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CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH,
JA BALPUR

Original Application No. 800 of 1996

Jabalpur, this the 29th day of November, 2006.

Hon'ble Dr.G.C.Srivastava,Vice Chairman
Hon'ble Shri A.K.Gaur, Judicial Member

Ajit B.Awasthi, aged 46 years, S/o Dr. Bhawani Prasad
Awasthi, Assistant Commissioner of Customs and
Central Excise Division, Bhopal, r/o Type IV/2, Income
Tax and Central Excise Colony, E/8, Bharat Nagar
(Shahpura), Bhopal-462016

-Applicant

(By Sr.Advocate – Shri Rajendra Tiwari assisted by
Shri T.K.Khadka)

V E R S U S

1. Union of India, through the Secretary, Ministry of
Finance, Department of Revenue, North Block, New
Delhi-110001.

2. Shri P.V.Das, Additional Commissioner of Customs &
Central Excise Commissionerate, Peeramal Chambers,
Parel, Mumbai-II

3. Shri K.L.Bablani, Deputy Commissioner of Customs
& Central Excise Commissionerate, Nav Prabhat
Chamber, Dadar(West), Mumbai.

4. Commissioner of Customs & Central Excise, Manak
Bag Palace, Indore 452001

-Respondents

(By Advocate – Shri S.A.Dharmadhikari)

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ORDER**By Dr.G.C.Srivastava,VC.-**

This Original Application has been filed in respect of office order no.55/96 dated 29.3.1996 (annexure A-4) whereby Shri K.L.Bablani, Assistant Commissioner of Customs, Mumbai was promoted to the grade of Deputy Commissioner of Customs & Central Excise notionally with effect from 6.7.1985 and his seniority was fixed below Shri O.C.Karikatti and above Shri K.L.Indra. The impugned order also mentioned that the promotion of Shri K.L.Bablani was in pursuance of CAT, Mumbai Bench order dated 6.9.94 in TA No.11/92. Through this OA, the applicant has sought for the following relief:-

“(1).....to command the respondents 1 and 4 to certify to the court the record relating to the vacancies of the year 1972 onwards, for perusal and reference

(2) ...to command the respondents 1 and 4 to treat the petitioner as appointed in Class I service w.e.f.9-8-73 with all consequential benefits.

(3)...the petitioner may also be given the advantage of being promoted as Additional Commissioner of Central Excise, as per Rules, with all consequential benefits.

(4)....to command the respondents to apply ratio of the judgment of Bablani's case (supra) to the case of the petitioner as well; and thereby giving him seniority from the initial date of his appointment in Class-I service to other promotion post, placing him senior to the Respondent No.2 in the Gradation List.

(5) Any other writ, order or direction, as may be deemed fit in the circumstances of the case may also kindly be awarded, together with awarding costs of these proceedings.



2. The grievance of the applicant is that by the impugned order dated 29.3.2006, Shri K.L.Bablani, respondent no.3, who was promoted as Assistant Commissioner in 1986 along with the applicant and was much below the applicant in the seniority list of Assistant Commissioners has been promoted as Deputy Commissioner notionally with effect from 6.7.1985. The contention of the applicant is that Shri Bablani has been promoted to the detriment of the applicant and this act of the respondents is unconscionable and arbitrary. Hence, this Original Application. We have taken note of the fact that the array of respondents included Shri K.L.Bablani, but no counter reply was filed by or on his behalf. Reply was filed only on behalf of respondent no.1 viz. Union of India.

3. This OA was earlier dismissed by this Tribunal through order dated 19.9.2001. This was done on merit under Rule 15 of Central Administrative Tribunal (Procedure) Rules, 1987 although none appeared for the parties. This was challenged in the High Court in writ petition no.5593/2001 and the High Court quashed the order of the Tribunal and remitted it back "for affording an opportunity of hearing to both sides and then to pass an order on merit".

