

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

**O.A.No.2072/2004  
With  
O.A.No.2456/2003  
And  
O.A.No.362/2005**

**Hon'ble Mr.L.K. Joshi, Vice Chairman(A)  
Hon'ble Mr.Mukesh Kumar Gupta, Member(J)**

New Delhi, this the 29<sup>th</sup> day of March, 2007

**O.A.No.2072/2004**

P.R. Chandrasekharan,  
Aged about 49 years,  
S/o late P.M. Rama Iyer,  
Commissioner of Customs,  
Central Revenue Buildings,  
Queens Road, Bangalore-560 001  
Residing at : No.303, Akshaya Apartments,  
11<sup>th</sup> Main, 13<sup>th</sup> Cross, Malleswaram,  
Bangalore-560 003

.....

Applicant

(By Advocate: Shri C. Harishankar)

Vs.

1. Union of India by  
Secretary, Department of Revenue,  
Ministry of Finance,  
North Block, New Delhi-110 001
2. Chairman,  
Central Board of Central Excise & Customs,  
North Block, New Delhi-110 001
3. Review Departmental Promotion Committee held in March 2002  
By its Chairman and Member,  
Union Public Service Commission,  
Dholpur House, Shahjahan Road,  
New Delhi.
4. Secretary,  
Department of Personnel and Training,  
Government of India,  
Central Secretariat, New Delhi-110 001
5. R.K. Jain  
Commissioner of Central Excise & Customs,  
ICE Bhavan, Press Club Road, Statue,

*L. N. Joshi*

Trivandrum-695001

6. P.S. Pruthi,  
Chief Vigilance Officer,  
Semi-conductor Complex Ltd.,  
Phase VIII, S.A.S. Nagar,  
Punjab-160059
7. Ms.Ruchira Pant,  
Group General Manager,  
Container Corporation of India,  
Le-Meridien Commercial Tower  
Raisina Road, New Delhi
8. Arun Sahu,  
Additional Director General,  
Directorate General of Systems and Data Management.  
4<sup>th</sup> and 5<sup>th</sup> Floor, Samrat Hotel,  
Chanakyapuri, New Delhi-110021
9. Mathew John,  
Additional Director General,  
Office of the Addl. Director General of Systems,  
Directorate of Systems,  
Central Excise Complex,  
121, Uttamar Gandhi Road,  
Nungambakkam, Chennai-600 034
10. K. Srivastava,  
Commissioner,  
Directorate of Housing & Welfare,  
Customs & Central Excise,  
'D' Block, I.P. Estate,  
New Delhi-110002
11. K.K. Jha,  
Additional Director General,  
Directorate General of Vigilance,  
Customs & Central Excise,  
1<sup>st</sup> & 2<sup>nd</sup> Floor, Hotel Samrat,  
Kautilya Marg, Chanakyapuri,  
New Delhi-110021
12. A.K. Das,  
Commissioner of Customs (Port),  
15/1, Strand Road, Custom House,  
Kolkata-700 001
13. Deepak Kumar,  
Additional Commissioner,  
Commissioner of Customs,  
New Custom House, Ballard Estate,  
Mumbai-400 038
14. Ms.Mala Srivastava,  
Director (Narcotics Control),  
Central Board of Excise & Customs,  
North Block, New Delhi-110001
15. V. Ramu,  
Commissioner (Appeals),  
Commissioner of Customs & Central Excise,

*Pruthi*

6/7, A.T.D. Street, Race Course Road,  
Coimbatore-641 018

16. Rajiv Kumar,  
Commissioner (Appeals),  
Commissioner of Central Excise & Customs,  
Telangkhedi Road, Civil Lines,  
Nagpur-440 001
17. Saheb Singh,  
Commissioner of Customs,  
Custom House, Kandla-370210
18. S.C. Jana,  
Additional Director General,  
Directorate General of Vigilance,  
Customs & Central Excise,  
East Zonal Unit, 44, Park Street (2<sup>nd</sup> Floor),  
Kolkata-700 016
19. Harjinder Singh,  
Commissioner of Customs and Central Excise, Meerut-I,  
Excise Chowk, University Road, Mangal Pandey Nagar,  
Meerut-250 005
20. Daya Shankar,  
Additional Commissioner,  
Directorate General of Vigilance,  
Customs & Central Excise,  
West Zone Unit, 4<sup>th</sup> floor, Transport House,  
Poona Street, Masjid (East),  
Mumbai-400 009
21. S.K.S. Somvanshi,  
Commissioner,  
Directorate of Publicity and Public Relations,  
Customs & Central Excise,  
I.P. Estate, C.R. Buildings,  
New Delhi-110002
22. Ms. Hussain R.,  
Additional Director General,  
Directorate General of Inspection,  
Customs & Central Excise,  
'D' Block, I.P. Bhawan,  
I.P. Estate, New Delhi-110002
23. Ms. Joy Kumari Chander,  
Commissioner (Adjudication),  
Office of the Commissioner of Central Excise,  
Central Revenue Building,  
Queens Road, Bangalore-560 001
24. B.K. Singh,  
Commissioner (Appeals),  
Commissioner of Customs, Gujarat,  
Customs House, Navrangpura,  
Ahmedabad-380 009
25. Mewa Singh,  
Commissioner (Appeals),  
Commissioner of Central Excise, Chandigarh-I,

