

(1999) 12 DEL CK 0092
In the Delhi High Court
Case No : C.W.P. No. 2399 of 1988

Harish Chander

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 24-12-1999

Acts Referred:

Customs Act, 1962 — Section 129, 129C
Customs, Excise and Service Tax Appellate Tribunal Members (Recruitment and Conditions of Service) Rules, 1987 — Rule 10(1), 10(2), 10(3), 10(4), 16

Citation : (2003) 159 ELT 106

Hon'ble Judges : D.K. Jain, J;Arun Kumar, J

Bench : Division Bench

Advocate : P.P. Malhotra, Vineet Malhotra and Shailendre Sharma, for the Appellant; S.B. Jaisinghani, ASG, Rekha Palli, Ashwani Kumar and Poonam Singh, for the Respondent

Final Decision : Dismissed

Judgement

Arun Kumar, J.—Short but interesting question of law is to be determined in this petition. Facts are brief and largely uncontroverted. They are:

Petitioner was an Advocate enrolled with Bar Council of Punjab & Haryana. While practicing as an Advocate he applied for the post of Judicial Member in Customs, Excise & Gold (Control) Appellate Tribunal (hereinafter referred to as the CEGAT) in response to advertisement dated 23rd August, 1981 issued by Government of India, Ministry of Finance, Department of Revenue for filling up six posts of Judicial Members. Petitioner was considered for the said post and selected. He was given offer of appointment which he accepted on 17th September, 1982. On 25th September, 1982 he was formally appointed by the President of India as judicial Member of CEGAT and was posted at Bombay Bench of the said Tribunal. Gazette notification dated 11th October, 1982 to this effect was issued by the respondents and petitioner joined the post on 29th October, 1982.

2. In exercise of powers conferred by the proviso to Article 309 of the

Constitution of India notification dated 26th February, 1987 was issued promulgating Customs, Excise and Gold (Control) Appellate Tribunal Members (Recruitment and Conditions of Service) Rules, 1987 (hereinafter referred to as CEGAT Rules, for short). As per these rules period of probation as Judicial Member was one year. On 3rd November, 1988 order was issued by the respondents stating that petitioner had completed his period of probation w.e.f. 28th October, 1983 which was followed by notification dated 7th November, 1988 appointing petitioner substantively to the post of Judicial Member of CEGAT w.e.f. 29th October, 1983. While the petitioner was working as Member, CEGAT, by order dated 15th January, 1991 he was appointed as Vice-President of CEGAT at Delhi w.e.f. date he took over the charge of the Office of Vice-President, CEGAT. This was followed by order dated 15th May, 1991 whereby petitioner was declared as Head of Department under SR-2(10) as well as under Rule 13(2) of the Delegation of Financial Powers Rules, 1978 subject to the conditions mentioned therein. This order was put in operation for the period from 13th May, 1991 to 24th May, 1991 during which Shri G. Shankaran, President, CEGAT was on leave w.e.f. 4th June, 1991 and till the new President took over, in as much as w.e.f. 4th June, 1991 Shri G. Shankaran was taking voluntary retirement as President, CEGAT. After the voluntary retirement of Shri G. Shankaran, the post of President, CEGAT fell vacant and the same was filled up by appointing petitioner to this post vide order dated 13th April, 1992.

3. Petitioner took over the charge as President, CEGAT on 13th April, 1992, he completed his three years of tenure on 12th April, 1995. On 12th April, 1995 an order was issued to the following effect:

"Sanction of the President is hereby accorded to Shri S.K. Bhatnagar, Vice-President, Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi functioning under the Department of Revenue, being declared as Head of the Department under S.R. 2(10) as well as under Rule 13(2) of the Delegation of Financial Powers Rules, 1978 subject to the conditions mentioned therein.

This order will come into force on the expiry of the term of three years of Shri Harish Chander, as President on 12-4-1995 afternoon, and will continue till the new President takes over."

