

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH: HYDERABAD**

**Original Application Nos. 020/808/2018 & 021/1016/2018**

**Reserved on: 13.03.2019**

**Pronounced on: 05.04.2019**

**OA No.020/808/2018**

Between:

Bokka Sukumar, S/o. Israel,  
Aged 42 years, Occ: Inspector of Central Tax & Customs  
(Group B Non-Gaz), O/o. Superintendent of Customs & Central Tax,  
Suryarao Peta GST Range, Vijayawada Division,  
Vijayawada, Krishna District, AP.

... Applicant

And

1. Union of India, rep. by  
The Secretary, Ministry of Finance,  
Department of Revenue,  
North Block, New Delhi – 110 001.
2. The Chairman, Central Board of Excise and Customs,  
North Block, New Delhi – 110 001.
3. The Chief Commissioner of Customs & Central Tax,  
Hyderabad Zone, GST Bhavan, Basheerbagh, Hyderabad.
4. The Principal Commissioner,  
Central Taxes, Hyderabad Commissionerate,  
GST Bhavan, Basheerbagh, Hyderabad.
5. Additional Commissioner (P&V),  
O/o. The Principal Commissioner,  
Central Taxes, Hyderabad Commissionerate,  
GST Bhavan, Basheerbagh, Hyderabad.

... Respondents

Counsel for the Applicant ... Mr. K.R.K.V. Prasad

Counsel for the Respondents ... Mr. R.V. Mallikarjuna Rao, Sr. PC for CG

**OA No.021/1016/2018**

Between:

Krishna Murthy R.V., S/o. R. Srimannarayana,  
Aged 40 years, Occ: Inspector of Central Tax & Customs

(Group B Non-Gaz), O/o. The Commissioner of Central Tax & Customs, Audit-I Commissionerate, GST Bhavan, Basheerbagh, Hyderabad – 500 004, Telangana State.

... Applicant

And

1. Union of India, rep. by  
The Secretary, Ministry of Finance,  
Department of Revenue,  
North Block, New Delhi – 110 001.
2. The Chairman, Central Board of Excise and Customs,  
North Block, New Delhi – 110 001.
3. The Chief Commissioner of Customs & Central Tax,  
Hyderabad Zone, GST Bhavan, Basheerbagh, Hyderabad.
4. The Principal Commissioner,  
Central Taxes, Hyderabad Commissionerate,  
GST Bhavan, Basheerbagh, Hyderabad.
5. Additional Commissioner (P&V),  
O/o. The Principal Commissioner,  
Central Taxes, Hyderabad Commissionerate,  
GST Bhavan, Basheerbagh, Hyderabad.

... Respondents

Counsel for the Applicant ... Mr. K.R.K.V. Prasad

Counsel for the Respondents ... Mrs. L. Pranathi Reddy, Addl. CGSC

***CORAM:***

***Hon'ble Mr. Justice R. Kantha Rao, Member (Judl)***

***Hon'ble Mr. B.V. Sudhakar, Member (Admn.)***

***ORDER***

***{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }***

2. The OAs have been filed for not promoting the applicants on adhoc basis as Superintendent on par with their juniors. As the applicants are seeking similar relief in these OAs from the same respondents, a common order is passed.

3(i) Facts of the case in OA 808/2018 are as follows:

Applicant is a direct recruit Inspector, Central Taxes who was selected in 2009 by the Staff Selection Commission (“SSC” for brevity) against notification issued in the year 2006. On being selected applicant reported for duty to

Hyderabad Zone on 5.4.2010 as per orders of the respondents dt 9.3.2010. The SSC (Staff Selection Commission) allots a rank to each of the selected candidate which indicates the merit status of the candidate. Respondents have called the less meritorious candidates earlier and therefore, they joined the post earlier to the applicant. Having followed this procedure respondents have drawn up a draft seniority list on 26.8.2014 which is not as per the merit list of the Staff Selection Commission. Consequently less meritorious candidates were shown senior to the applicant forcing the applicant to represent on 11.9.2014 to show his name at Sl. 597 above the candidates less meritorious than him on the ground that seniority of direct recruit is determined based on merit in the select list issued by SSC and not as per the date of joining.

