 156/86

It is held that the application of Office Memorandum No. 35014/2/80-Estt(D) dated 7.2.86 of the Government of India is prospective. In the said Office Memorandum the Government of India decided to dispense with the Quota System of seniority rule as provided earlier in the case of fixation of seniority of direct recruit vis-a-vis promotees serving in the Government of India offices following the O.M. dated 22.12.1959. However, the amended rule of seniority came into force with effect from 1.3.1986 and there was specific direction that the seniority of direct recruitment or of promotees would be continued to be determined in accordance with the principles in force prior to the issue of the OM dated 7.2.1986. Therefore, it is quite clear that the seniority of the applicant cannot be disturbed which was already settled long back prior to 1.3.1986 but the Commissioner ignored the same to give undue advantage of seniority to the private respondents. The rejection of the prayer

Debajyoti Misra

of the applicant for restoration of seniority in spite of the direction of the Hon'ble Tribunal passed in O.A. 111/2001 is highly arbitrary, unfair and illegal and on that score above the impugned order dated 6th January 2003 is liable to be set aside and quashed with heavy cost. The statement of the Commissioner that the seniority of the present applicant vis-a-vis private respondent recasted after observing all required formalities and after careful examination of the judgement of the Supreme Court is a deliberate false statement of the Commissioner who is occupying a very high position, rank and status in the Department of Revenue of Government of India.

It is relevant to mention here that the Commissioner as well as other respondents are well aware of the fact that the various implemented the principle laid down by the judgement of the Hyderabad Bench in O.A. 1323/1993 as well as the principles laid down in the O.M. dated 7.2.1986, but it is the Shillong Commissionerate who is taken a different view in the matter of fixation of seniority of direct recruit vis-a-vis promotee Inspectors of Customs and Central Excise in a most arbitrary manner in spite of the several directions passed by this Hon'ble Tribunal, as

Debayyoti Misra

such Hon'ble Tribunal be pleased to impose heavy cost for deliberate and willful violation of the judgement and order dated 16.5.2002 passed in O.A. 111/2001. Be it stated that the decision rendered by the Full Bench as stated above in fact on the same issues involved in the 'case of fixation of seniority of direct recruit vs. promotee Inspectors working in other regions of the country under the same respondents Union of India. As such, there cannot be two sets of principles governing seniority of direct recruit and promotee Inspectors working in the Central Excise and Customs. And on that score alone the impugned order dated 6.1.2003 is liable to be set aside with heavy cost, with a further direction upon the respondents to restore the seniority position of the applicant as he was enjoying for more than a decade till 1993. It is a settled position of law that the seniority position once settled cannot be disturbed after a long lapse of time. In the instant case of the applicant he was enjoying the seniority position above the private respondents for about the O.M. dated 22.12.1959, as such the applicant is entitled to be placed above the private respondents in the cadre of Inspectors by way of restoring his seniority which was taken

Debayyoti Misra

away by the respondent Union of India in total violation of the O.M. dated 7.2.1986 issued by the Government of India. The action of the respondent No. 3 in passing the impugned order dated 6.1.2003 in violation of the decision rendered by this Hon'ble Tribunal in O.A. 111/2001 deserves to be quashed as because he is aware of the fact that Hyderabad region as well as other regions of the country under the same respondents Union of India has upheld the claim of the similarly situated employees of the other region but even then he has rejected the legitimate claim of the present applicant in total violation of the direction passed in total violation of O.A. 111/2001.

In the facts and circumstances as stated above the application deserves to be allowed with cost.

A copy of the impugned order dated 06.01.2003 and judgement and order passed by the Hyderabad Bench in O.A. 1323/1993 and the Full Bench of the Hon'ble Tribunal are annexed as **Annexure 16.17 and 18** respectively.

4.24 That this application is made bonafide and for the cause of justice.

Debajyoti Misra

5. Grounds for relief(s) with legal provisions.

- 5.1 For that the impugned order dated 11.1.2001 has been passed in total violation of the direction contained in the judgment and order dated 22.1.1999 passed in O.A. No. 171/95.
- 5.2 For that the respondents have violated the direction passed in the Judgment and Order dated 22.1.1999 by the Hon'ble Tribunal in O.A. No. 171/95 deliberately and passed the impugned order dated 11.1.2001 without examining the records in spite of the specific direction of the Hon'ble Tribunal.
- 5.3 For that the impugned order dated 11.1.2001 passed in total violation of the direction of the Hon'ble Tribunal without application of mind and also with a view of intention to avoid the contempt proceeding pending before this Hon'ble Tribunal.
- 5.4 For that decision of the respondents to adhere the revised seniority list dated 13.7.1998 issued under letter No. C. No. 2(34)1/ET.1/96/28968-29010(A) which alleged to have been issued consequent to the judgment and order dated 5.9.1995 in O.A. 241/91 has no relevancy with the judgment and order passed on 22.1.1999 in O.A. No. 171/95. Moreover the decision of the respondents to act upon the impugned seniority list is contrary to the relevant seniority list issued under O.M. dated 22.12.1959 and also in total violation of

Debayyoti Misra

O.M. dated 7.2.1986 issued by the Government of India, Ministry of Home Affairs.

- 5.5 For that decision of the respondents to act upon the impugned seniority list is contrary to the law laid down following the pronouncement of the various decisions of Hon'ble Tribunal, High Courts and Supreme Court.
- 5.6 For that seniority list in the grade of Inspector published by the impugned letter dated 20.8.99 as on 1.7.99 as well as seniority determined by the respondents earlier vide impugned order dated 27.4.95 are contrary to the relevant rules of seniority as well as contrary to the statutory rule issued by the Government of India through O.M. dated 22.12.1959 and 7.2.1986, as such the decision of the respondents to determine the seniority of the applicant in terms of impugned order dated 27.4.95 and 20.8.99 and 11.1.2001 cannot be sustained in the eye of law.
- 5.7 For that the applicant is entitled to place above the private respondents in the seniority list to the cadre of Inspector in terms of the relevant seniority rule issued under OM dated 22.12.1959 and 7.2.1986 issued by the Government of India.
- 5.8 For that the promotion orders of the juniors to the applicant issued on the basis of impugned seniority list are contrary to the rule and as such all such

Debajyoti Misra

promotion orders are liable to be set aside and quashed.

- 5.9 For that the applicant is entitled to be considered by holding DPC/review DPC in terms of seniority of the applicant fixed as on 1.1.1984 and 1.1.1993 with all consequential service benefits or at least from the date of promotion of his immediate juniors in the cadre of Inspectors.
- 5.10 For that the impugned order dated 11.1.2001 is a non speaking and cryptic and also without recording any reason passed in a mechanical manner without application of mind.
- 5.11 For that the settled position of seniority cannot be permitted to unsettle after a long 13 years, under the existing seniority rule.
- 5.12 For that the Office Memorandum dated 7.2.1986 issued by the Department of Personnel, Government of India, is still valid and the instruction laid down in para 7 of the O.M. dated 7.2.1986 has not been set aside and quashed by any of the Court/Tribunal, therefore the same is binding upon the respondents.
- 5.13 For that the applicants were not impleaded as party respondents in the cases of Cuttack Bench and Calcutta Bench referred by the respondents in the letter dated 24.10.1994 therefore judgment of the Cuttack Bench and Calcutta Bench cannot be applied in the matter of seniority so far as the applicant is concerned.

Debayyoti Misra

5.14 For that the judgement of Cuttack Bench and Calcutta Bench are judgement in personam and not judgement in rem, therefore, the same cannot be applied to the case of the present applicant.

5.15 For that the impugned seniority list as on 21.10.1994 and 13.7.1998 are contrary to the guidelines and instructions, decision of Government of India contained in O.M. dated 7.2.1986 issued by the Department of Personnel, Government of India and also in total violation of the judgement of the order dated 22.1.1999 referred to above.

5.16 For that, impugned order dated 6.1.2003 has been passed by the respondent No. 3 in total violation of the judgement and order dated 16.5.2002 in O.A. No. 111/2001 and also ignoring the contents of the O.M. dated 7.2.1986 issued by the Government of India in a deliberate and willful manner rejecting the acclaim of restoration of the seniority position of the applicant above the private respondents.

5.17 For that, rejection of the claim of the applicant in spite of the direction passed by the Hon'ble Tribunal is unjust in view of the fact that the Commissioner is well aware of the fact that the other regions including the Hyderabad region have implemented the direction of the Hyderabad Bench passed in O.A. 1329 of 1993 laid down the very principle of

Debayyoti Mishra

seniority applicable in the case of direct recruit versus promotee Inspectors working in Customs and Central Excise.

- 5.18 For that, the Commissioner as well as other respondents are well aware regarding the decision of the Full Bench of the CAT held in R.A. No. 103 of 1993 in O.A. No. 1019 of 1992 and six other cases wherein the Hon'ble Tribunal held that the operation of the O.M. dated 7.2.1986 is prospective in nature.
- 5.19 For that, there is no break down of quota rule of seniority in the instant case of the applicant as alleged by the respondent No. 3 in the impugned Order dated 6.1.2003 for the first time, in order to avoid implementation of the judgement dated 16.5.2002 in favour of the present applicant.
- 5.20 For that, the respondent Union of India cannot have two sets of principles for fixation of seniority of the direct recruit Inspectors vis-a-vis promotee Inspectors as appeared on the impugned letter dated 6.1.2003.

6. Details of remedies exhausted.

That the applicant states that he has exhausted all the remedies available to him and there is no other alternative and efficacious remedy than to file this application.

7. Matters not previously filed or pending with any other Court.

Debayyoti Misra

The applicant further declares that he had approached the Hon'ble Tribunal in two occasions by filing O.A. Nos. 171/95 and 111/2000. Both the O.As. were disposed of by the Hon'ble Tribunal to re determine the seniority in terms of the O.M. dated 7.2.196 and also in the light of the judgment and order passed by the Hyderabad Bench of the Hon'ble Tribunal in similar cases as well as Hon'ble Supreme Court, but the respondents rejected the claim of the applicant without following the direction contained in the aforesaid judgment and O.M. dated 7.2.1986. The applicant further declares that no such O.A./Writ Petition or Suit is pending before any Court or any other authority or any other Bench of the Tribunal regarding the subject matter of this application nor any such application, Writ Petition or Suit is pending before any of them.

8. Relief(s) sought for:

Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief(s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s):

Debajyoti Misra

8.1 That the impugned seniority list published as on 21.10.1994 vide letter No. C. No. II(34)I/ET-I/91/PT-I dated 24.10.94 and the letter No. C. No. II(34)I/ET-I/91/^{F-1}PT-I/9466-550 dated 27.4.95 whereby draft seniority is declared as final be set aside and quashed.

8.2 That the letter No. C. No. II(34)10/ET-I/93 (Annexure- 13) whereby impugned seniority list published as on 1.7.1999 and other subsequent seniority list published thereafter be set aside and quashed.

8.3 That the Respondents be directed to maintain the seniority position of the applicant and private Respondents which was assigned as on 1.1.1984 (and also on 1.1.1993 in terms of seniority principles laid down in the Office Memorandum dated 22.12.1959 and also in terms of para 7 of the O.M. dated 7.2.1986.

8.4 That the direction of the Revenue Boards for re fixation of seniority communicated vide Telex F. No. 23024/5/1/92-AD-IIIA dated 4.10.1994 (and the impugned order bearing letter C. No. I (9)I/ET-I/2001/PT.I dated 6.1.2003 be set aside and quashed.

8.5 That the applicant be declared senior to the private respondent nos. 6 to 58 in the grade of Inspector as well as in the grade of

Debayyoti Misra

Superintendent Gr. B in the department of Customs and Central Excise for all purposes.

8.6 That the promotion of the applicant in the grade of Superintendent Gr. B be antedated at least from the date of promotion of his immediate junior with all consequential service benefits including seniority.

8.7 Costs of the application.

8.8 Any other relief or reliefs to which the applicant is entitled to, as the Hon'ble Tribunal may deem fit and proper.

9. Interim order prayed for.

During pendency of this application, the applicant prays for the following relief: -

9.1 That the Hon'ble Tribunal be pleased to make an observation that pendency of this application shall not be a bar for the respondents to consider the claim of the applicant as has been prayed for in this application.

10.

This application is filed through Advocates.

11. Particulars of the I.P.O.

Debajyoti Misra

- i) I. P. O. No. : 86 490738.
ii) Date of Issue : 26.5.03
iii) Issued from : G.P.O Guwahati
iv) Payable at : " Guwahati

12. List of enclosures.

As given in the index.

Debayyoti Misra

VERIFICATION

I, Sri Debajyoti Mishra, Son of late Jyotirmoy Mishra, aged about 49 years, working as Superintendent, Group B, in the office of the Commissioner, Customs and Central Excise, Dibrugarh, Assam, do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the ^{21st}..... day of June, 2003.

Debajyoti M
Signature

Annexure-1

CUSTOMS AND CENTRAL EXCISE
SHILLONG

ESTABLISHMENT ORDER No. 84/82

Dated Shillong, 11th 6th March, 1982Sub : Promotion of UDCs to the grade of Inspector (O.C.)
order regarding.

The following U.D.C.s of Customs and Central Excise are provisionally and temporarily appointed to the grade of Inspector (O.G.) in the scale of pay Rs. 425-15-500-EB-560-20-700-EB-25-800 with effect from the date they join as Inspector (O.G.) and until further orders. The promotions are purely provisional and ad hoc. The service rendered during the period of ad hoc promotion will not count towards seniority. Further the ad hoc promotion will not confer any right for regular promotion.

Sl. No.	Name of the Officer
1	Smt. Purabi Dev. Gupta
2	Devjyoti Mishra
3	Shri Sudip Kr. Nandi
4	Shri Jyotish Ch. Das

Consequent on the above promotion, the following postings and transfers

Sl. No.	Name of the Officer	From	To
1	Smt. Purabi Dev. Gupta	Silchar	Silchar
2	Devjyoti Mishra ✓	Digboi	Digboi
3	Shri Sudip Kr. Nandi	Dibrugarh	Dibrugarh
4	Shri Jyotish Ch. Das	Tezpur	Tezpur

Sd/- P.S.gupta
Assistant Collector(hqrs.)
Customs & Central Excise, Shillong.

Pls. send
for
advocate

Annexure-2.

CUSTOMS AND CENTRAL EXCISE
SHILLONG

ESTABLISHMENT ORDER No. 330/82

Dated Shillong, the 16th November, 1982.

Subject : Estt. Promotion of UDCs/Steno of Customs and Central Excise, who were earlier promoted as Inspector (CC) on ad hoc basis in the scale of pay of Rs. 425-15-500-EB-560-20-700-EB-25-800 vide this Office Estt. Order Nos. 105/81 dated 2.4.81, 254/81 dated 9.9./81, 285/8 dated 16.10.81 and 84/82 dated 6.3.82 are hereby appointed, on regular basis to officiate in the grade of Inspector with effect from the date of this order and until further orders and their seniority in the grade of Inspector (O/OO) will be in the order as indicate below :

Sl. No.	Name
1	Shri Debashis Bhattacharjee ✓
2.	Shri Jibanlal Bhowmick
3.	Shri Sukesh Ranjan Dhar
4	Shri Srijan Ganguli
5	Shri Abhijit Ghosh
6.	Shri Biswajit Bhattacharjee
7	Shri Priya Ram Sarmah
8	Shri Priya Ram Sarmah
9	Smti Purabi DebGupta
10	Shri Rathindra Bhattacharjee
11	Shri Rose May Shabong
12	Shri Tapan Kar
13	Shri Tapan Kar
14	Shri Priyada Ranjan Mallick
15	Smti S.J. Begam
16	Shri Debjyoti Mishra ✓
17	Shri Haripada Debnath
18	Shri Gopal Ch. Das
19	Shri L. Maufaihreia
20	Shri Sachindra Nath Das
21	Shri Sudip Kr. Nandi
22	Shri Biman Chandra Das
23	Shri Jyotish Ch. Das
24	Shri Amit Kr. Deb
25	Shri K. Chandra Rabha
26	Smti D. Shhampliant

Sd/- P.S.gupta
Assistant Collector(hqrs.)
Customs & Central Excise, Shillong.

Attested
by
Advocate

C. No. II/3/40/Et-III/78/16665-85 dated 20.11.82

Copy forwarded for information and necessary action to :

1. The Collector, Customs & central Excise, Shillong.
2. The Addl. Collector, Customs and Central Excise, Shillong.
3. The Asstt. Collector, Customs & Central Excise, Digboi. Copies meant for the officer(s) concerned is/are enclosed herewith for onwards transmission to him/them. Joining report of the officer (s) concerned may please be forwarded for record.
4. Shri Debajyoti Mishra, Inspector.
5. The CAO/PAO of Collectorate Hqrs. Office,
6. Shillong.
7. Et. I/Accts. I/II/Confdl. Branch of Hqrs. Office, Shillong
8. Guard File.

Sd/- P.S.gupta
Assistant Collector(hqrs.)
Customs & Central Excise, Shillong.

Annexure-3

CUSTOMS AND CENTRAL EXCISE

SHILLONG

ESTABLISHMENT ORDER No. 17/Con/85

Dated Shillong, the 3rd September, 1985.

Sub : Following officiating Inspector (OG) are hereby appointed substantively in the grade of Inspector (OG) in the pay scale of Rs. 425-15-500-EB-15-560-20-700-EB-25-800/- w.e.f. the dates shown against their name.

SL. Name	Name of the Officer	Date of confirmation
1.	Biraja Gopal Mandal	1.10.81
2.	Debendra Chandra Das	1.1.82
3.	Debashish Bhattacharjee	1.2.82 ✓
4.	Chalau	1.2.82
5.	Gopendra Lala Sutradhar	1.3.82
6.	Jiban Lal Bhowmick	1.3.82
7.	T.M. Martlong	1.3.82
8.	Bikash Rn. Dhar	1.3.82
9.	Srijan Ganguli	1.4.82
10.	Abhijit Ghose	1.4.82
11.	Rajendra Singh	1.4.82
12.	Vijoy Kumar Joshi	1.5.82
13.	Biswajit Bhattacharjee	1.5.82
14.	Priya Ram Baruah	1.6.82
15.	Smt. Puravi Deb Gupta ✓	1.7.82 ✓
16.	Madhu Bushan Tyagi	1.7.82
17.	Rathindra Bhattacharjee	1.8.82
18.	Rose May Snabong	1.8.82
19.	Jegajyoti Acharjee	1.8.82
20.	Tapan Kumar Kar	1.8.82
21.	Priyoda Rn Mallick	1.8.82
22.	Smti Sayada Jasmin Begum	1.8.82
23.	Ashwani Kumar Sharma	1.8.82
24.	Debajyoti Mishra	1.8.82
25.	Haripada Debnath	1.8.82

*Revised
for
Advocate*

25.	Haripada Debnath	1.8.82
26.	Gopal Chandra Das	1.8.82

Annexure-3(Contd.)

