

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 804 of 2002

Indore, this the 20th day of July, 2004

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. Madan Mohan, Judicial Member

J.K. Dewani,
S/o Shri Kishanchand Dewani
Aged about 45 years,
Inspector, Central Excise,
Nagpur Commissionerate,
Presently on deputation to
Director General, Central Excise
Intelligence Wing No.VI, West
Block No.8, R.K. Puram
New Delhi.

APPLICANT

(By Advocate - Shri S. Paul)

VERSUS

1. Union of India
Through its Secretary,
Ministry of Finance,
Department of Revenue,
Govt. of India,
New Delhi.
2. The Central Board of Excise & Customs,
through its Member(Personnel)
North Block,
New Delhi.
3. The Commissioner,
Central Excise & Customs,
Manik Baugh Palace
Indore.
4. Shri P.P.S. Chawla
O/o The Commissioner,
Central Excise & Customs,
Manik Baugh Palace
Indore.

RESPONDENTS

(By Advocate - Shri Om Namdeo)

ORDER

By M.P. Singh, Vice Chairman -

By filing this OA, the applicant has sought the
following main reliefs :-

"(i) quash the impugned seniority list of Inspectors
as circulated on 1st August 2002 as the same is drawn
against the well established principle of fixing
the seniority of transfers on inter-Commissionerate
transfer and to further quash the promotion made to the
posts of Superintendent based on the above said impugned
faulty and wrong seniority list; and set aside the
order dated 10.10.2002 Annexure A-17.



(ii) further direct the respondents to hold Review DPC/fresh DPC for the posts of Superintendent after re-casting the seniority list of Inspectors in accordance with law by placing the Applicant above the direct recruit who joined after 7.4.1986 in the recipient Commissionerate at Nagpur; and".

2. The brief facts of the case are that the applicant was appointed as Inspector of Central Excise in 1983 in Aurangabad Commissionerate (formerly Pune Commissionerate). Due to personal reasons and on compassionate grounds he made a request to the respondents to transfer him to Nagpur Commissionerate. The applicant was accordingly transferred from Aurangabad Commissionerate to Nagpur Commissionerate and he joined Nagpur Commissionerate on 7.4.1986. While transferring him from Aurangabad Commissionerate to Nagpur Commissionerate it was specifically provided in clause 1 of the transfer order as under -

"That the seniority of Shri J.K.Dewani, I, will be fixed below the last temporary Inspector(OG) in Nagpur and Madhya Pradesh Collectorate i.e. he will be treated as a fresh entrant in the cadre of Inspector in new charge".

The applicant has, therefore, claimed that he is entitled to count his seniority in the recipient Commissionerate after the last serving direct recruit in the cadre of Inspector. Such direct recruit may have been working on temporary or regular basis or against a temporary or regular post meant for direct recruitment but the moot point is that such incumbent/officer should be in position on the date of joining the applicant. The applicant has submitted that the principle of fixation of seniority of a transferee as submitted above is already laid down by the respondents themselves in their order dated 20.5.1980 and clarification thereto dated 23.11.1981 (Annexure-A-4 colly.). He has also vide memo dated 3.7.86(Annexure-A-5) submitted that the Department of Personnel & Training/has also issued consolidated orders on fixation of seniority of employees in different circumstances, Clause 3.5 of the

said office memorandum provides as under -

"3.5 In cases in which transfers are not strictly in public interest, the transferred officers will be placed below all officers appointed regular to the grade on the date of absorption".

The applicant has further stated that the respondents have issued further orders in the year 1998 with regard to fixation of seniority of the transferee officers. This order of 1998 also reiterates the same principle of fixation of seniority of transferee as envisaged in the earlier orders of the department as well as the Department of Personnel & Training. According to the applicant, the requirement of issuing the orders of 1998 arose because of the confusion created by the order of 12.3.1987, which sought to bestow higher seniority upon the incumbents who were not even the members of the service and who were actually to join the service after a transferee had already joined a particular Commissionerate on transfer basis. By applying the principle laid down in OM dated 12.3.1987, the applicant was placed much below in the seniority list, even below many juniors who even joined after the applicant's entry into the cadre of Inspectors in the recipient Commissionerate at Nagpur. He immediately represented against this vide representation dated 9.10.1995 but the same was rejected on 9.5.1996. He submitted another representation, which has also been rejected vide order dated 30.3.1997. Thereafter, the applicant has submitted repeated representations to the Ministry of Finance. He has contended that the Ministry of Finance, Department of Revenue vide their order dated 22.6.1999 communicated to the applicant the decision of the Ministry which contained a direction to the Commissioner(Indore) to place the name of the applicant in the seniority list above the names of all direct recruits Inspectors, who joined the service after the applicant had joined the Commissionerate at Nagpur on inter-commissionerate transfer basis. The applicant had accordingly requested the Commissioner, Central Excise to revise the placement of his