4. However, thereafter respondents issued order dated 17th April, 1995 wherein it was stated that consequent upon completion of three years' tenure, petitioner had relinquished the charge of the post of President, CEGAT from the evening of 12th April, 1995. The order further stated that "On completion of his tenure as President, and in accordance with the scheme of Rule 10 of the CEGAT Members (Recruitment and Conditions of Service) Rules, 1987, Shri Harish Chander is not entitled to hold any other post in the Tribunal."

5. Petitioner states that he received this order dated 17th April, 1995 in the evening of 17th April, 1995 at his residence and, Therefore, the question of his relinquishing the charge of the post of President, CEGAT on 12th April, 1995 did

not arise. According to him, he relinquished the charge only on 25th April, 1995. In fact on 12th April, 1995 itself he had applied for leave w.e.f. 12th April, 1995 to 28th April, 1995. The leave applied for by the petitioner was, however, refused vide letter dated 27th April, 1995 on the ground that since he had completed three years tenure as President on 12th April, 1995 and could not continue in CEGAT in any other capacity no leave could be granted to him. Be that as it may, fact remains that after 12th April, 1995 petitioner did not work in any capacity in CEGAT. Petitioner submitted representation against order dated 17th April, 1995 on 8th October, 1995. Vide letter dated 17th October, 1995 he was informed by the Finance Minister that he shall have the matter carefully examined. However, as no further communication or reply was received from the respondents, petitioner filed application (O.A. No. 2249/95) u/s 19 of the Administrative Tribunal Act before the Central Administrative Tribunal (hereinafter referred to as CAT, for short) Principal Bench, New Delhi. By impugned order dated 13th April, 1998 CAT dismissed the application filed by the petitioner. Feeling aggrieved against the order of the CAT present writ petition has been filed by the petitioner.

6. Before stating the arguments advanced by the respective parties, it would be appropriate to reproduce rules which have bearing on this case. As noticed above, appointment to the post of Judicial Member, Vice-President, President are governed by CEGAT Rules, 1987. Rule 2 of the CEGAT Rules, 1987 is definitions clause and reads as under :

"In these rules, unless the context otherwise requires :

- (a) "Act" means the Customs Act, 1962 (52 of 1962);
- (b) Judicial Member means a Judicial Member of the Tribunal;
- (c) "Member" means a Member of the Tribunal and unless the context otherwise requires, includes the President, the Senior Vice-President, a Vice-President, a Judicial Member and a Technical Member;
- (d) "President" means the President of the Tribunal;
- (e) "Senior Vice-President" means the Senior Vice-President of the Tribunal;
- (f) "Technical Member" means a Technical Member of the Tribunal;
- (g) "Tribunal" means the Customs, Excise and Gold (Control) Appellate Tribunal constituted u/s 129 of the Act;
- (h) "Vice-President" means the Vice-President of the Tribunal."

7. Rule 3 deals with qualification of Member for recruitment. Rule 5 provides for initial constitution of CEGAT and prescribes that any Member of the Tribunal holding the post of President, Senior Vice-President, Vice-President, Judicial Member or Technical Member on the date of commencement of these rules shall be deemed to have been appointed as such w.e.f. date of his appointment. As noticed above, petitioner was appointed as Judicial Member on 11th October,

1982 and, Therefore, he was treated to be appointed as Member and part of initial constitution in terms of Rule 5. Rule 6 stipulates method of recruitment. As per Rule 8 period of probation of a person appointed as Member is one year. Rule 9 deals with reversion or termination of the service of Members.

8. Rule 10 deals with appointment of President, CEGAT and as this rule has relevance for the present case, same is reproduced below :

"Rule 10 : President

(1) The Central Government shall appoint one of the Members to be the President.

(2) Notwithstanding anything contained in Rule 6, a Sitting or Retired Judge of a High Court may also be appointed by the Central Government as a Member and President simultaneously.

