

FORM NO. 4

(See Rule 42)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

Case No. APPLICATION NO. 10/2000 OF 199
09.12/95

Applicant(s) Sri Debajyoti Mishra and Ors.

Respondent(s) Sri P. G. Mankad and Ors.

Advocate for Applicant(s) Mr. M. Chanda.

Advocate for Respondent(s)

Notes of the Registry	Date	Order of the Tribunal
The Learned Applicant Advocate has filed his complaint petition regarding non- compliance of the order dtd. 22-1-95 passed by this Hon'ble Tribunal.	4.4.00	Issue notice. Notice returnable on 2.5.2000. List on 2.5.2000 for further order.
Serial before Hon'ble Court for further order.	trd 10/12/2000	WTS has not been filed. No DTS is available. Admon to 23.5.00.
Section Officer 23/3/2000	23.5.00	There is no Bench today. Adjourn to 22.6.00.

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Member8/0
by18/0
by

(2) CP. 10/2000

Notes of the Registry	Date	Order of the Tribunal
<u>6-4-2000</u> Service of notices prepared and Sent to D. Section for issuing it. The same to the respondent through Regd. post with A.D. vide D.Nos. 1041 and 1044. Dtd. 7.4.2000.	13.7.00	Present : The Hon'ble Mr S. Biswas, Administrative Member. Mr M.Chanda, learned counsel for the petitioner and Mr none for the contemner are present. This petition should be placed before the Division Bench on 25.8.00. s. Biswas Member (A)
<u>27/6/00</u> Notice duly served on respondents No 3,4 & 5.	25.8.00	No Bench is available. Adj. to - 31.10.00.
<u>Notice duly served on</u> R.No. 3,4 & 5.	31.10.00	Present : The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman. Heard Mr M.Chanda, learned counsel for the petitioner. Office to indicate as to whether notices were served on respondents No. 1 and 2 and report on the next date. List on 15.11.2000 for order.
<u>31/10/2000</u> Pl. compl. order dtd 31.10.2000. S 31/10/2000	pg	Vice-Chairman
<u>14 - 11 - 2000</u>	23.11.2000	Notice duly served on respondents No. 3,4 & 5. Await service report on respondents No.1 & 2. List on 23.11.00 for orders.
① Notice duly served on R.No. 3,4 and 5, Respondant No- 1 and 2, still awaited.	1m Hrgay 15/11	Vice-Chairman
<u>23/11/2000</u> Service report is still awaited R. A. J. J. J. await service report on - 1 & 2. 23/11/2000	23.11.00	Await service report on alleged contemners No.1 and 2. List on 8.12.2000 for order.
	23/11/2000	Vice-Chairman

Notes of the Registry	Date	Order of the Tribunal

Notes of the Registry	Date	Order of the Tribunal
	8.12.00	Await service report. Vice-Chairman
Notice duly served on R. No. 3, 4 and 5, respondent No. 1 & 2 are still awaited, Bd 1.1.2001.	2.1.01	Await Service Report on respondent Nos 1 & 2. Notices served on respondents No.3,4 & 5. No written statement has been filed. Let this case be listed after service of notices of respondent Nos. 1 & 2. Vice-Chairman
1m		

C.P.10/2000

Notes of the Registry	Date	Order of the Tribunal
	16.7.2001	<p>No representation stand out. List on 17.7.2001 for order.</p> <p><i>IC Ushani</i> Member</p> <p><i>h</i> Vice-Chairman</p>
<p>Copy of the order dtd. 17.7.01 sent to D: Section for issuing of the same to the Contemnor No-4 and Learned Adv. for the Applicant.</p> <p><i>By</i> 19.7.01</p>	17.7.2001	<p>It has been stated that pursuant to the judgment and order dated 22.1.1999 passed by this Tribunal in C.A.171/1995 the respondents have passed an order which is also the subject matter of diff- erence.</p> <p>Accordingly, the Contempt Petiti- on stands closed.</p> <p><i>IC Ushani</i> Member</p> <p><i>h</i> Vice-Chairman</p>
	bb	

Notes of the Registry Date Order of the Tribunal

केन्द्रीय प्रशासनिक न्याय
Central Adm. Administrative Tribunal

264 28 MAR 2000

गुवाहाटी
Guwahati Bench

In the Central Administrative Tribunal

Guwahati Bench :::: Guwahati.