An Inspector who has put in 8 years of service is eligible to be promoted as Superintendent. However, there being an ongoing litigation in regard to inter-se seniority amongst promotee inspectors, DPC for promotion to Supdt. cadre was not held from 2015 onwards. To resolve the issue a meeting was conducted by the 3<sup>rd</sup> respondent on 13.3.2018 wherein it was decided that inspectors who are senior as per SSC ranking would be considered with respect to their juniors who have completed the prescribed qualifying service. Thereafter 4<sup>th</sup> respondent issued a letter convening DPC for promotion to Supdt. cadre for the vacancies of 2016-17, 2017-18 and 2018 by enclosing a list of Inspectors who completed 8 years of service. In that list, applicant name did figure but DPC was not held. As the DPC was not held some of the Direct recruit Inspectors approached this Tribunal in OA 704/2017 wherein it was directed to conduct DPC and cause promotions. Accordingly 5<sup>th</sup> respondent conducted DPC for promotion on adhoc basis to Supdt. Cadre on 8/9.8.2018, enclosing the eligibility list wherein the name of the applicant was shown at Sl.No. 29. Applicant represented to

consider his candidature on par with his juniors of SSC 2006 batch citing Chennai Zone orders promoting 2006 batch inspectors. 4<sup>th</sup> respondent issued orders of promotion vide Establishment Order No.46 of 2018 on 10.8.2018 wherein the applicant name did not figure. Many juniors to the applicant from the direct recruit and promotee cadre of inspectors were promoted. Such promotions are in contravention of DOPT office memorandum dt 25.3.1996 which provides for promotion of seniors. This proviso along with the length of service in inspector cadre being reduced to 3 years were also incorporated in the Draft Recruitment rules approved by the 2<sup>nd</sup> respondent circulated vide lr dt 12.5.2016. With different provisions being in his favour and yet not being granted promotion has led to filing of the OA.

(ii) Facts relating to the applicant in OA No. 1016/2018 are that, he is a direct recruit Inspector, Central Taxes who was selected in 2011 by the *SSC* against notification issued in the year 2008. On being selected applicant reported for duty to Hyderabad Zone on 25.08.2011. Respondents have drawn up a draft seniority list of direct recruit Inspectors and the Promotees as on 01.01.2014 showing the promotee Inspectors promoted from the feeder cadre of UDC/DEOs as Inspectors below the applicant and the applicant is shown at Sl. No. 753. An Inspector who has put in 8 years of service is eligible to be promoted as Superintendent. However, there being an ongoing litigation in regard to inter-se seniority amongst promotee inspectors, DPC for promotion to Supdt. cadre was not held from 2015 onwards and the seniority positions remain as it is. On coming to know that a decision to promote some of his juniors was circulated on 01.08.2018, the applicant submitted representation on 09.08.2018. However, in the DPC held subsequently, none of his juniors were promoted. Subsequently, once again, a list of eligible Inspectors was circulated on 27.09.2018 which did

not contain his name and therefore, he submitted a representation on 10.10.2018, inter alia, mentioning that in terms of DOPT OM dt. 25.03.1996, whenever a junior is considered for promotion, their seniors should also be considered provided they are not short of requisite qualifying service by more than half of such qualifying service / eligibility service or two years whichever is less. The applicant has completed 7 years 1 month qualifying service and as such, he is eligible for promotion. Therefore, applicant has filed the OA.

4. The contentions of the applicant in OA 808/2018 are that DOPT Memo dt 25.3.1996 is in his favour. Pre-amended Recruitment Rule has incorporated the clause of promoting the senior contained in OM dt 25.3.1996 of DOPT. Further as on the date of DPC proceedings ie 10.8.2018, applicant has 8 years of required service in Inspector cadre and that there are vacancies to consider his case. The cut off date of 1.4.2018 is of no relevance as promotions to the cadre of Supdt. were not regularly conducted year wise by the respondents. Besides, respondents showing the name of the applicant in the eligibility list drawn on 1.8.2018 but denying promotion is irregular. In fact as per rule the ratio decided for promotion from the direct and promote cadre is 2:1 and accordingly 98 direct recruits and 50 promotees are to be promoted whereas 43 direct recruits and 105 promotee inspectors were promoted. Applicant, being an SC officer, has also expressed the apprehension as to whether roster was followed in ordering the promotion. In Chennai zone following DOPT OM cited, orders of promotion were issued. Principle of senior being promoted has been violated. DOPT memo states that the seniority of Direct recruit will be decided as per the order of merit issued by the selecting authority. Applicant has cited OA 3405/2014 before Honourable Principal Bench of this Tribunal supporting his contention.