Mewa

C.R. Buildings, Plot No.19, Sector 17-C,  
Chandigarh

26. P.J.R. Sekhar,  
Jt. Chief Departmental Representative,  
Office of the Joint Chief Departmental Representative (CEGAT),  
West Region, Lakshmi Building, Ground Floor,  
Sir P.M. Road, Fort, Mumbai-400 001

27. D.S. Negi-I,  
Commissioner of Central Excise & Customs,  
Town Centre, N-5, CIDCO,  
Aurangabad-431 003

28. A.K. Prasad,  
Director (Customs),  
Central Board of Excise & Customs,  
North Block, New Delhi-110 001

29. J. Chaturvedi,  
Commissioner of Central Excise & Customs,  
Telangkhedi Road, Civil Lines,  
Nagpur-440 001

30. Ms. Deepa B. Dasgupta,  
Commissioner,  
C/o Amit Dasgupta,  
Embassy of India, Berlin, Germany

31. K.K. Sharma-I,  
Commissioner of Customs & Central Excise, Meerut-II,  
Bhaisali Ground, Meerut

32. D.K. Marandi,  
Commissioner of Central Excise,  
143, New Baradwari, P.O. Sakchi,  
Jamshedpur-1

33. S.K. Chowdhury,  
Commissioner (Appeals),  
Commissioner of Central Excise, Ahmedabad-I,  
New Central Excise Building, Near Polytechnic,  
Ahmedabad

34. Ms. S. Panda,  
Commissioner of Central Excise, Mumbai II  
Piramal Chambers, 9<sup>th</sup> Floor, Jijibhoy Lane,  
Lalbaug, Parel, Mumbai-400 012

35. S.B. Singh,  
Additional Director General,  
Directorate of Revenue Intelligence, Mumbai Zonal Unit,  
3<sup>rd</sup>/4<sup>th</sup> Floor, Hotel Waldorf,  
16, Arthur Bunder Road, Colaba,  
Mumbai-400 005

36. Satinder Singh,  
Secretary, NCERT,  
W/19, Greater Kailash Part II,  
New Delhi

*2/1/2013*

37. Najib Shah,  
First Secretary (Trade & Commerce),  
Indian Embassy, Singapore

38. H.K. Jain,  
Commissioner of Customs & Central Excise,  
New Central Excise Building,  
Dhamtari Road, Tikrapara,  
Raipur

39. Chitrang Dube,  
Commissioner (Appeals),  
Commissioner of Central Excise, Kolkata-I,  
Customs House, 15/1, Strand Road,  
Kolkata-700 001

40. C.S. Prasad,  
Commissioner (Appeals),  
Commissioner of Customs and Central Excise,  
B-123, Sector-5, Noida

41. K.K. Goel,  
Commissioner of Central Excise, Rohtak,  
17-P, Sector-1,  
Rohtak, Haryana

42. M.D. Singh,  
Additional Director General,  
Directorate General of Vigilance, Customs & Central Excise,  
1<sup>st</sup> and 2<sup>nd</sup> Floor, Samrat Hotel, Kautilya Marg,  
Chanakyapuri, New Delhi-110 021

.....Respondents

(By Advocate: Shri R.V. Sinha, for official respondents  
Shri K.N. Tripathy and Shri Satish Yadav for  
respondents 5,12,14,15,18,19,21,22,24,27,28,32, 34  
37 and 38 in O.A.2072/2004)

### O.A.No.2456/2003

Shri Sunil Uke, I.R.S.,  
R/o 171, Mount Kailash,  
New Delhi-110 065

....Applicant

(By Advocate: Shri S.K. Sinha)

versus

1. Union of India,  
Through the Secretary (Revenue),  
Ministry of Finance & Company Affairs,  
North Block, New Delhi-2
2. The Chairman,  
Central Board of Excise & Customs,  
North Block, New Delhi-2

....Respondents

(By Advocate: Shri R.V. Sinha)