Contempt Petition No. 10

In O.A. No. 171/1995

/2000

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Filed before Advocate
Mr. Q. Debonin
Advocate

In the matter of :

Shri Debajoti Misra

-Vs-

Union of India and others

-And-

In the matter of :

An application under Section 17 of the
Administrative Tribunal Act 1985 praying
for initiation of contempt proceeding
against the contemners for non compliance
of the judgement and order dated 22.1.99
passed in O.A. No. 171 of 1995.

-And-

In the matter of :

Shri Debajyoti Misra

Inspector,

Son of Shri Jyotinmoy Misra

Office of the Superintendent

Central Excise, RBC II,

Range : Digboi, P.O. Digboi.

Assam.

..... Petitioner.

- Versus -

1. P.G. Mankad

Secretary

Ministry of Finance,

Department of Revenue,

North Block,

New Delhi - 110002.

2. S.D. Mohile

Chairman

Central Board of Customs and Excise,

North Block,

New Delhi - 110001.

3. B.P. Srivastava

Chief Commissioner

Customs and Central Excise,

15/1 Strand Road,

Custom House, Calcutta - 700001.

4. Z. Tochhawng

Commissioner of Central Excise (NER),

Shillong-793001.

5. B. Thamar

Joint Commissioner (P & V),

Customs and Central Excise,

Shillong- 793001.

..... Respondents.

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The humble petition of the abovenamed petitioner most respectfully submits as follows :-

1. That your petitioner approached this Hon'ble Tribunal through the original application no. 171/95 praying for setting aside the seniority list published as on 21.9.94 issued by the collector of Customs and Excise, Shillong so far as the Inspector of Customs and Central Excise are concerned and also for setting aside the letter No. C.II (34)/I-ET.I/91/ET-1/ 9446-550 dated 27.4.95 whereby impugned draft seniority list in respect of Inspector of Customs and Central Excise was finalised. Further it was prayed that the impugned promotion order issued under Estt. Order No.167/95 dated 7.5.95 on the basis of the Seniority list as on 21.10.94 be set aside and quashed and for a direction to issue a fresh seniority list. The said O.A. No.171/95 was finally decided by this Hon'ble Tribunal with the following order :

"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 the receipt of this order".

A copy of the judgement and order dated 22.1.99 in O.A. No. 171/95 is annexed as Annexure - I.

2. That your ~~app~~ petitioner submitted a representation on 28.4.99 for implementation of the judgement passed on 22.1.99 ~~O.~~ in O.A. No. 171/95 but the contemnners/respondents did not take any action and thereafter applicant submitted another representation on 30.8.99 for the implementation of the said judgement and order but the respondents/contemnners did not take any action and thereby wilfully disobeyed the judgement and order dated 22.1.99 passed by this Hon'ble Tribunal.

Copies of the representation dated 28.4.99 and 30.8.99 are annexed as Annexure - 2 and 3.

3. That the counsel of the petitioner have ~~served~~ served a notice on behalf of petitioner for implementation of the above judgement and order on 31.8.99 and the contemnners/respondents after receiving the notice contemner replied on 2.9.99 that the judgement and order dated 22.1.99 pronounced by the Hon'ble Tribunal was contrary to the another judgement dated 5.9.95 in O.A. 241/95 on same issue. Hence the ~~an~~ abvious reason the instant judgement could not be implemented.

Copy of the counsel notice and reply of the contemner are annexed as Annexure - 4 and 5 .