(3) Where a Member (other than a Sitting or Retired Judge of a High Court) is appointed as President, he shall hold the office of the President, for a period of three years or till he attains the age of 62 years, whichever is earlier,

(4) Where a serving Judge of a High Court is appointed as Member and President, he shall hold office as President for a period of three years from the date of his appointment or till he attains the age of 62 years, whichever is earlier :

Provided that where a Retired Judge of a High Court above the age of 62 years is appointed as President, he shall hold office for such period not exceeding three years as may be determined by the Central Government at the time of appointment or re-appointment."

9. Thereafter, relevant rule for our purpose is Rule 16 and it reads as under:

"16. Compulsory retirement:

Subject to, provisions of Rule 10, the date of compulsory retirement of a Member (other than the President) shall be the date on which he attains the age of sixty years and not the last day of the month as in the case of other Central Government Servants, unless it is extended by an order of the Central Government."

10. In addition to the above rules, since F.R. 9(4), 9(13), 9(22), 9(30-A) F.R. 14A(d) have also bearing on the question involved and as reliance has been placed on them it may be appropriate to quote these provisions as well:

"Rule 9(4)

Cadre means the strength of a service or a part of a service sanctioned as a separate unit.

Rule 9(13)

Lien means the title of a Government servant to hold substantively, either immediately or on the termination of a period or periods of absence, a permanent post, including a tenure post, to which he has been appointed substantially.

Rule 9(22)

Permanent post means a post carrying a definite rate of pay sanctioned without limit of time.

Rule 9(30A)

Tenure post means a permanent post which an individual Government servant may not hold for more than a limited period.

Rule 14A(d)

A Government servant's lien on a post shall stand terminated on his acquiring a lien on a permanent post (whether under the Central Government or a State Government) outside the cadre on which he is borne."

11. In 1995 when the impugned order was passed by the respondents, petitioner was 54 years of age and he claims that he has right to continue as President/Senior Vice-President/Vice-President/Judicial Member till he attains the age of 62 years.

12. The main thrust of the argument advanced by Mr. P.P. Malhotra, learned Senior Counsel appearing on behalf of the petitioner, was that on the petitioner's appointment as President, CEGAT he held lien to the post of Vice-President/Judicial Member which he was holding on substantive basis. On his appointment as President, his lien to the post of Judicial Member was only suspended and such a lien cannot be terminated under Fundamental Rule 14A. Accordingly, he argued that, when the petitioner's tenure as President came to an end after he served for three years on the said post, he had to be reverted back as Judicial Member/Vice-President, CEGAT and had a right to continue on the said post till he attains the age of 62 years.

13. Elaborating his contention, he submitted that as petitioner was holding a permanent post of Judicial Member, CEGAT on which post he was to retire on attaining the age of 62 years, on his appointment as President, CEGAT for a fixed tenure he continued to hold lien on the substantive post of Judicial Member, CEGAT and this lien to the post of Judicial Member held by him could not be taken away by appointment to a tenure post of three years. He buttressed this argument by contending that all the posts in CEGAT belong to same cadre. He submitted that the composition of CEGAT was that of President, Senior Vice-President (which post stood abolished on 26th September, 1997), two Vice-Presidents and 18 Members which belong to the same cadre. He referred to the letter dated 18th July, 1991 addressed by Deputy Secretary, Government of India to the Registrar, CEGAT relating to sanction regarding setting up of the

Appellate Tribunal for Customs, Excise and Gold (Control) Matters and particularly Para 2 thereof which reads as under:

"One of the Members would be President of the Appellate Tribunal and there will be one Vice-President also from among the Members. Each Bench will have atleast one Judicial Member and one Technical Member."

14. He submitted that initial constitution of the Tribunal included seven Judicial Members and seven Technical Members and it is one of the Members who was to be the President of Appellate Tribunal and another Member was to be the Vice-President. Thus President, Vice-President were to be from amongst Members of the Tribunal which clearly shows that the President belongs to the same cadre.