*R.V.Sinha*

# O.A.No.362/2005

C.P. Srivastava,  
Aged about 50 years,  
S/o Late Shri M.P. Srivastava,  
R/o House No.406B,  
Veena Villa, Road No.5B,  
Ashok Nagar, Ranchi

....Applicant

(By Advocate: None)

versus

1. Union of India by  
Secretary, Department of Revenue,  
Ministry of Finance,  
North Block, New Delhi-110 001
2. Chairman,  
Central Board of Excise & Customs,  
North Block, New Delhi-110 001
3. Review Departmental Promotion Committee  
held in March, 2002 by its Chairman and Member,  
Union Public Service Commission,  
Dholpur House, Shahjahan Road,  
New Delhi
4. Secretary,  
Department of Personnel & Training,  
Government of India,  
Central Secretariat, New Delhi-110 001
5. Joint Secretary (Admn),  
Central Board of Excise and Customs,  
North Block, New Delhi-110 002
6. R.K. Jain,  
Commissioner of Central Excise & Customs,  
ICE Bhavan,  
Press Club Road, Statue,  
Trivandrum-695 001
7. P.S. Pruthi,  
Commissioner of Central Excise,  
Central Excise House,  
F Block, Rishinagar,  
Ludhiana-141 001
8. D.K. Marandi,  
Commissioner of Central Excise,  
143, New Baradwari,  
P.O. – Sakehi  
Jamshedpur - I
9. Ms. Ruchira Pant,  
Group General Manager,  
Container Corporation of India,  
Le-Meridien Commercial Tower,  
Raisina Road, New Delhi

*W. Joshi*

10. Saheb Singh,  
Commissioner of Customs,  
I.C.D., Tughlakabad,  
New Delhi
11. Arun Sahu,  
Additional Director General,  
Directorate General of Systems & Data Management,  
4<sup>th</sup> and 5<sup>th</sup> Floor, Samrat Hotel,  
Chanakyapuri, New Delhi-110 021
12. Mathew John,  
Commissioner of Central Excise,  
No.1 Williams Road, Cantonment,  
Tiruchiralpalli-620 001
13. K. Srivastava,  
Commissioner,  
Directorate of Housing & Welfare,  
Customs & Central Excise,  
'D' Block, I.P. Estate,  
New Delhi-110002
14. K.K. Jha,  
Additional Director General,  
Directorate General of Vigilance,  
Customs & Central Excise,  
1<sup>st</sup> and 2<sup>nd</sup> Floor, Hotel Samrat,  
Kautilya Marg, Chanakyapuri,  
New Delhi-110 021
15. A.K. Das,  
Commissioner of Customs (Port),  
15/1, Strand Road, Customs House,  
Kolkata-700 001
16. Deepak Kumar,  
Commissioner (Appeal),  
Central Excise,  
New Central Excise Building,  
Near Polytechnic, Ambawadi,  
Ahmedabad-380015
17. Ms. Mala Srivastava,  
Director (Narcotics Control),  
Central Board of Excise & Customs,  
North Block, New Delhi-110 001
18. V. Ramu,  
Commissioner (Appeals),  
Commissioner of Customs & Central Excise,  
6/1, A.T.D. Street, Race Course Road,  
Coimbatore-641 018
19. S.C. Jana,  
Additional Director General,  
Directorate General of Vigilance,  
Customs & Central Excise,  
East Zonal Unit, 44, Part Street (2<sup>nd</sup> Floor),  
Kolkata-700 016
20. Harjinder Singh,

*Harjinder Singh*

Commissioner of Central Excise and Customs,  
Telangkhedi Road,  
Civil Lines, Nagpur-440 001

....Respondents

(By Advocate: Shri K.N. Tripathy and Shri Satish Yadav, for  
respondents 6,8,15,17,18,19 and 20)

## ORDER

Mr. L.K. Joshi, Vice Chairman (A)

By this order, we are disposing off the above three OAs in which the facts and relief sought are identical. Shri P.R. Chandrasekharan, applicant in O.A.2072/2004 is a direct recruit officer of the Indian Revenue Service (Customs & Central Excise) of the year 1979 batch while Shri Sunil Uke, applicant in O.A.2456/2003 and Shri C.P. Srivastava, applicant in O.A.362/2005 are officers of 1980 and 1978 batches respectively of the same service. The applicants are governed by the Indian Customs and Central Excise Service Group 'A' Rules 1987 (hereafter 1987 Rules). The Rule 20 (1) of 1987 Rules provide for appointment to Grade IV of service i.e. Deputy Collector (now called Joint Commissioner) on the principle of selection on merit. Rule 20 (1) is as follows :

**"20(1) Appointment to Grade IV of Service:** (1) Appointment to Grade IV of the Service shall be made by promotion on the principle of selection on merit of officers in Grade V of the Service."

