

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 127 of 1998

Jabalpur, this the 26 day of March 2003

Hon'ble Shri Shanker Raju --- Member (Judicial).  
Hon'ble Shri R.K. Upadhyaya --- Member (Administrative).

A.K. Soni, aged about 55 years,  
son of Kunjilal Soni, Inspector,  
Central Excise, Office of the  
Assistant Commissioner, Customs and  
Central Excise Division No. 2, Bhopal,  
resident of Type-IV/4, C.P.W.D. Colony,  
Bharat Nagar, Shahpura, Bhopal (M.P.). ... Applicant

(By Advocate Shri M.K. Verma)

Versus

1. Union of India,  
through the Secretary/Revenue,  
North Block, New Delhi.
2. Secretary, Central Board of  
Excise and Customs, North  
Block, New Delhi.
3. Commissioner, Customs and  
Central Excise Indore-I, H.Qrs,  
Office Manikbagh Palace,  
Indore (M.P.).
4. Commissioner, Customs and Central  
Excise Indore-II, Central Revenue  
Building, Bhopal (M.P.).
5. Ramesh Rahate, Superintendent,  
Customs and Central Excise,  
Indore (M.P.).
6. G.S. Agrawal, Superintendent, Customs  
and Central Excise, Indore (M.P.).
7. Gopichand Prasad, Inspector, Central  
Excise, Range II, Bhopal (M.P.).
8. Smt. Rita Joshi, Inspector, Central  
Excise, Range II, Bhopal (M.P.).
9. U.K. Banerjee, Inspector, Central  
Excise, Office of the Commissioner,  
Customs and Central Excise, Indore  
(M.P.).

... Respondents

(By Advocate Shri B. Dasilva)

ORDER

Mr. Shanker Raju, Member (J):

Applicant through this OA has sought counting of his earlier service for grant of promotion to the post of Superintendent as well as refixation of seniority above Shri Ramesh Rahate, R-4, in the seniority list issued in 1996.

2. Applicant was appointed as an Inspector, Central Excise in Patna, Central Excise Commissionerate as direct recruit on 12.7.78. Applicant ~~for~~ transfer at his own request to Indore Commissionerate and in pursuance ~~declaration~~ was executed which foregoes his earlier seniority and acceptance of seniority at new Commissionerate ~~below~~ all temporary working Inspectors on the date of joining. Applicant joined at Indore on 7.9.1981. The last temporary entrant working on the date of joining of applicant was one Sh. B.K. Adale who was placed at serial No.11 of the seniority list having joined on 26.4.81. Applicant in the seniority list has been shown at serial No.83 below all the entrants of 1982. Applicant represented for correct fixation of seniority through his representation dated 8.10.96 which was turned down on 13.3.97 without assigning any reasons.

3. In pursuance of accorded seniority respondents 4 and 5 were promoted to the post of Superintendent by an order dated 31.7.97.

4. Learned counsel for applicant Sh. M.K. Verma assailed the impugned order and the seniority list on the ground that as per the instructions dated 20.5.1980 "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 concerned cadre in the new charge;" Having regard to the aforesaid it is contended

that applicant should have been placed below the temporary entrant B.K. Adale at serial No.11-A above respondent No.5 who joined the department on 19.7.1982 whereas placing him below en bloc 1982 batch cannot be countenanced and is violative of the instructions as the officer of 1982 batch cannot be treated as temporary employees without taking the charge of the post. Merely on the basis of the results of the examination held in 1981 seniority accorded is contrary to the decision of the Constitutional Bench of Apex Court in The Direct Recruit Class II Engineering Officers Association v. State of Maharashtra & others, 1990 (13) AIR 348, in which it has been held that once an incumbent is appointed to the post his seniority is to be counted from the date of appointment. It is further stated that the seniority of 1982 batch is to be counted from the date of initial appointment. Accordingly, as per the circular he was to be placed at the bottom of the seniority list existing on that date and according seniority below the direct recruit batch of 1982 is per se illegal. The seniority to 1982 batch has been accorded from a retrospective batch even when the incumbents were not borne in that cadre. In so far as 1978 circular referred to by the respondents which lays down starting point in recruitment roster for the purpose of seniority it is contended that the same wherein the seniority and date of completion of selection process has been observed to be announcement of results of an examination is for maintaining inter-se-seniority between the direct recruits and promotees but would not be an impediment and in contravention to the Board's circular issued on 20.5.1980 which has been issued after the DOPT instructions of 1978 taking note of the same.