27.	L. Raufairam	1.8.82
28.	Arun Krl. Chaturvedi	1.8.82
29.	Sachindra Nath Das	1.8.82
30.	Sudip Kumar Nandi	1.8.82
31.	Sital Ch. Das	1.8.82
32.	Dilip Kr. Verma	1.8.82
33.	Sukumal Das	1.8.82
34.	Biman Chandra Das	1.9.82
35.	Jyotish Ch. Das ✓	<u>1.9.82</u> ✓
36.	Amit Kr. Deb	1.9.82
37.	Kharendra Ch. Rabha	1.9.82
38.	Rahindra Neo	1.9.82
39.	Smti L. Shompuliang	1.9.82
40.	Ashok Kumar Dey	1.9.82
41.	S.Das	1.9.82
42.	Aruan Prakash	1.1.83
43.	Smti H. Mary Synram	1.2.83
44.	Dhani Ram Das	1.2.83

Sd/- M. Prasad
Deputy Collector(P & V)
Customs & Central Excise : Shillong

C. No. II(11)5/Et.IV/Con/74
Copy to :

Dated

1. The Asstt. Collector, Customs & central Excise,
2. The Chief Accounts Officer/Pay & Accounts Officer,
Customs & Central Excise, Shillong.
3. Shri Debajyoti Mishra, Inspector, Dibrugarh.
4. ET-I/IV/Accounts_I/II Branch of Hqrs Office, Shillong.
5. Guard File.

Sd/- M. Prasad
Deputy Collector(P & V)
Customs & Central Excise : Shillong

MOST IMMEDIATE/DO NOT DELAY

CUSTOMS AND CENTRAL EXCISE
SHILLONG

C. No. 11(34)1/ET-I/91/PT-I/5263-302

Dated 24.10.94

To
The Assistant Collector of Central Excise,
Digboi Central Excise Division (All)

Sub : Re-fixation of Seniority of Inspectors appointed
before 1.3.1986- reg.

Prior to the issuance of Ministry of Personnel, Public Grievance and Pensions Office Memorandum No. 35014/2/86-Estt(D) dated 07.02.86 which came into force w.e.f. 01.03.86, the relative seniority of Direct Recruits and Promotees in Central Services were determined as per Ministry of Home Affairs O.M. No. 9/11/55-RPS dated 22.12.1959 i.e. according to rotation of vacancies reserved for direct Recruits and Promotees respectively as per Recruitment Rules.

While the above mentioned principles was working satisfactorily in cases where direct recruitment could also be made to the full extent of the quotas prescribed, there was difficulty in determining seniority in cases where there was delay in direct recruitment or promotion or where enough number of direct recruits or promotions was not available. In such situations, the practice followed was to keep the slots meant for direct recruits or promotees, which could not be filled up, vacant, and when direct recruits or promotees were available through later examinations or selections, such persons occupied these vacant slots thereby becoming senior to some of the officers already in position.

This matter has also come up for consideration in various Court cases both before the Hon'ble C.A.T. and the Supreme Court and in several cases the Courts on the ground of inappropriateness, directed the Govt. to recast-case the seniority already fixed on the basis of O.M. dated 07.02.59 in the light of the principles contained in O.M. dated 07.02.86 keeping in view the illustration given in Para 3 of O.M. dated 07.02.86. Copy of Para 3 and the illustration of O.M. dated 07.02.86 are enclosed herewith.

Now, referring to decisions in two such cases viz. Monotosh Goswami & Ors. Vs. U.O.I. & Ors. In Hon'ble C.A.T. Cuttack, Shri N.C. Patra, a direct recruit Inspector of 1981 batch of this Collectorate represented seeking relief in the light of above mentioned judgments. Accordingly, the Board vide their Telex No. A-23024/5/92-AD-III.A dated 4.10.94 have decided to extend the relief as requested by Shri

*Referred
Jr.
Advocate*

-71-
75
109

Annexure-4 (Contd.)

Patra, Inspector, which may be circulated to all concerned Inspectors working under your charge immediately on receipt of this letter. They may also be informed that they may make their representations, if any and such revision by 20.11.94. Any representation received after this date will not be entertained.

Enclo : As above (with usual
Number of spare copies
Of revised seniority
List)

Sd/- Illegible
Deputy Collector (P & V)
Customs & Central Excise : Shillong.

C. No. 11(34)1/ET-I/91/PT-I/ Dated

1. Shri R.K.Mitra, Under Secretary, Govt. of India, Ministry of Finance, Department of Revenue, Central Board of Excise and Customs, New Delhi.
2. The Additional Collector of Customs (Preventive), Office of the Additional Collector of Customs (Preventive), Now Checkon Road, Opposite Palace Gate, Imphal.-1.
3. The Deputy Collector, Customs (Preventive), Shillong.
4. The Assistant Collector (Judicial), Customs and Central Excise, Shillong.
5. Shri Nimai Chandra Patra, Intelligence Officer, Narcotics Control Bureau, Eastern Zonal Unit, 4/2. Karaya Road, 3rd Floor, Calcutta-17.
6. All other concerned Inspectors on deputation.
7. The General Secretary, Group 'C' Executive Officers Association, Customs and Central Excise, Shillong.

Sd/- Illegible
Deputy Collector (P & V)
Customs & Central Excise : Shillong.

72 - 53 - 110

Annexure - 4

10

DRAFT SENORITY LIST
AS ON 21-10-94 (ENCLOSED AS PER ORDER)

TA/EX-16 A-23024/5/92-43
DATED 4-10-94

Name and Qualification	Date of Birth	Date of app't. in the Govt. Service.	Date of confir- mation.	Date of app't. as Inspector.	Remarks
1. Rakesh Kanti Sarman, B.A.	08-02-51	26-01-77	01-03-79	25-01-77	DR
2. Sankar Sharma, M.Sc.	31-03-52	25-11-75	13-12-83	25-11-75	DR
3. Chander Shullai (ST), B.A.	19-12-49	13-11-75	01-04-81	13-11-75	DR
4. Sanjiv Chakravorty, Matrio	12-02-46	04-04-76	19-09-81	10-09-79	DR
5. Uma Prasad Neog, B.A.	29-06-52	1-07-76	10-10-81	22-07-76	DR
6. Narendra Ch. Dhar, Matrio	01-03-44	22-01-65	01-11-81	01-09-79	DR
7. Dilip Das, B.Sc.	15-05-54	07-03-80	01-10-81	07-03-80	DR
8. Hari Gopal Sen (SC), B.A.	26-06-46	26-10-70	01-10-81	26-10-80	DR
9. Madhu Sukhan Tyagi, B.Sc.	23-07-57	13-14-81	01-12-82	13-04-81	DR
10. Jagajyoti Acharjee, B.Sc.	01-01-55	30-03-81	01-12-82	30-03-81	DR
11. Arun Kumar Chaturvedi, M.A.	25-12-54	06-04-81	01-12-82	08-04-81	DR
12. S.K. Vidyanta, M.Sc.	13-02-56	27-03-81	01-12-82	27-03-81	DR
13. Dilip Kr. Verma, B.Sc.	16-06-55	10-06-81	01-12-82	10-06-81	DR
14. Susmal Das, B.Sc.	02-01-56	23-05-81	01-12-82	23-05-81	DR
15. Khanindra Neog, B.Com.	11-06-55	30-03-81	01-12-82	30-03-81	DR
16. Jambu Lama (ST), B.A.	12-04-55	09-06-81	05-03-85	09-06-81	DR

On deputation to
DGRI, New Delhi.

On deputation to
DGAE, Patna.
On deputation to
NCS, New Delhi.

Contd....2/2....

Attended
Law
Advocate

S/CHM

	1.	2.	3.	4.	5.	6.	7.	8.
27. Nimai Chandra Patra (SC), B.Sc.	01-01-54	16-03-79	13-03-86	30-06-81	DR	On deputation to N.C.B. Calcutta.		
28. Kritiya Gopal Barma (ST), B.Sc.	27-12-54	30-03-81	13-03-86	30-03-81	DR			
29. Alagiri Swami (SC), B.A.	31-06-47	30-03-81	13-03-86	30-03-81	DR			
30. Bapukan Patra (ST), B.A.	30-04-50	27-03-81	13-03-86	27-03-81	DR			
31. Raja Sonowal (ST), B.A.	01-04-56	30-03-81	19-03-85	30-03-81	DR			
32. Bimala Chandra (SC), B.A.	20-11-54	27-03-81	19-03-85	27-03-81	DR			
33. P. Putakhanthang (ST), B.Sc.	01-03-55	13-04-81	07-06-86	13-04-81	DR			
34. Pradip Kumar Bera (ST), B.A.	05-09-51	30-03-81	07-06-85	30-03-81	DR			
35. Parash Debbarma, B.Sc.	02-02-56	01-04-82	07-06-86	01-04-82	DR			
36. Bijoy Krishna Deb, B.Com.	05-06-56	19-01-82	29-11-86	19-01-82	DR			
37. Jihar Dey, B.A. (H)	01-09-57	02-09-82	29-11-86	02-09-82	DR			
38. Debasish Bhattacharjee, B.A.	25-03-54	07-11-75	01-12-82	06-11-82	PR			
39. Naba Chandra Singh Singjam (SC) B.Sc.	01-09-51	07-04-82	29-11-86	07-04-82	DR			
40. Ansuman Chakraborty, B.Sc.	06-01-56	06-08-82	29-11-86	06-08-82	DR			
41. Tapen Kumar Sarkar (SC), B.Sc.	19-04-56	02-08-82	27-04-87	02-08-82	DR			
42. Jibonlal Bhattacha, P.U.	26-12-53	18-02-76	01-12-82	16-11-82	PR			
43. Partha Sarathi Das (SC), B.Com.	24-02-57	06-02-82	27-04-87	16-09-83	DR			
44. Arabinda Dutta, B.Sc (H)	30-04-53	16-03-82	27-04-87	16-03-82	DR			
45. Koj Tat (ST), B.A.	22-11-55	19-01-82	27-04-87	19-01-82	DR	On deputation to D.R.I. Calcutta.		
46. Suresh Rn. Dhar, B.A.	08-05-52	09-02-76	01-12-82	16-11-82	PR			
47. Dipak Ranjan Saha, B.Sc.	02-01-57	18-03-82	27-04-87	18-03-82	DR			
48. Roshindra Kumar Sarkar, M.Sc.	30-11-58	06-07-82	27-04-87	06-07-82	DR			

Contd...2/3...

74-1

112

Am

-55-

-39-

41-

= 3 =

2.	3.	4.	5.	6.	7.	8.
S/SHPI						
Sukanta Das, B.Sc.	13-10-59	26-03-82	27-04-87	26-03-82	DR	
Srijan Ganguli, B.Sc.	01-08-55	13-02-76	01-12-82	16-11-82	PR	
Biresa Saikia (ST), B.Sc.	01-12-53	19-01-82	27-04-87	19-01-82	DR	
Subranganu Deb, M.Sc.	01-03-57	01-04-82	27-04-87	01-04-82	DR	
Smti. Niranjani Phukan, M.Sc.	01-03-56	26-02-82	27-04-87	26-02-82	DR	
Abhijit Ghosh, B.Sc.	03-11-52	21-02-76	01-12-82	16-11-82	PR	
Aloek Chakrabarty, B.Sc.	10-07-58	28-01-82	27-04-87	26-01-82	DR	
Nalini Mohan Baishya, B.A.	20-12-57	01-04-82	27-04-87	01-04-82	DR	
Ranjit Kr. Sharma, B.A.	01-03-55	26-02-82	29-04-87	26-02-82	DR	
Biswajit Bhattacharjee, B.A.	30-06-55	20-02-76	01-12-82	16-11-82	PR	
Harit Kr. Saikia, M.Sc.	01-01-59	22-01-82	29-04-87	22-01-82	DR	
Dipak Bhattacharjee, B.Sc.	18-05-57	22-01-82	29-04-87	22-01-82	DR	
Amar Kr. Singha, B.A.	04-11-57	20-01-82	13-05-87	20-01-82	DR	
Priya Ram Baruah, B.U.	01-02-54	02-11-70	01-12-82	16-11-82	PR	On deputation to D.R.I. New Delhi.
Pinaki Sankar Roy, B.Sc.	15-01-57	09-03-82	13-05-87	09-03-82	DR	On deputation to DCE, Calcutta.
Dinesh Mahanta, B.Sc. (H)	01-01-56	12-09-83	13-05-87	12-09-83	DR	
Partha Sarathi Purkayastha (2), B.Sc.	01-12-56	24-03-83	13-05-87	24-03-82	DR	
Smti. Parabi Deb Gupta, B.A.	01-12-54	06-11-75	01-12-82	16-11-82	PR	
Pranab Kr. Sharma, B.Sc.	01-03-58	14-04-82	13-05-87	14-04-82	DR	
Aswini Kr. Das, (SC), B.Com.	01-03-59	05-07-82	13-05-87	05-07-82	DR	
Jagadish Ch. Das (No.2) (SC), B.Com.	01-09-54	19-01-82	13-05-87	19-01-82	DR	
Arvindra Bhattacharjee, B.Sc.	04-11-54	04-03-76	01-12-82	16-11-82	PR	

75-

- 52 - 113
- 56 -

Annexure - 4(8)

1.	2.	3.	4.	5.	6.	7.	8.
S/SERI							
✓ 61. Monoj Kr. Stahar (ST), M.Sc.	09-02-55	12-07-82	13-05-87	12-07-82	DR		
✓ 62. Binoy Kr. Saishing (ST), B.Sc.	08-11-56	17-03-82	13-05-87	17-03-82	DR		
✓ 63. Padmeswar Pegu (ST), B.Sc.	31-01-56	08-04-82	13-05-87	08-04-82	DR		
64. Sati. Rosemary Shapong (ST), Matric	01-09-44	05-08-71	01-12-82	16-11-82	PR		
✓ 65. Naba Kr. Baruah (ST), B.Sc.	01-01-55	29-01-82	13-05-87	29-01-82	DR		
✓ 66. Subodh Ch. Basuvarari (ST), B.A.	29-01-58	06-08-82	13-05-87	06-08-82	DR		
✓ 67. Achinta Sonowli (ST), B.A.	01-11-54	05-02-82	13-05-87	05-02-82	DR		
68. Dipan Kr. Kar, B.A.	01-11-49	05-06-74	01-12-82	16-11-82	PR		
✓ 69. Bidya Prasan Saikia (ST), B.Sc.	12-09-52	31-08-82	13-05-87	31-08-82	DR		
70. Malicia Symah (ST), M.A.	30-03-58	04-01-82	13-05-87	04-01-82	DR		
71. Mahurya Monon Mog (ST), B.Com.	01-01-56	01-04-82	13-05-87	02-04-82	DR		
72. Pradyota Kr. Mallic (ST), P.U.	01-32-47	01-04-72	01-12-82	16-11-82	PR		
73. Debendra Nath Doley (Sc), B.Com.	30-07-53	20-02-82	13-05-87	20-02-82	DR		
74. Gangadhar Das (ST), B.A.	01-08-56	12-07-82	13-05-87	12-07-82	DR		
75. Sati. Sayade Jasmine Bagun, B.A.	01-12-52	15-04-74	01-12-82	16-11-82	PR		
76. Debendra Mosmahary (ST), M.A.	20-09-58	05-03-82	13-05-87	05-03-82	DR		
77. James Donling (ST), B.A.	18-03-56	02-03-82	13-05-87	02-03-82	DR		
78. Karendra Nath Daimary (ST) B.Sc.	01-01-58	12-07-82	13-05-87	12-07-82	DR		
79. Debajyoti Mishra, B.Com.	01-09-54	01-06-74	01-12-82	16-11-82	PR		
80. Dipak Roy Choudhary, B.Sc.	21-07-57	01-07-82	13-05-87	01-07-82	DR		
81. Santanu Kr. Chalia, B.Sc. (H)	01-03-57	29-07-82	13-05-87	19-07-82	DR		
82. Hrudin Fakir, B.Sc.	01-03-58	10-09-82	13-05-87	10-09-82	DR		
***74.A. Bikash Kr. Saikia (ST) B.Com.	01-01-57	01-03-82	13-05-87	01-03-82	DR		

Alotted
for
admission

CC-11-11-11

-76-

W4

80

Annexure-5

To
The Collector of Central Excise,
Shillong

Date : 10th November/94

Madam

Sub : Re-fixation of seniority of Inspectors appointed
before 1.3.86.

Kindly refer to the Hq. Estt's letter C. No. II(94)/1/ET/1/91/PT.I/15263-302 (A) dated 24.10.94 under which a draft seniority list of Inspectors appointed before 1.3.86 has been circulated.

On going through the said draft seniority list I beg to submit the following few lines for favour of your perusal.

That Madam, the date of appointment as Inspector as in Col.6 against my name under Sl. No. 79 of the said seniority list has been shown wrongly. In fact, on being promoted vide Estt. Order No. 84/82 dated Shillong the 6th March, 1982, I joined as Inspector on 12.3.1982. So, the date of appointment as in Col 6 of the seniority list may kindly be corrected accordingly showing the date as 12.3.82 in place of 16.11.82 as cast my seniority in accordance with the date of my joining i.e. 12.3.1982.

In this context, I would like to append below the legal position set out in the case of "THE DIRECT RECRUITS CLASS II ENGINEERING OFFICERS' ASSOCIATION VS. STATE OF MAHARASHTRA (1990) (2) SC 264 where it was held :

"But if the appointment is made after considering the claims of all eligible candidates and the appointee continues in the post uninterruptedly till the regularization of his service in accordance with the rules made for regular substantive appointments, there is no reason to exclude the officiating service for purpose of seniority."

The above legal position set out by the Hon'ble Supreme Court may kindly be seen in a similar judgment dated 29.8.92 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No. 3071/91, 3110/91 & 111/91 filed by the Central Revenue Chemical Service Association. Copy of the judgment is enclosed for ready reference.

That Madam, I joined as Inspector on 12.3.82 on being promoted to Lower grade of Ministerial cadre only after knowing my position of seniority in the grade of Inspector due to the "Vacant Slots" reserved for such promotees on that date and accordingly I was placed on such a vacant slot as per the then policy of the Govt. of India. But now suddenly lowering my seniority from the existing one that

*Accepted
for
signature*

That Madam, a seniority case No. O.M. 141/92 filed by Mr. K. Neog and Others Vs. Union of India is pending for decision in the Hon'ble Central Administrative Tribunal, Guwahati Bench at Guwahati. In the said case I am also Respondent. Therefore, preparation of a draft seniority list at this stage pending decision of the seniority case is unwarranted.

In view of the above, I would request your good self to consider my representation for fixation of my seniority on the basis of seniority list as on 1.1.1993.

Yours faithfully,

Date : Digboi the 10th November, 1994.

Sd/- Debajyoti Mishra
Inspector, Central Excise,
Digboi

-78-

114

82

Annexure-6

CUSTOMS AND CENTRAL EXCISE
SHILLONG

O. No. 11(34)2/ET-I/91/F.I/9466-550(8)

Dated 27.4.95

To
The Assistant Collector of Central Excise,
Digboi Central Excise Division (All)

The Assistant Collector of Customs (Preventive),
Branch/Cell/Unit(Hqrs. Office)(All)

Sub : Refixation of seniority of Inspectors appointed
before 01.03.86 regarding.