Coming to the applicant in OA 1016/2018, his main contentions are that the pre-amended recruitment rules for promotion to Superintendent has to be reckoned in principle. Amending the recruitment rule is a matter of formality. DOPT memo dt. 25.03.1996 is in his favour. Principle of seniority has to be respected in promotions. Learned counsel for the applicant asserts that fixing a cut off date to work out the length of service lacks sanctity since promotions were not granted since last two years. Hon'ble Principal Bench decision in OA No. 3405/2014 supports his contention. Respondents declining to grant him promotion is arbitrary and is violative of Articles 14 & 16 of the Constitution.

5. Respondents inform that based on the orders of this Tribunal in MA 467/2018 of OA 1225/2016 they conducted DPC for promotion to the cadre of Superintendent of GST, Central Tax & Customs, Group B Gazetted on adhoc basis. In the absence of a finalised seniority list, the condition of 8 years of residency period in Inspector cadre was considered for promotion as per Supdt. of Central Exercise Rules, 1986 and the date of joining to count the length of service in accordance with DOPT memo dt 8.5.2017. Roster was followed in ordering the promotion of 111 (UR), SC (24) and ST (13) Inspectors. Further, in view of the pending litigation in OA 1225/2016 in regard to seniority, final seniority list will be decided based on the outcome in the cited OA. Applicants are falling short of the required service of 8 years in Inspector cadre and therefore were not considered for promotion. The question of senior junior does not apply for promotion to the cadre of promotion of Supdt. Mere seniority will not do unless other conditions are satisfied to get promoted. Rect. Rules do not provide for any provision to relax the residency period. DOPT Memo. dt 25.3.1996 cannot be invoked unless recruitment rules are modified. Draft recruitment rules with the changes unless notified in the Gazette of India will not

come into force. Incidentally, in OA 1016/2018 respondents admitted that Recruitment Rules 1986 for promotion to the cadre of Superintendent have been modified on 13.12.2018 incorporating the provision of promotion of senior as stated in DOPT OM dt. 25.03.1996. However, the said amendment would not come to the rescue of the applicants since their final seniority has not yet been drawn up in view of pending litigation. The delay in conducting DPC was because of pending litigation since 2016 and only when permitted by this Tribunal in MA 467 of 2018 the process of promotion was initiated on 9/10.8.2018. Respondents also intimate that on receipt of orders allocating Inspectors to zones, antecedents of the candidates had to be verified after completing the Physical Endurance Test and medical examination. Only after clearance of the antecedents of the applicant by the concerned authorities the applicant in OA 808/2018 was directed to join on 9.3.2010 and the applicant joined on 5.4.2010. There was no delay on their behalf in this regard. In regard to OA 3405/2014 of Hon'ble Principal Bench of this Tribunal there are no orders from the Board to implement the judgment.

6. After hearing both the counsel we have gone through the documents and material papers submitted in detail.

7. As seen from the records the applicants fell short of 8 years of service to be considered for promotion as Supdt. Respondents claim that in the absence of final seniority list due to pending litigation they have taken the residency period of 8 years in the feeder cadre of Inspector in ordering the promotions. In the process juniors to the applicants were promoted. It needs no reiteration that it is a well established principle of Service law that seniority has to be considered in ordering promotion. In regard to seniority the following need to be answered to arrive at a fair and just decision.

i) What are the norms to be followed to fix seniority?

Orders of the Govt. of India in OMs namely MHA OM No. 9/11/55-RPS dated 22.12.59, No.35014/2/80-Estt. (D) dated 7.2.1986, No.22011/7/86-Estt (D), dated 3.7.1986, No.20011/5/90-Estt (D), dt.4.11.1992 and No.20011/1/2006-Estt (D) dt.3.3.2008 clarify different issues pertaining to seniority of direct recruits and promotees.

One such clarification relates to seniority of direct recruits which reads as under:

*"The relative seniority of all direct recruits is determined by the order of merit in which they are selected for such appointment on the recommendations of the UPSC or other selecting authority, persons appointed as a result of an earlier selection being senior to those appointed as a result of subsequent selection. The relative seniority that used to be determined earlier according to the date of confirmation and not the original order of merit, (in case where confirmation was in an order different from the order of merit indicated at the time of their appointment), in accordance with the general principles of seniority, has been discontinued w.e.f. 4.11.1992 (OM No. 20011/5/90-Estt. (D) dated 4.11.1992). The general principles of seniority therefore stands modified to that extent."*

As per the above clarification the seniority of the applicant has to be fixed as per his rank in the select list of the respective batch issued by the Staff Selection Commission. If done, applicants will rank senior and they have to be considered. The assertion of the respondents that seniority is irrelevant does not stand to logic in view of the well settled law in considering employees for promotion.

ii) Corollary to the first question is what is the legal position in regard to seniority?