4. The facts of the case as narrated by the applicant are that he was appointed as Appraiser on the basis of the result of IAS Etc. Examination of 1972. During that year, the Customs and Central Excise Department had notified 22 vacancies in Class-I, whereas in that very year 99 persons were promoted from Class-II to Class-I. The contention of the applicant is that 50% of the total vacancies filled up in 1972 (i.e. $22 + 99 = 121$) should have been notified for direct recruitment. This would have meant that 61 and not 22 vacancies should have been notified. If that was done, the applicant

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would have been appointed in Class-I service as persons up to serial no.148 were appointed in Class-I service while the number of the applicant in the merit list was 176. The applicant further contended that respondent no.3 Shri Bablani was selected on the basis of IAS Etc. Examination of 1974 and was, therefore, junior to the applicant in the seniority list of Appraisers and even as Assistant Commissioner, to which both of them were promoted on 17.9.1986. The applicant was at serial no.55 in the seniority list whereas Shri Bablani was at serial no.72. By the impugned order, this seniority list has been upset and respondent no.3 has been made an Assistant Collector (redesignated subsequently as Assistant Commissioner) with effect from 16.7.1975 and has been promoted as Deputy Commissioner notionally with effect from 6.7.1985 to the detriment of the applicant. Thus, the applicant, who is senior to respondent no.3 has been made much junior. The applicant has accordingly prayed that the benefit that has been given to respondent no.3 should also be given to him so that he maintains his seniority over respondent no.3. The applicant has also claimed that applying the principle that was accepted by this Tribunal in Bablani's case [TA 11/92 decided on 6.9.1994 and reported in 1994 (6) SLR 213] regarding notifying vacancies correctly, the applicant would also be entitled to be appointed to a Class-I post on the basis of IAS Etc. Examination, 1972.

5. We have heard the arguments advanced by the counsel of both the parties and have also gone through the material on record.

6. The respondents have raised a preliminary objection that the application is highly time barred as it seeks to agitate against an event which took place more than 25 years ago. It is noticed that

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the applicant has specifically mentioned in his OA that the application is in respect of office order no.55/96 (annexure A-4) which was issued on 29.3.1996. The applicant had represented in respect of this order to the higher authorities on 5.8.1996 (annexure A-7A) but having received no response, he has approached this Tribunal through this OA on 18.11.1996. The OA is, therefore, very much within time and the objection of the respondents in this regard is not sustainable.

7. Another objection taken by the respondents is that necessary parties have not been joined in the OA inasmuch as those who would be affected adversely, namely, direct recruits appointed on the basis of the results of IAS Etc. Examination conducted between the years 1973 and 1996 have not been impleaded as respondents. This issue was also dealt with by this Tribunal in Bablani's case (TA 11/92) and relying on the judgment of Hon'ble Supreme Court in the case of **General Manager, South Central Railway Vs. A.V.R.Siddhanti and others** [1974 (4) SCC 335] and **A.Janardhana Vs. Union of India and others** [1983 (3) SCC 601] wherein it was held that relief was sought only against the Union of India and the Ministry concerned and, therefore, even if technically direct recruits were not before the court, the application is not likely to fail on this ground. In view of this, we also hold that this application does not suffer from the vice of non-joinder.

8. The respondents have also sought cover under the plea that if the service of the applicant is allowed to be changed at this stage, it would entail large scale changes not only in the Customs and Central Excise Department but also in other Class-I allied services. The learned counsel for the applicant cited the case of

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S.Ramanathan Vs. Union of India and others (2000 AIR SCW 4549, wherein it has been held that relief cannot be refused merely on the ground of apprehension of administrative chaos without any material in support of the same. In this case, the Hon'ble Supreme Court in its order pronounced on 7.12.2000 directed the respondents to redetermine the strength of the cadre of the Indian Police Service by going back to the year 1989. In the instant case, the applicant has challenged the order passed in 1996 and the plea of the respondents that a decision on this issue is likely to create an administrative problem does not appear to be sound enough.