4. That there after your petitioner submitted another representation dated 14.9.99 for implementation of judgement and order dated 22.1.99 but the contemners did not take any action. On 11.11.99 the counsel of the applicant submitted another notice clarifying their letter dated 2.9.99 stating that if two judgement are delivered on the same issue, the subsequent and latest judgement should be relied upon by the Departmental Authority, even there after, the contemners also did not take any further action for implementation of the judgement and order. Thereafter the petitioner submitted a fresh representation dated 1.2.2000 but contemners did not implemented the judgement and order dated 22.1.99 passed in O.A. No.171/95. And therefore action of the contemners is amount to contempt of the Hon'ble Tribunal as the contemner did not implement the judgement and order dated 22.1.99 . Therefore Hon'ble Tribunal be pleased to initiate a contempt proceeding against the contemners for wilfull non-compliance of the judgement and order dated 22.1.99 passed in O.A. 171/95.

~~Copy of the counsel's notice, Representation
Copy of the Counsel's notice
dated 14.9.99, reply of the contemners, clarifi-
cation of the counsel and representation dated
1.2.2000
2.1.2000~~ are annexed as Annexure - 6, 7 and 8. Sug'

5. That this petition is made bonafide and for the ends of justice.

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Under the facts and circumstances stated above the Hon'ble Tribunal be pleased to initiate contempt proceeding against the contemner for wilfull non-compliance of the judgement and order dated 22.1.99 passed by the Hon'ble Tribunal in O.A. No.171/95 and further be pleased to impose punishment in accordance with law.

And for this act of kindness your petitioner as in duty bound shall ever pray.

Affidavit7

A F F I D A V I T

I, Shri Debajyoti Misra son of Shri Jyotinmoy Misra aged about 35 years, office of the Superintendent, Central Excise RBC II, Range Digboi, petitioner in the above contempt petition do hereby solemnly affirm and declare as under :-

1. That I am the petitioner in the above contempt petition and as such I am well acquainted with the facts and circumstances of the case and also competent to sign this affidavit.
2. That the statements made in para 2, 3, 4 and 5 are true to my knowledge and those made in para 1 are derived from records.
3. That this affidavit is made for the purpose of filing contempt petition before the Central Administrative - Tribunal, Guwahati Bench, Guwahati for the non compliance of judgement and order dated 22.1.99 passed by the O.A. No. 171/95.

And I sign this affidavit on this 24th day of March '2000 at Guwahati.

Identified by

S. M.

Advocate

Debajyoti Misra.
Deponent.

Solemnly affirmed and declared
before me by the deponent.

Debajyoti Misra
Advocate.

Draft Charge

Laid down before the Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati for initiating contempt proceeding against the contemner/respondents for wilfull non compliance and ~~dis~~ dis-obedience of the judgement dated 22.1.99 passed in O.A. No.171/95 and also to impose punishment upon the contempner for non compliance of the judgement of the Hon'ble Tribunal as mentioned above in accordance with law.

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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.

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P. J. Deo,
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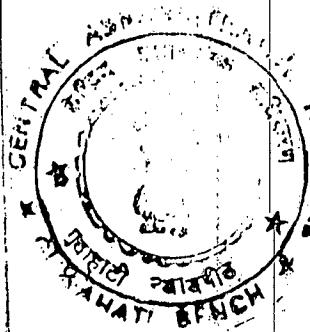
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O R D E R

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 24.10.1984 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,

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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

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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

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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.

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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

well recognised canon 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 we 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. learned in his

We are of the opinion that the Additional Solicitor General is right submission that the decision of the

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 9.9.197 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. dted 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

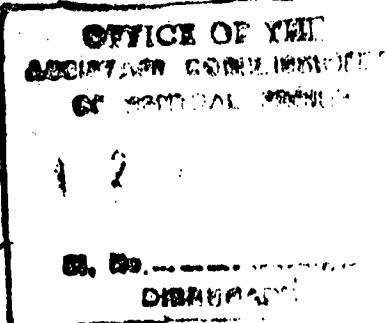
प्रमाणित प्रतिलिपि

Section Officer (J)

ग्रान्तमाला अधिकारी (न्यायिक शाखा)
Central Administrative Tribunal

केन्द्रीय प्रशासनिक अधिकरण
Guwahati Bench, Guwahati-6

** दि. यायनी, ग्रान्तमाला-6



To
The Commissioner,
Central Excise
Shillong.

