

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.209/2012

This the 21st day of July, 2016

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K. N. Shrivastava, Member (A)**

Govind Krishna Dixit S/o Dr. Ram Krishna Dixit,
R/o L-42 Kalkaji, New Delhi-110019

Presently working as
Additional Director (Infrastructure & Welfare),
Directorate General, Human Resources Development,
Plot No.C-4, West Wing, Ground Floor, IRCON Building,
Saket, New Delhi-110017. ... Applicant

(By Advocate: Shri A. K. Behera with Shri Sridhar Nayak and Shri
Amar Pandey)

Versus

1. Union of India through Secretary,
Department of Revenue,
Ministry of Finance, North Block,
New Delhi-110001.
2. Secretary,
Department of Personnel and Training
(Establishment Wing), North Block,
New Delhi-110001.
3. Establishment Officer to the Government of India,
Department of Personnel and Training,
North Block,
New Delhi-110001.
4. Chairman,
Central Board of Excise and Customs,
Department of Revenue,
Ministry of Finance, North Block,
New Delhi-110001.

5. Director General,
 Human Resources Development,
 Central Board of Excise and Customs,
 5th Floor, Drum Shaped Building,
 IP Estate, New Delhi-110002. ... Respondents

(By Advocate : Shri R. N. Singh and Shri Amit Sinha for Shri R. V. Sinha)

O R D E R

Justice Permod Kohli, Chairman :

The applicant on qualifying Civil Services Examination, 1988 was appointed to the Grade-VI (Assistant Commissioner) of the Indian Customs and Central Excise Service on 21.08.1989, and later promoted to the Grade-V of the Service (Deputy Commissioner) on 21.08.1993. The recruitment and promotion etc. in the Service are governed and regulated by the "Indian Customs and Central Excise Service Group 'A' Rules, 1987" as amended in 1992, 1993, 1998 and 2004, and notified vide notification No.G.S.E.794:(E) dated 17.09.1987. Hierarchy of the Service is indicated in Schedule-I appended to the aforesaid Rules, which is reproduced hereunder:

Sl. No.	Grade of the Post	Number of posts	Scale of pay
1.	Grade I - Chief Commissioner of Customs and Central Excise	47	Rs.22400-525-24500/-
2.	Grade II - (Senior Administrative Grade) Commissioner of Customs and Central Excise	288	Rs.18400-500-22400/-
3.	Grade III - Non-Functional Selection Grade of Junior Administrative Grade - Additional Commissioner of Customs and Central Excise	300	Rs.14300-400-18300/-
4.	Grade IV - (Junior Administrative Grade) Joint	276	Rs.12000-375-16500/-

	Commissioner of Customs and Central Excise		
5.	Grade V - (Senior Time Scale) Deputy Commissioner of Customs and Central Excise	601	Rs.10000-325-15200/-
6.	Grade VI - (Junior Time Scale) Assistant Commissioner of Customs and Central Excise	790	Rs.8000-275-13500/-
7.	(i) Deputation Reserve (ii) Leave Reserve (iii) Training Reserve (iv) Probationary Reserve	NIL	Rs.8000-275-13500/-

The next promotion is to Grade-IV (Junior Administrative Grade) Joint Commissioner of Customs and Central Excise. The eligibility criteria for such promotion as contained in rule 20, reads as under:

“20. Appointment to Grade IV of Service:-

- (1) Appointment to Grade IV of the Service shall be made by promotion on the principle of selection of officers in Grade V of the Service.
- (2) Officers with a minimum of 5 years regular service in the Grade V, failing which 9 years' combined regular service in the Grades V and VI taken together shall be eligible for promotion to Grade IV."

The applicant having completed five years' service in Grade-V in 1998 became eligible for promotion to Grade-IV in January, 1999 against the vacancies for the year 1999-2000. No DPC was held for the vacancies for the years 1999-2000 and 2000-01. A DPC was held in 2002 to consider the vacancies for the years 1999-2000 and 2000-01.