In continuation of this office letter of even No. 15263-302 (A) dated 24.10.94 on the above subject and with a view to implement the judgment of Hon'ble C.A.T., Calcutta on O.S. No. 925/92 the draft seniority list prepared and circulated to all concerned is now being finalized as under

2. Some affected promotee Inspectors have contended that as a similar case was sub-judiced before the Hon'ble C.A.T., Guwahati (O.A. No. 141/92) to which some representations are private respondents their position in the seniority list should not have been disturbed till the final disposal of the case. However, the Hon'ble CAT (Guwahati) vide their order dated 30.07.92 on O.A. No. 141/92 have empowered this department to dispose of the representations of the applications during the pendency of the case. Hence Draft Seniority List extending the relief as requested by the applicants was not incorrect or illegal.

3. Again, some of the Direct Recruit affected by the revision have contended that all the Promotee Inspectors who joined the grade at a later date though in the same, year, should be regarded to have become available through later selection and hence be placed junior to them. As has already been mentioned vide this office letter dated 24.10.94 mentioned above, the underlining principle, as per C.A.T.'s order followed in this regard was Para 3 of Ministry of Personnel P.G. & Pensions O.M. No. 35014/2/80-Estt(B) dated 7.2.86 which, similarly, provides for rotation of Direct Recruitment Rules for fixing seniority among Direct Recruit and Promotee Officers becoming available through selection of the same year, irrespective of their date of joining. Hence the objections this regard is not correct.

Further, some of the promotee Inspectors, who were first promoted on ad hoc basis have contended that their seniority be fixed with reference to the year/date they joined as Inspector on ad hoc basis and not with reference to the Year/date they were subsequently promoted on regular basis. Whereas the condition of such ad hoc promotion was

*Detested
Law
Advocate*

that such ad hoc promotion will not confer on the officers so promoted any claim for continued officiation in grade and the period of such ad hoc service for further promotion.

Lastly, some of the promotee Inspectors have contended that the Recruitment year in their case should be the year they passed the departmental examination (written examination) for promotion to the grade of Inspector from lower grade and not the year they were actually promoted. The relevant instruction in this regard has clearly stated that the Recruitment Year of Officers promoted to higher grade is the year in which the D.P.C. was held.

In view of the above, all the representations received against the Draft seniority list have been considered carefully and are hereby disposed of and the Draft Seniority List is hereby made final without any further alterations. This will, however, be subject to the outcome of the SLP filed by the department before Hon'ble Supreme Court against the judgment of the Hon'ble CAT, Calcutta in O.A. No. 925/92 and various other cases spending before the Hon'ble CAT, Guwahati, Guwahati in this issued.

All the concerned Inspectors working under your charge may be informed suitably.

Sd/- Illegible
Deputy Collector (P & V)
Customs & Central Excise : Shillong.

C. No. 11(34)2/ET-I/91/F.I/9466-550(8)
Copy to

Dated 4.5.95

Shri D.Mishra, Inspector, Central excise, RBC II Range, Digboi for information.

Sd/- Illegible
Admn. Office
Customs & Central Excise, Digboi.

Attested
by
Advocate

CUSTOMS AND CENTRAL EXCISE
SHILLONG

ESTABLISHMENT ORDER No. 167/1995

Dated 7.6.95

Sub : Estt. Promotions of Inspectors to the grade of
Superintendent Gr. 'B' - order regarding.

P R O M O T I O N S

RT-I

The following Inspectors of Customs and Central Excise are hereby promoted to the grade of Superintendent Group 'B' in the scale of pay of Rs. 2000/- to 3500/- with effect from the date they take charge of higher post at the places of posting with immediate effect until further orders.

<u>Sl. No.</u>	<u>Name</u>
1	Shri C. Shullai
2.	Shri Hirendra Ch. Dhar
3.	Shri Sudip Deb
4.	Shri Madhu Sudhan Tyage
5.	Shri Jagajyoti Acharjee
6.	Shri Arun Kr. Chaturvedi
7.	Shri S.K. Vidanta
8.	Shri Dilip Kr. Verma
9.	Shri S.Das
10.	Shri Khanindra Neog
11.	Shri J.Lama
12.	Shri Nimai Ch. Patra
13.	Shri Kritiya Gopal Barma
14.	Shri Alagri Swamy
15.	Shri Sapuken Potir
16.	Shri R. Sonowal

The seniority of the above officers in the grade will be in the order shown above.

This promotion order, excepting the officers appearing at Sl. No. 1,2 and 3 will however, be subject to the outcome of the S.L.P. filed by the department before the Hon'ble Supreme Court against the judgment dated 25.11.93 of the

*Attended
for
Advocate*

Hon'ble CAT, Calcutta in O.A. No. 925/92 and various other cases pending before the Hon'ble C.A.T., Guwahati on the issue.

They are hereby asked to exercise option within one month from the date of promotion as to whether their initial pay should be fixed in the higher post on the basis of F.R. 22 (I) (a) (1) straight way without any further review on accrual of increment in the pay scale of the lower post of their pay on promotion should be fixed initially, in the manner as provided under F.R. 22 (a) (i) which may be refixed under the provision of FR 22 (I) (a) (1) on the date of accrual of next increment in the scale of pay of the lower post. Option once exercised shall be final.

In the event of refusal of promotion they should be debarred from promotion for a period of one year.

PART-II TRANSFERS AND POSTINGS

On promotion, S/Shri M.S. Tyage, A.K.Chaturvedi, Dilip Kr. Verma, Susmal Das and N.C. Patra (Sl. No. 4,6,8,9 & 12) are hereby temporarily transferred and posted at Hqrs. Office, Shillong. All other promotions are retained at their respective present places of postings. Final postings as Superintendent Group 'B' will be issued later on.

Note : In the event of any deputationists being repatriated back to parent Collectorate, the Junior most officer(s) in the above promotion order will be reverted back as Inspector.

This issues with the approval of the Collector of Central Excise, Shillong.

Sd/- Illegible
Deputy Collector (P & V)
Customs & Central Excise : Shillong.

C. No. 11(3)9/ET-III/95/12029-50(A) Dated 7.6.95

Copy forwarded for information and necessary action to :

1. The Sr. P.A. to Collector (Cus. Prev. Shillong.
2. The P.A. to Collector of C.Ex., Hqrs. Shillong.
3. The Additional Collector (Tech), Hqrs. Office, Shillong.
4. The Additional Collector (Cus. Prev), NER, Imphal
5. The Director General, D.G.R.I., New Delhi. The copy meant for the concerned officer is enclosed.
6. The Additional Director General D.R./I_____.
7. The Dy. Director R.C.B._____. The copy meant for the concerned for is enclosed.

8. The Director General, DGRI, Calcutta. The copy meant for the concerned is enclosed.
9. The Asstt. Collector of C./Cus(P)_____ is/are enclosed.
10. The Asstt. Collector of C/Cus(P), Tinsukia.
11. Shri _____ for compliance
12. The PAO/CAO of Collectorate Hqrs. Office, Shillong.
13. The Accounts I & II/ET.I & II/ Confdl. Br./CIU-cum -VIP Br.
14. The General Secretary Gr. B/Gr.C Executive Officer Asson., Customs and Central Excise, Shillong.
15. The Supdt. Of Imphal Range, Imphal. The copy meant for the concerned officer is enclosed.
16. Guard file.

Sd/- Illegible
Deputy Collector (P &V)
Customs & Central Excise : Shillong.

Annexure-8

CUSTOMS AND CENTRAL EXCISE
SHILLONG

ESTABLISHMENT ORDER No. 362/1995

Dated 11.12.95

PART-I

P R O M O T I O N S

The following Inspectors of Customs and Central Excise are hereby promoted to the grade of Superintendent Group 'B' in the scale of pay of Rs. 2000/- to 3500/- with effect from the date they take charge of higher post at the places of posting with immediate effect until further orders.

Sl. No.	Name
1.	Shri Pabitra Kumar Reang(ST)
2.	Shri Paresh Debnath
3.	Shri Jahar Dey
4.	Shri Debashish Bhattacharjee
5.	Shri Snsuman Chakraborty
6.	Shri Jibanlal Bhowmick
7.	Shri Arabinda Dutta
8.	Shri Koj Tat (ST)
9.	Shri Sukesh Ranjan Saha
10.	Shri Dipak Ranjan Saha
11.	Shri Biren Saikia (ST)
12.	Shri Aswini Kumar Das (SC)
13.	Shri Jagadish Ch. Das (No.2), (SC)

The seniority of the above officers in the grade will be in the order shown above.

This promotion order is subject to the outcome of the S.L.P. filed by the department before the Hon'ble Supreme Court against the judgment dated 25.11.1993 of the Hon'ble C.A.T., Calcutta in O.A. No. 925/92 and various other cases pending before the Hon'ble C.A.T., Guwahati on the issue.

They are hereby asked to exercise option within one month from the date of promotion as to whether their initial

*Attested
by
Advocate*

84

89 122

pay should be fixed in the higher post on the basis of F.R.22(I)(a)(1) straightway without any further review on accrual of increment in the pay scale of the lower post or their pay on promotion should be fixed initially in the manner as provided under F.R. 22 (a) (1) on the date of accrual of next increment in the scale of pay of the lower post. Option once exercised shall be final.

In the event of refusal they would be debarred from promotion for a period of one year.

PART-II TRANSFERS AND POSTINGS

On promotion, Shri D. Bhattacharjee, Shri A. Dutta & B. Saikia (Sl. No. 4, 7, & 11) are hereby temporarily transferred and posted Hqrs. Office, Shillong. All other promotees are retained at their respective preent places of postings. Final postings as Superintendent Group 'B' will be issued later on.

Note : In the event of any deputationist(s) being repatriated back to parent Commissionerate, the junior most Officer(s) in the above promotion order will be reverted back as Inspector.

This promotion order is issued against the vacancies arising out of the recent promotion to the grade of Assistant Commissioner vide Ministry's Order No. 225/95 dated 19.10.95, which was issued subject to the final outcome/order in Civil Appeals No. 257 of 1998 and 4004-07/87 with CHP No. 160003/89 and 9014/88 petitions No. 506/88, 2635/81, 512, 535 and 1200/88 4532-33/70 pending before the Hon'ble Supreme Court and subject to the final order in O.A. No. 3/93 filed in CAT, Bombay Bench by All India Customs Officers Asson. And subject to review.

C. No. II(3)9/E2.III/95/21916-926 (A) Dated 09 Dec 1997
Copy forwarded for information & necessary action to :

1. The Commissioner (Customs), NER, Shillong
2. **The Commissioner (Appeals), Customs & Central Excise, Guwahati.**
3. Shri Deputy Commissioner (Customs), NER, Shillong.
4. The Deputy Commissioner (P & V), Cus. & Cen. Ex. Shillong.
5. The Assistant Commissioner of Central Excise, Division Dibrugarh. The copy meant for the concerned officer is enclosed.
6. The A.C.R.C. (Accounts)/PAO of Hqrs. Office, Shillong.
7. Shri B. Baishang, Inspector for compliance.
- 8-9. Accounts I & II/PT.I & II/Confdl. Br. CIU-Vig.Br.
10. The General Secretary, Gr. B/Gr. C Executive Officers' Asson. Customs & Central Excise, Shillong.

85-

90

125

11. Guard File.

Sd/- Illegible
Assistant Commissioner (HQ)
Customs & Central Excise : Shillong.

86-
-9-
ANNEXURE-9
Annexure-1
124
CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

Date of decision: This the 22nd day of January, 1999.

Hon'ble Mr. Justice D.N.Baruah, Vice-Chairman.

Hon'ble Shri G.L.Sanglyine, Administrative Member.

O.A. No. 101 of 1995

Shri Jibanlal Bhowmick

...Applicant.

By Advocate Mr. M.Chanda.

-versus-

Union of India & Ors.

...Respondents.

By Advocate Mr. A.Deb Roy, learned Sr. C.G.S.C.

O.A. No. 171 of 1995.

Shri Debajyoti Mishra

... Applicant.

By Advocate Mr. M.Chanda.

-versus-

Union of India & Ors.

....Respondents.

By Advocate Mr. A.Deb Roy, learned Sr. C.G.S.C.

O.A. No. 147 of 1995.

Shri Ashoke Dey & Ors.

...Applicant.

By Advocate Mr. M.Chanda.

-versus-

Union of India & Ors.

... Respondents.

By Advocate Mr. A.Deb Roy, learned Sr. C.G.S.C.

82

Placed
for
signature

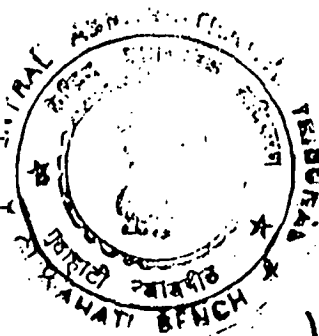
Contd....

87-18-
O R D E R

BARUAH.J. (V.C.)

All the above three original applications involve common questions of law and similar facts. Therefore, we dispose of all the three applications by this common order.

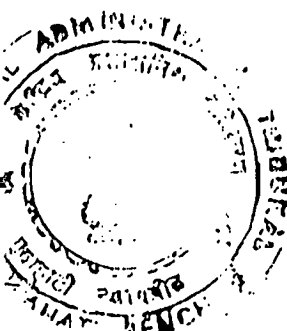
2. All the applicants were Inspectors of Customs and Central Excise, working in the North Eastern Region at the material time. They were appointed on ad hoc basis during the period from 1981 to 1983 and later on they were regularly appointed Inspectors. The seniority of the applicants was fixed above the private respondents in pursuance of the Office Memorandum dated 22.12.1959 issued by the Department of Personnel and Training, Ministry of Home Affairs, New Delhi. According to the applicants such seniority was settled long back in the cadre of Inspectors in the year 1983. The applicants further state that the seniority used to be maintained on Regional basis. Such seniority was fixed in terms of Quota-Rota Rule as per the guidelines given in O.M. dated 22.12.1959. This practice continued till 1993. In October 1994 a Draft Seniority List was published by the respondents showing private respondents above the applicants. This was in violation of the provisions of the Office Memorandum dated 7.2.1986 whereby the old cases were sought to be reopened. The draft seniority list was prepared. By the draft seniority list so prepared, a letter dated 24.10.1994 was issued showing the applicants juniors to the private respondents. According to the applicants the draft seniority list which was later on



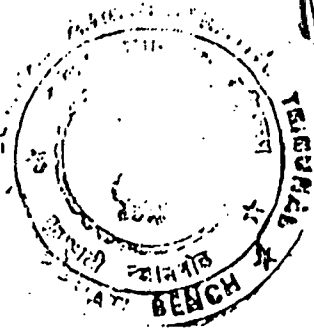
made final was in violation of the Office Memorandum dated 7.2.86 inasmuch as in the said draft seniority list the old cases had been re-opened, which was prohibited by the Office Memorandum dated 7.2.86. After the publication of the draft seniority list the applicants submitted representation objecting the draft seniority list. These representations were disposed of against the applicants by order dated 27.4.1995. and the draft seniority list so published is declared final. Being aggrieved, the applicants have approached this Tribunal by filing the aforesaid original applications.

3. In due course the respondents have entered appearance. The official respondents have filed written statements in all the application. In O.A. No. 101/95 the private respondent No. 16 has filed written statement. In O.A. No. 147/95 none of the private respondents No. 5 to 36 has filed written statement. In O.A. Nos. 171/95 private respondent Nos. 5, 27, 28 and 31 have filed written statements, others have not filed any written statement even though notices were duly served on them as will appear from the office note. Today Mr. B.K.Sharma, learned counsel appearing on behalf of respondent No. 16 in O.A. 101/95, respondent Nos. 7, 30 and 31 in O.A. No. 147/95 and, Respondent Nos. 5, 27, 28 in O.A. No. 171/95 is present. Mr. B.P.Kataki has entered appearance for respondent No. 28 in O.A. 171/95. However, he is not present today before the Tribunal.

4. We have heard Mr. M.Chanda, learned counsel for all the applicants, Mr. A.Deb Roy, learned Sr. C.G.S.C for all the official respondents and Mr. B.K.Sharma,



learned counsel for some of the private respondents as mentioned above. Mr. Chanda, submits that the applicants were originally shown senior to the private respondents since their appointments by promotion to the rank of Inspector of Customs and Central Excise were earlier. This was done in strict compliance with the Office Memorandum dated 22.12.1959. During the period of 1959-85 the quota-rota system was prevalent. The persons were appointed by promotion or directly recruited on the basis of the quota. However, Mr. Chanda submits that by yet another Office Memorandum dated 7.2.86 issued by the Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, the old system of quota-rota had been done away and in its place the seniority was required to be fixed as per the date of appointment. The quota-rota system was abolished after the O.M.86. As per the said O.M. 86 the old cases where the seniority had already been fixed would not be re-opened. The Office Memorandum dated 7.2.86 was to take effect from 1.3.1986. Relying on this Mr. Chanda submits that as the quota-rota system was there and the same procedure was followed, the applicants were put above the direct recruits on the basis of quota-rota system, the said seniority ought to have been maintained. Instead, the respondents have made a total change in the seniority list in utter violation of the provisions contained in para 7 of the Office Memorandum dated 7.2.86. Learned counsel further submits that when the seniority was fixed on earlier occasion putting the applicants above the private respondents they never objected. He also submits that the applicants having occupied the place for a long time their seniority positions ought not to have been



R2

disturbed. It is also submitted that the decision of the Calcutta Bench rendered in O.A. No. 925/92 is not binding on the applicants in as much as the applicants were never served with a notice. The decision was made ex parte in their absence. They had no knowledge whatsoever, about it. They came to know it only from the written statement filed by the respondent No.16 in O.A. No. 101/95. The written statement filed by the official respondents is silent in this regard.

5. Mr. Deb Roy, learned Sr. C.G.S.C. submits that prior to Office Memorandum dated 7.2.86, the quota-rota system was in vogue. This system was abolished by the said Office Memorandum dated 7.2.86. He however very fairly submits that the relative seniority of Inspectors between Direct Recruits and Promotees was maintained as per Circular dated 22.12.1959.