(Through proper channel)

Sir,

Sub:- Re-fixation of seniority of Inspectors appointed before 01.03.86- Implementation of Central Administrative Tribunal, Guwahati Bench's Order dated 22.01.99 in O/A NOS. 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 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 01.01.93 which was prepared and circulated following O.M. dated 22.12.59 for those Inspectors appointed before 01.03.86 be considered for revival in the light of Hon'ble CAT 'S Order dated 22.01.99 passed in the subject appeals WITH CONSEQUENTIAL RELIEF.

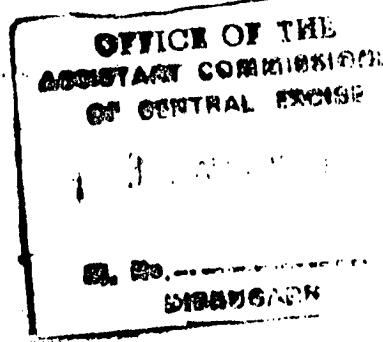
Dated Dibrugarh
The 28th April, 1999

Yours faithfully,

Misra (D. Misra)
Inspector, Central Excise
Dibrugarh.

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 22/01/99 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 C.NO. II(29)8/ET/PL/ACD/98/662 dated 29/4/99 by the Assistant Commissioner, Central Excise, Dibrugarh.

In this connection I once again fervently appeal to your benignself to implement the order dated 22/01/99 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 01/01/93 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,

Debjyoti Misra
(Debjyoti Misra)
Inspector,
Central Excise,
Dibrugarh Division

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TELEGRAM

FAX

Annexure-A

Chairman
Central Board of Excise and
Customs (CEBEXCUS)
New Delhi.

Kindly refer to my notice dated 02.08.99 regarding implementation of Judgement and order dated 22.01.99 of Hon'ble CAT, Guwahati Bench in O.A. NOS 101/95, 147/95 and 171/95 holding that regarding fixation of seniority O.M. dated 22.12.59 to be adhered to for the period for which the particular O.M. was in force. Hon'ble Tribunal directed The Official Respondents to implement the order within three months time. Department have not implemented the order till to-date. Non-implementation of courts order within fixed time limit tantamounts to contempt of court. It is, Therefore, requested that instruction to commissioner, Central Excise, Shillong be issued for immediate implementation of the order dated 22.01.99. It is also requested to send a copy of the instruction to the undersigned.

N.T.B.T.

DATE - 31-8-99.

(Signature)
M. Chanda
Advocate

(Signature)
M. Chanda , Advocate
Guwahati High Court
Lachit Nagar
By Lane -7, Ghy-7
Assam.

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE : SHILLONG.

C.No. II (34)1/ET.I/99/ 3-7666

Dated:

- 2 SEP 1999

To

Shri M. Chanda,
 Advocate, Guwahati High Court,
 Bye Lane-7, Lachit Nagar,
Guwahati - 781 007.

Sir,

Subject : O.A. Nos. 101/95, 171/95 and 147/95 filed
 by Shri J.L. Bhowmik & Ors. - corres. regd.

This has reference to your notice dated 2.8.99 on the
 above subject.

The Judgement dated 22.1.99 pronounced by Hon'ble CAT,
 Guwahati was a contrary to their judgement dated 5.9.95. in
 O.A. No. 241/91 on the same issue. Hence, for obvious reasons,
 the instant Judgement dated 22.1.99 could not be implemented.

For your information a contempt petition has been
 filed by Shri Biman Dhar for non-implementation of the CAT's
 order dated 5.9.95. Therefore, at this point of time it will
 not be possible to implement the CAT's order dated 22.1.99
 until and unless CAT gives direction as to which of these two
 orders should be implemented.

Sincerely yours,

[Signature]
 (B. THAMAR)
 JOINT COMMISSIONER (P&V)
 CUSTOMS & CENTRAL EXCISE
SHILLONG.

*Shri M. Chanda
 Advocate*

- 26 -

RECEIVED
24/9/99

OFFICE OF THE
ASSISTANT COMMISSIONER
OF CENTRAL EXCISE

14 SEP 1999

Annexure - 6

SI. NO.
DIBRUGARH

To
The Commissioner,
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 .