2. On 26.07.2002, the Central Government formulated a new policy/scheme of "Partial Funding of Foreign study" (Annexure A-

5). The eligibility conditions are notified in the said policy at para 1 thereof. Relevant conditions of eligibility are reproduced hereunder:

- “i. All Group ‘A’ officers of the Government of India are eligible to apply under this scheme;
- xxx xxx xxx
- iv. An officer can avail the benefit of this scheme only once in his/her entire career;
- v. An officer who has availed of study leave in the past will also be eligible for benefit under this scheme.”

Apart from the eligibility conditions referred to above, there are other conditions contained in para-V. The relevant condition for purposes of the present Application is condition V(i), which is reproduced hereunder:

- “(i) An officer selected for partial funding will be treated as “on duty” for the first year of study. However, he/she will not be entitled for any TA/DA. Only the period in excess of one year would be treated as on leave as may be due and admissible to the officer.”

The applicant being a Group ‘A’ officer of the Government of India was eligible under the conditions of eligibility referred to above, and opted for study leave under the aforementioned partial funding of the Government of India. His request was accepted and vide order No.34/2002 dated 23.08.2002, sanction of the President was accorded to the deputation of the applicant for course in “Master of International Policy and Practice” Programme at Elliot School of

International Affairs of the George Washington University, Washington D.C., USA for one year commencing from 03.09.2002. His period of study leave was sanctioned w.e.f. 03.09.2002 to 02.09.2003, excluding journey time etc. Condition 3(i) of the sanction order further provided for treating his period of study leave as on duty. The said condition reads as under:

“i) The officer will be treated as ‘on duty’ for the first year of the study. However, he will not be entitled for any TA/DA. Only the period in excess of one year would be treated as on leave as may be due and admissible to the officer;”

3. Since the applicant was eligible for promotion from Grade-V to Grade-IV, he was considered by the DPC along with other eligible candidates for promotion as Joint Commissioner of Customs and Central Excise (Grade-IV) against the vacancies for the year 1999-2000 and 2000-01. On the recommendations of the DPC he was promoted as Joint Commissioner of Customs and Central Excise on *ad hoc* basis in the pay scale of Rs.12000-375-16500 vide order No.142 of 2002 dated 24.09.2002. His name figured at serial number 5 of the promotion list (Annexure A-9). Shri J. S. Chandrasekhar and Shri Rajesh Nandan Srivastava were also promoted along with the applicant at serial numbers 13 and 245 respectively. Both these officers had also opted for partial funding of foreign study under the abovementioned scheme. On their promotion, the applicant as also

the above named two officers submitted their charge assumption reports in the grade of Joint Commissioner w.e.f. 24.09.2002, since they were on duty under the policy of the Government and their promotion being *in situ* in nature. Their charge assumption reports were accepted and they were also paid salary attached to the post of Joint Commissioner w.e.f. 24.09.2002, i.e., the date of assumption of charge. These averments have been specifically made in paras 4.20 to 4.22 of the OA, and admitted in the counter reply filed by the respondents.

4. A civil list was published in the year 2006. It is stated that the civil list itself is the seniority list as no separate seniority list is notified in the Customs and Central Excise Department. The applicant is shown at serial number 94, whereas J. S. Chandrasekhar is shown at serial number 102 of the said civil list. The date of promotion as Joint Commissioner of the applicant is shown as 24.09.2002 and that of J. S. Chandrasekhar as 01.11.2002. In the subsequent civil lists also published in the years 2008 and 2009, the dates of appointment as Joint Commissioner (Grade-IV) of the applicant and J. S. Chandrasekhar are shown as 24.09.2002 and 01.11.2002 respectively. The respondents issued notification dated 17.03.2003 for grant of Non Functional Selection Grade (NFSG) of Rs.14300-400-18300 in the Junior Administrative Grade to various

officers of Customs and Central Excise Group 'A' Service. This is a promotion to Grade-III under the recruitment rules as Additional Commissioner, and is governed by rule 21 of the recruitment rules.