6. Mr. B.K.Sharma, learned counsel submits that though quota-rota system was applicable as per the Office Memorandum dated 22.12.1959, this system was never adhered to. In fact, there was a break down of this system and the procedure as prescribed in the subsequent notification dated 7.2.1986 was in fact followed. Therefore, there was no question of following quota-rota system. Besides he has drawn our attention to a decision of Cuttack Bench of the Central Administrative Tribunal. Relying on this Mr. Sharma states that the quota-rota system was never followed and therefore the Office Memorandum dated 22.12.1959 had no relevance in the facts and circumstances of the case. Besides he has also drawn our attention to paragraph 14 of the judgement of the Cuttack Bench. Referring to that Mr. Sharma submits that seniority already determined could not be disturbed. The

Printed
Respondent



B

Cuttack Bench of this Tribunal declined to accept the provision of the Office Memorandum dated 7.2.1986. Agreeing with the Madras Bench of the Tribunal it was held that the principles laid down by the Supreme Court should be given effect from the date of pronouncement of the judgment by the Supreme Court and not from any prospective date. It was further held that Memorandum dated 7.2.1986 could not supersede the Supreme Court decision and must not be taken into account while upsetting the seniority once fixed. Mr Sharma further submits that an SLP was filed against the Calcutta Bench decision and the said SLP was dismissed. However, Mr Sharma, when asked to produce the order, expressed his inability to do so. In the written statement there is no averment to the effect that the SLP against Calcutta Bench decision was dismissed. On the other hand Mr Chanda submits that he has no information that such SLP was filed. Mr Deb Roy has also no knowledge about it. Mr Sharma further draws our attention to a decision of this Tribunal given in original application No.241 of 1991. Besides this, Mr Sharma has relied upon two other decisions viz. A. Janardhana -vs- Union of India and others reported in AIR (1983) SC 769 and AIR (1987) SC 716, A.N. Pathak and others -vs- Secretary to the Government.

7. On the other hand Mr Chanda has referred to a catena of decisions.

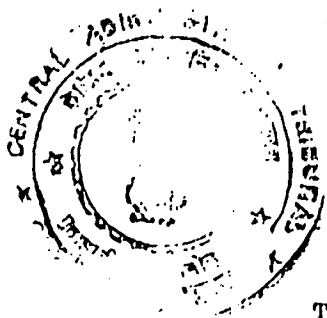
8. On the rival contention of the learned counsel for the parties, it is to be seen whether the applicants are entitled to the relief claimed.



9. The controversy relates to which of the Office Memoranda, namely Office Memorandum dated 22.12.1959 or Office Memorandum dated 7.2.1986, was applicable to the applicants and the private respondents at the material time. Para 6 of the Office Memorandum dated 22.12.1959 (OM 59 for short) states that the relative seniority shall be determined according to the rotation of vacancies between the direct recruits and promotees on the basis of vacancies reserved for the aforesaid two categories of employees as per the Recruitment Rules. The respondent Nos.1 to 4 in their written statement have stated as follows:

".....the relative seniority of Inspectors between DRs and PRs in this Department were maintained as per Ministry of Home Affairs O.M.No.9/11/55-RPS, dt. 22.12.59 i.e. according to rotation of vacancies reserved for DRs and PRs as per Recruitment Rules. As per this principle, if in a year, sufficient DRs or PRs were not available, the practice followed was to keep the slots meant for DRs or PRs, which could not be filled up, vacant and where such DRs or PRs were available through later examination as/Selections, such persons occupied these vacant slots thereby becoming senior to some of the Officers already in position."

The respondents have also stated in their written statement that revised seniority list was prepared in accordance with the judgment of the Calcutta Bench of this Tribunal whereby the respondents were directed to refix the seniority of Shri N.C. Patra and another in the light of the judgment referred to above. The Tribunal also directed to refix the seniority of similarly situated employees in the light of judgment of Cuttack Bench and the two decisions of the Apex Court referred to in the said decision.



10. As per the Office Memorandum dated 7.2.1986 (OM 86 for short) the seniority to be fixed from the date of promotion or appointment as the case may be without following the Quota-Rota system. In para 14 of the judgment passed by the Cuttack Bench in Original Application Nos. 62 to 71 of 1987 observed as under:

".....The seniority already determined by the department has been challenged by the applicants on the basis of pronouncement of the Supreme Court, some of which have been referred to in the preceding paragraphs. We are, therefore, unable to appreciate the provision in paragraph 7 of the office memorandum dated 7.2.86 which has made the revised procedure for determination of seniority effective only from 1st March 1986. We agree with the Madras Bench that the Principles laid down by the Supreme Court have to be given effect to at least from the date of pronouncement of the decision by the Supreme Court"

✓ Calcutta Bench of the Tribunal after hearing the parties found that the Cuttack Bench judgment has already been implemented. The judgment was passed in 1989 and no stay order was granted by the Supreme Court. This Bench also had an occasion to decide a similar matter. While deciding the similar matter in O.A.No.241 of 1991 this Bench observed as follows:

"5.In paragraph 9 of the written statement it is stated that the seniority list of Inspectors as on 1.1.91 was circulated in December 1991 and it was based on the guidelines of Govt. dated 7.2.1986 and it cannot be reopened. However in our view the question of assigning correct seniority to the applicant in the promotional post has to be decided in the light of the decision of the Cuttack Bench. This can be adequately decided while disposing of the representation."

As per the above decisions whatever was held by the Cuttack Bench should be kept in mind in fixing the seniority. In A Janardhana Vs. U.O.I. & Ors. (Supra) a similar matter came up before the Supreme Court. The Supreme Court observed as follows:

"28. It is a well recognised principle of service jurisprudence that any rule of seniority has to satisfy the test of equality of opportunity in public service as enshrined in Art. 16. It is an equally

R

well recognised cannon of service jurisprudence that in the absence of any other valid rule for determining inter se seniority of members belonging to the same service, the rule of continuous officiation or the length of service or the date of entering in service and continuous uninterrupted service thereafter would be valid and would satisfy the tests of Art. 16. However, as we would presently point out we need not fall back upon this general principle for determining inter se seniority because in our view there is a specific rule governing inter se seniority between direct recruits and promotees in MES Class I Service, and it was in force till 1974 when the impugned seniority list was drawn up."

The Supreme Court further observed :

" Therefore, once the quota rule was wholly relaxed between 1959 and 1969 to suit the requirements of service and the recruitment made in relaxation made in relaxation of quota rule and the minimum qualification rule for direct recruits is held to be valid, no effect can be given to the seniority rule enunciated in para 3(iii), which was wholly inter-linked with the quota rule and cannot exist apart from it on its own strength. This is impliedly accepted by the Union Government and is implicit in the seniority lists prepared in 1963 and 1967-68 in respect of AEE, because both those seniority lists were drawn up in accordance with rule of seniority enunciated in Annexure 'A' to Army Instruction No. 241 of 1950 dated September, 1, 1949, and not in compliance with para 3 (iii) of Appendix V."

In the said case Supreme Court considered 1949 Rules which came into force on April 1, 1951. In the said rule the provision was made for determining inter se seniority between direct recruits and promotees. In the Appendix V of the said Rules it was provided that the roster should be maintained indicating the order in which appointments had to be made by direct recruitment or promotion in accordance with the percentages fixed for each method of recruitment in the recruitment rules. The relative seniority of the promotees and direct recruits should be determined by the dates on which the vacancies reserved for the direct recruits and the promotees occur. This 1949 Rules related the quota of 9:1 between direct recruits and promotees. It showed that the roster was to be maintained consistently



with the quota so that relative inter se seniority of promotees and direct recruits could be determined on the date on which vacancy occurred and the vacancy is for the direct recruit or for the promotees. If the quota prescribed was adhered to or invioable, the rule of seniority as per the Appendix V would hve to be given full play and the seniority list had to be drawn in accordance with it. But once the quota rule gave away the seniority rule as prescribed the same became otiose and ineffective.

11. The next decision cited Mr. B.K.Sharma is A.N.Pathak and Others Vs. Secretary to the Government, Ministry of Defence and another, reported in AIR 1987 SC 716, when similar questions came up before the Apex Court. In the said decision, relying on the decision of A.Janardhana Vs. Union of India and others (Supra), the Apex Court observed thus :

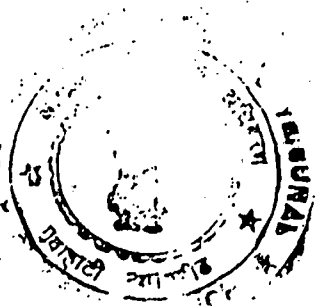
"14.length of service and seniority, in cases where there was inordinate delay in making direct recruitment. He tried to justify the inequity saying that the new rules have tried to rectify it. We are not satisfied with this explanation since that is little consolation to the petitioners. We are of the view that the grievance of the petitioners is justified in law. The rules enabling the authorities to fill in vacancies for direct recruits as and when recruitment is made and thereby destroying the chances of promotion to those who are already in service cannot but be viewed with disfavour. If the authorities want to adhere to the rules strictly all that is necessary is to be prompt in making the direct recruitment. Delay in making appointments by direct recruitment should not visit the promotees with adverse consequences, denying them the benefit of their service."

12. Mr Chanda has drawn our attention to a decision in the case of Union of India & Ors. Vs. G.K. Vaidyanathan and Others, reported in AIR (1996) SC 688. In the said case a three Judge Bench of the Apex Court observed as follows:

"12. We are of the opinion that the learned Additional Solicitor General is right in his submission that the decision of the

E

Madras Tribunal is based upon a concession and cannot, therefore, be treated as a decision on merits. The said concession made by direct recruits cannot and does not bind the Union of India, which is equally an affected party in the matter. No such concession was made by any of the respondents before the Bangalore Bench. As stated above, the direct recruits impleaded as respondents before Madras Tribunal were also impleaded as respondents before the Bangalore Tribunal. Moreover, the said concession is found to be opposed to the record, as found by the Bangalore Tribunal, which has recorded on a perusal of relevant records, that even during the years 1978 to 1981 - the period during which the promotees say, there was a break-down in the quota rule - both direct recruitments and promotions were being made though it may be that promotions to the cadre were made in excess of the quota. The correctness of the facts recorded in Para-28 of the decision of the Bangalore Tribunal is not disputed or questioned before us. Once this is so, the very theory of break-down of the quota rule falls to the ground. In such a situation, it is not necessary either to deal with the decisions cited by the parties on the question when the quota rule can be said to have broken down or with the question whether the principle contained in Office Memorandum dated February 7, 1986 can be given retrospective effect. The factual situation concludes the issue against the promotees."



Regarding the break-down the Apex Court observed in para 7 of the said judgment as follows:

"7.The direct recruits were impleaded as Respondents Nos. 4 to 19 who included Respondents Nos. 3 to 15 before the Madras Tribunal. The basis of the claim was identical, viz., the break down of the quota rule. The direct recruits remained ex-parte but Union of India contested the promotees' case. The Bangalore Tribunal looked into the relevant records and found as follows:

"On an examination of the records, we notice that there was a deviation or departure in adhering to the quotas prescribed for direct recruitment and promotion in the calendar years from 1978 to 1981 reckoning each year as one unit. In all these years, the posts in the cadres of CGI were filled in from two sources, viz. direct recruitment and promotions. Strange enough

during this years, promotions to the cadre were in excess of direct recruitment. This then is the factual position revealed from the records."

In that case, of course, the Apex Court found that there was no breakdown. Again Mr Chanda cited another decision, namely, Abraham Jacob and others Vs. Union of India and Others, reported in (1998) 4 SCC 65. In this case the Apex Court observed as follows:

"4.....Further, the inter se seniority of such direct recruits and promotees has to be determined by taking recourse to the aforesaid office memorandum dated 22.12.1959 issued by the Government of India in the Ministry of Home Affairs. Needless to mention that this principle has to be invoked for determination of inter se seniority of the appointees both direct recruits and promotees during the period 1969 till 9.9.1976 and in fact the Government has drawn up the seniority list on following the said principle. In the aforesaid premises, the direction of the Tribunal in the impugned judgement to redraw the seniority list without importing any quota/rota rule for the period prior to 9.9.1976 is unsustainable in law and we accordingly quash the said direction. Necessarily, therefore, the inter se seniority of the direct recruits and promotees in the cadre of Assistant Engineers for the period 1969 till 9.9.1976 has to be determined in accordance with the government order dated 22.12.1959 issued by the Ministry of Home Affairs."



From the decisions cited above, it appears that if there is no rule regarding fixation of seniority, as in this case, O.M.'59 is to be adhered to for the period for which the particular O.M. was in force. It is also stated that the O.M.'86 does not have any retrospective effect. Now, the question is, as Mr. B.K.Sharma has strenuously argued, as to whether the quota-rota rule as prescribed in O.M. dated 22.12.1959 had broken down or not. The facts are not available before us. The applicants have submitted a seniority list prepared by the office for the period before 1986. No opportunity was given to the other side to rebut.

The applicants have drawn our attention to the list; we cannot ignore looking into this. On looking to the this list it cannot be said that the rule prescribed by O.M.'59

had in fact collapsed. If it had collapsed then the decision has to be taken in the light of the decision of A. Janardhana's case (Supra) and also the other decisions cited above. Due to the paucity of the materials available before us we are not in a position to decide this.

13. In view of the above, we send back the cases to the respondents to examine the entire matter afresh in the light of the decisions of the Apex Court referred to above. If the applicants claim personal hearing before any decision is taken, they may be given such opportunity. The non-official respondents may also be given opportunity of personal hearing if they so claim and they should be given at least seven days notice. This must be done as early as possible at any rate within a period of three months from the date of receipt of this order.

14. The applications are accordingly disposed of.

15. Considering the facts and circumstances of the case, we however, make no order as to costs.

Sd/- VICE-CHAIRMAN

Sd/- MEMBER (ADMN)

Certified to be true Copy
प्रमाणित प्रतिलिपि

Section Officer (J)

प्रमुख अधिकारी (न्यायिक शाखा)
Central Administrative Tribunal

केन्द्रीय प्रशासनिक अधिकरण
Guwahati Bench, Guwahati-8

२०२१ सालीत, गुवाहाटी-८

25/3/21

44- 103
137
Anenxure-10

To
The Commissioner
Central Excise,
Shillong

(Through Proper Channel)

Sir,

Sub : Re fixation of seniority of Inspectors appointed
before 1.3.86 - Implementation of Central
Administrative Tribunal, Guwahati Bench order
dated 22.1.99 in O.A. No. 101/95, 147/95 and
171/95.

In making a respectful reference to the above mentioned
order of the Tribunal passed against the revised seniority
list of 1994, it is requested that the Hon'ble Tribunal's
order may kindly be implemented early in the manner as
indicated therein.

It is also requested that seniority list as on 1.1.1993
which was prepared and circulated following O.M. dated
22.12.1959 for those Inspectors appointed before 1.3.1986 be
considered for revival in the light of Hon'ble CAT's order
dated 22.1.1999 passed in the subject appeal WITH CONSEQUEN-
TIAL RELIEF.

Dated Dibrugarh the 28th April, 1999

Yours faithfully,
Sd/- D.Mishra
Inspector, Central Excise,
Dibrugarh

*Attested
by
Advocate*

- 100 -

138

104

Annexure-11

To
The Commissioner (By Name)
Central Excise,
Shillong

(Through Proper Channel)

Sir,

Sub : Re-fixation of seniority of Inspector appointed before 01/03/86 - Implementation of the order dated 22.1.99 passed by the Hon'ble CAT Guwahati Bench in O.A. Nos. 101/95, 147/95 and 171/95.

Kindly refer to my letter dated 28.4.99 on the above subject which was forwarded under O.M. No. II(29)8/ET/PL/ACD/96/662 dated 29.4.99 by the Assistant Commissioner, Central Excise, Dibrugarh.

In this connection, I once again fervently appeal to your benign self to implement the order dated 22.1.99 passed by the Hon'ble Central Administrative Tribunal, Guwahati Bench, in O.A. Nos. 101/95, 147/95 & 171/95 and revive the seniority list of Inspectors as on 1.1.93 accordingly with consequential relief.

And for this act of your kindness, I shall remain ever grateful to you.

Dated Dibrugarh the 30th August, 1999

Yours faithfully,
Sd/- D.Mishra
Inspector, Central Excise,
Dibrugarh Division.

*Attended
for
Advocate*

101-

139

405

-101-

Annexure-12

To
The Commissioner (By Name)
Central Excise,
Shillong

(Through Proper Channel)

Sir,

Sub : Re-fixation of seniority of Inspectors appointed before 01/03/86 and seniority list of Inspectors as on 01.07.99-regarding.

Ref : C. No. II(34)10//ET-1/93/34703-44 dt. 22.08.99 of the Joint Commissioner (P &V), Customs & Central Excise, Shillong.

Most respectfully I beg to lay before your benign self the following few lines for favour of your perusal, consideration and favourable order.

That Sir, the seniority list of Inspectors as on 01.07.99 published & circulated under C. No. II(34)10//ET-1/93/34703-44 dt. Shillong the 20th August, 1999 was received by me from the Administrative Officer, Central Excise, Dibrugarh.

That Sir, on scrutiny of the above mentioned seniority list of Inspectors as on 1.7.99 it is seen that the said seniority list of Inspectors has not been prepared following the direction of the Hon'ble Central Administrative Tribunal, Guwahati Bench on 22.1.1999 in O.A. Nos. 101/95, 147/95 & 171/95.

That Sir, principles regarding fixation of seniority of Inspectors appointed before 1.3.1986 of this Commissionerate has already been decided by the Hon'ble CAT, Guwahati Bench on 22.1.1999 in O.A. Nos. 101/95, 147/95 & 171/95. The Hon'ble Tribunal has held that the general principles of seniority prescribed under Ministry of Home Affairs O.M. No. 9/11/55-RPS dated 22.12.1959 should be adhered to for the period for which the particular O.M. was in force.

That Sir, the applicant is an Inspector of this Commissionerate & appointed in the grade of Inspector in the year 1982. My seniority was always fixed up to the period of 1.1.93 following the principles laid down in O.M. No. 9/11/55-RPS dated 22.12.1959 issued by the Department of Personnel & Training, Ministry of Home Affairs, New Delhi.

That Sir, in view of the above, the seniority list of Inspectors as on 01.07.99 published and circulated under C. No. II(34)10/ET-1093/34703-44 dated 20.08.99 by the Joint Commissioner (P & V) Customs & Central Excise, Shillong is not acceptable to me.

*Assisted
by
Advocate*

I would, therefore, request your honour to implement the order dated 22.1.1999 passed by the Hon'ble Central Administrative Tribunal, Guwahati Bench, in O.A. Nos. 101/95, 147/95 & 171/95 to restore my seniority as on 1.1.93 and to hold review DPC to consider the promotion of the applicant to the grade of Superintendent Group 'B' with all consequential benefits.

And for this act of your kindness I shall remain ever grateful to you.

Dated Dibrugarh the 14th ~~December~~ ^{September}, 1999

Yours faithfully,
Sd/- D.Mishra
Inspector, Central Excise,
Dibrugarh Division.

Annexure-13

OFFICE OF THE COMMISSIONER
CENTRAL EXCISE : SHILLONG

Subject : Seniority List in the Grade of Inspector as on
1.7.1999 - Circulation thereof.

Please find herewith the seniority list in the grade of Inspectors as on 1.7.1999 of this Commissionerate. The List may please be circulated amongst all officers concerned and their signature obtained in token of their having seen the seniority list. They may be informed that omission and /or factual error(s), if any should be pointed out and brought to the notice of this office immediately. The objection(s) filed by the Officer(s), if any, along with your comments thereon should be forwarded to this office within ten (10) days from the date of receipt.