name in the seniority list of Inspector as per the Ministry decision contained in the order dated 22.6.1999. Despite the above said factual and legal position, the respondent no.3 has circulated the seniority list on 1.8.2002 again wrongly placing the applicant below many juniors. Aggrieved by this, he has filed this OA.

3. The respondents in their reply have stated that through the instructions dated 5.6.1998 (Annexure-R-II), the Ministry has taken care of promotee Inspectors also, who were earlier in the instructions of 23.11.1981 and 12.3.1987 were missed out. The instructions dated 5.6.1998 provides that the Inter-Commissionerate transferee will be placed below such a 'Promotee' Inspector also who was in position on that date. It is not correct to say that the orders of 12.3.1987 were irrational and arbitrary ^{and} ~~so~~ orders of 5.6.1998 were issued to amend the same. According to the respondents, the orders of 12.3.1987 are rather clarificatory in nature. The order dated 20.5.1980 is not clear enough with regard to a situation when a panel of direct recruit candidates, sponsored by the S.S.C. is in operation and some of it are not able to join immediately though they hold merit over those who joined immediately after declaration of results. Order dated 12.3.1987 make it clear, in such a situation that the formers will be placed above the laters. They have further stated that the applicant has erred in assuming that the 'date of joining' is the sole factor for determining the seniority. It is material and important in case of Inter Commissionerate Transfers but it is not equally material and important in case of the candidates who are sponsored by the Staff Selection Commission. Their seniority is determined by the S.S.C. on their merit basis which cannot be altered/rectified at the level of any Head of the Office itself. This fact has not been denied by any order issued by the Board or the Ministry.



4. Heard both the learned counsel of parties.

5. The learned counsel for the applicant has stated that the applicant has been transferred from Aurangabad Commissionerate to Nagpur Commissionerate at his own request and as per the instructions contained in the letters dated 20.5.1980 and 23.11.1981 (Annexure-A-4 colly.) issued by the Central Board of Excise and Customs, the seniority of the applicant should be fixed. As per the terms and conditions in the letter dated 20.5.1980 the inter-Collectorate transfers can be effected only in posts filled by direct recruitment. These instructions further provide that "the transferee will not be entitled to count the service rendered by him in the former Collectorate for the purpose of seniority in the new charge. In other words, he will be treated as a new entrant in the Collectorate to which he is transferred and will be placed at the bottom of the list of the temporary employee of the concerned cadre, in the new charge". The instructions contained in the letter dated 23.11.1981 provides that the "seniority is to be taken into account from the date he joins the recipient Department and not from the date of issue of transfer order. The persons whose names figure in the recruitment panel which is in operation at the material time, but who are not in position when an officer joins on inter-Collectorate/inter-Departmental transfer, will be placed below the transferred officer in the seniority list".

5.1 The learned counsel for the applicant has further submitted that the orders/clarification issued vide letter dated 12.3.1987 will not be applicable in this case as the applicant has been transferred/appointed in the Nagpur Commissionerate on 7.4.1986. Therefore, the orders issued on 20.5.1980 and 23.11.1981(Annexure-A-4 colly.) to determine the inter se seniority, will be applicable, and accordingly, the applicant will be senior to those direct recruits who have joined their duties after the applicant had joined the

post of Inspector on 7.4.1986. He states that the same view is held by the Ministry i.e. the Central Board of Direct Taxes and instructions had been issued to respondent no.3 i.e. Commissioner, Central Excise & Customs, Indore again and again. But still despite the instructions given by the Ministry to fix the seniority of the applicant in terms of the instructions contained in letters dated 20.5.1980 and 23.11.1981 (Annexure-A-4 colly.) the seniority of the applicant has not been fixed by the respondent no.3.