15. He also drew our attention to Rule 10 of the Rules, 1987 as per which Central Government is to appoint one of the Members to be the President. He submitted that Sub-rule (2) of Rule 10 stipulates appointment of Sitting or Retired Judges of High Courts "as Member and President simultaneously" meaning thereby that same person could be Member and President. Similar expression, according to him, was used in Sub-rule (4) of Rule 10. The definition of "Member" given in Rule 2(c) states that Member includes the President etc. He further submitted that method of recruitment was provided under Rule 6, which only mentioned the procedure for recruitment to the post of Member, Thus, according to him, a person had to be appointed as Member under Rule 6 and for which there had to be a properly constituted selection committee as provided under the said rule. Once a person was appointed as Member, he was recruited to the cadre and it is from these Members that Central Government was to appoint one person as President. He also sought to draw parallel from Articles 315 and 316 of the Constitution of India which deal with appointment to various posts in Public Service Commission.

16. Relying on the aforesaid provisions of the CEGAT Rules, Fundamental Rules as well as constitutional provisions enumerated above, Mr. P.P. Malhotra, learned Senior Counsel further argued that petitioner always held the post of Member in substantive capacity on which post he had right to remain till he attains the age of superannuation i.e. 62 years. When he was appointed as President on tenure post for a period of three years, it was in the same cadre and his lien on the substantive post of Member was suspended temporarily during the period he was holding tenure post of President. After his tenure as President was over, his lien on the post of Member stood revived and he had a right to join back the duties as Member, CEGAT. Mr. Malhotra also relied upon following judgments in support of his case: T.R. Sharma Vs. Prithvi Singh and Others, ; State of Haryana Vs. Shri Des Raj Sangar and Another, ; State of Punjab and Others Vs. Labhu Ram and Others, ; Registrar T.N.V.A.S. University Vs . Shyed Abdul Quayam and Others; D.M. Bharati Vs. L.N. Sud and others, . Thus, to sum up, Mr. Malhotra argued that his case was based on the following three propositions :

(A) Post of Member to which the petitioner was appointed, was a permanent post

which he held in substantive capacity;

(B) He was appointed as President on a tenure post of three years during which period he held his lien on the permanent post of Member;

(C) The posts of Member as well as Vice-President belong to the same cadre and Therefore on completion of tenure he had a right to join back as Member, CEGAT till he attains the age of superannuation.

17. As may be noticed in detail herein after respondents do not dispute the first proposition as well as second proposition to the extend that petitioner was appointed as President which is tenure post. Respondents do not, however, agree that petitioner held lien on the post of Member after his appointment as President. The entire dispute is on the third proposition advanced by Mr. P.P Malhotra, as well as retention of petitioner's lien on the post of Member after his appointment as President, CEGAT.

18. It would be appropriate, at this stage, to refer to the impugned judgment of the Central Administrative Tribunal.

19. The discussion and conclusions arrived at by the Tribunal can be summed up in the following manner :

(a) As per Section 129 of the Customs Act post of President, CEGAT is recognised by statute and Section 129C provides that while a member and President are both Members of CEGAT, they hold different offices. President has special powers which a Member does not have.

(b) Post of President is a permanent post within the meaning of F.R. 9(22) read with F.R. 9(30-A).

(c) When the petitioner was appointed as President, CEGAT it gave him clear tenure of three years and after the expiry of the same, it automatically ended. As he was not appointed as President with a right to be reverted to the post of Judicial Member/Vice-President the question of his reversion to the post of Member/Vice-President does not arise.

(d) On the appointment of petitioner as President and after petitioner having taken over the Office of President his lien in the post of Member (which is also a permanent post) stood terminated and he acquired lien on the post of President for a period of three years. This was the inevitable conclusion in view of F.R. 9(13) read with F.R. 14A(d).

20. Thus, according to the reasoning given by the Tribunal in the impugned judgment, the posts of Members as well as President in CEGAT are permanent posts. Once a Member is appointed as President even on a tenure basis, he holds substantive post of President and, Therefore, he cannot have lien on the post of Member after his appointment to the post of President on substantive tenure basis as a person cannot hold two posts on substantive basis. Therefore, consequence was that on his appointment as President, CEGAT, his lien to the

post of Member stood terminated as he acquired lien on the post of President for a period of three years.