9. Before we proceed further, it would be useful to recount the background of the case of Shri Bablani, which is the central issue in this case. Shri Bablani appeared in the IAS Etc. Examination of 1974. He passed that examination and was placed at serial no.221 in category III. Candidates up to serial no.198 were accommodated in Class-I service on the basis of the available vacancies. Since Shri Bablani was at serial no.221, he was accommodated in Class-II service in the Customs Department. He started working as Customs Appraiser (Class-II) in the Bombay Customs House from 10.11.1976. In 1983, Shri Bablani made a representation to the effect that in 1974, when the Department of Customs and Excise had notified available vacancies to be filled in by the candidates who qualified at the IAS Etc. Examination, 1974 the number of vacancies was wrongly communicated as 40. According to Shri Bablani, 97 vacancies should have been so notified in Class-I posts in 1974 and not 40. Shri Bablani claimed that had the vacancies been correctly notified, he would have been appointed to a Class-I post in this department in 1974. This representation of Shri Bablani was rejected on 23.9.1985. Thereafter, he filed a writ

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petition before the Bombay High Court (writ petition no.1933/1985), which was transferred to the Bombay Bench of this Tribunal and registered as TA 11/1992. Through this writ petition/TA, Shri Bablani inter alia, sought for the following relief:

“(c) issue a Writ of Mandamus or any other appropriate writ or direction directing the respondents to make appointment and adjust promotions in Group ‘A’ and Group ‘B’ services of Category III relating to Central Excise and Custom Services and adjust the same with strict compliance of 50:50 quota system between direct recruits and promotees for the post of Assistant Collector of Customs/ Central Excise Group ‘A’ on the basis of various results of IAS etc. examination”.

10. The Tribunal vide its order dated 6.9.1994 allowed the TA partly with the following directions:

“21. As a result, this application succeeds partly inasmuch as the prayer made in Sub Para (c) is found to be acceptable. The respondents are hereby directed to consider the appointment of the applicant after adjusting the vacancies in a strict compliance of 50:50 quota system between direct recruits and promotees (emphasis provided) for the posts of Assistant Collector of Customs/ Central Excise existing when the results of the UPSC exams of 1974 were announced. If the vacancies are found to be large enough to cover the applicant he may be allotted the notional position and seniority alongwith other entrants (emphasis provided) who were appointed on the basis of 1974 examination. However, this relief will not entitle the applicant to benefits of pay and allowances of the post of Assistant Collector against which he had not worked till his promotion to that grade. This order may be complied within 6 months of issue of this order.”

The aforesaid order of the Tribunal was challenged by the Union of India and others in the Supreme Court in Civil Appeal No.1328/1995 but before the appeal could be decided, the respondents issued the office order no.55/96 (annexure A-4) giving retrospective appointment and promotion to Shri Bablani.

11. A perusal of the operative portion of the order of this Tribunal in Bablani's case shows that its implementation involved the following steps:-

(i) The correct number of vacancies to be filled by direct recruitment through the IAS etc. examination held in 1974 was required to be worked out after adjusting the vacancies in a strict compliance of 50:50 quota system between direct recruits and promotees for the post of Assistant Collector of Customs and Central Excise existing when the result of the UPSC examination of 1974 was announced.

(ii) If the vacancies are found to be large enough to cover the applicant, he may be allotted the notional position and seniority along with other entrants who were appointed on the basis of 1974 examination.

The impugned order does not indicate if this exercise was undertaken by the respondents before the aforesaid office order was issued.

12. In this connection, the contention of the respondents in respect of the prayer of the applicant in the present OA is relevant. The respondents have made the following submissions in paragraphs 8 and 12 of their reply –

“there may be a number of officers, who might have given their preferences for appointment to this service and were allotted a higher ranking but could not be given appointment to this service due to limited number of vacancies.....It is just wishful thinking and hallucination on the part of the applicant in assuming that he would have got into IC&CES Grade A instead of Customs Appraisers in Gr.B on the basis of IAS Etc. Examination, 1972 had there been some more vacancies in IC&CES. Even if there were more vacancies, the entire roster pertaining to allocation of candidates to different services might have undergone change and it cannot be stated at this stage as to which service would have been allocated to which candidate.....The increase in vacancies mean that a certain number of candidates, who

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were not recommended by the UPSC for appointment to any category on the basis of IAS Etc. Examination, 1972 should now be given an offer of appointment in the interest of justice and fair play and which obviously is not possible at this stage. So assuming but not admitting that less number of vacancies were intimated to the UPSC for being filled up on the basis of IAS Etc. Examination, 1972, there is no remedy available at this stage whereby under-intimation of vacancies could be rectified now"