Please acknowledge receipt.

Sd/- B. THAMAR
JOINT COMMISSIONER (P & V)
CUSTOMS & CENTRAL EXCISE : SHILLONG

C. No. II(34)10/ET-I/93

Date _____

Copy forwarded for information and necessary action to :

1. The Suptd. (Hqr. Customs) Tech-Adj NER Branch/Unit of office, Shillong.
2. The Senior P.A. to the Commissioner of Customs, Shillong.
3. The P.A. to Commissioner of Central Excise, Shillong.
4. The General Secretary, Group 'C' Executive Officers' Association, Customs & Central Excise, Shillong.
5. Guard File.

*Attended
for
Advocate*

104-

- 88

142

Annexure - 13

Annex - 13

SENIORITY LIST IN THE GRADE OF INSPECTOR AS ON 01-07-99

SL.NO.	NAME & QUALIFICATION	DATE OF BIRTH	DATE OF APPT. IN GOVT. SERVICE	DATE OF CONFIRMATION	DATE OF APPT. AS INSPECTOR	WHETHER DR/PR	REMARKS
1.	2.	3.	4.	5.	6.	7.	8.
<u>S/SHRI</u>							
1.	Silpa Prasad Neog, B.A.	29.8.52	22.7.76	10.10.81	22.7.76	DR	23
2.	Dinesh Mahanta, B.Sc(H)	1.1.56	12.09.83	13.05.87	12.09.83	DR	
3.	Gangadhar Das(ST), B.A.	01.08.56	12.07.82	13.05.87	12.07.82	DR	
4.	Bikash Kr. Saikia, (ST), B.Com.	01.01.57	08.03.82	13.05.87	08.03.82	DR	
5.	Ms. Sayada Jasmine Begum, B.A.	01.12.52	15.04.74	01.12.82	16.11.82	PR	
6.	Debendra Moshahary, (ST) M.A.	20.09.58	05.03.82	13.05.87	05.03.82	DR	
7.	James Dohring(ST) B.A.	18.03.56	02.03.82	13.05.87	02.03.82	DR	
8.	Karendra Nath Daimary, (ST), B.Sc	01.01.58	12.07.82	13.05.87	12.07.82	DR	
9.	Debajyoti Mishra, B.Com.	01.09.54	01.06.74	01.12.82	16.11.82	PR	
10.	Dipak Roy Choudhury, B.Sc.	21.07.57	01.07.82	13.05.87	01.07.82	DR	
11.	Santanu Kr. Chalia, B.Sc, (H)	01.03.57	29.07.82	13.05.87	19.07.82	DR	
12.	Faizuddin Fakir, B.Sc.	01.03.58	01.09.82	13.05.87	10.09.82	DR	
13.	Haripada Debnath, B.Sc.	01.02.45	20.03.74	01.12.82	16.11.82	PR	
14.	Kumud Ch. Deka, B.Sc.	18.01.58	05.07.82	13.05.87	05.07.82	DR	On Deputation
15.	Benu Prasad Jaishi, B.A.	22-03-56	03-04-82	13-05-87	03-04-82	DR	with D.R.I.
16.	Mukul Baruah, B.Sc.	01-02-58	11-08-82	13-05-87	11-08-82	DR	
17.	Chandan Kr. Dhandu, B.A.	10.12.55	25.01.77	13.05.87	18.01.82	DR	
18.	Chandan Biswas, B.Sc.	24.07.57	01.04.82	13.05.87	01.04.82	DR	
19.	Dipankar Choudhury, B.Sc.	07.10.57	09.07.82	13.05.87	09.07.82	DR	
20.	L. Hauferram(ST), B.U.	24.12.46	01.03.74	01.12.82	16.11.82	PR	

Contd....P/2.

Attested
by
Advocate

705

143

- 89 -

-: 2 :-

1.	2.	3.	4.	5.	6.	7.	8.
<u>S/SHRI</u>							
21. Sudip Kr. Nandi, B.Sc.	01-02-51	07-09-77	01-12-82	16-11-82	PR		
22. Biman Ch. Das, (SC), H.S.L.C.	21-08-47	15-03-74	01-12-82	16-11-82	PR		
23. Jyotish Ch. Das, (SC), B.A.	01-12-52	14-11-77	01-12-82	16-11-82	PR		
24. Amit Kr. Deb. Matric	01-10-41	06-04-74	01-12-82	16-11-82	PR		
25. Karendra Ch. Rabha, (ST), B.A.	01-11-49	22-01-77	01-12-82	26-11-82	PR		
26. Ms. Lilyda Shangpliang, (ST), B.A.	27-01-52	03-02-74	01-12-82	16-11-82	PR		
27. Pankajlal Singha, B.A.	28-01-60	20-06-83	13-05-87	20-06-83	DR		
28. Tarun Kr. Singha, B.A.	01-02-51	22-10-83	13-05-87	22-10-83	DR		
29. Pannalal Singha, B.Com.	30-01-55	20-06-83	13-05-87	20-06-83	DR		
30. Ashok Kr. Dey, B.A.	10-06-51	10-04-78	01-08-83	15-07-83	PR		
31. Ms. H. Ramcha Devi, B.Sc.	01-12-51	05-01-83	13-05-87	05-05-83	PR		
32. W.S.K. Singh, (O.B.C.), B.A.	01-03-51	07-09-83	13-05-87	07-09-83	DR (Resigned)		
33. Swapan Dutta, B.Sc.	18-12-51	09-03-83	13-05-87	09-03-83	DR		
34. Beliram Das, (SC), P.U.	12-02-51	23-06-77	01-08-83	18-07-83	PR		
35. Debashish Mazumder, B. Com.	22-01-51	02-05-83	13-05-87	02-05-83	DR		
36. Jamkhogin Haukip, (ST), B.A.	01-03-61	30-05-83	13-05-87	30-05-83	DR		
37. Ms. Hilda Mary Synrem, (ST), P.U.	07-12-51	14-02-78	01-08-83	05-07-83	PR		
38. Abdul Mutalib, B.Sc.	01-01-51	31-12-80	13-05-87	07-07-83	DR		
39. Sujit Mishra, B.Sc.	17-01-51	08-09-83	13-05-87	08-09-83	DR		
40. Syed Taffique Hussain, B.Sc.	20-09-51	06-10-83	30-05-87	06-10-83	DR		
41. Dhani Ram Das, F.U.	07-02-51	26-02-78	01-08-83	22-07-83	PR		
42. Pabitra Kataki, B.Sc.	25-12-51	02-05-83	13-05-87	02-05-83	DR		
43. Jasabanta Mazumder, B.Sc.	03-01-61	18-05-83	13-05-87	18-05-83	DR		

-106-

144

-90-

-- 3 :-

1.	2.	3.	4.	5.	6.	7.	8.
<u>S/SHRI</u>							
44. Rajkumar Kalita, B. Sc.	15-10-56	05-05-83	13-05-87	05-05-83	DR		
45. Md. Ali Mazarbhuyan, B.A.	11-02-52	13-03-74	07-06-86	14-10-83	PR		
46. Jatin Ch. Das, (SC), B.Sc.	15-09-51	08-07-83	13-05-07	08-07-83	DR		
47. Dils. Debajyoti Sinha, M.A.	10-01-58	15-06-83	13-05-87	15-06-83	DR		
48. Ganesh Ch. Sharma, B. Sc.	01-03-59	04-08-83	13-05-87	04-08-83	DR		
49. Joydeep Dutta, B. Com.	01-09-56	01-09-83	13-05-87	01-09-83	DR		
50. Hom Prasad Sharmah, B.A.	20-01-57	22-10-83	13-05-87	22-10-83	DR		
51. Swapan Kr. Nath, B. Sc.	01-01-58	07-09-83	13-05-87	07-09-83	DR		
52. Tridip Ch. Roy, B. Sc.	18-01-57	30-08-83	13-05-87	30-08-83	DR		
53. Rahul Sinha, B. Sc.	29-11-58	13-05-83	13-05-87	13-05-83	DR	On deputation	
54. Imdabur Rahman, M.Sc.	03-01-58	07-09-83	13-05-87	07-09-83	DR	with D.R.I.Sil.	
55. Saagar Kr. Dutta, B. Sc.	31-08-57	11-07-83	13-05-87	11-07-83	DR		
56. Dwigendra Mohan Das, B.A.	01-09-57	19-09-83	13-05-87	19-09-93	DR		
57. Nikendra Singha, M.A.	02-09-58	02-05-83	13-05-87	02-05-83	DR		
58. Naziruddin, B. Sc.	04-10-56	20-06-83	13-05-87	20-06-83	DR		
59. Sudip Kr. Dutta, B.A.	31-12-58	10-05-83	13-05-87	10-05-83	DR	On deputation	
60. Hem Chandra Kalita, B.Sc.(H).	01-01-57	07-09-83	13-05-87	07-09-83	DR	with DRI, Silchar	
61. Dambaru Borah, (ST)	01-07-55	08-06-83	13-05-87	08-06-83	DR		
62. Debeswar Chandi, (ST), B.A.	01-03-58	17-09-83	13-05-87	17-09-83	DR		
63. Prafulla Kr. Taye, (ST), B.A.	01-10-58	06-10-83	13-05-87	06-10-83	DR		
64. Thangchuoilo, (ST), B.A.	01-03-52	16-05-83	13-05-87	16-05-83	DR		
65. Tushar Kanti Sen, B. C om.(H).	15-01-57	16-09-83	13-05-87	16-09-83	DR		
66. Nihareish Nandi, (SC), B.A.	01-11-56	10-11-83	13-05-87	10-11-83	DR		
67. Larho Krelo, (ST), B.A.	01-03-60	12-10-83	13-05-87	12-10-83	DR		

Contd....P/4.

107-

-91-

145

- : 4 :-

1. 2. 3. 4. 5. 6. 7. 8.

S/SHRI.

68. Sakkam Kilong, (ST), B.A.	04-08-59	01-10-83	13-05-87	01-10-83	DR
69. Dilip Kr. Gogoi, B.Sc.	01-09-56	11-11-83	13-05-87	11-11-83	DR
70. Bibhuti Bhusan Borah, B.Sc.	01-03-57	06-10-83	13-05-87	06-10-83	DR
71. Shymal Kr. Dutta, B.Sc.	25-01-57	01-11-83	13-05-87	01-11-83	DR
72. Ashok Kr. Chakraborty, B. Sc.	01-11-58	01-02-84	13-05-87	01-02-84	DR
73. Khagen Borah, B. Sc.	01-01-59	01-11-83	13-05-87	01-11-83	DR
74. Bijoy Bhusan Baruah,	01-09-59	07-09-83	13-05-87	07-09-83	DR
75. Phani Bhusan Roy, B. Sc.	01-09-56	05-09-83	13-05-87	05-09-83	DR
76. Dipak Kr. Deb, B. Sc.	16-01-58	06-09-83	13-05-87	06-09-83	DR
77. Basudeb Bhattacharjee, M.A.	23-02-58	26-09-83	13-05-87	26-09-83	DR
78. Imranul Goni,	11-10-56	24-10-83	13-05-87	24-10-83	DR
79. Subhasish Guha, B. Com.	03-03-60	06-10-83	13-05-87	06-10-83	DR
80. Dilip Kr. Chettri, B. Sc.	01-03-57	19-02-83	13-05-87	25-05-83	DR
81. Farag Kr. Baruah, B. A.	12-10-58	10-11-83	13-05-87	10-11-83	DR On deputation with DRI, New Delhi.
82. Ashit Chakraborty, B. Sc.	02-01-57	28-09-83	13-05-87	28-09-83	DR
83. Binayak Bhattacharjee, B. Sc.	18-06-58	03-09-83	13-05-87	03-09-83	DR
84. Ashish Adhikary, B. Sc.	28-02-58	09-11-83	13-05-87	09-11-83	DR
85. Biswendu Dey, M. Sc.	26-09-56	03-10-83	13-05-87	03-10-83	DR
86. Tarun Ch. Mahanta,	01-09-58	07-10-83	13-05-87	07-10-83	DR
87. Subir Das, B. Sc. (H).	01-01-60	20-10-83	13-05-87	20-10-83	DR On deputation with DRI, Guwahati.
88. Bikash Ch. Nath, B. Sc.	01-12-58	19-03-84	13-05-87	19-03-84	DR
89. Nihar Ranjan Debroy, B.A.	17-08-58	21-03-84	13-05-87	21-03-84	DR
90. Guru Prasad Das, B. Sc.	15-06-58	14-11-83	13-05-87	14-11-83	DR
91. Bhaskar Kanti Bhattacharjee, B.A.	01-04-57	13-10-83	13-05-87	13-10-83	DR

Contd.....P/5.

Annexure-14

GOVERNMENT OF INDIA
OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE : SHILLONG
M.G.ROAD, SHILLONG -01

Dated 11 JAN 2001

C No. 11(34)1/ET-1/99/28-29

To
The Assistant Commissioner,
Central Excise Division,
Dibrugarh

Sub : Re-fixation of seniority of Inspector appointed
before 01.03.86 implementation of the order dated
22.1.99 passed by the Hon'ble CAT, Guwahati Bench
in O/A Nos. 101/95 and 171/95.

This has reference to your office endorsement C. No.
11(29)8/ET/PL/ACD/96/272 dated 01.02.2000 on the above
subject.

This Commissionerate have examined critically and in
detail the above judgment and after relevant judgments of
the Hon'ble CAT, Guwahati and representation dated 1.2.2000
of Shri Debjyoti Misra. The CAT's Order dated 22.1.99 has
directed the Department to give a decision in this respect
by examining the entire matter afresh in the light of the
decisions of the Apex Court referred to in the aforesaid
judgment. Accordingly after examination of all relevant
judgments of CATs and Supreme Court- this Commissionerate
has decided to adhere to the revised seniority list dated
13.7.98 issued under C No. 11(34)1/ET.1/96/28968-290(A)
which has been issued consequent to the CAT's Judgment dated
05.09.95 in O.A. No. 241/91 ✓

Shri Debajyoti Misra, Inspector may be informed
suitably.

Sd/- B.Thamar
Additional Commissioner (P & V),
Customs & Central Excise,
Shillong.

*Attested
Advocate*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 111 of 2001

Date of decision: This the 16th day of May 2002

The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman

The Hon'ble Mr K.K. Sharma, Administrative Member

Shri Debajyoti Mishra,
Inspector,
Office of the Assistant Commissioner,
Central Excise, Dibrugarh Division,
Dibrugarh, Assam.

.....Applicant

By Advocates Mr J.L. Sarkar, Mr M. Chanda,
Mrs N.D. Goswami, Mr G.N. Chakraborty and
Mr S. Ghosh.

- versus -

1. The Union of India, represented by
The Secretary to the Government of India,
Revenue Department, Ministry of Finance,
New Delhi.

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

3. The Collector,
Central Excise,
Shillong.

4. The Secretary to the Government of India,
Ministry of Personnel,
Public Grievances and Pensions,
Department of Personnel & Training,
New Delhi.

5. Shri Arun Kumar Chaturvedi

6. Shri D.K. Verma

7. Shri Khanindra Nag

8. Shri Susmal Das,

9. Shri Jambu Lamba

10. Shri Nitya Gopal Barma

11. Shri A. Swami

12. Shri Bapukan Patir

13. Shri Raju Sonowal

14. Shri Gobinda Thabrah

15. Shri J. Tuankhsthang

16. Shri Pabitra Kumar Reang

17. Shri Paresh Debnath

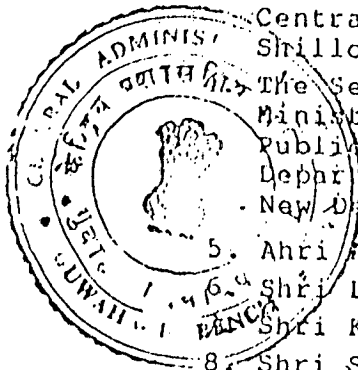
18. Shri Bijoy Kr. Deb

19. Shri Jahar Dey

20. Shri N.C. Singh Singjam

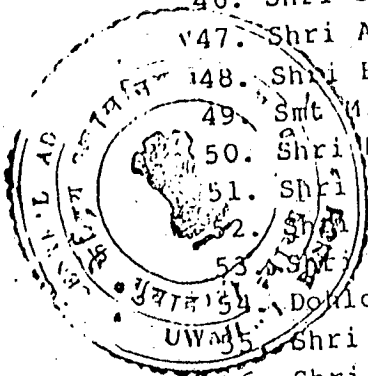
21. Shri A. Chakraborty

22. Shri T.K. Sarkar



*Assisted
Leave
Advocate*

23. Shri Partha Sarathi Das
24. Shri Arabinda Dutta
25. Shri Koj Tat
26. Shri B.M. Saha
27. Shri R.K. Sarkar
28. Shri Sukanta Das
29. Shri Biren Saikia
30. Shri Subrangshu Deb
31. Smt Ninamani Phukan
32. Shri Alok Chakraborty
33. Shri Nalini Mohan Biashya
34. Shri Ranjit Kr. Sharma
35. Shri Amrit Kr. Saikia
36. Shri Deepak Bhattacharjee
37. Shri Amar Kr. Singha
38. Shri Dinesh Mohanta
39. Shri Partha Sarathi Purkayastha
40. Shri Pranab Kr. Sharma
41. Shri Aswini Kr. Das
42. Shri Manoj Kr. Brahma
43. Shri Padmeswar Pegu
44. Shri Naba Krishna Daruah
45. Shri Binoy Kr. Bashing
46. Shri Subodh Ch. Basumatari
47. Shri Achinta Kr. Sonowal
48. Shri Bidya Bhusan Saikia
49. Smt M. Synnah
50. Shri M.M. Neog
51. Shri D.N. Doley
52. Shri Gangadhar Das
53. Smt Debendra Moshahary
54. Shri D.K. Long
55. Shri Khagendra Nath Daimary
56. Shri Bikash Kr. Saikia
57. Shri Jagadish Chandra Das.



Respondent Nos. 5 to 57 are working as Inspectors/Superintendent Group 'B' of Customs and Central Excise under the Commissioner of Customs and Central Excise, Shillong.

By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

.....Respondents

W

.....

CHOWDHURY.J. (V.C.)

In this application under Section 19 of the Administrative Tribunals Act, 1985, following are the reliefs sought for:

"8.1 That the impugned order dated 11.1.2001 rejecting the claim of the applicant, seniority list as on 21.10.94 published vide letter No.C No.II(34)I/ET-i/91/PT-I dated 24.10.94 and the letter No.C. No.II(34)/ET-I/91/PT-I/9466-550 dated 27.4.95 whereby draft seniority is declared as final be set aside and quashed.

8.2 That the letter No.C.No.II(34)10/ET-1/93 (Annexure-13) whereby impugned seniority list published as on 1.7.99 is be set aside and quashed.