Appointment to Grade VI of service i.e. Assistant Collector (now Assistant Commissioner) in Junior Time Scale is governed by Rule 18 of 1987 Rules, which is as follows:

**"18. Appointment by promotion to Grade VI of Service** (1) Appointment to the vacancies in Grade VI of the Service required to be filled up by promotion under sub-rule 2(ii) of rule 5 shall be by promotion of the following categories of Group 'B' officers in the Central Excise, Customs and Narcotics Departments who have completed three years regular service in the Group 'B' posts of -

- (a) Superintendents of Central Excise in the Central Excise Department and District Opium Officers or Intelligence Offices or Superintendents (Executive) in the Narcotics Department.
- (b) Appraisers of Customs in the Customs Department.

*L.K. Joshi*

(c) Superintendents of Customs (Preventive) in the Customs Department.

2(a) The vacancies to be filled by promotion shall be filled in accordance with the common seniority list of the three Group 'B' categories of the officers mentioned in sub-rule (1) above.

(b) The seniority of the officers in Group 'B' feeder categories of service for eligibility for promotion to Group 'A' shall be determined on the basis of their regular length of service in their respective Group 'B' categories subject to the condition that the inter-se seniority in each feeder category of service shall be maintained.

(3)(a) The promotions shall be made on the principle of selection on merit basis.

(b) The Commission shall be consulted for making promotions to Grade VI."

Thus, for the post of Assistant Collector, there is promotion from feeder grade and there is also direct recruitment.

2. The selection on merit basis was regulated by DoP&T's O.M.No.22011/5/86-Estt.(D) dated 10.04.1989. Under the principle of selection on merit, the procedure was that the applicants were graded by the DPC as Outstanding, Very Good, Good etc. and then those who ranked Outstanding were placed en bloc senior to those who were graded Very Good and then placed in the select panel. The O.M. provides as follows in case of selection by merit :

#### "SELECTION BY MERIT

(v) In respect of services/posts for which the bench mark has been determined to be 'Very Good', each DPC would grade the officers as 'Outstanding', 'Very Good', 'Good', 'Average' & 'Unfit' as the case may be. However, only those officers who are graded as 'Very Good' and above will be included in the select panel, by placing the officers graded as 'Outstanding' on top followed by those graded as 'Very Good', subject to availability of vacancies, with the officers with the same grading maintaining their inter-se-seniority in the feeder grade.

(v) Appointments from the panel shall be made in the order of names appearing in the panel for promotion."

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3. Meanwhile in a case before the Hon'ble Supreme Court in W.P.No.4532-33/1978 and other connected matters, the seniority of officers of feeder grades for promotion to the post of Assistant Collector was the issue. The officers who are eligible for promotion to the grade of Assistant Collector comprise, as per Rule 18 of 1987 Rules, Superintendents of Central Excise, Group 'B', Superintendents of Customs (Preventive), Group 'B' and Appraisers of Customs, Group 'B'. The grade of Assistant Collector also comprises directly recruited officers, like the applicants in this case. The writ petition before the Hon'ble Supreme Court was for determining the seniority of the officers of the feeder posts to the post of Assistant Collector. In the above writ petition, the Hon'ble Supreme Court passed an order on I.A. 6 and I.A. 7 of 1990 in which the directions were sought about ad hoc promotions to the cadre of Deputy Collector pending disposal of the case and subject to final result therein. The Hon'ble Supreme Court passed the following order in this case:

"3. It is submitted by the learned Additional Solicitor General for the Union of India that about 157 posts out of the cadre strength of 284 posts of Deputy Collectors remained vacant and unfilled owing to the pendency of the litigation and that this circumstance has its own serious effect on the collection of revenue. Learned Additional Solicitor General submitted that some reasonable basis, though ad-hoc and subject to the final result, required to be evolved to fill-up these posts in the larger interests of administration.

4. It appears to us that this prayer needs to be granted. Those 157 posts of Deputy Collectors are permitted to be filled-up by effecting promotions on the basis of selection on merit by the constitution of appropriate Departmental Promotion Committees, so however, that out of the said 157 posts, 57 posts are filled up by officers who are promoted from the feeder line in Group B posts.

The list of officers within the zone of consideration for the purpose of effectuation of the promotions, however, shall ensure that no promotee to the cadre of Assistant Collectors from Group B posts will find a place in the list higher than that of an officer directly recruited who joined as Assistant Collector before such promotee.

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These promotions shall be purely ad-hoc and shall be subject to review as a sequel to such further or final orders that may be made in these matters. Orders of promotions shall also expressly specify that the promotions are so subject to such further or final orders."