6. On the other hand the learned counsel for the respondents has stated that the seniority of the applicant has correctly been fixed below his senior Shri S.C.Wagh in terms of Board's circulars dated 20.5.1980, 23.11.1981 and 12.3.1987, which stipulate that a transferee should be placed below such a candidate who is already in a position on the date on which he joins in the recipient Commissionerate. According to the respondents, the Board's letter dated 12.3.1987 is a clarification to their circular dated 20.5.80 and letter dated 23.11.1981. They have further stated that some Inspectors as mentioned by the applicant, who joined the Department after joining of the applicant and Shri S.C. Wagh but placed in the seniority list above them, are on account of their position in the merit list, sponsored by the S.S.C. As per general principle of seniority of direct recruit, as contained in Ministry of Home Affairs circular dated 22.12.1959 and reiterated in Department of Personnel & Training's OM dated 03.7.1986, the relative seniority of all direct recruits is determined by the order of merit in which they are selected for such appointment on the recommendation of the UPSC or other selecting authority. Thus, even if the Board's letter dated 12.3.1987 is ignored, the seniority of the applicant has correctly been fixed in terms of M.H.A.'s letter dated 22.12.1959 and DOPT's OM dated 3.7.1986.



7. We have given careful consideration to the arguments advanced by both the parties.

8. We find that the applicant has been appointed as a direct recruit Inspector in the year 1983 in Aurangabad Commissionerate (formerly Pune Commissionerate). He had made a request because of personal reasons for his transfer to Nagpur Commissionerate and he had been transferred to Nagpur Commissionerate at his own request where he joined on 7.4.1986. His seniority in the cadre of Inspector is required to be fixed in terms of letter dated 23.11.1981 and 20.5.1980. The letter dated 20.5.1980 provides as under-

"2. ...The requests received for inter-Collectorate transfers from the Group 'C' officers on really compassionate grounds may be considered on merits. The transfers wherever considered necessary, may be effect...on the following conditions:-

(i)...

(ii) the transferee will not be entitled to count the service rendered by him in the former Collectorate for the purpose of seniority in the new charge. In other words, he will be treated as a new entrant in the Collectorate to which he is transferred and will be placed at the bottom of the list of the temporary employees of the concerned cadre in the new charge;

(iii) on transfer he will not be considered for promotion/confirmation in the old office...

(iv) Such transfers can be effected only in the posts filled by direct recruitment.

The instructions contained in the letter dated 23.11.1981 provides as under-

"...his seniority is to be taken into account from the date he joins the recipient Department and not from the date of issue of transfer order. The persons whose names figure in the recruitment panel which is in operation at the material time, but who are not in position when an officer joins on inter-Collectorate/inter-Departmental transfer, will be placed below the transferred officer in the seniority list."

9. The admitted position is that the applicant has joined the Nagpur Commissionerate on 7.4.1986. The Staff Selection Commission has already recommended the name of direct recruits and the appointment/transfer of the applicant as Inspector in the Nagpur Commissionerate is



to be treated as direct recruitment, in terms of letter dated 20.5.1980 (Annexure-A-4). One of the recommended persons by the SSC, has already joined before the own request transfer of the applicant is effected. He is, therefore, senior to the applicant. The applicant does not have any objection to that. His only objection is that persons who are recommended by the SSC for appointment and in the order of merit they are senior to the persons who had already joined but they had joined on a later date, i.e. on a date after the applicant and one of the selected persons had joined, should rank junior to him. Meaning thereby, that the direct recruits who are higher in merit than a candidate, who had already joined, may not rank senior to him as well as the applicant, ~~junior to the applicant~~ on the ground that they had joined the post of Inspector on a later date.

10. The instructions contained in the letter dated 12.3.1987 issued by the Central Board of Excise & Customs (Annexure-R-1) provides as under-

"the question of fixation of seniority of officials who are transferred from one Collectorate to another Collectorate at their own request on compassionate grounds in terms of the provisions of the Recruitment Rules for Group 'C' and 'D' posts in the Customs and Central Excise Department has been re-examined. It is hereby clarified that the transferred officials should be assigned seniority in the recipient Collectorate as the juniormost direct recruit. However, if a panel for direct recruitment is in operation at the time of transfer, and if some persons from the panel have already been appointed, the transferred official will be given seniority with effect from the date of his appointment in that Collectorate, subject to the condition that if some persons senior in the select panel happen to join subsequently, they will be entitled to seniority above the transferred officer, having regard to their position in the select panel vis-a-vis their juniors who had joined earlier".

(emphasis supplied)

The main contention of the learned counsel for the applicant is that the aforesaid instructions contained in letter dated 12.3.1987 will not be applicable in the present case. He has also stated that the instructions contained in the letter dated



5.6.1998 (Annexure-R-II) are the same as contained in the letters dated 20.5.1980 and 23.11.1981(Annexure-A-4 colly). This contention of the learned counsel for the applicant does not appear to be correct.