21. Mr. Jaisinghani, learned Additional Solicitor General who appeared on behalf of the respondent supported the conclusion arrived at by the CAT and submitted that in law and in view of the relevant rules, quoted above, this is the only conclusion. It was submitted that recruitment to the post of President is "direct selection recruitment" made with the approval of the Appointment Committee of Cabinet (hereinafter referred to as "ACC", for short). He referred to Rule 10 of CEGAT Rules to contend that it provides for the procedure for appointment of President and shows that it is a fresh direct appointment to an independent post based on "selection method" and inter alia provides that any Member (not necessarily senior most Member) can be appointed as President. He submitted that it is not even necessary that only Member is appointed as President and even a person who is or has been a Retired Judge of a High Court can be appointed as President of CEGAT. He further referred to Rule 16 of CEGAT Rules which fixes superannuation age of a Member (other than the President) at 62 years. Rule 16 expressly makes it subject to Rule 10 including Sub-rule (3) of Rule 10 while according to him, can only mean that a Member on becoming President will go out on the expiry of his tenure under Sub-rule (3). Thus, according to him, if Rule 16 is subject to Rule 10(3) President cannot have the advantage of superannuation as in Rule 16. Dilating further on this aspect, learned Additional Solicitor General submitted that Rule 10(3) provides that Office of the President shall be for a tenure of three years only or till the age of 62 years whichever is earlier and, Therefore, Rule 10(3) substantially makes the provision by which a President has to demit office i.e. after his tenure of three years expires or till he attains the age of 62 years whichever is earlier and, Therefore, after a person completes the tenure as President he cannot be reverted to the post of Member.

22. We have considered the submissions made by both the parties and have given our utmost thought to the provisions of various rules cited above. For the reasons mentioned hereinafter we are inclined to accept the submissions of the respondents and confirm the conclusion arrived at by the Central Administrative Tribunal in its impugned judgment.

23. No doubt a Member of CEGAT is eligible to be appointed as President, the zone of consideration for appointment to the post of President is not confined to Members of CEGAT alone, Sub-rule (1) of Rule 10 of CEGAT Rules deals with the appointment of President and states that one of the Members shall be appointed as President, Sub-rule (2) widens the field :

"Rule 10. President:

(1)

(2) Notwithstanding anything contained in Rule 6, a Sitting or Retired Judge of a High Court may also be appointed by the Central Government as a Member and

President simultaneously."

24. As per this sub-rule the Sitting or Retired Judge of High Courts may also be appointed as President by the Central Government with only rider that such person may be appointed as Member and President simultaneously. Reading Sub-rules (1) and (2) cumulatively it is crystal clear that the consideration for appointment to the post of President is not confined to Sitting Members of CEGAT. It travels outside as well and includes Sitting or Retired Judges of High Courts. Therefore, when question of appointment of President comes, the Central Government may include in the zone of consideration all Sitting Members of CEGAT as well as Sitting and Retired Judges of the High Courts, Sub-rules (3) and (4) stipulate tenure/age of retirement of President depending on the fact as to whether a Sitting Member is appointed as President or a Sitting or Retired Judge of High Courts is appointed as President. It is also not necessary that even when the post is filled up from amongst Members of CEGAT, senior most Member is appointed as President. From this it follows that the post of President is not in the nature of promotion from that of Member, CEGAT. The area of choice is wide and the post is filled up by way of direct appointment which is approved by the Appointments Committee of the Cabinet.

25. Once a person is appointed as President he is governed by totally different set of service conditions. Office of President is on a tenure basis. Section 129C of the Customs Act recognises it to be a different office with special powers which a Member does not have. Moreover, F.R. 9(22) read with Rule 9(30A) makes the post of President a permanent post, albeit, for a limited period. This fact is even admitted by the petitioner as in his O.A. filed before the Central Administrative Tribunal he himself stated that on his appointment to the post of President he held the post of President substantively.