4. A DPC was thereafter held and its recommendations considered and orders of promotion were issued by order No.175/1991 dated 23.05.1991 by the Ministry of Finance. Since this was a selection based on merit, the applicants superseded other directly recruited officers on the basis of their record. Applicant Shri P.R. Chandrasekharan was placed at Serial Number 22 of the Promotion List, applicant Shri Sunil Uke was placed at Serial Number 62 and applicant Shri C.P. Srivastava was placed at Serial Number 19.

5. The final decision in the case of All India Federation of Central Excise v. Union of India and others, (1997) 1 SCC 520 in Writ Petitions © Nos. 306 and 1200 of 1998 was given on 22.11.1996. By this judgment, the Hon'ble Supreme Court decided the issue regarding constitutionality of Rule 18 (2) of 1987 Rules, quoted above.

6. It will be seen that these Rules govern the seniority of the officers in Group 'B' feeder categories of service for eligibility for promotion to Group 'A'. The Hon'ble Supreme Court gave a formula for fixing the seniority between different feeder cadres. Furthermore in this judgment, the Hon'ble Supreme Court has also observed as follows:

"18. In Group 'A' Service of the Customs and Excise Department, 50% of the cadre strength are filled by direct recruitment through Union Public Service Commission and the balance 50% are filled through promotion from Group 'B' cadres. Group 'B' Officers when promoted to Group 'A' Service, obviously have no right to occupy more than 50% of their prescribed quota. It would, therefore, be incumbent upon the Government to rearrange or regularize the seniority list in Group 'A' Service keeping the inter se quota of the direct recruits and promotees intact and should not allow either to get any promotion in excess of their quota. The ad hoc promotions given to Group 'B' Officers in Group 'A' Service, pursuant to interim orders of this Court, would not, therefore, have any effect or prejudice the interests of rights of the direct recruits of Group 'A' Service while rearranging the seniority in Group 'A'

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Service as indicated in the judgment. It would, therefore, be of necessity that the Government should rearrange their inter se seniority and promotions of the respective direct recruits and promotees within their quota and consequential promotions in further higher services. Their seniority be arranged accordingly."

7. On the basis of this judgment, a DPC was held in March, 2002 the recommendations of which were implemented by Order No.A-32012/3/2000-Ad.II(Vol.II) dated 03.05.2002. By this order, the order of direct recruits which was fixed by the DPC of the year 1991, was completely rearranged. Applicant Shri P.R. Chandrasekharan came at Serial Number 40 of panel of the year 1989-90 in which process, he was superseded by a very large number of direct recruit officers. Similarly, the other two applicants were also disturbed. At the time of the DPC held in March, 2002, DoP&T had issued O.M. No.35034/7/97-Estt(D) dated 08.02.2002 about the procedure to be observed by DPC. In this order, the O.M. No.22011/5/86-Estt.(D) dated 10.04.1989 was revised and it was decided that there should be no superseding in matter of selection (merit) promotion at any level. This O.M. dispensed with the distinction between selection by merit and selection-cum-seniority and renamed this as a selection only. It provided that for this process there would be only a relevant benchmark 'Very Good' or 'Good' prescribed for promotion and there will be no superseding. The DPC of 2002 followed the above O.M. of DoP&T dated 08.02.2002.

8. Learned counsel for the applicants have argued that the writ petition in the Hon'ble Supreme Court was about the seniority of feeder grades for promotion to Grade – V i.e. Assistant Collector and it was not concerned with inter-se-seniority of direct recruit officers. It has been argued that in the final judgment in All India Federation of Central Excise (supra), the Hon'ble Supreme Court had observed that the seniority of direct recruits should not be affected while rearranging the seniority in Group 'A' service as integrated in the judgment. Paragraph 18 of All India Federation of Central Excise has been quoted fully above. It has also

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been pointed out that the DoP&T's O.M. dated 08.02.2002 could only be prospective and it could not retrospectively affect the seniority of officers promoted prior to its coming into force. Reliance has also been placed on Y.V. Rangaiah and others v. J. Sreenivasa Rao and others, (1983) 3 SCC 284 in which it has been held that vacancies in the promotional posts occurring prior to the amendment have to be filled up in accordance with the unamended Rules. It has been held by the Hon'ble Supreme Court as follows:

"But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules."