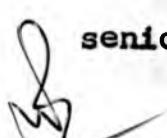
11. We find that the orders of 12.3.1987 are rather clarificatory in nature as the order dated 20.5.1980 was not clear enough with regard to a situation when a panel of direct recruit candidates, sponsored by the S.S.C is in operation and some of them are not able to join immediately though they hold merit over those who joined immediately after declaration of the results. The order dated 12.3.1987 makes it clear^{that} in such a situation, ^{that} the former^s will be placed above the laters. In other words, it means that the inter-commissionerate transferee should be placed immediately below the candidate(direct recruit) who is in position on that day and will also rank junior to those candidates who are senior² junior in the panel(which is in operation) to the candidate who happened to join earlier to them. The transferred candidate will rank senior to those candidates who are junior in the (direct recruit) panel to the DR ² who is in position on that date and joining² their duties after such DR and the applicant. It is clear from the language used in the order dated 12.3.87 that this is only in the nature of a clarification to the instructions contained in earlier letters dated 20.5.80 and 23.11.81. The letter dated 5.6.98 also makes it abundantly clear that the same has been issued in partial modification of letter dated 20.5.80 and in supersession of letter dated 23.11.81 and 12.3.87 and any other instructions on this particular subject. It also provides that if some promotees have already been appointed on regular basis prior to the appointment of a candidate on transfer basis, he will be junior to those promotees and if as a consequence of Rota-quota, some of those promotees become junior to some DRs then the transferee will become junior to those DRs also notwithstanding their date of



joining. The contention of the learned counsel of the applicant that the requirement of issuing order of 1998 arose because of confusion created by letter dated 12.3.87 is therefore not correct and is rejected.

13. Moreover, the position becomes more clear by the instructions issued by the Ministry of Home Affairs on 22.12.1959 which deal with general principles of seniority and particularly about the inter-se seniority of the direct recruits. These instructions clearly state that the inter-se seniority of direct recruits will remain as it has been recommended in the order of merit in which they are selected. These instructions further stipulates that where a person is appointed by transfer against direct recruitment, such transfer shall be grouped with direct recruits or promotees as the case may be and he shall be ranked below all directs or promotees as the case may be selected on the same occasion. These general principles of seniority have been reiterated by the Department of Personnel & Training vide their OM dated 3.7.1986(Annexure-A-5) and till now these instructions of the general principles of seniority have not been superseded or modified and they still hold good. The Ministry's order dated 7.2.2003(Annexure-RJ/1) never says that the general principle of seniority of direct recruit as contained in MHA's circular dated 22.12.1959 and DOPT's OM dated 3.7.1986 are not to be observed.

14. Thus, the contention of the applicant that he should rank junior to one of the junior candidates recommended by the SSC in the panel who happened to join earlier but he should rank senior to those who are senior in the panel but happened to join later, does not stand to any logic as it is against the general principles of seniority issued by the DOPT vide their OMs dated 22.12.1959



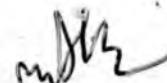
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and 3.7.1986. as well as against the instructions issued by the Central Board of Excise & Customs from time to time.

15. We, therefore, find that the seniority of the applicant has been correctly fixed by the respondents in terms of the instructions contained in letters dated 20.5.80, 23.11.81 and 12.3.87 issued by the Central Board of Excise and in terms of letters dated 22.12.1959 and 3.7.86 issued by MHA & DOP&T.

16. In the result, for the reasons contained in the preceding paragraphs, we do not find any merit in this OA and the same is accordingly dismissed, however, without any order as to costs.


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman

rkv.

पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....

प्रतिलिपि अच्यो छितः—

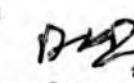
(1) सचिव, उच्च न्यायालय चार एसोसिएशन, जबलपुर

(2) आकेदक श्री/श्रीमती/कु.....के कार्बंगल S. Paul

(3) प्रत्यक्षी श्री/श्रीमती/कु.....के कार्बंसल Om Mani

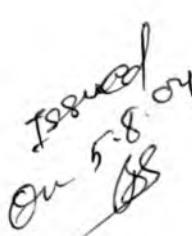
(4) दंपात्ता, के प्र.अ., जबलपुर न्यायपीठ

सूचना एवं आवश्यक कार्यवाही हेतु



मेरा उप रजिस्ट्रार

5-8-84


Date 5.8.84
On 5/8/84