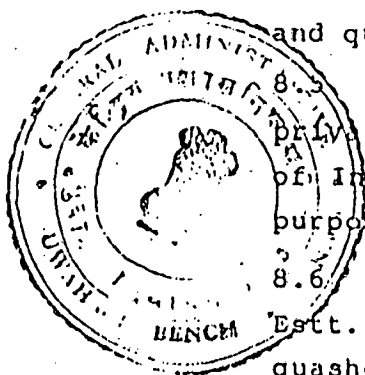
8.3 That the Respondents be directed to maintain seniority position of the applicant and private Respondents which was assigned as on 1.1.84 and also on 1.1.93 in terms of seniority principles laid down in the Office Memorandum dated 22.12.59 and also in terms of para 7 of the O.M. dated 7.2.1986.

8.4 That the decision of the Revenue Boards for refixation of seniority communicated vide telex F. NO.23024/5/5/92-AD-III dated 4.10.94 be set aside and quashed.

8.5 That the applicant be declared senior to the private respondent No.5 to 58 in the grade of Inspector in Customs and Central Excise for all purposes.

8.6 That the imugned promotion order issued under Estt. Order No.167/95 dated 7.6.95 be set aside and quashed in respect of private respondent Nos.5 to 14.

8.7 That the respondents be directed to hold Review DPC to consider the promotion of the applicant with all consequential benefits to grade of Superintendent Group 'B' in respect of the applicant as Inspector.



-112-

150

8.8 That impugned promotion orders issued under Estt. Order NO.362/95 dated 11.12.95, 69/96 dated 29.3.96, 184/96 dated 29.9.96, 156/97 dated 8.7.97, 206/97 dated 3.10.97, 228/97 dated 19.11.97 and 238/97 dated 8.12.97 be set aside and quashed (Any other promotion order/orders promoting the juniors to the applicant during the pendency of this application also be set aside and quashed."

2. The crux of the issue raised in this application is the interse seniority of the applicant vis-a-vis the respondents. Being aggrieved by the fixation of interse seniority the applicant came before this Tribunal by way of O.A.No.171 of 1995. The O.A. in question was taken up alongwith like cases by the Tribunal and by order dated 22.1.1999 remanded the matter to the authority to each case in the light of the observations made therein. Consequent to the Judgment and Order dated 22.1.1999 the applicant also submitted representation for refixation of his seniority. A draft seniority list in the grade of Inspector as on 1.7.1999 was circulated vide order dated 20.8.1999. In that seniority list the name of the applicant was shown below the respondents. The applicant submitted his representation on 14.12.1999. Finally, by the impugned order dated 11.1.2001 the representation was fraudly rejected and the authority decided to adhere to the seniority list dated 13.7.1998 issued under C.No.11(34)1/ET.1/96/28968-290(A).

3. In this application the applicant stated and contended that prior to issuance of the impugned notification, the applicant was all throughout assigned as senior to the respondent Nos.5 to 57 in the grade of Inspector. The applicant pleaded that he was appointed in the grade of Inspector with effect from 16.11.1982 and on the.....

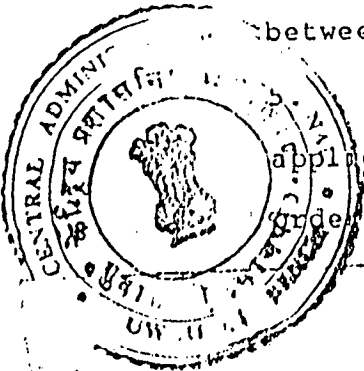
the basis of his entering into service, the seniority position assigned as on 1.1.1984 and 1.1.1993, the applicant was shown above the private respondents. However, by the interse seniority list as on 21.10.1994 the applicant was shown junior to the private respondents, which was the subject matter in O.A.No.171/1995. The applicant contended that the interse seniority was determined on the basis of O.M. dated 22.12.1959 which was modified by O.M. dated 7.2.1986. Mr J.L. Sarkar, learned counsel for the applicant, submitted that the O.M. dated 7.2.1986 itself indicated that the 1986 O.M. was to come

into effect from 1.1.1986 and the seniority already determined in accordance with the existing principles on the date of issue of the O.M. dated 7.2.1986 was not to be re-opened. The O.M. was clearly prospective and the same was upheld by the Hyderabad Bench of the Tribunal in O.A.No.1323 of 1993 and connected O.A.s disposed of on 13.2.1997.

4. We have heard the learned counsel for the parties at length. Upon hearing the parties we are of the opinion that the matter requires further reconsideration at the official level. The order dated 11.1.2001 itself indicated that the respondents failed to apply its mind to the fact situation. In the impugned order dated 11.1.2001 it had mentioned that the authority decided to adhere to the revised seniority list dated 13.7.1998 issued under C.No.11(34)1/ET.1/96/28968-290(A). We have perused the revised seniority list circulated vide C.No.11(34)1/ET.1/96/28968-290(A) dated 13.7.1998 which related to the seniority list of Inspectors subsequently promoted as Superintendents. The applicant was not promoted as Superintendent.....

Superintendent and therefore, his case could not have been linked with those cases. At any rate, the matter requires reconsideration by the authority. As was earlier ordered by the Tribunal while determining the interse seniority between the applicant and the private respondents, the respondents were also to take note of the decision rendered by this Bench including the decision of the Hyderabad Bench in O.A.No.1323/1993 and also the O.M. dated 7.2.1986 which was made applicable prospectively. The applicant may also submit a fresh representation, if so advised, within two weeks from the date of receipt of the order and on receipt of such representation, the respondents are directed to redetermine the interse seniority of the applicant vis-a-vis the private respondents as expeditiously as possible, preferably within two months from the date of receipt of such representation. We, however, decline to pass any order on the promotion matter since we have remanded the matter to the authority for determination of the interse seniority between the applicant and the private respondents.

Subject to the observations made above, the application stands disposed of. There shall, however, be no order as to costs.



Certified to be true copy
 प्रमाणित प्रतिलिपि

SD/MEMBER(A)
 SD/MEMBER(J)

nkm

Placed Onfile (J)
 आवृत्ति अधिकांश (सदस्य न्यायाधीश)
 Central Administrative Tribunal
 Office of the Secretary
 Hyderabad Bench, Guwahati
 न्यायाधीश, गुवाहाटी

Annexure-16

BY FAX/SPEED POST

GOVERNMENT OF INDIA
OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE
MORELLO COMPOUND, SHILLONG-793001

No. I(9)1/ET/2001/Pt.I

Dated

To
The Assistant Commissioner
Karimganj Customs Division
Karimganj

Subject : Re-fixation of seniority of Inspector appointed
before 01.03.86 - Implementation of the order
dated 16.05.2002 passed by the Hon'ble CAT in O.A.
No. 111/2001 - Corres. Reg.

This has reference to the representation dated
11.06.2002 submitted by Shri D.Mishra, applicant in O.A.
No.111/2001 in pursuance to the order dated 16.05.2002 of
the Hon'ble CAT, Gauhati Bench, Guwahati.

The Hon'ble CAT, Gauhati vide its Order dated
16.05.2002 has observed that the matter of re fixation of
seniority of the above named applicant requires
reconsideration by the Authority. It was also ordered that
while determining the inter-se seniority between the
applicants and the private respondents, the respondents were
also to take not o f the decision rendered by this Bench
including the decision of the Hyderabad Bench and also the
O.M. dated 07.02.1986.

The Commissionerate has examined critically and in
detail the above mentioned judgment dated 16.05.2002 and
the directions contained therein and the representation of
the applicant. After examination of all relevant judgments
of CAT and the Hon'ble Supreme Court this Commissionerate
has come to the conclusion that the quota rule has failed in
the instant case during the period prior to 01.03.86 so far
as the seniority of the DR Inspectors and PR Inspectors
are concerned. The seniority list of this Commissionerate
was re-casted after observing all necessary procedures in
this regard and subsequently the same was finalized on

*Attended
Secy
Advocate*

✓

27.04.95 in the ratio of the judgments of Cuttack & Calcutta Bench vide order in O.A. No. 925/92 of Calcutta Bench. The Judgments of Hyderabad Bench were also examined while determining the inter se seniority between the applicant and the private respondent as per observation of the Hon'ble Tribunal, Gauhati Bench in order dated 16.05.2002 and it is observed that the decision of the Hyderabad Bench is distinguishable on facts, in as much as, that there was not a case of break down of quota rule, hence this is not a position in the instant case in respect of Shillong Commissionerate. From Para 29 of the judgment dated 13.02.97 passed by the Hyderabad Bench it is seen that there was no break down of quota rule and hence Hon'ble CAT Hyderabad Bench is of the view that O.M. No. 22.12.59 has to be followed. Thus the decision rendered by the Hyderabad Bench is not relevant as far as the issue involved in the matter of seniority of Inspectors in Shillong Commissionerate.

Therefore, in the light of the above facts and circumstances it is decided that the Seniority List of the Inspectors including those appointed before 1.3.86 of this Commissionerate in force has properly been maintained as per the relevant provisions of O.M., judgments of Hon'ble CAT, Apex Court etc.

The representation of the applicant in O.A. No. 111/2001 is disposed of accordingly.

Shri Debajyoti Mishra, Superintendent may be informed suitably.

Sd/- Illegible
(Z. Tochhawng)
Commissioner
Central Excise
Shillong

C. No. I(9)1/ET/2001/Pt.1/243-48 Dated 6 JAN 2003
Copy forwarded for information to :

1. The Secretary (Revenue), Ministry of Finance, Department of Revenue, government of India, North Block, New Delhi.
2. The Chairman, Central Board of Excise & Customs, North Block, New Delhi-2.
3. The Chief Commissioner of Central Excise, 15/1 Strand Road, Customs House, Kolkata-700 001, charge of North Eastern region).
4. The Additional Commissioner (Technical), Central Excise, Shillong.
5. The Deputy Commissioner (Law), Central Excise, Guwahati. He is requested to inform the Standing Counsel accordingly.

Sd/- Illegible
(Z. Tochhawng)
Commissioner
Central Excise
Shillong

-117

Annexure - 17

155

were promoted as Director (Geology) for the first time by the impugned order, dated 21-5-1992. They are aggrieved by their supersession in the matter of promotion to the post of Director (Geology) and also wrong assignment of seniority in the seniority list of Geologists (Senior) issued on 1-10-1990. It is contended by the applicants that their supersession and wrong assignment of seniority was primarily due to the fact that the posts falling vacant were not filled up in terms of the judgment in the case of *Virpal Singh Chauhan and others v. Union of India and others* [1987 (4) ATC 685] and the directions given by the Hon'ble Supreme Court in other cases from time to time. It is contended that the respondents by not taking into consideration the judgment in *Virpal Singh Chauhan (supra)* and the decisions of the Supreme Court in this regard have not acted in a just and fair manner.

The contention of the respondents is that, the final seniority list was issued on 1-10-1990 and the applicants at that point of time had not raised any objection in regard to assignment of seniority to them. The present OA having been filed on 13-4-1993 is barred by limitation. It is also stated that the Private respondents were selected and promoted against the vacancies for the year 1990-91 reserved for Scheduled Caste candidates for which the applicants were not eligible. It is also stated that the averments of the applicants that their claim for promotion had been ignored is, therefore, not correct and the applicants have not been superseded.

Held: The grievance of the applicants is regarding denial of promotion with effect from 9-5-1991. The representations made by the applicants had evoked no response. It is noteworthy that in an identical case *U.K. Bassi v. Union of India and others*, the gradation list, dated 1-10-1990 was under challenge in O.A. No. 515/CH of 1996 and the same was disposed of by the Chandigarh Bench of the Tribunal by an order, dated 22-10-1996. Taking into consideration the facts and circumstances of the cases on hand we condone the delay, if any, in filing these applications in the interest of justice.

The controversies raised in these OAs have been settled by the Constitution Bench of the Hon'ble Supreme Court in *R.K. Sabharwal v. State of Punjab* [JT 1995 (2) SC 351]. The question of reservation in the cases on hand came up for consideration in *Union of India v. Virpal Singh Chauhan* [(1995) 6 SCC 684] and *Akhil Bharatiya Soshit Karmachari Sangh through its Secretary and another v. Union of India through its Secretary, Ministry of Railways and others* [1996 (5) SLR 687]. In view of these decisions, we do not propose to issue any specific directions in these cases regarding the placement of the applicants.

The placement of the officials including the applicants will be made on the basis of the aforesaid decisions of the Hon'ble Supreme Court after issuing notices and hearing those whose placement in the seniority list may be liable to be varied. This will be done within a period of 4 months from the date of receipt of a copy of this order.

431. Swamy's CL Digest 1997/1 ✓

CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH

Srik

O.A. No. 132

Revising the position over

Held: All being disposed of cases is relating and promotees seniority list of the Tribunal process the office 1972 onwards led to filing the do not propose correct principle the two decision rect recruits and length of service We, therefore, comprehensive keeping the regulations as well.

The OM, recruits and promotes between the each given category provisions there persons with to principles were did away with who were appointed OM shall take accordance with 7-2-1986 will be applicable

No question whose seniority could arise. The tion of rules by OM, dated 22-1 revised seniority and determining tained in OM, settled seniority

Attended
for
Advocate

Srikanth Babu and others v. Union of India and another

O.A. No. 1323 of 1993 and connected OAs Date of Judgment 13-2-1997

Revising the seniority of Inspectors of Central Excise unsettling settled position over years and adversely affecting the career prospects of several Inspectors, not sustainable

Held: All these matters involve common questions and are therefore being disposed of by this common order. The Central point raised in these cases is relating to correct fixation of *inter se* seniority between direct recruits and promotees under O.Ms., dated 22-12-1959 and 7-2-1986 as the impugned seniority list has been prepared purportedly in accordance with the decisions of the Tribunal in O.A. No. 156 of 1986 and O.A. No. 1019 of 1992. 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 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 *ad hoc* promotees. We, therefore, propose to examine the questions raised in these proceedings comprehensively which will not be confined to parties in the instant case but keeping the rights of all the Inspectors concerned in the various review applications as well.

The OM, dated 22-11-1959 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 quota of vacancies reserved for each given category 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 7-2-1986. 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 1-3-1986 and seniority already determined in accordance with the existing principles on the date of issue of the OM, i.e., 7-2-1986 will not be reopened. Clearly therefore the said OM was prospectively applicable.

No question, therefore, of applying the modified principles to those whose seniority was regulated by OM, dated 22-11-1959 up to 7-2-1986 could arise. 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 the impugned revised seniority list, dated 30-4-1993 for reopening the seniority from 1972 and determining the same in accordance with the modified principles contained in OM, dated 7-2-1986 applying it retrospectively and unsettling the settled seniority prevailing from 1972 up to 6-2-1986.

Attended
Law
Associates

The impugned revised seniority list of Inspectors of Central Excise of Hyderabad, Guntur and Visakapatnam Collectorates as on 1-1-1992 issued by the Collectorate of Customs and Central Excise, Hyderabad vide Order C. 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.

432. Swamy's CL Digest 1997/1

CENTRAL ADMINISTRATIVE TRIBUNAL

JABALPUR BENCH

Rajendra Prasad v. Union of India and another

O.A. No. 227 of 1995 Date of Judgment 20-2-1997

When a post is filled up by considering staff of different seniority units, the total length of continuous service in the same or equivalent grade held by them shall be the determining factor for assigning *inter se* seniority

Held: This application has been filed aggrieved by the non- empanelment of the applicant for promotion to Group 'C' post. The case in brief is that, there were 18 vacancies of Junior Clerk against the promotion quota from Group 'D'. Out of 18 vacancies, 3 were reserved for SC candidates. 3 SC candidates who were allegedly senior to the applicant in the grade of Rs. 800-1,150 were selected and empanelled and the applicant was left out.

Since employees belonging to different grades have been empanelled on the basis of suitability, total service with reference to the entry in the grade common to all of them should have been ascertained by drawing up a common seniority list for all the candidates. In other words, Rs. 750-940 being the lowest grade which can be said to be common grade for purposes of comparing their total length of service, the panel should have been drawn up considering the seniority in the integrated/common seniority list. If this had been done, the applicant whose date of engagement is shown as 22-11-1984 (his date of promotion to the grade of Rs. 800-1,150 being 1-3-1993) would have greater length of service compared to the last empanelled SC candidate Dilip Kumar Parasram George, whose date of engagement is shown as 14-6-1986 (his date of promotion to the grade of Rs. 800-1,150 being shown as 15-10-1990). Viewed from this point of view of common denominator (date of engagement in the initial grade of Rs. 750-940), the applicant would have been empanelled by virtue of his higher seniority in the integrated or common seniority list *vis-a-vis* the empanelled SC candidate.

As no common or integrated seniority list of all the candidates taking the examination with reference to their total length of service from the date of engagement in the initial grade of Rs. 750-940 was drawn up, we hold that the panel is vitiated in terms of Para. 320 of the Indian Railway Establishment Manual.

This Title
Pabra and other
on 26-11-1996
streams in G
Rs. 2,375-3,500
Rs. 2,000-3,200
total length of
of Rs. 2,000-3,200
the next higher
spondents and
spondents have

In the in
vice in the gra
not empanelled
were appointed
were still stagn
longed to a diff
treated senior to
higher grade of

In the con
pared by the au

Shiv Datta

In a selection
sede the seni

Facts: The
prayer for rest
effect from 15-
sequently by th
The respondent
were considere
ACR records o
4-1-1989 and 1-
Shri Bijender S
applicant only
post, Shri Bijen
selected. In the
one of the vacan
unreserved. A

-120-
CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

ANNEXURE - 18

RA 103/93 in OA 1019/92
MA 21/94 in RASR 3836/93
RA 80/94 in OA 1619/92
RA 81/94 in OA 156/86
RA 82/94 in OA 1019/92
RA 29/94 in OA 156/86 &
RA 30/94 in OA 156/86.

Thursday this the 21st day of November, 1996.

CORAM:

HON'BLE MR.JUSTICE CHETTUR SANKARAN NAIR, CHAIRMAN

HON'BLE MR.JUSTICE M.G.CHAUDHARI, VICE CHAIRMAN

HON'BLE MR.P.T.THIRUVENGADAM, ADMINISTRATIVE MEMBER

RA 103/93 in OA 1019/92

1. Veer Vikram Dev Kumar
Aged about 40 years, S/o Late Shri Chandra Dee Kumar
Occupation: Service, R/o Plot No.51, P&T Colony,
Trimulghery, Sec'dad.500 015.
2. B.Sudhakara Reddy aged about 39 years,
S/o B.Bhima Rao H.No.100 LIC Colony,
Opp.Indira Park, Hyd-380.
3. Sri K.Bullaiah aged about 41 years, S/o Late
K.Ankamma, Occu:Service, R/o 177/C, Venkatesw Nagar,
Hyd-38.
4. Sri N.Venkata Raju aged about 41 years,
S/o Late Rama Raju, Occu:Service, R/o LIC 121,
KFHB Colony, Kukatpalli,Hyd872.
5. K.Vijaya Simhudu aged about 40 years,
S/o Late K.V.Prasada Rao, Occu:Service,
R/o 8-3-720/7,Salivahana Nagar, Srinagar
Colony,Punj gutta,Hyd.
6. K.Nagaraja Rao aged about 40 years,
S/o Late K.R.Krishna Rao, Occu:Service,
R/o Plot No.43, Castle Hills, Rd.No.2,
Vijayanagar Colony,Hyd-457.
- 7.K.Chandra Sekhar aged about 39 years,
S/o KC Narasimhulu Occu:Service R/o Plot No.11,
6-1-119, Padma Rao Nagar,Sec'bad.
- 8.Sri Syed Ghouse, aged about 41 years,
S/o Syed Jaffar, Occu:Service, R/o No.22/1122
(Old No.30) SBI Colony, Kingareddy Palle, Chittoor.
- 9.Sri N.Ram Reddy aged ab ut 45 years,
S/o Narayan Reddy Occu:Service, R/o Plot No.25,
Malani Housing Colony, Sy.No.201/2, Tad Bund,
Sec'bad.-3.