In C.B. Dubey and others v. Union of India and others, 1975 (1) SLR 580, the Hon'ble Delhi High Court held as follows:

"3. After the basis of promotion was changed from merit to seniority in 1973, the Government seems to have thought that the petitioners and others who had been promoted on the basis of merit when the posts in Grade I were selection posts but who had not been confirmed in those posts were liable to be reverted to Grade II so that the amendment of the rules in 1973 may be virtually given a retrospective effect. The two reasons why the Government intended to revert the petitioners on the coming into force of the 1973 rules were, as stated above, (1) that their promotions were ad hoc to posts on which other persons had originally held liens, and (2) some posts in the quota of the direct recruits had been occupied by some of these promotees."

In a recent judgment in P. Mohanan Pillai v. State of Kerala and others, 2007 (3) SCALE 548, the Hon'ble Supreme Court has held as follows:

"It is now well settled that ordinarily the rules which were prevailing at the time when the vacancies arose would be adhered to. The qualification must be fixed at that time. The eligibility criteria as also the procedure as was prevailing on the date of vacancy should ordinarily be followed."

9. For the official respondents, the learned counsel has argued that the promotions made in 1991 were ad hoc promotions. In this context, he has pointed out that in the promotion orders it was clearly mentioned that the promotions are purely ad hoc and are subject to the final results in

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Civil Appeal Nos.257 of 1988 and 4004-07 of 1987 with CMP Nos.16003 of 1989 and 9014 of 1988 and Writ Petition Nos.4532-33/1978, 3835/1981, 306/1988, 512, 635 and 120/1988 pending before the Hon'ble Supreme Court. It has also been pointed that in this order, the observations of the Hon'ble Supreme Court were quoted as follows :

"It is necessary, perhaps, to clarify that since the assessment by the D.P.C. is only to facilitate the ad-hoc promotions and these promotions themselves are liable to be reviewed pursuant to the final decision on the merits of the pending cases, the deliberations of the D.P.C.s shall not be held conclusive against any person in the event of such review of promotions and that all the promotions will be subject to the final result of the pending cases."

It has also been pointed out that the Order No.A-32012/9/97-AD.II dated 13.11.1997 by which the notification for appointment of Shri Sunil Uke and Shri K.P. Singh to the non-functional selection grade was issued, it was mentioned that this would be subject to the outcome of the implementation of the judgment of the Hon'ble Supreme Court in various Civil Appeal etc.

10. It has also been argued that the applicants' assumption that the promotion of 1991 was regular, is not well founded because there was no seniority list in the grade of AC(P) till the year 2000 and the above promotion was only ad hoc. The learned counsel for the respondents has further stressed that the list issued vide Office Order No.175/1991 dated 23.05.1991 is not a seniority list.

11. It has further been argued that the DPC held in the year 2002 was not a review DPC but it was a regular DPC and, therefore, it has rightly followed the O.M. dated 08.02.2002 of the DoP&T. It has further been pointed out that the Central Board of Excise and Customs had made a request to DoP&T seeking clarification as to whether the instructions dated 08.02.2002 would be applicable in the DPC held earlier also but promotions made on ad hoc basis. It is stated that the DoP&T very clearly advised that the O.M. of 08.02.2002 only would be applicable to all DPCs held after the issuance of this O.M. It has further been argued that in the earlier promotion in 1991 also, it had been very clearly stated that the

*Writ Petition*

promotion shall be purely ad hoc and shall be subject to review as a sequel to such further or final orders that may be passed by the Hon'ble Supreme Court in these matters. The DPC has also directed on the basis of the orders of the Hon'ble Supreme Court that the orders of promotion shall also expressly specify that the promotions are subject to further or final orders. It has been further brought to our notice that the promotion order of 23.05.1991 had very clearly stated that these orders are subject to final orders in the matter pending before the Hon'ble Supreme Court.

12. The learned counsel for the respondents has also cited the judgment of the Hon'ble Supreme Court in State of Orissa and others v. Gopinath Dash and others, JT 2005 (10) SC 484 regarding the powers of judicial review of administrative action. The Hon'ble Supreme Court has held as follows :

"4. In support of the appeal, learned counsel for the appellants submitted that the approach of the High Court is clearly erroneous. It failed to notice that the policy decision of the government is not to be lightly interfered with. The High Court did not indicate any justifiable reason to quash the policy decision.

5. There is no appearance on behalf of the respondents. Operation of the impugned judgment was stayed by this Court by order dated 8.5.1997.

6. While exercising the powers of judicial review of administrative action, the court is not the appellate authority and the Constitution does not permit the court to direct or advise the executive in matter of policy or to sermonize any matter which under the Constitution lies within the sphere of the Legislature or the executive, provided these authorities do not transgress their constitutional limits or statutory power. (See *Ashif Hamid v. State of J&K*, AIR 1989 SC 1899, *Shri Sitaram Sugar Co. v. Union of India*, AIR 1990 SC 1277). The scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution. Thus, the position is that even if the decision taken by the Government does not appear to be agreeable to the Court it cannot interfere."