The said rule is reproduced hereunder:

"21. Appointment to Grade III of Service:-

(Non-functional Selection Grade of the Service): 30 percent of the senior duty posts shall be operated in the Grade III of Service, which is Non-functional selection grade (Rs.14300-400-18300) of Junior Administrative Grade of the Service, and appointment to these posts shall be by promotion on the basis of seniority based on suitability taking into account the overall performance, experience and any other related matter:

Provided that no officer shall be appointed to the selection grade unless he has been appointed to Grade IV of Service to the post of Joint Commissioner of Customs and Central Excise and has entered the 14th year in that Service on the 1st July of the year calculated from the year following the year of examination on the basis of which he was recruited.

Provided further that inter-se seniority of officers in Grade IV shall not be changed as a result of their appointment to the Non-Functional Selection Grade."

From a perusal of the rule, it appears that no minimum qualifying service is required for promotion from Grade-IV to Grade-III. The only requirement is a combined 13 years' service, and a person who has entered 14th year of service on the 1st July of the year to be calculated from the year following the year of examination, is eligible

for appointment to Grade-III of the Service. Since the applicant had acquired the eligibility and had more than 13 years of service in Group 'A' from 1st July of the year of examination, i.e., 1988, he acquired eligibility for promotion to Grade-III (Additional Commissioner). While promoting the Joint Commissioners from Grade-IV to Grade-III vide notification dated 17.03.2003, the applicant was not considered. It is specifically alleged by the applicant that promotes from serial number 94 (K. Anpazhakhan) onwards were all juniors to him. It is pertinent to mention that when promotions were made on 17.03.2003, the applicant was still on foreign study under the aforesaid scheme and was deemed to be on duty even on the date of such promotion, as his study leave had to expire on 02.09.2003 (one year).

5. It is admitted case of the applicant that he overstayed the study leave and returned back to India on 21.08.2009. He was, however, allowed to join duties. The applicant overstayed on leave for a period of about six years. In the meantime, next promotion to the Grade-II, i.e., Commissioner Customs and Central Excise also took place on 25.03.2010. The applicant was again not considered. The applicant made a representation dated 17.06.2010. On consideration of this representation, Under Secretary to the Government of India, Ministry of Finance, Department of Revenue,

vide letter dated 30.06.2010 asked the Commissioner of Customs (I&G) to look into the matter as the officer (the applicant) had overstayed leave and had also received salary in the grade of Joint Commissioner from 24.09.2002 till February, 2005, even when he was on study leave/deputation w.e.f. 03.09.2002 up to 02.09.2003 under the partial funding scheme of the Government of India. The letter further noted that the applicant re-joined on 21.08.2009 and under the office order No.142/2002 dated 24.09.2002 his promotion to the grade of Joint Commissioner became effective from 21.08.2009 only. From the text and tenor of this letter, it appears that not only the representation of the applicant for promotion to Grade-II has been declined, but action is also suggested against him for overstaying the period of leave and for receiving salary without working on the post. On account of prompting vide the aforesaid letter dated 30.06.2010, a charge memo No.23/2010 dated 12.08.2010 was issued to the applicant for initiation of disciplinary proceedings under rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965.

6. The applicant filed the present OA on 03.01.2012 seeking the following reliefs:

“In view of the facts mentioned in para 4 and the grounds stated in para 5 above the applicant prays that this Hon’ble Tribunal may be pleased to direct the respondents that

- (a) the applicant has been duly appointed to Grade IV of the Service (Joint Commissioner) with effect from 24.09.2002 with all consequential benefits, including pay and seniority,
- (b) the applicant is deemed to have been granted study leave from 3.9.2003 to September 2004 and is deemed to have been sanctioned leave of the kind due and admissible from October 2004 onwards,
- (c) the applicant be appointed to Grade II of the Service (Additional Commissioner) with effect from 1.11.2002, the date from which his juniors were appointed to the Grade, with all consequential benefits, including those for the purposes of fixation, including those for the purposes of fixation of pay,
- (d) the applicant be considered for promotion to Grade II of the Service (Commissioner) by a review Departmental Promotion Committee held in March 2010 and if found fit he shall be promoted from the date his immediate junior was promoted to that grade, with all consequential benefits including the benefit of pay and seniority in that grade,
- (e) award cost of these proceedings to the applicant,
- (f) pass such other order or direction as may be considered appropriate in view of the facts and circumstances of the case."