(By Advocate Mr.S.A.Chary)

... Applicants

Y.B.

1.Union of India rep. by its Secretary,
M/o Finance, Central Board of Excise &
Customs, New Delhi.

... 2.

*Attended
Law
Advocate*

2. Collector of Customs & Central Excise, Hyd.
3. Dy. Collector (P&V), Central Excise Collectorate, Hyd.
4. Sri T. Chandrasekhara Rao, S/o TV Rangarao aged 45 years, Inspector of Central Excise, Hyd.
5. Sri C. Naganath, aged about 43 years, S/o CR Sasthry, Inspector of Central Excise, Hyd.
6. Sri K.V. Someshwara Rao, aged about 48 years, S/o Suryanarayana, Inspector of Central Excise, Hyd.
7. P. Vijayasarithi, S/o Suryanarayana, Inspector of Central Excise, Hyd.
8. K. Satyanarayana, aged about 52 years, S/o Satyanarayana, Inspector of Central Excise, Hyd.
9. S. Padma Rao, aged about 55 years, S/o S. Narayana Swamy, Inspector of Central Excise, Hyd.
10. J. Balarama Murthy, aged about 45 years, Father's name not known, Inspector of Central Excise, Hyd.

... Respondents

(By Advocate Mr. V. Rajeshwar Rao for Mr. N.V. Ramana)
M.A. 21/94 in RA. Sr. 3836/93.

1. Smt. Zareena Begum W/o Ameer Sahib Syed, aged 33 years, R/o F.No. 015 Amruth Apartments, Kapadia Lane, Somajiguda, Hyderabad-482.
2. D.B. Nageswararao, S/o Ramarao, aged 33 years, Inspector of Central Excise, Anti-Evasion-Group-I, Office of the Collector of Central Excise, Basheerbagh, Hyderabad-29.
3. A. Ravi Kumar Reddy, S/o Venkatarama Reddy, aged 31 years, Inspector of Central Excise, Puttur Range, R/o. Cazulamarayam (B.O), Ranigunta-517 520.

... Applicants.

(By Advocate Mr. S.A. Chary)

Vs

1. T. Chakradhar Rao
2. C. Naganath
3. K.V. Someswararao
4. P. Vijaya Saradhi
5. K. Satyanarayana

... Respondents/
Applicants in OA.
No. 156/86.

6. The Collector of Customs and Central Excise, Hyderabad.
7. The Deputy Collector (P&V), Central Excise Collectorate, Hyderabad.

... Respondents.

(By Advocate Mr. N.R. Devaraj)

...

RA 80/94 in OA 1619/92

Between :

1. S.Krishna Murthy, S/o Late Shri S.G.K.Prasad Rao, aged about 40 years, Hindu, Occ: Service, Inspector of Central Excise, R/o Plot No.44, BHEL, Enclave, Tank Bund, Sec'bad.
2. Kelidindi Venkata Subrahmanyam Raju, S/o K.Narayana Raju, Hindu, aged about 37 years, Occu: Inspector of Central Excise, R/o Flat No.406, Sriramakrishna Towers, Yellareddyguda, Amcerpet, Hyd-73.

(By Advocate Mr.S.A.Chary)

... Applicants

And

1. Shri S.Padma Rao, Inspector of Central Excise, & Customs, on Deputation to the Directorate of Revenue Intelligence, Bombay.
2. The Collector of Customs & Central Excise, Hyderabad.
3. The Dy. Collector (P&B), Central Excise Collectorate, Hyd.

.. Respondent/Applicant

.. Respondents/Respondents

(By Advocate Mr.N.R.Devaraj)

RA 81/94 in OA 156/86

1. P.V.S.S.Srinivas S/o P.Sriramachandra Murthy aged about 30 years, R/o 204 shivleela Apartment, Opp: Rail way Track, Begumpet, Hyd-16.
2. M.Venkateswarlu S/o Vis anadham aged about 33 years, R/o Plot No.4, H.No.1-2-236/17, New SEH Colony, Demalguda, Hyd-29.
3. V.Prasada Raju, S/o late Krishna Murthy Raju, aged ab ut 33 years, R/o H.No.1-9-285/1/B, Vidyanagar, Hyd-44.
4. Sri D.Sai Ramesh S/o D.Venkateswara Rao, aged about 31 years, R/o H.No.8-3-676/1/B, Yellareddiguda, Hyd.
5. K.V.Reddy, S/o K.Lakshma Reddy aged about 32 years, R/o H.No.16-78/1 Rd.No.3, Krishna nagar colony, Dilsikhnagar, Hyd-660.
6. T.Venkateswara Rao S/o T.Ramachandra Rao aged about 33 years, R/o H.No.5-5-27 Upstairs, Khaleelwadi, Nizamabad-503 003.
7. M.Kritivasan S/o S.Muthukrishnan aged about 33 years, R/o 12-13-412, Street No.1, Tarnaka-500 017.
8. P.Gopichand, aged about 32 years, S/o P.V.Ramanaiah, Inspector of Central Excise, R/o 10-1-499, Chintalapasti, Hyd-4.
9. P.Sreenivas S/o P.S.N.Murthy, aged about 33 years, R/o 6-3-609/132, Anandhagar Colony, Hyd-4.

.. Applicants

(By Advocate Mr.S.A.Chary)

And

-123-

161

1. T.Chakradhar Rao
2. C.Maganath
3. K.V.Someswara Rao
4. P.Vijaya Saradhi
5. K.Satyanarayana
6. The Collector of Customs & Central Excise, Hyd.
7. The Dy.Collector (P&V), Central Excise Collectorate, Hyd.

... Respondents

(By Advocate Mr.N.R.Dev raj)

RA 82/94 in OA 1019/92

1. CRK Choudari, S/o Bhaskara Rao,
aged 41 years, Occ: Service, R/o 49-26-61,
Madhuranagar, Vizag-16.
2. T.Satyamurthy, S/o Late Sri T.Venkatareddi Naidu
aged 39 years, Occ: Service, R/o LIG, 74 Lawson's
Bay Colony, Visakhapatnam-17.

3. B.Narayana Murthy, S/o Narasingarao,
aged 39 years, Occ: Service, R/o Plot No.116/2
Sector-2, Sharadanagar, Visakhapatnam-17.

(By Advocate Mr.S.A.Chary)
Vs.

... Applicants

1. Sri S.Padma Rao, Superintendent of Central Excise
Collectorate, Audit Section, O/O. Collector of
Central Excise, Revenue Buildings, Kannaavari Thota,
Guntur-4.
2. The Collector of Customs & Central Excise, Hyd.
3. The Dy.Collector (P&E), Central Excise, Hyd.

... Respondents

(By Advocate Mr.V.Jegayya Sarma for R-1
Mr.N.R.Devaraj for RR 2 & 3)

RA 29/94 in OA 156/86

T.Srikanth Babu S/o Satyanarayana
aged 33 years, Inspector of Central
Excise & Customs, Hyd.

... Applicant (3rd party

Vs.

1. T.Chakradhar Rao
2. C.Maganath
3. K.V.Someswara Rao
4. P.Vijaya Saradhi
5. K.Satyanarayana

Respondents (Applicants)

6. The Collector, Customs & Central Excise, Hyd.
7. The Dy.Collector (P&E), Central Excise Collectorate,
Hyd.

... Respondents(Respds)

... 5.

RA 30/44 in OA 156/86

Between:

G.Gopalakrishna Rao, S/o.G.Raghava Rao,
Occ:Inspector of Central Excise,
Office of the AssttCollector of Central
Excise, Hyderabad IX Division,
Posnett Bhavan, Ramkote, Hyderabad.

.. Reviewed Petitioner/
Applicant/3rd Party.

(By Advocate Mr.S.A.Chary)

A N D

1. The Collector of Customs
& Central Excise-I, L.B.
Stadium Road, Basheerbagh,
Hyderabad.
2. The Deputy Collector (P&V)
Customs & Central Excise,
L.B.Stadium Road, Basheerbagh,
Hyderabad. A.P.
3. The Secretary, Central Board
of Excise & Customs,
New Delhi.
4. The Secretary,
Ministry of Finance,
Department of Revenue,
New Delhi.
5. Sri T.Chakrathara Rao,
6. Sri C.Naganath
7. Sri K.V.Someshwara Rao
8. Sri P.Vijayasarithi
9. Sri K.Satyanarayana.

Respondents/Respondents

Applicants in OA.156/1986

I By Advocate Mr.K.Bhaskara Rao)

The Review Applications having been heard on 21.11.1996
The Tribunal on the same day delivered the following:

O R D E R

CHETTUR SANKARAN NAIR(J), CHAIRMAN

This reference comes before us, in somewhat unusual circumstances.
A Bench of this Tribunal in a Review Application thought that an issue
decided in the main application, deserved consideration by a Full
Bench, in Review. The points referred are:

- (i) Whether O.M.No.35014/2/80-Estt(D) dated 7.2.86 of the
Government of India, DOPT is prospective or retrospective.
- (ii) Whether Jansardhana's case, 1982(2) SLR 113 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."

Coming to the second question first, we may observe that Janardhan's case will have to be understood on its own and not as understood by the Tribunal in O.A.No.156/86. No elucidation is required on this point.

2. Coming to the first question we may notice the content and contours of the order, particularly paragraph 7, which states:

"these orders shall take effect from 1st March, 1986. Seniority already determined in accordance with the existing principles on the date of issue of these orders will not be reopened..."

The question is whether this provision is prospective or retrospective. When the rule clearly states that:

"Seniority already determined....will not be reopened."

it eludes comprehension how any doubt could arise as to whether it operates retrospectively. The vires of the Office Memorandum itself is not doubted and the reference is limited only to the question of prospectivity or retrospectivity. We are therefore only answering that question.

3. The Ernakulam Bench in V.Narayanan and three others Vs. Collector of Central Excise and Customs and others, (1992) 19 ATC 198 took the view that the provision we have hereinbefore noticed operates retrospectively. The Bench has not given any reason for coming to this conclusion. In the first four paragraphs of its order the facts are stated and in the 5th paragraph after referring to certain decisions of the Supreme Court, particularly the decisions

contd.....

dealing with a situation where the quota rule has broken down, the Bench applied the principles to be applied where the quota rule breaks down. No finding is entered on facts, on the question whether the quota rule had broken down. The finding in law is unrelated to facts and has to be treated as 'per incurium'. It does not lay down the correct law.

4. When the language of a provision is clear, it is not for the court or Tribunal to innovate and glean meanings. On the plain language of it, paragraph 7 of the Office Memorandum is only prospective in its operation. Paragraph 7 of the Office Memorandum does not militate against the rule in Janardhana's case or the rule laid down in a long line of decisions including Direct Recruit Class II Engineers Vs. State of Maharashtra and others, AIR 1990 SC 1607, (Para 44), Union of India Vs. Ravi Varma, AIR 1972 SC 670, D.P. Sharma Vs. Union of India, AIR 1989 SC 1071, Mervin Vs. Collector, AIR 1967 SC 52 and a long catena of other decisions.

5. We answer the reference by stating that the Office Memorandum particularly paragraph 7 thereof is prospective in its operation.

6. We make it clear that we have not considered questions of limitation or maintainability or merits of the contentions raised in the Review Applications. We have also not pronounced on the question whether an Original Application will lie against the Seniority List

contd.....

-6-

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.

7. Reference is answered accordingly.

DECLARED TO BE TRUE COPY

RECEIVED
COURT CLERK
JULY 11 1996
COURT HOUSE
JULY 11 1996
JULY 11 1996

*Distilled
Learn
Advocate*

RH.103/93 & 4a

21/11/96

22/11/96

[Signature]

12/11/04
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: AT GUWAHATI

Filed by:-
12/11/04
(B. C. Pathak)
Addl. Central Govt. Standing Counsel
Central Administrative Tribunal
Guwahati Bench : Guwahati

O.A. No. 139/2003

Shri Debajyoti Mishra ... Applicant

-VS-

Union of India & Others ... Respondents

(WRITTEN STATEMENTS FILED BY THE RESPONDENT No. 1 to 5)

The written statements filed by the above-mentioned respondents are as follows:

1. That the copies of the above noted O.A. No. 139/2003 (hereinafter referred to as the "application") has been served on the respondents. The respondents have gone through the same and understood the contents thereof. The interest of all the answering respondents (1 to 5) being common and similar, the written statements may be treated as common to all of them.
2. That the statements made in the application which are not specifically admitted by the respondents are hereby denied. The respondents crave the leave of this Hon'ble Tribunal to allow them to rely upon and produce any such records which may be required at the time of hearing of the case.

3. That with regard to the statements made in **para 1** of the application, the answering respondents state that there is no cause of action to justify the filing of the instant application. Hence the application is liable to be dismissed with cost. The matter is also barred by the doctrine of res judicata.
4. That the answering respondents have no comment to offer to the statements made in para 2 of the application.
5. That with regard to the statements made in para 3 of the application, the respondents state that the subject matter and the application is hopelessly barred by limitation and therefore the application is liable to be dismissed.
6. That the answering respondents have no comments to offer to the statements made in **para 4.1 & 4.2** of the application those being matter pertaining to records.
7. That the contention made in **para 4.3** of the application is not correct and therefore the same are denied by the respondents. In this connection, the respondents state as follows:
 - (i) That the matter of seniority as prayed in OA No.111/2001 by the applicant was already decided vide judgment dated 22.1.99 by this Hon'ble Tribunal in OA No.171/95 filed by the applicant. By the judgment dated 22.1.99, this Hon'ble Tribunal directed the respondents to examine the entire matter afresh in the light of the decision of the Hon'ble Apex Court referred therein. The Hon'ble Tribunal also directed the respondents to dispose of the representation of the applicant.

(ii) The respondents examined and considered the case and the representation of the applicant in the light of the judgment of the Apex Court and this Hon'ble Tribunal including the similar decisions of other Benches of the Tribunal. After thorough examination of the matter, the respondents decided to adhere to the revised Seniority List issued under C.No.II(34)1/ET-I/96/28968-29010(A) dt. 13.7.98 which was issued consequent to the judgment dated 5.9.95 passed by this Hon'ble Tribunal in OA No.241/91 and also in consequent to the judgment and order dated 25.11.93 passed by the Hon'ble Calcutta Bench of this Tribunal in OA No.925/92 by relying upon the judgment and order dated 10.4.89 passed by the Hon'ble Cuttack Bench in OA No.62 to 71 Of 1987. Accordingly the representation of the applicant was disposed of.

(iii) As the matter has been decided by the Hon'ble Tribunal as stated above, the matter has become barred by the doctrine of res judicata. Moreover, the law is also well settled that a settled position of seniority involving a large number of persons cannot be unsettled.

8. That with regard to the statements made in **para 4.4 and 4.5** of the application, the answering respondents have no comment to offer those being matter of facts and records. However, the respondents do not admit anything which is not supported by such records.

9. That the statements made in **para 4.6** of the application are not correct and the same are denied by the respondents. The respondents state that the seniority of the Inspectors is maintained as per Govt. of India, Ministry of Personnel, P.G. and Pension O.M. dt.7.2.86 which came into force w.e.f. 1.3.86. In respect of the effective date of this O.M. some Inspectors moved the Hon'ble Tribunal, Cuttack Bench. The Hon'ble Cuttack Bench vide its Judgment dated

10.4.89 in OA No. 62 to 71 of 1987 held ".....we agree with the Madras Bench that the principles laid down by the Supreme Court have to be given effect to atleast from the date of pronouncement of the decision by the Supreme Court and not arbitrarily from some prospective date depending upon when the O.M. gets issued by the Govt.....". It has also been held that the quota rule of recruitment failed in as much as there is large scale deviation and consequently the rota rule of seniority can not be given effect and directed to recast the seniority of the applicants in the light of the principles contained in O.M. dated 7.2.86. Since the quota-rota rule for fixing of seniority under O.M. dated 22.12.59 had broken down, a draft seniority list of Inspectors of the respondents fixed as per O.M. dt. 7.2.86 was issued on 24.10.94 pursuant to the judgment dated 25.11.93 in OA No.925/92 of Hon'ble Calcutta Bench and Cutack Bench followed by the direction of concerned Ministry to refix the seniority of Inspectors appointed prior to 1.3.86. The draft seniority List was made final on 27.4.95 after disposing of objection and representations in this regard.

10. That with regard to the statements made in **para 4.7** of the application, the answering respondents state that the contention of the applicant is not correct. ✓ Since the quota-rota rule for determination of seniority under O.M. dt. 22.12.59 had broken down and collapsed due to large-scale deviation, the seniority of Inspectors prior to 1.3.86 was recasted as per O.M. dated 7.2.86 in pursuant to the Hon'ble Tribunal's judgements as stated above and the direction of the Govt. of India.
11. That with regard to the statements made in **para 4.8 to 4.11 and 4.13** of the application, the answering respondents reiterate and reassert the foregoing statements.

12. That with regard to the statements made in **para 4.12** of the application, the answering respondents state that the contentions are not correct and therefore the same is denied. The promotion to the grade of Superintendent was made on the basis of the seniority list of 24.10.94. Hence the application does not have any merit and is liable to be dismissed with cost. ✓
13. That with regard to the statements made in **para 4.14** of the application, the answering respondents state that the statements are not correct and the same are hereby denied. The matter of determination of seniority of Inspectors was already made res-judicata as per judgment and order dt. 25.11.93, 10.4.89, 5.9.95 of the Hon'ble Tribunal in OA No.925/92, 62 to 71 of 1987 and 241/91 respectively as stated above. This may be pertinent to mention here that finding ambiguity in the judgment dated 5.9.95 in OA No.241/91 and the judgment dated 22.1.99 in OA No.171/95 the respondents filed a review application before this Hon'ble Tribunal and sought clarification on the said two judgments. This Hon'ble Tribunal on hearing the said review application was pleased to pass an order on 12.10.99 in Misc. Petition No.243/99 and the said petition was dismissed.
14. That with regard to the statements made in **para 4.15** of the application, the answering respondents state that the contention of the applicant is not correct. The applicant is raising the same issue time and again although he is not entitled to any relief in that regard. Therefore the respondents reiterate the foregoing statements and state that the applicant is not entitled to any relief whatsoever as prayed for. The draft seniority list was prepared on 24.10.94 and the final inter se list was published on

27.4.95 which was prepared and published after inviting objection and following the ratio of the judgment of Cuttack and Calcutta Bench as well as the decision of the Hon'ble Apex Court. In the said list the applicant has been shown as junior to the private respondents 5 to 57.