It is contended that the Tribunal should not interfere with this because seniority is not a fundamental right.

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In the same context, Ekta Shakti Foundation v. Govt. of NCT of Delhi, AIR 2006 SC 2609 has also been cited, wherein the Hon'ble Supreme Court has held as follows:

"10. While exercising the powers of judicial review of administrative action, the court is not the appellate authority and the Constitution does not permit the court to direct or advise the executive in matter of policy or to sermonize any matter which under the Constitution lies within the sphere of the Legislature or the executive, provided these authorities do not transgress their constitutional limits or statutory power. (See Ashif Hamid v. State of J&K., AIR 1989 SC 1899, Shri Sitaram Sugar Co. v. Union of India, AIR 1990 SC 1277). The scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or is violative of the fundamental rights of the citizens or is opposed to the provisions of the Constitution. Thus, the position is that even if the decision taken by the Government does not appear to be agreeable to the Court it cannot interfere."

13. The learned counsel for the respondents has also argued that the applicants are wrong to assert the right of promotion because promotion made in the year 1991 was only ad hoc. It has also been argued that the applicant Shri Sunil Uke was not eligible for promotion as per 1987 Rules in 1991, whereas he has been promoted because it was only an ad hoc promotion. It is contended that in R.S. Garg v. State of U.P. and others, (2006) 6 SCC 430, the Hon'ble Supreme Court has held as follows:

"It may be that for the purpose of direct appointment, experience and academic qualifications are treated to be on a par, but when an eligibility criterion has been provided in the Rules for the purpose of promoting to a higher post, the same must strictly be complied with. Any deviation or departure therefrom would render the action void."

In the same context, reliance has also been placed on the order of this Tribunal in V.P. Rao v. Union of India and others in O.A.No.23/2006 decided on 26.06.2006 in which it has been held that the DPC has to proceed strictly in accordance with the Rules and law governing the role of DPC.

14. It has been argued on behalf of the UPSC that the meeting of regular DPC was held by the Commission in March, 2002 for filling up the vacancies in the grade of Joint Commissioner of Customs and

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Central Excise on regular basis for the years 1986 to 1992 by taking into account a total of 192 vacancies. The DPC in this case followed the revised guidelines of DoP&T in O.M. No.35034/7/97-Estt. (D) dated 08.02.2002 about the assessment of officers. The meeting of DPC in October, 1990 was held in compliance of the interim order passed by the Hon'ble Supreme Court to fill up the vacancies on ad-hoc basis and not on regular basis. It has further been stated that the DPC of 2002 is not a review DPC because there are no instructions issued by the Government of India for holding review DPCs to review the ad-hoc promotions. It is stressed that the DPC held in March, 2002 was, therefore, not a review DPC. It has further been argued that Rangaiah (supra) does not apply in this case.

15. The learned counsel for respondent no.11 Shri K.K. Jha in P.R. Chandrasekharan's case, contends that the applicant has no locus standi to challenge the promotion of respondents No.5,6,7,8,9,10,11, 17 and 32 who, in the regular promotions in 2002, were promoted against the vacancies of 1986 (Respondent 5), 1987 (Respondent 6) and 1988 (Respondents 7 to 11, 17 and 32). It is contended that the applicant as per his length of service was not even eligible for promotion against the vacancies of 1986 and 1987 as per his seniority and was outside the zone of consideration for promotion against the vacancies of 1988. It is argued that a person who is not eligible for consideration for promotion in respect of vacancies of a particular year cannot challenge the promotion made in respect of vacancies of that year. It has also been argued that for a proper conduct of a DPC meeting, a proper seniority list of the officers to be considered for promotion should be available and placed before the DPC and the number of vacancies arising in each year for which promotions are to be made should be determined correctly and separate proceeding of DPC should be held for each year. It has been argued that both the above elements were missing in the

22/11

proceedings of DPC of 1990 that formed the basis of ad hoc promotions in 1991.