5. However, by referring to the order passed by the Principal Bench in OA-430/95 in R.D. Verma v. Union of India it is contended that although the vires of circular dated 20.5.1980 has been upheld even at the level of Apex Court but yet the issue regarding accord of seniority below the temporary appointee in case of inter-Collectorate transfer has not been decided. As such the decision is per incuriam and would not apply to the facts and circumstances of the present case.

6. Respondents 1-4 filed their reply whereas despite notice private respondents have not filed their reply and it is inferred that they have nothing to say in defence. Official respondents in their reply have strongly rebutted the contentions of applicant and stated that on acceptance of conditions inter-Collectorate transfer is acceded to and is to be absorbed in new Collectorate against the vacancies for direct recruitment Seniority list of Inspectors issued on 6.8.86 was re-notified in pursuance of the decision of the Tribunal in OA filed by one A.K. Dixit and the same was revised on 20.12.1992. As per the instructions contained in DOPT OM dated 24.6.1978 the seniority list of Inspectors has to be considered from the year results have been declared by the Staff Selection Commission for the Inspectors of 1982 on 5.9.1981 and as the seniority of transferred officer is to be fixed below the last temporary employee of the concerned Collectorate in the new charge and as officers of 1982 batch were assigned seniority of the year 1981 applicant has been rightly placed below the Inspectors of 1982 batch as he joined Indore Collectorate on 7.9.1981 whereas the results of 1982 batch were declared on 5.9.1981.

7. In so far as counting of past service of Patna Collectorate is concerned, the same as per the circular ibid and in view of the decision of the Tribunal in R.D. Verma's case (supra) cannot be considered.

8. In rejoinder, applicant has re-iterated his pleas taken in the OA.

9. We have carefully considered the rival contentions of the parties and perused the material on record. Having regard to the circular dated 20.5.1980 which clearly stipulates that the earlier service shall be forfeited to which applicant had agreed to in his undertaking and the fact that the aforesaid circular's vires have been upheld by the Apex Court and followed by this Tribunal in R.D. Verma's case (supra) claim of applicant for counting previous service of Patna Commissionerate at Indore Commissionerate cannot be countenanced.

10. Regarding seniority assigned to applicant, though circular dated 20.5.1980 envisages placement of new entrant at the bottom of the list of the temporary employee, the fact that applicant has joined on 7.9.1981 but in view of OM dated 24.6.1978 issued by DOPT where starting point in the recruitment roster for the purpose of seniority in so far as direct recruits who have been selected through examination the date of announcements of results is the date for their seniority and in all probabilities would be the date of their temporary appointment. The contention that those incumbents were not even borne in the cadre cannot be assigned seniority and resort to Maharashtra Engineering Association's case (supra) is not well founded as applicant in this OA has failed to impugn OM dated 24.6.78. Moreover the Apex Court in Govt. of A.P. v. M.A. Karim, 1991 (supp) 2 SCC 1830 recognised the principle of acquisition of qualification in entering into a cadre the basis of determination of seniority and this has been keeping in view the ratio laid down by the Apex Court in Maharashtra Engineering's case (supra). The aforesaid dictum has been followed by the Bombay High Court in K.B. Varude v. Supdt. Engineer, 1985 (3) SLR 724.

11. In Maharashtra Engineering's case (supra) dispute regarding direct recruit and promotion were in issue and in that conspectus in general principles of seniority the ratio that the seniority is to be reckoned from the date of appointment and not from the date of confirmation has been held which would not apply in the present case and the decision is distinguishable.

12. In the present case the seniority of direct recruits of 1982 batch has been reckoned from the date of publication of results on 5.9.1981 which is the starting point of their seniority and as applicant was transferred on 7.9.1981 he has been rightly placed below the 1982 batch which is in consonance with their circular dated 20.5.1980.

13. In the result, for the foregoing reasons, the OA is found bereft of merit and is accordingly dismissed. No costs.

Michigan

(R.K. Upadhyay)  
Member (A)

*S. Raju*  
(Shanker Raju)  
Member (J)

'San.'

Issued  
on 31.3.03  
by SS