7. While issuing notice, the Tribunal stayed the recovery proceedings against the applicant vide order dated 20.01.2012. The said order reads as under:

"Issue notice to the respondents returnable on 6.02.2012. Meanwhile, recovery is stayed. Process 'Dasti'."

The interim order is continuing till date.

8. The disciplinary proceedings against the applicant commenced vide memorandum dated 12.08.2010 have continued. Learned counsel appearing for the parties have admitted during the course of arguments that the inquiry officer has already submitted his report and the matter is under consideration of the disciplinary authority.

9. Mr. A. K. Behera, learned counsel for the applicant has strenuously argued that the applicant is entitled to be promoted from Grade-IV to Grade-III and from Grade-III to Grade-II with effect from the dates his juniors were so promoted. To support his contention he has relied upon rule 24 of the Recruitment Rules. The said rule is reproduced hereunder:

“24. Senior not to be ignored for consideration in promotion if junior is to be considered:

Where juniors who have completed their qualifying/eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of the requisite qualifying/eligibility service for more than half of such qualifying/eligibility service or two years, whichever is less and have successfully completed their probation period for promotion to the next higher grade along with their juniors who have already completed such qualifying/eligibility service.”

On the strength of the mandate contained in the aforesaid rule, it is stated that the juniors having been promoted, the applicant cannot be denied promotion to the higher grades, as a specific right has been

conferred by virtue of the aforesaid statutory rule. Admittedly, persons junior to the applicant have been promoted from Grade-IV to Grade-III vide notification dated 17.03.2003 and from Grade-III to Grade-II vide order dated 25.03.2010.

10. Mr. R. N. Singh, learned counsel appearing for the respondents has opposed the prayer of the applicant. Referring to the promotion order dated 24.09.2002 (Annexure A-9), he has submitted that on account of conditions attached to the promotion order, the applicant was entitled to be promoted only on return from the study leave on joining the parent department. He has heavily relied upon clause 6 of the said promotion order, which reads as under:

“6. The *ad-hoc* promotion of the above mentioned Officers, except for those on deputation, shall be on *in situ* basis. The *ad-hoc* promotion of officers on deputation/study leave shall be effective from the date they return to the parent department.”

11. It is, however, not disputed that Mr. J. S. Chandrasekhar who was also on foreign study leave and promoted along with the applicant vide the same promotion order dated 24.09.2002 as Joint Commissioner at serial number 13, has been granted the benefit of promotion as Joint Commissioner while he was on study leave w.e.f. 01.11.2002, and the applicant was also granted benefit of promotion w.e.f. 24.09.2002, as both the officers had assumed charge on the said

dates. The condition in the promotion order seems to be contrary to the scheme which *inter alia* clearly provides that first year of the study leave would be deemed to be as on duty. A similar condition has been incorporated in the sanction order dated 23.08.2002 when the applicant's study leave was sanctioned, as referred to hereinabove. Thus, at least for one year from the date of study leave which commenced on 03.09.2002 up to 02.09.2003, the applicant was deemed to be on duty. He earned promotion vide order dated 24.09.2002 while on study leave, but deemed as on duty. Similar is the situation with J. S. Chandrasekhar and Rajesh Nandan Srivastava. In the various civil lists, right from 2006 to 2009, the applicant and J. S. Chandrasekhar have been shown as Joint Commissioners with their seniority in the said Grade-IV. Admittedly, they were also given pay scale of the post of Joint Commissioner (Grade-IV) all along. Even when promotion from Grade-IV to Grade-III was made on 17.03.2003 during the first year of the study leave of the applicant, he was deemed to be on duty. Persons junior to him were promoted from serial number 94 onwards, but the applicant was not considered for such promotion. Rule 24 of the Recruitment Rules clearly provides for promotion of seniors if juniors are so promoted. Thus, the mandate of the rule has to be adhered to. As on 17.03.2003 the applicant was within first year of study leave, and eligible for promotion from Grade-IV to Grade-III as Additional Commissioner.