16. The learned counsel for the applicant has vehemently contested the argument that the list of 1991 promotions does not reflect seniority. It has been pointed out that the DPC itself has minuted that separate zones of consideration for direct recruits and promotees for all the years' vacancies have been prepared on the basis of their separate seniority lists. It has further been contended that the applicants were not parties before the Hon'ble Supreme Court in various Writ Petitions and Civil Appeals deciding the issue of seniority in the feeder grades. Attention has further been drawn to the order of the Hon'ble Supreme Court in I.A.6 and I.A.7 of 1990 (ibid)

17. It is clear that in so far as the order of the Hon'ble Supreme Court dated 22.11.1996 in All India Federation of Central Excise is concerned, it is about Rule 18 (2) of 1987 Rules regarding the seniority between feeder grades for promotion to the post of Assistant Collector (Assistant Commissioner). When in 1990, while disposing off the I.As. of 1990 the Hon'ble Supreme Court had directed that ad-hoc promotions should be made in the interest of administration, it had also been very clearly stated that the direct recruits would be placed above the promotees to the cadre of Assistant Collector from Group 'B' posts. It was also directed that the promotions would be ad-hoc and subject to the final results. It is natural that in such cases, the interim orders would be subject to the final orders of the Court. However, when the final order decides all the issues which do not disturb the ad-hoc promotions subject to the final results made earlier, there should be no reason for reviewing the promotions made earlier. There should have been, at the most, some adjustments in the promotion list of direct recruits, if there was any affect on that due to the orders of the Hon'ble Supreme Court. It did not justify the holding of a fresh DPC for these promotions. There is a catena of judgments of the Hon'ble Supreme Court about

22.11.1996

promotions to be held according to the Rules prevalent during the year of promotion. If the rules are amended subsequently or subsequent instructions are issued, those cannot be made applicable for promotions for previous years. The instructions cannot be prospective in nature. We find it difficult to accept the advice given by the DoP&T that after 08.02.2002, all DPCs should follow the procedure prescribed in this O.M. although it could not have had any retrospective effect for promotion to the posts of previous years. This view is also supported by the Hon'ble Supreme Court's judgment in Chandravathi P.K. and others v. C.K. Saji and others, 2004 (3) SCC 734, in which it has been held that retrospective effect of Rules can be there if it had been explicitly clear by making express provisions therefor or by necessary implication. Such retrospectivity cannot be inferred by way of surmises and conjectures. The same view has been held in P. Mahendran & ors. V. State of Karnataka & ors., AIR 1990 SC 405 and in Shyam Sunder & ors. V. Ram Kumar and Anr., 2001 (8) SCC 24.

18. In so far as the issue regarding applicant Shri Sunil Uke not being eligible for promotion in the year 1990 at the time of DPC is concerned, it has not been shown how he was not eligible for promotion at the time of DPC. If he has been placed above the officers of 1986 batch, it is because of the operation of then existing instructions contained in DoP&T's O.M. of 10.04.1989. His appointment at that time is in this view according to the rules and law prevalent at that time.

19. After considering the rival contentions of parties and on perusal of records as well as in view of discussion made hereinabove, we do not find justification in respondents' stand taken in their reply. On the other hand, we find weighty reasons and justification in the contention raised by applicants. Accordingly, OAs are allowed and we hold as follows:

(a) Vide order dated 13.08.1990, the Hon'ble Supreme Court directed respondents to fill up 157 posts of Deputy Collectors on the basis of "selection on merit" by constituting appropriate DPC from the list of

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officers within the zone of consideration and further ordered that promotions so effected would be subject to "**review as a sequel to such further or final orders that may be made in these matters.**"

(b) While disposing off the said writ petitions on 22.11.1996, All India Federation of Central Excise v. Union of India and others, (1997) 1

SCC 520, the aforesaid interim order was neither varied nor modified. On the other hand, para 19 of said judgment would show that Government was directed to "**rearrange their inter se seniority and promotions of respective direct recruits and promotees within their quota and consequential promotions in further higher services.**"

© The Government was directed only to rearrange their inter se seniority and not to disturb the manner of promotion and sequence in which promotion orders were issued particularly of direct recruit Assistant Collectors, later redesignated as Assistant Commissioners.

(d) The vacancies against which the applicants were promoted were prior to the year 2002. Paragraph 5 of the DoP&T O.M. dated 08.02.2002 specifically states that the said O.M. "**shall come into force from the date of its issue**". In the circumstances, DPC held later while considering the officials was not justified to implement and follow the said O.M.

(e) Impugned orders vide which respondents issued notification dated 03.05.2002 as well as rejecting applicants' representation are quashed and set aside.

(f) Respondents are directed to re-convene the DPC particularly for the next higher posts for which earlier DPCs had been held after 22.11.1996 i.e. the date when the Hon'ble Supreme Court pronounced the aforesaid judgment in All India Federation of Central Excise case, without taking recourse to O.M. dated 08.02.2002 and as per the DoP&T's O.M. of 10.04.1989 and regulate the promotions accordingly with all consequential benefits.

*M. J. Joshi*

The aforesaid exercise shall be completed within a period of three months  
from the date of receipt of a certified copy of the present order. No costs.

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( Mukesh Kumar Gupta )  
Member (J)

( L.K. Joshi )  
Vice Chairman (A)

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