15. That with regard to the statements made in para 4.16, the respondents state that the statements are not correct and the same are denied. As indicated above, the promotion are made in accordance with the inter se seniority list.
16. That with regard to the statements made in para 4.17 to 4.21 of the application, the answering respondents reassert the statements made in this application and state that the application is liable to be dismissed.
17. That with regard to the statements made in para 4.22, 4.23 and 4.24, the respondents state that the respondents followed the direction given by the order dated 16.5.2002 including the decision dated 13.2.97 of the Hon'ble Hyderabad Bench and the O.M. dt.7.2.86 and also the decision of the Hon'ble Supreme Court while considering the representation of the applicant. In doing so, the respondents came to a conclusion that the quota rule has failed in the instant case during the period prior to 1.3.86 and so far the seniority of the Direct Recruit Inspectors and the Promotee Recruit Inspectors are concerned. The facts and circumstances of the case of the Hyderabad Bench and the instant case are different. According to the Hon'ble Hyderabad Bench, the O.M. dt.22.12.59 is to be followed whereas the said O.M. has no application to the instant case.
18. That with regard to the statements made in para 5.1 to 5.20 showing the grounds to substantiate the claims of the applicant, the respondents state that in view of the facts

and circumstances of the case and the provisions of law, the grounds are not tenable in law and the application is liable to be dismissed with cost.

19. That with regard to the statements made in **para 6 and 7** of the application, the respondents state that the application is barred by the doctrine of res-judicata and law of limitation and hence the same is liable to be dismissed with cost.
20. That with regard to the statements made in **para 8.1 to 8.8 and 9.1**, the respondents state that in any view of the matter and the provisions of law, the applicant is not entitled to get any relief whatsoever as prayed for and therefore the application is liable to be dismissed with cost.

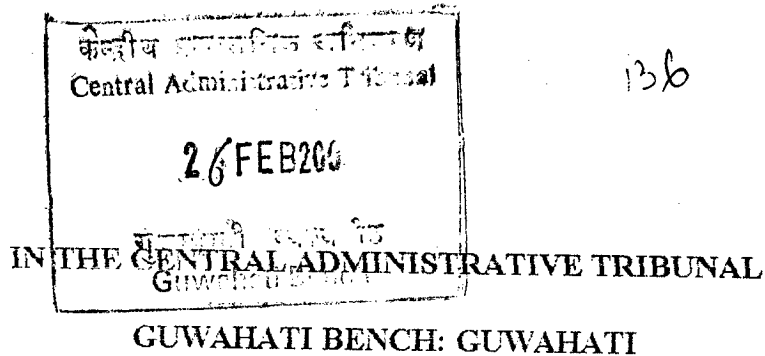
In the premises aforesaid, it is therefore prayed that Your Lordships would be pleased to hear the parties, peruse the records and after hearing the parties and perusing the records shall be pleased to dismiss the application with cost.

Verification

I, Shri *Arnowar Hussain*, at present working as *Deputy Commissioner*, in the office of the *Central Excise, Guwahati*, being competent and duly authorized to sign this verification do hereby solemnly affirm and state that the statements made in para 1, 2, 3, 4, 5, 8, 11, 12, 14, 15, 16, 18, 19 and 20 are true to my knowledge and belief, those made in para 7, 9, 10, 13 and 17 being matter of records are true to my information derived therefrom and the rest are my humble submission before this Hon'ble Tribunal. I have not suppressed any material fact.

And I sign this verification on this *09*th day of *January*, 200*4* at Guwahati.

Arnowar Hussain
DEPONENT
(A. HUSSAIN)
Deputy Commissioner
CENTRAL EXCISE
GUWAHATI DIVISION



Filed by the applicant
through: Subrata Mishra
Advocate
123 26.02.04

In the matter of:

O.A. No. 139 of 2003

Shri Debajyoti Mishra

-vs-

Union of India & Ors.

And

In the matter of:

Rejoinder submitted by the
applicant in reply to the
written statement submitted by
the Respondents.

The applicant above named most humbly and respectfully
begs to state as under:

1. That with regard to the statement made in paragraphs 3 and 5 of the written statement are not correct and the same are categorically denied. The statement such as the application is barred by doctrine of Resjudicata as well as the statement that the application is hopelessly barred by limitation has been wrongly used in the instant case of the application without understanding the application and correct meanings of those phrases. The officer to the standing of Deputy Commissioner who has signed the Verification of Written Statement on 9th January, 2004 ought to have consulted

the relevant records of the instant case as well as the previous judgment and orders passed by this learned Tribunal in O.A. No.171 of 1995 and then O.A. No.111 of 2001 in favour of the present applicants. In this connection it is relevant to mention here that the present application arises due to non compliance of Hon'ble Tribunal's Judgment and order passed in O.A. No.111 of 2001 on 16.05.2002 in the true manner and spirit. Moreover, the representations of the applicant further rejected in a most mechanical manner without application of mind. There was a specific direction in the Judgment and order dated 16.05.2002 for redetermination of the inter-se-seniority of the applicant vis-à-vis the private respondents as expeditiously as possible preferably within 2 months of the receipt of such representation. But the respondent Union of India in fact violated the direction passed by this learned Tribunal way back on 16.5.2002 and passed the impugned order only on 6th January 2003, although there was a specific direction for re-determination of the seniority of the applicant. There was no scope on the part of the respondent Union of India to avoid the implementation of the judgment that too with a pretext they have followed the decision of The Cuttack and Calcutta Bench. It is pertinent to mention here that the respondent Union of India in the earlier two cases had already referred the Cuttack and Calcutta Bench judgment and advanced their arguments following the Cuttack and Calcutta Bench judgment and on perusal of

entire records, materials placed by the respondent Union of India the learned Tribunal was pleased to pass judgment and order on 16.05.2002 in O.A. No. 111 of 2001. Therefore it is implied that those arguments following the judgment of Cuttack and Calcutta Bench have been rejected by the Hon'ble Tribunal. As such those arguments cannot be re-opened after pronouncement of the judgment and order dated 16.05.2002. It is categorically submitted that there cannot be two rules of seniority in a particular organization of the Government of India, so far the question involved in the instant case has already been settled by the Tribunal by pronouncing series of judgments in different benches of the Tribunal and those decisions also confirmed by the Full Bench of the Central Administrative Tribunal. But surprisingly, the respondents with one pretext or other delaying the implementation of the order passed by this learned Tribunal and also with a mala fide intention rejecting the claim of the applicant in spite of specific direction passed by the learned Tribunal. The original application has been filed well within the time limit from the date of the receipt of the impugned order dated 06.01.2003. The question of Resjudicata or law of Resjudicata does not apply in the facts and circumstance of the present case. Hence those contention of the Respondent Union of India are categorically denies. The Commissioner, Central Excise, Shillong forcing the present applicant to approach the

learned Tribunal by rejecting his prayer with a mala fide intention when the law is well settled in the instant case. As such the application is deserved to be allowed with imposition of heavy cost upon the respondent Union of India.

2. That the applicant categorically denies the statement made in para 7, 7. (i), 7.(ii), 7(iii) and further begs to state that the contention of the respondents in para 7 (i) and 7.(ii) has already been dealt by this learned Tribunal in the earlier proceedings and the same was rejected by the Hon'ble Tribunal with the following observation in para 4 of the judgment and order dated 16.05.2002.

"The order dated 11.1.2001 itself indicated that the respondents failed to apply its mind to the fact situation. In the impugned order dated 11.1.2001 it had mentioned that the authority decided to adhere to the revised seniority list dated 13.7.1998 issued under C. No. 11(34) 1/ET.1/96/28968-290(A). We have perused the revised seniority list circulated vide C. No. 11(34) 1/ET.1/96/28968-290(A) dated 13.7.1998 which related to the seniority list of Inspectors subsequently promoted as Superintendents. The applicant was not promoted as Superintendent and therefore, his case could not have been linked with those cases."

In view of the above specific findings of the Hon'ble Tribunal the respondent Union of India have no jurisdiction to reject the prayer of the applicant by repeating the same grounds and it appears that the same has been done mechanically with a mala fide intention. The phrase used by the respondents that a settled position of seniority cannot be unsettled after a decade is rather more appropriate in the case of the applicant than the respondents.

3. The applicant categorically denies the statements made in para 9,10,11,12 and 13 and further begs to state that the seniority of the applicant in fact settled following the O.M. dated 22.12.1959 which was specifically admitted by the respondents in O.A. No. 101 of 1995 more particularly in para 5 and 9. As such the contention of the respondents that seniority was maintained as per O.M. dated 07.02.1986 is a deliberate false and misleading statement. The allegation of large-scale deviation as stated by the respondents so far quota rule are concerned in the Commissionerate of Central Excise is categorically denied. Moreover, the allegation of "deviation" from the quota rule does not mean "breakdown of quota rule" as already held by the Apex Court in G.K. Baidyanathan case. The order of finalization of draft seniority list on 27.04.1995 was challenged by the present applicant in O.A. 171 of 1995 and the Hon'ble Tribunal vide its judgment and order dated directed to re-determine the seniority of the

applicant in the light of the observation made in the judgment dated 22.01.1999 and thereafter without examining the case properly rejected the prayer of the applicant which was further challenged in O.A. No. 111/01.

So far statement made in paragraph made in paragraph 10 regarding breakdown of quota rule is categorically denied. There is no scope on the part of respondents to advance such arguments at this belated stage more particularly after pronouncement of the judgment dated 16.05.2002 and especially when the respondents have admitted in the impugned order itself that they have followed the judgment of the Cuttack and Calcutta Bench in total violation of the direction contained in O.A. No. 111/2001. The applicant reiterates the statements made in para 4.12 and 4.14 of the O.A. It is categorically denied that the learned Tribunal had given any clarification in the review application preferred by the respondent Union. It would be evident from the order dated 12.10.1999 passed in M.P. No. 243/99. Therefore it is quite clear that the Tribunal did not give any clarification in their favour as desired by the respondents.

A copy of the order dated 12.10.99 is annexed as Annexure-A.

4. That the statement made in para 14,15,16,17,18,19 and 20 are categorically denied and further beg to state that since the issues involved in the instant case since long back following series of decision of the CAT

but unfortunately the Central Excise Commissionerate, Shillong avoiding implementation of the order passed by the Learned Tribunal on the same pretext repeatedly. It is further categorically denied that promotions were made in accordance with the rule of seniority of the private respondents but the applicant have been illegally superseded in violation of the seniority Rule which was governed by O.M. dated 22.12.1959 upto 01.03.1986. There was a specific direction in O.M. dated 07.2.1986 that past case need be re-opened which was appreciated by the Apex Court in G.K. Baidyanathan's case. The case of the Hon'ble Hyderabad Bench referred in the judgment and order dated 16.05.2002 as well as the decision of the Full Bench referred in the Original Application fully supported the case of the applicant. So far allegation made in paragraph 17,18,19 and 20 has been replied adequately in the preceding paragraph.

In the facts and circumstances the Original Application deserves to be allowed with heavy cost. More so, due to misuse of official powers vested with the Commissioner of Central Excise, Shillong.

143

180

VERIFICATION

I, Debajyoti Mishra, S/o Shri Jyotirmoy Mishra, aged about 47 years, working as Inspector, Central Excise, RBC II, Range Digboi, applicant in the O.A. no. 111/2001 do hereby verify that the statements made in Paragraph 1 to 4 in this rejoinder are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on this 24th day of February, 2004.

Debajyoti Mishra.

144

182

FORM NO. 4
(See Rule 42)

In The Central Administrative Tribunal

GUWAHATI BENCH, GUWAHATI

ORDER SHEET

APPLICATION NO. 243/99

OF 199

C.P. 11/99

O.A. 241/91

Applicant(s) *Coastal Engineer*

Coastal Engineer Customs

Respondent(s)

Shri Biman Chak

Advocate for Applicant(s) *M. Deb Roy*

Advocate for Respondent(s)

Mr. B.K. Sharma

Mr. S. Barma



TRUE COPY

प्रतिनिधि

12/11/99

Respectable Hon'ble Mr. Justice D.N. Baruah,
Vice-Chairman and
Hon'ble Mr G.L. Sanglyine,
Administrative Member.

ORDER SHEET

This petition has been filed for
clarification of the judgment dated
5.2.91 passed in O.A. 241/91.

Heard Mr A. Deb Roy, learned Mr C.G.
S.G. for the petitioner and Mr S. Barma,
learned counsel for the opposite party.

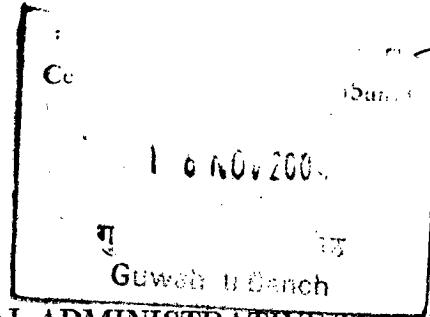
On hearing the counsel for the parties
we do not find any ambiguity in the
judgment. Accordingly the petition is
dismissed.

Section Officer (Joint)
Central Administrative Tribunal
Guwahati Bench, Guwahati-8

Sd/- VICE CHAIRMAN

Sd/- MEMBER (ADMIN)

Certified to be true copy
Admitted
26.02.01



145-

183
Filed by the Petitioner
through Surojit Choudhury
on 29.10.04

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

In the matter of:

O.A. No. 139 of 2003
Shri Debajyoti Mishra

-vs-

Union of India & Ors.

And

In the matter of:

An Additional affidavit and submission of documents thereof issued by the Government of India vide no. A.32012/8/2000-Ad II dated 29.07.2004 in support of the applicant's case, for kind perusal of the Hon'ble Tribunal.

The applicant above named most humbly and respectfully begs to state as under:

1. That the applicant was aggrieved at the revised seniority list of inspectors issued by the respondents on 21.10.1994 in violation of the O.M dated 22.12.1959 and O.M.dated 7.2.1986 of the DOP&T, Govt. of India wherein the name of the petitioner for the first time, was shown below that of the private respondents and as such the applicant filed O.A.no.171/95 and then O.A.no. 111/2001 and finally the present O.A.no 139/2003 before this Hon'ble Tribunal praying interalia for restoration of his seniority in the cadre of Inspector over the private respondents with consequential

benefits thereof. The O.A.no. 139/2003 is now pending before the Hon'ble Tribunal.

2. That the Govt. of India, Ministry of Finance, Department of Revenue vide its notification no. A.32012/8/2000-Ad.II dated 29.07.2004 in compliance with the judgments dated 22.11.1996 and dated 28.05.1996 of the Hon'ble Supreme Court, has laid down the rules for determination of seniority of officers of the IC and CES, Group "A". The rules laid down in Para (ii) of the aforesaid notification runs as: -

"(ii) Promotee officers whose promotion has been regularized against the vacancies for the year 1980 to 1985, their seniority vis-à-vis direct recruitment officers has been fixed on the principle of rota quota in terms of the Ministry of Home affairs O.M dated 22.12.1959".

The case of this applicant being a matter of 1982 is squarely covered by the above quoted rules down by the Govt. of India in terms of the Apex Court's decision.

(Copy of the notification-dated 29.07.2004 is annexed hereto and marked as Annexure-A).

3. That in view of the above the applicant most respectfully prays that the Hon'ble tribunal be pleased to allow the Original application and grant the relief's sought for therein, directing the respondents to restore the seniority of the applicant as on 01.01.1993 over the private respondents with consequential benefits including promotion.
4. That this application is filed bonafide and for the cause of justice.

147 -
185VERIFICATION

I, Debajyoti Mishra, S/o Shri Jyotirmoy Mishra, aged about 47 years, working as Inspector, Central Excise, RBC II, Range Digboi, applicant in the O.A. no. 139/2003 do hereby verify that the statements made in Paragraph 1 to 3 in this additional affidavit are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on this 29th day of October November, 2004.

Debajyoti Mishra

F.No.A.32012/8/2000-Ad.II

Government of India

Ministry of Finance

Department of Revenue

New Delhi, the 29th July, 2004

To

All Head of the Department under
Central Board of Excise & Customs

Sub: Determination of seniority of Officers of the IC&CES, Group 'A'

Sir,

I am directed to say that consequent upon the issue of the final integrated Group 'A' seniority list dated 24.09.2002 in compliance of the Hon'ble Supreme Court judgments dated 22.11.1996 and 28.05.1996 and Order dated 19th July 2002 of Central Administrative Tribunal, Bangalore in O.A. 1707 and 1715 to 1717/2001 and other case the Combined Seniority List of promotee officers and direct recruit at the level of Assistant Commissioner (JTS) has been prepared for the years 1995-96 and 1996-97 on the following principles:

- (i) As per the Hon'ble Supreme Court's judgment dated 22.11.1996 in C.W.P.No. 306/88 promotee officers (whose promotion has been regularized) viz. Supdt. of Central Excise, Supdt. of Cus(Prev.) and Customs Appraisers have been arranged in the list in the ratio 6:1:2.
- (ii) Promotee officers whose promotion has been regularized against the vacancies for the year 1980 to 1985, their seniority vis-à-vis direct recruit officers has been fixed on the principle of rota quota in terms of the Ministry of Home Affairs O.M. dated 22.12.1959.
- (iii) From 1986 onwards, the seniority has been regulated in terms of DOP&T's O.M. dated 07.02.1986.

2. The officers from Supdt. of Cus. (Prev.) and Customs Appraisers cadre whose names were not considered by UPSC in regularization DPC held in January 2000, have been sent to UPSC for consideration now. Therefore, the vacant slots have been kept vacant for them in the seniority list. The slots will be filled by these names after duly approved by UPSC.

Pl. open file
17/8/04

km

3. The Integrated Gr. 'A' Seniority List of officers upto 1995-96 and 1996-7, prepared in the manner indicated as above, in addition to the principles mentioned in this officer letter dated 24.09.2002, may please be circulated among all the concerned officers immediately. The officers may be advised to file objections/comments against the assignment of seniority as well as factual mistakes, if any, to this Department immediately and in any case not later than 25.08.2004.

Encl: As above

Yours faithfully,

K. Kipgen

(K. Kipgen)

Under Secretary to the Govt. of India

C.No. 11 (35) / CCO/SH/2003

21720-22

Dated

19 AUG 2004

Copy for information and necessary action forwarded to :-

1. The Commissioner of Central Excise, Shillong.
2. The Commissioner of Central Excise, Dibrugarh.
3. The Commissioner of Customs (P), N.E.A., Shillong.

A. D. S.

ASSISTANT COMMISSIONER
CHIEF COMMISSIONER'S UNIT
SHILLONG.