Reference: C.NO.II(34)10/ET-1/93/34703-44 dt.20.08.99
of the Joint Commissioner(P&V),Customs &
Central Excise,Shillong.

Most respectfully I beg to lay before your benignself 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 dated 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 01.07.99 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 22.01.1999 in O/A Nos.101/95,147/95 & 171/95 .

That Sir,principles regarding fixation of seniority of Inspectors appointed before 01.03.1986 of this commissionate has already been decided by the Hon'ble CAT,Guwahati Bench on 22.01.99 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 22.12.59 should be adhered to for the period for which the particulars O.M. was in force .

That Sir, the applicant is an Inspector of this Commissionate & appointed in the grade of Inspector in the year 1982. My seniority was always fixed upto the period of 01.01.93 following the principles laid down in O.M. NO. 9/11/55-RPS dated 22.12.59 issued by the Departmental of personal & Training ,Ministry of Home Affairs,New Delhi. .

That Sir, In view of above, the seniority list of Inspectors as on 01.07.99 published and circulated under C.NO.II(34)10/ET-1/93/34703-44 dated 20.08.99 by the Joint Commissioner(P&V)Customs & Central Excise,Shillong is not acceptable to me .

contd...p/2

I would, therefore, request your honour to implement the Order dated 22.01.99 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 01.01.93 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 SEPTEMBER, 1999

Yours faithfully,

Jyoti
(DEBAJYOTI MISRA)
INSPECTOR,
CENTRAL EXCISE,
DIBRUGARH.

Annexure - 7

From :- M.Chanda
Advocate
Guwahati High Court
By lane-7, Lachit Nagar,
Guwahati- 781 0017.

Guwahati
Dated 11th Nov, 1999

To,

The Chairman
Central Board of Excise & Customs.
Ministry of Finance
Dept. of Revenue
New-Delhi.

Sub :- Implementation of CAT, Guwahati Bench order dated 22-01-99 passed in O.A. Nos. 101/95 147/95 and 171/95 filed by J.L. Bhowmick and ORS.

Sir,

The misc. petition filed by the commissioner , central excise , Shilling has long since been dismissed by the Hon'ble CAT. The order dated 22-01-99 is based on the latest decisions of the Hon'ble Supreme Court on fixation of seniority of direct recruits and promotees . The seniority of inspectors appointed before 01-03-86 has been fixed on the principal of O.M. dated 22-12-59 and their position also confirmed .

In this connection it is stated that when two Judgements are delivered on the same issue , the subsequent and the latest judgement should be relied upon by the Departmental Authority.

Department has already taken a considerable time for implementation of the latest order and judgement dated 22-01-99 . commissioner central excise , Shillong be directed for immediate compliance of the judgement dated 22-01-99.

Yours Sincerely

(Signature)

M.CHANDA
Advocate.

To

The Commissioner,
Central Excise
Shillong.

OFFICE OF THE
ASSISTANT COMMISSIONER
OF CENTRAL EXCISE

1 FEB

D. B. D. -
DIBRUGARH

(Through proper channel)

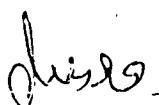
Sir,

Subject : Re-fixation of seniority of Inspector appointed before 01/03/86 - Implementation of the order dt. 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, 30.8.99 and 14.9.99 on the above subject.

In this connection I would request your benignself to implement the judgement dt. 22.1.99 passed by the Hon'ble CAT, Guwahati in O/A Nos. 101/95, 147/95 and 171/95 at an early date.

Yours faithfully,



(DEBAJYOTI MISRA)

INSPECTOR
CENTRAL EXCISE : DIBRUGARH

C.No. II(29)8/ET/PL/ACD/96/272

Dated : 1.2.2000

Forwarded to the Commissioner, Central Excise, Shillong for favour of information and necessary action.

(M.C.HAZARIKA)
ASSISTANT COMMISSIONER
CENTRAL EXCISE :: DIBRUGARH