His juniors having been so promoted, he cannot be denied promotion merely on the ground that there was a stipulation in the promotion order that the promotion of officers on deputation/study leave would be effective from the date they return to the parent department. When the promotion order was passed, they being treated on duty, their lien was with the parent department and thus, the respondents also understood the stipulation in that sense and allowed them to join promotional post and granted them pay scale of Joint Commissioner, and also included them in the seniority/civil list published in the years 2006, 2008 and 2009. By virtue of the mandate of rule 24, the applicant cannot be denied promotion from Grade-IV to Grade-III as the second promotion also falls within a period of one year, i.e., before expiry of his foreign study leave, which had expired on 02.09.2003.

12. As regards the prayer of the applicant that he may also be considered for further promotion from Grade-III to Grade-II, the prayer cannot be granted. Promotion to Grade-II was made on 25.03.2010. The applicant had overstayed the study leave during that period. The benefit of duty could only be accorded to him for a period of one year from the commencement of the study leave, i.e., from 03.09.2002 to 02.09.2003 and thereafter he is not to be treated as on duty, particularly when he has overstayed the leave and has been

proceeded against in disciplinary proceedings for unauthorized absence, and thereafter he has suffered a charge-sheet on 12.08.2010.

13. In the above circumstances, the applicant is found entitled to relief under prayer (a) and prayer (c). He is deemed to be validly promoted from Grade-V to Grade-IV w.e.f. 24.09.2002. He is also entitled to promotion from Grade-IV to Grade-III w.e.f. 17.03.2003, when his juniors from serial number 94 onwards of the said promotion order were promoted. However, he is not entitled to further promotions from Grade-III to Grade-II onwards, for the reason that he was absent from duty and could not have been considered for promotion even on the strength of rule 24 of the Recruitment Rules. The said rule has application only if a member of the Service is working. An absentee member of the Service is not entitled to claim the benefit of promotion from the date of promotion of his juniors under the said rule. It would be an absurd proposition of law. With effect from 12.08.2010, the applicant having suffered a charge-sheet, he can only be considered for promotion by sealed cover procedure to be opened on termination of the disciplinary proceedings. We are not aware of the fact whether sealed cover procedure has been adopted or not. Be that as it may, no such direction can be issued in view of the pendency of the disciplinary proceedings against the applicant.

14. This Application is accordingly partially allowed with the following directions:

- (i) The applicant is declared to have validly promoted from Grade-V to Grade-IV as Joint Commissioner of Customs and Central Excise vide order No.142/2002 dated 24.09.2002.
- (ii) The non-consideration of the applicant for further promotion from Grade-IV to Grade-III as NFSG (Additional Commissioner of Customs and Central Excise) with effect from the date his juniors were promoted being violative of his rights under Articles 14 and 16 of the Constitution, he is entitled to be considered for promotion to Grade-III (Additional Commissioner of Customs and Central Excise) having completed 13 years of service and entered 14th years with effect from the 1st July following the year of examination, in terms of rule 21 of the Recruitment Rules. The respondents are accordingly directed to hold a review DPC for consideration of the applicant for promotion to Grade-III of the Service with effect from the date his juniors were promoted, within a period of two months, and depending upon the recommendations of the review DPC,

consequential order be passed within a period of one month thereafter.

(iii) The prayer of the applicant for further promotion from Grade-III to Grade-II and Grade-II to Grade-I is rejected.

The OA is dismissed to that extent.

(K. N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

/as/