26. Sustenance to this conclusion can also be drawn from reading Rule 16 of the CEGAT Rules dealing with age of retirement. A perusal of this rule reveals two significant aspects, namely, (a) it is made subject to provisions of Rule 10 and (b) retirement age prescribed is that of a Member specifically excluding President. The Pay and Allowance structure contained in the rules show that President's post carries a higher salary as compared to the post of Member. A Member is treated on different footing as President. When this is the factual position with respect to the two posts, they cannot be said to be in the same cadre.

27. In the case of Dr. L.P. Agrawal Vs. Union of India and others, , Apex Court had the occasion to define expression "tenure" in the following manner :

"Tenure" means a term during which an office is held. It is a condition of holding the office. Once a person is appointed to a tenure post, his appointment to the said office begins when he joins and it comes to an end on the completion of the tenure unless curtailed on justifiable grounds. Such a person does not superannuate, he only goes out of the office on completion of his tenure.

28. Dr. Aggarwal was appointed as Director on tenure basis for five years or till he attained the age of 62 years whichever was earlier. He was sought to be compulsorily retired before completion of the tenure post. This action was set aside by the Supreme Court holding that he had right to complete the tenure. Conversely, in the instant case, petitioner had no right to continue on his tenure post after expiry of the tenure simply because he had not attained the age of 62 years which is the retirement age of a Member. There is no concept of superannuation on a tenure post of President which as per rules is for three years or for lesser period in case the incumbent attains the age of 62 years earlier.

29. The CEGAT Rules and the position in the instant case clearly reveal that post of President and Member belong to different "cadres". This position finds support from the following cases : State of Mysore Vs. R.V. Bidap, and Dr. S.K. Kacker Vs. All India Institute of Medical Sciences and Others, . The statement of law emerges from these observations of the Apex Court in Dr. S.K, Kacker's case (supra).

"The appellant, while working as Head of the Department and Professor of the ENT Department, was selected by the Selection Committee for appointment as Director of the AIIMS. It is also an admitted position that any Professor in India is entitled to apply for and seek selection to the post of Director. It is a selection post to be filled by competition in the open market. Therefore, once a Director is selected and appointed with the concurrence of the Central Government, it becomes an independent permanent appointment. It is seen that the advertisement itself clearly indicated that the incumbent would be on probation for one year. It is also an admitted position that the appointment to the post of Director is a tenure post for a period of five years. Thus, it is a permanent post.

The question, Therefore, is whether, on completion of the period of five years, the incumbent would revert to his parent post? It is seen that the appellant came to be selected while he was working in the post of Professor and Head of the ENT Department. Take for instance, a doctor who is selected from outside the institute from anywhere in the country; on his appointment, unless he is permitted by his Appointing Authority to go on tenure basis with a right to revert to the parent department, he cannot claim to retain his post in his original appointment; at the same time, he can be a permanent Government servant in the Central Government with the AIIMS."

30. Similarly, in Bidap's case (supra) the Supreme Court held that Chairman of U.P.S.C. is also a Member but nevertheless the Office of a Member is different from that of a Chairman so also the duties attached to each office are different although both are Members. The Supreme Court observed that when a person holding office of the Member takes up office as Chairman, he by necessary implication relinquishes or ceases to hold his office as Member and that it is inconceivable that he would hold two offices at the same time as that would also reduce the number of Members. Therefore, logically it would spell an automatic

expiry of office of the Member qua ordinary Member on his assumption of office as Chairman. The question in Bidap's case was whether a person on appointment as Chairman, U.P.S.C. would get fresh tenure of six years or his tenure as Member will be counted for computing the six years period mentioned in Article 316 of the Constitution of India. It was held that, appointment as Chairman was a fresh appointment and period of six years would be counted afresh.