Honourable Supreme Court in ***Bal Kishan v. Delhi Admn., 1989 Supp (2)***

**SCC 351** has held as under:-

*9. In service, there could be only one norm for confirmation or promotion of persons belonging to the same cadre. No junior shall be confirmed or promoted without considering the case of his senior. Any deviation from this principle will have demoralising effect in service apart from being contrary to Article 16(1) of the Constitution.*

Respondents are now following a draft seniority list. Even as per this seniority list the applicants rank senior than those juniors who have been promoted. Therefore, the respondents decision is violative of the Hon'ble Supreme Court decision cited above. It needs no reiteration that Hon'ble Supreme Court observations are binding.

iii) Respondents have claimed that the issue of seniority is of no consequence since they are considering regular service of 8 years in Inspector cadre for promotion to Supdt. Grade. The question that would then arise is as to how do you define regular service in legal parlance?

An apt answer is found in the Hon'ble Supreme Court observation in ***Union of India v. K.B. Rajoria, (2000) 3 SCC 562***, wherein Hon'ble Apex Court had occasion to deal with the term, 'regular' and it came to the conclusion that as long as an appointment is not irregular, the same is regular. The following is the relevant observation of the Apex Court in this regard:

*10. Finally, while considering the definition of the word "regular" in the Concise Oxford Dictionary, 9th Edn., the High Court noted that it meant:*

*"(1) conforming to a rule or principle; systematic. (2) harmonious, symmetrical. (3) acting or done or recurring uniformly or calculably in time or manner; habitual, constant, orderly. (4) conforming to a standard of etiquette or procedure; correct; according to convention. (5)*

*properly constituted or qualified; not defective or amateur; pursuing an occupation as one's main pursuit."*

11. The word "regular" therefore does not mean "actual" and the first question the High Court should have considered was whether the appointment of Krishnamoorti was regular and in accordance with the Rules or it was irregular in the sense that it was contrary to any principle of law.

Applicants in the present case were appointed on a regular basis and therefore their regular service does not mean the actual service. It is beyond that. In other words, the notional seniority calculated from the year of selection. Hence the respondents are on a weak wicket in considering service rendered per se. In the given circumstances the parameter that had to be relied upon was the draft seniority list according to which applicants rank senior. Therefore the stand of the respondents that seniority need not be given credence loses all the sheen it has. Seniority is an essential factor which plays a paramount role in promotions. Therefore the concepts like seniority cum merit and merit cum seniority have come into vogue which have been dealt at length in service jurisprudence. Therefore it cannot be brazenly ignored.

iv) Being on the subject of seniority the question that follows is as to whether DOPT instruction dt 25.3.1996 will have primacy over Recruitment rules of Supdt?

An elaborate answer is found to this question in the judgment of Hon'ble Principal Bench in OA 3405/2014, wherein it was decided that DOPT letter cited has a statutory flavour.

The relevant para of the OM dt.25.3.1996 is extracted hereunder for better appreciation of the issue in the context of the verdict delivered by the Hon'ble

Principal Bench of this Tribunal.

*"In the light of the Supreme Court judgment in R. Prabhadevi Vs. Govt of India and Others in CA Nos. 2040-42 of 1987 decided on March 8, 1988 on the judgment and order dated February 11, 1986 of the Central Administrative Tribunal, New Delhi and in continuation of OM of even number dated 23.10.1989 Government have decided to amend para 3.1.2 of Part III in this Departments OM No. AB/14017/12/87-Estt.(RR) dt. 18<sup>th</sup> March 1988. Accordingly, the last sentence of para 3.1.2.will stand amended to read as under:*

*"To avoid such a situation the following Note may be inserted below the relevant service rules/ column in the Schedule to the Recruitment Rules*

*"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 by more than half of such qualifying/ eligibility service or two years whichever is less, and have successfully completed probation period for promotion to the next higher grade along with their juniors who have already completed such qualifying/ eligibility service."*

As adduced above, the nature of the OM in regard to its status as a statutory provision fell for consideration of the Honourable Principal bench of this Tribunal in OA 3405/2014. The Honourable Principal bench has held that the memo dt 25.3.1996 along with certain other OM have to be considered to have been issued by the Executive of the Union in the legislative power conferred upon by Article 73 of constitution. Therefore the executive instruction emanating from the OM dt 25.3.1996 is as good as a statutory rule. Extracts of the Honourable Principal Bench are extracted below, which come to the rescue of the applicant.