13. The above submissions of the respondents were equally relevant when the order of this Tribunal in Bablani's case was required to be implemented. The purport of this Tribunal's order was not merely to consider the case of the applicant i.e. K.L.Bablani but also of other entrants who were appointed on the basis of 1974 examination along with Shri K.L.Bablani. It is not known as to on what basis the respondents found that Shri K.L.Bablani would have been allotted the Customs and Central Excise Service, if the number of vacancies were increased. Unless the choice given by other entrants who were above him in the merit list was examined, it would not have been possible to determine the service that should have been allotted to Shri K.L.Bablani. The respondents did not even work out the number of vacancies which should have been notified for direct recruitment. Even if it is presumed that the number of additional vacancies were large enough to cover the applicant, it would have only meant that the applicant would move from Class-II service to one of the Class-I services but not necessarily to Customs and Central Excise, as it would depend upon the option given by other candidates who were above him, but were not given Customs and Central Excise Service despite their choice because of non-availability of vacancies. In absence of any material on record to show that this exercise was undertaken by the respondents, we are left with no option but to

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hold that the impugned order has not been passed in proper compliance of this Tribunal's order in Bablani's case.

14. It is also worth noting that the respondents have mentioned in their reply that Shri K.L.Bablani has been appointed to Customs and Central Excise on the basis of IAS Etc. Examination, 1974 as per the directions of the Mumbai Bench of this Tribunal as contained in order dated 6.9.1994 in TA 11/92. It does not appear to be a correct statement inasmuch as the order of this Tribunal was to consider the appointment of the applicant along with other entrants who were appointed on the basis of 1974 examination and not necessarily to assign the Customs and Central Excise Service to Shri Bablani. It is obvious from this that the respondents have misconstrued this Tribunal's order while issuing the impugned order. This has resulted in considerable injustice to a large number of officers, who were recruited to the Customs and Central Excise Service between 1975 and 1995, but were made junior to Shri Bablani after having spent a number of years as his senior. Many of these officers would have, in fact been Shri Bablani's direct superior officers. If Shri Bablani was to be given the benefit of the Tribunal's order in his case, without undertaking the exercise laid down by the Tribunal in its order, equity and fairness demanded that Shri Bablani should have been allocated a Class-I service, other than the Customs and Central Excise, where he had functioned as a very junior employee for 20 years.

15. We also consider it relevant to mention that the respondents have averred in the present OA that it was not possible for them to comment upon the factual accuracy or otherwise of the averments made by the applicant, as most of the files relating to the IAS Etc. Examination, 1972 are, as per the record retention schedule,

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required to be destroyed after the expiry of 10 years. Only files pertaining to vital policies of the Government are retained for a period of 25 years and since files pertaining to appointments and intimation of vacancies in different services are not policy oriented files, they are not required to be retained beyond a period of 10 years. On this analogy, the records pertaining to the IAS Etc. Examination, 1974 would have been destroyed by the time Shri K.L. Bablani filed his writ petition in the Bombay High Court in 1985. It is, therefore, established beyond doubt that the impugned order by which relief was given to K.L. Bablani was passed without following the directions given by the Tribunal and is, therefore, legally unsustainable.

16. On the question of giving relief to the applicant on the basis of this Tribunal's order in Bablani's case, the respondents have submitted that respondent no.3 was given the benefit of the order pronounced by this Tribunal in TA 11/92 on 6.9.1994 as per the interim order passed on 6.2.1995 by the Supreme Court in SLP No.22899/94 (filed by Union of India & ors) according to which the aforesaid order of the Tribunal was to be made operative for Shri Bablani only and not generally in the department, which would be subject to the result of the appeal pending. Hence, there is no question of granting the benefit of this order to the applicant.

17. The appeal filed by Union of India (Civil Appeal No.1328/1995 was decided on 3.12.1998 (AIR 1999 SC 517). The Supreme Court re-affirmed its interim order passed on 6.2.1995 whereby the order of the Tribunal in K.L. Bablani's case was made operative only for K.L. Bablani and not generally in the department by observing very categorically that "the present order will operate only in respect of the respondent for reasons which we have set out

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earlier". This was done as the Supreme Court agreed that there would be a complete disruption in the postings and position of persons appointed as far back as in the year 1974, who are now occupying various posts not merely in the Customs and Central Excise Department, but in various other allied services as well. The same would be the position if the vacancies for any subsequent or earlier years are now recalculated and the initial postings given to a large number of candidates during these years are now disturbed.