31. In our view decision of the Supreme Court in Dr. S.K; Kacker's case clinches the issue involved in the present case. Dr. Kacker was already working in AIIMS as a Professor and Head of Department, just like the petitioner in the present case who was working in the CEGAT as a Member. Dr. Kacker was selected for appointment as a Director on the basis of an open selection. The post of Director was not a promotional post. Similarly in the instant case the petitioner was appointed on the basis of open selection and not by way of promotion. The post of President, CEGAT is not a promotional post. On his appointment the petitioner joined a new, independent statutory post. He entered upon a new office and relinquished the post of Member held hitherto by him. He ceased to hold the post of Member of the CEGAT. The post of Member and President are different having different duties and responsibilities and different pay scales. On his appointment as President of CEGAT, the petitioner's links with the post of Member got completely snapped and the petitioner cannot claim to fall back upon the said post on completion of his tenure as President. The post of President is a higher post and in view of the nature of duties and responsibilities attached to it, is in a different cadre.

32. Coming to the question of cadres it appears that the petitioner is confusing the word "cadre" with the word "service". The posts of Member, Vice-President, Senior Vice-President and President in the CEGAT may be said to be posts in the same service but these posts cannot be said to be in the same cadre. When the status, nature of duties and pay scales attached to the posts are different, they cannot be said to be in the same cadre,

33. In this connection we would like to note the observations of the Supreme Court in Chakradhar Paswan Vs. State of Bihar and Ors, . As per facts in the said case the Directorate of Indigenous Medicine comprised of 4 posts, namely, Director and three Deputy Directors which were all Class I posts. The Supreme Court observed that though the Director and Deputy Directors were Members of the same service but they do not belong to the same cadre. The question in that case was about reservation of posts as per 40 point roster. It was observed "In service jurisprudence, the term "cadre" has a definite legal connotation. In the legal sense, the word "cadre" is not synonymous with "service". Fundamental Rule 9(4) defines the word "cadre" to mean the strength of a service or a part of service sanctioned as a separate unit, the post of Director which is the highest post in the Directorate is carried on a higher grade or scale, while the post of Deputy Directors are borne in a lower grade or scale and, Therefore, constitute

two definite cadres or grades. It is open to the Government to constitute as many cadres in any particular service as it may choose according to the administrative convenience and expediency and it cannot be said that the establishment of the Directorate constituted the obligation of a joint cadre of the Director and Deputy Directors because the posts are not inter-changeable and the incumbents do not perform the same duties, carry the same responsibilities or draw the same pay."

34. Applying the above ratio to the facts of the present case the conclusion is inevitable that the posts of Member and President in the CEGAT are in different cadres.

35. Further the provisions of Sections 129 and 129C of the Customs Act clearly bring out the difference between the two posts which fortifies the conclusion that the two posts are in different cadres.

36. On the question of lien the argument of the learned Counsel for the petitioner is that even after his appointment to the post of President, the petitioner continued to have his lien to the post of Member and, Therefore, after completion of the tenure in the post of President he is entitled to revert to the post of Member. There is no dispute that the post of President as also the post of Member, CEGAT are permanent posts and appointment to the said posts are substantive appointments. It is also settled position in law that a person cannot hold lien in two permanent posts at the same time. Admittedly the appointment of the petitioner to the post of President, CEGAT was a substantive appointment to a permanent post. The petitioner was entitled to have a lien on the said post till his tenure on the post was to last. The next question is can the petitioner be said to continue to retain his lien on the post of Member which also he had held on a substantive basis? We have already held that the appointment of the petitioner to the post of President was a regular substantive appointment on the basis of selection. It was in the nature of a direct recruitment. Therefore, under Fundamental Rule 14A(d) on his appointment to the permanent post of President, CEGAT, the petitioner acquired lien on the said post and his lien on the post of Member CEGAT stood terminated. The said post being out of the cadre, the petitioner could not retain a lien thereon.