*"27. However, Full Bench has given reasons as to why in their opinion the DoP&T OM dated 18.03.1988, 19.07.1989, 25.03.1996 and 24.09.1997 would not be covered by this law. According to them, these OM can well be considered to have been issued by the Executive of the Union in the Legislative power conferred upon by Article 73 of the Constitution. They deal with uncovered issues i.e. a situation where a junior is being considered for promotion even though his senior was not being so considered owing to the fact that he does not have the prescribed eligibility service. Full Bench has held that*

*such a situation had not been covered by the relevant Service Rules. Further, they have gone on to hold that in the aforesaid OMs there was a mandate that all cadre controlling authorities should insert a note in their respective Rules to the effect that when a junior was being considered for promotion then his seniors should also be considered by giving relaxation in the eligible service. Full Bench has observed that the directive issued by DoP&T has admittedly been complied with by many cadre controlling authorities by inserting such a note in the Recruitment Rules. Moreover, in cases where such a note has not been incorporated, Government has been freely resorting to taking relaxation in the rules as regards eligibility.*

*28. Further, they have observed that in Sadhna KhannaVs. Union of India & Ors., (OA No. 1271/1993 decided on 24.09.1999) this Tribunal has already held that OMs which are directives have to be read with the rules and this judgment has been affirmed by the highest Court of the Land. Further, they have stated that if a Member of the service in whose case such a note has not been inserted in the Recruitment Rules, were to seek a writ in the nature of mandamus directing the respondents to insert such a note in the service rules, there cannot be any meaningful resistance to such a writ by the Government. Finally, they have stated that if relaxation is given in some service where such note has been incorporated in the service rules and not given in services where such incorporation has not been done, it would amount to invidious discrimination and be violative of the provisions of the Article 14 of the Constitution. They have gone on to state that the directives of DoP&T issued through OMs are applicable across the board i.e. all services of the Government of India and for that reason have to be taken as if they are legislation by the executive under Article 73 of the Constitution.*

*29. Thus, Full Bench has given ample justification as to why O.M. dated 25.03.1996 has to be read along with the service rules and why this is not against the law laid down by Hon'ble Supreme Court that executive instructions cannot override statutory rules. As stated earlier, this O.M. prescribing relaxation in eligibility service for seniors by maximum of 02 years in situation when their juniors are being considered for promotion will operate in areas uncovered by service rules.*

*30.... Further, DoP&T in consolidated Instructions issued on 31.12.2010 on the subject of guidelines for framing/amendment/relaxation of recruitment rules have reiterated the aforesaid O.M. dated 25.03.1996."*

Thus the legal principle of treating the OM dt 25.3.1996 of DOPT as statutory in nature has been well settled. Therefore based on this decision the applicants would be eligible for promotion in terms of DOPT memo cited. Incidentally, it has been brought on record by the respondents that the Recruitment rules have been amended vide lr 13.12.2018. Having submitted the fact that unless recruitment rule is amended relief cannot be granted to the applicants taking the stand that the issue of seniority has to be settled to grant promotion is akin to changing stands as per convenience. Respondents

organization is a Model Employer and therefore, it is expected of them to take a uniform and fair stand. Respondents stated that they have not received any orders from the Board in regard to implementation of the Judgement of the Hon'ble Principal Bench of this Tribunal in the aforesaid OA. Respondents may have to note that a judicial precedent is binding on them as long as it holds its ground. Hon'ble Supreme Court in ***Bhargavi Constructions & Anr Vs. Kothakapu Muthyam Reddy & Ors, 2017 AIR (SC) 4428, 2017 (5) ALT 35*** has observed as under:

*“Law includes not only legislative enactments but also judicial precedents. An authoritative judgment of the Courts including higher judiciary is also law.”*

(v) Having dealt with the legal aspect of the issue now let us know as to what did the respondents state in deliberating on the issue in their internal meetings?