18. While upholding the contention of Shri Bablani that Govt. of India was required to notify not only promotion vacancies but also temporary vacancies of long duration and to determine the total number of vacancies available for direct recruits for their 50% quota, ~~Accordingly~~^{Gr}, the apex court, found "some justification" in the submission of Union of India that "in a writ petition which was filed in the year 1985, appointments which were made as far back as in the year 1974, ought not to have been disturbed". Accordingly, the apex court observed as follows:

"8. One intervention application is before us which was filed in the year 1996 by a person who was recruited in the year 1975. The appellants have also pointed out that after the decision of the Tribunal in the present case, they have received a number of representations from other persons who were appointed during the period 1974 up to 1990. Such belated applications can not now be considered. We, therefore, dismiss the intervention application. We make it clear that the present order will operate only in respect of the respondent for reasons which we have set out earlier".

19. In the ultimate analysis, the Supreme Court felt that having upheld the merits of the contention of Shri Bablani, it would not be fair to take away the benefit which he has actually obtained under the orders of the Tribunal. In this context the following paragraph of the Supreme Court's judgment need to be reproduced:

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“6. The appellants submitted before us with some justification, that in a writ petition which was filed in the year 1985, appointments which were made as far back as in the year 1974, ought not to have been disturbed. If a similar relief is to be granted to all those who were in the merit list of 1974 of I.A.S and Allied Services examination and who were placed in Class-II posts because of wrong notification of vacancies in the year 1974, there would be a complete disruption in the postings and positions of persons appointed as far back as in the year 1974 who are now occupying various posts not merely in this department but in other various Allied Services as well. The same would be the position if the vacancies for any subsequent years from 1975 to 1990 are now recalculated and the initial posting given to a large number of candidates during these years are now disturbed. They are, undoubtedly, right about this apprehension. Delay defeats equity is a well known principle of jurisprudence. Delays of 15 and 20 years cannot be overlooked when an applicant before the Court seeks equity. It is quite clear that the applicants for all these years had no legal right to any particular post. After more than 10 years, the process of selection and notification of vacancies cannot be and ought not to be reopened in the interest of the proper functioning and morale of the concerned services. It would also jeopardize the existing positions of a very large number of members of that service. The respondent, however, submitted that he has, in fact, been given the relief by the Tribunal. As a result, various orders have been issued granting him Group ‘A’ appointment and subsequent promotions though these are made subject to the outcome of this appeal. The only question is, whether having upheld the merits of his contention, we should now take the benefit which the respondent has actually obtained under the orders of the Tribunal”.

In view of such a categorical observation and direction by the Supreme Court, the question of giving the benefit of the contention upheld by the Tribunal in Bablani’s case to the applicant does not arise.

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20. In this context it is necessary to point out that in the SLP filed by K.L.Bablani it was brought to the notice of the Hon'ble Supreme Court by Shri K.L.Bablani himself that consequent to the relief given by the Tribunal, various orders have been issued granting him group-A appointment and subsequent promotions subject to the outcome of the SLP. But it was not brought to the notice of the Hon'ble Supreme Court that K.L.Bablani got an unintended benefit as the direction given by the Tribunal in his case were not translated into action by the respondents faithfully. The respondents followed the short cut of giving retrospective appointment and promotion to the applicant in the Custom and Central Excise Service, although if the required exercise of determining actual vacancies and considering option of other entrants was undertaken, most probably K.L.Bablani would have got a group A service other than Customs and Central Excise.

21. In view of the discussions in paras 16 to 18 above, we are unable to give any relief to the applicant in terms of this Tribunal's judgment in TA 11/92. However, it is clear that the respondents' order no.55/96 dated 29.3.1996 (annexure A-4) has not been passed in conformity with this Tribunal's judgment in TA 11/92. Nevertheless, since no ~~sub~~ relief in this regard has been prayed for by the applicant, we refrain from passing any such order. We leave it to the respondents to take suitable remedial measures, if so advised.

22. In the result, the OA is dismissed with no order as to costs.


(A.K. Gaur)
Judicial Member


(Dr. G.C. Srivastava)
Vice Chairman

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