Even in the meeting chaired by the Principal Commissioner, Cadre Controlling Authority, Hyderabad GST Commissionerate, convened on 30.3.2018 to discuss the issue of promotion to the cadre of Superintendent the issue relevant to the applicants was also discussed and stated as under:

*“Administration informed that with respect to DR inspectors, the eligibility criteria is that the batch of Inspectors recruited for the years 2002 to 2006 would be taken and out of which the Inspectors who have completed the qualifying service of eight years of service as on 1.4.2018 would be considered. Further, the Inspectors who are seniors as per the SSC ranking would be considered with respect to their juniors who have completed the prescribed qualifying service.”*

Thus it is evident that the respondents have come to a conclusion that inspectors who are senior as per SSC ranking would be considered for promotion with respect to those juniors who have completed the stipulated residency period. It is not understood as to why the respondents having come to the conclusion stated, have now taken a volte face in the instant OAs.

(vi) Last question that requires an answer is whether is it fair on the part of the respondents to deny a promotion on grounds that procedural formalities took time and therefore they had no say in the date of joining of the post by the applicants?

Procedural formalities should not come in the way of the merit of the applicants. Merit has been decided by SSC ranking. That is exactly the reason as to why a plethora of instructions referred to were issued to reckon seniority based on the select list of the selecting authority. Thus the notional seniority will be as per the SSC ranking. The short but sharp question is as to whether the notional seniority granted to the applicants could also fetch them the qualifying service for promotion to the next higher post. Answer to this question is available in the decision of the Hon'ble High Court of Andhra Pradesh in the case of **G. Hanumantha Reddy vs Union of India (1986) AP(LJ) 16** wherein the Hon'ble High Court has held as under:-

7. *With due respect we are unable to agree with the reasoning adopted by the learned Judge. It is admitted on all hands that the petitioner was entitled to have his seniority in the post of Deputy Collector reckoned from 16-9-1949. If the orders were passed in time, as the Government ought to have normally done, the petitioner who had been confirmed in the rank of Deputy Collector with effect from 1-11-1956 by G.O.Ms No. 1125 dated 10-9-1979 would have been in terms of clause (1) of Rule 4, eligible for being considered for inclusion in the panel for the year 1958, on his completing 8 years as on 15-9-1957. The belated recognition of and giving effect to the legitimate rights of the petitioner, that too as a result of the relentless fight he had to carry on, should not operate to his prejudice in the matter of consideration for **promotion**, as the petitioner was in no way responsible for the delay. Justice has been delayed to him; but let it not be denied to him completely. Rules and Regulations, in our view, are intended to advance, not to frustrate the cause of justice. Merely on the ground that there is no positive direction in the rule to the selection committee to reckon notional seniority, in the absence of any prohibition in the rules against notional seniority being taken into account for the purpose of eligibility for being considered for inclusion in the panel, if the committee refuses to include the period covered by the notional seniority, restricting it to actual service in the post of Deputy Collector or its equivalent post, it would amount to perpetuation of injustice. It is to be also noticed that the rule also does not speak about the 'actual service'. It speaks only about 'continuous service', which could normally mean actual service, but in peculiar circumstances it*

*could include **notional service** also. We must remember that the conferment of notional seniority on the writ petitioner was not a gratuitous act, but something due in recognition of his legal right. Undisputedly the petitioner would have been considered for inclusion in the 1958 list had this recognition come in time. Because of the delay in according this recognition, to which petitioner made no contribution, the writ petitioner had suffered enough throughout the time he was in service; and it would be only a token of what he deserved if now he is treated to have been eligible for being considered for inclusion in the 1958 list on the basis of his notional seniority, which might result in his entitlement for some arrears of salary and pensionary benefit on notional promotions and refixation of scales of pay. “*

The case of the applicants is fully covered by the verdict of the Honourable High Court. Thus the OAs of the applicants when analysed from the perspective of rules and law as discussed above will succeed. More importantly with the relevant rule being amended in favour of the applicants. The action of the respondents in not promoting the applicants on adhoc basis is illegal and arbitrary. The respondents are, therefore, directed to consider as under:

- i) To promote the applicants on adhoc basis as Superintendent of GST, Central Excise and Customs from the dates on which their juniors were promoted by the respondents subject to the condition that all other parameters for such promotion are fulfilled by the applicants.
- ii) The pay and allowances of the applicants are to be drawn and paid to the applicants in the promoted post from the date of their joining the respective posts.
- iii) Time calendared for implementation of the order is 3 months from the date of receipt of this order.
- iv) The OAs are allowed accordingly. No order to costs.

**(B.V. SUDHAKAR)  
MEMBER (ADMN.)**

evr

**(JUSTICE R. KANTHA RAO)  
MEMBER (JUDL.)**

Dated, the 5<sup>th</sup> day of April, 2019