37. The point regarding lien also stands fully covered by the decision of Supreme Court in the case of Dr. S.K. Kacker. Fundamental Rule 9(13) defines lien to mean title of a Government servant to hold substantively either immediately or on the termination of a period or periods of absence, a permanent post including a tenure post to which he has been appointed substantively. Therefore, if a Government servant is appointed substantively to a permanent post or a tenure post he becomes a Government servant for the purposes of his tenure. Consequently, he is entitled to retain lien on that post. A tenure post means as per FR 9(30A) a permanent post which an individual Government servant may not hold for more than a limited period. The Supreme Court observed in this behalf in Dr. Kacker's case :

"10. It would indicate that on appointment to a permanent post, be it under the Central Government or the State Government, outside the cadre on which he is borne, his lien on the previous permanent post stands terminated on his acquiring a lien in a permanent post. The post of Director is not in the same cadre as the post of Professor in the AIIMS. The post of Director is the Head of the AIIMS and it is independent of all the Departments. The Director is enjoined to supervise not only the administrative work of the AIIMS, but also its management for and on behalf of the Institute Body. Therefore, on his appointment to the permanent post as a Director, he lost his lien on the post as a Professor and Head of the ENT Department. Resultantly, when the tenure of the appellant had expired on by efflux of time or in case any of the eventualities mentioned in Regulation 30A had happened, he cannot revert to the post of Professor and Head of the Department."

38. The result of this discussion is that the petitioner cannot be said to have retained his lien in the post of Member, CEGAT on his substantive appointment to the post of President, CEGAT.

39. Before concluding we would like to deal with the judgments relied upon by learned Counsel for the petitioner. First he cited T.R. Sharma Vs. Prithvi Singh and Others, . In this case the appellant had been posted and later substantively confirmed on the post of Block Development & Panchayat Officer in the Development Department. Before this he was Agriculture Inspector in the Agriculture Department. On his own request he was deconfirmed and reverted to the parent department. He was then promoted to the post of District Agricultural Officer. This order was challenged by his juniors on the ground that his lien in the parent department stood terminated on his substantive appointment in the Development Department. The facts show that this case really turned on the interpretation of Punjab Civil Service Rules. The relevant rule required that lien of the officer concerned on the post held by him before joining the other department in a substantive capacity should have been suspended by the Competent Authority. The Competent Authority failed to suspend the lien of the appellant on the post of Agricultural Inspector. From this it was concluded that his lien on the post of Agricultural Inspector had not terminated. On being deconfirmed his lien in the parent department revived. Therefore, his promotion in the parent department could not be assailed. The rule position applicable in the present case is different. F.R. 14A(d) which is applicable is to the following effect:

"F.R. 14-A.

(a) xx xx xx (b) xx xx xx (c) xx xx xx (d) A Government servant's lien on a post shall stand terminated on his acquiring a lien on a permanent post (whether under the Central Government or a State Government) outside the cadre on which he is borne."

40. The said provision suggests that the Hen on the permanent post earlier held

by the Government servant stands automatically terminated on his acquiring a lien on another permanent post outside the cadre. Therefore, this decision is of no help to the petitioner.

41. In *State of Haryana Vs. Shri Des Raj Sangar and Another*, , the legal position was almost akin to the one in *T.R. Sharma's* case (supra). The same Punjab Civil Service Rule was under consideration and the Court arrived at this decision on the same basis. In view of the F.R. 14A(d) this decision is again of no help to the petitioner.

42. The other decisions, namely, *State of Punjab and Others Vs. Labhu Ram and Others*, ; and *D.M. Bharati Vs. L.N. Sud and others*, , in our view have no relevance in the facts and circumstances of the present case.

43. The main argument of the learned Counsel for the petitioner that the posts of Member and President, CEGAT are in the same cadre and, Therefore, the petitioner retained his lien on the post of Member when he was appointed as President on a fixed tenure has already been dealt with. We have held that the two posts are not in the same cadre. When the two posts are in different cadres, the question of retaining lien by officer concerned on the post held by him before his appointment to the ex cadre post on substantive basis does not arise. The appointment of petitioner on the post of President, CEGAT was a permanent substantive appointment though for a fixed tenure. The said post being in a cadre different from the cadre of the post of Member, the petitioner could not retain his lien in the post of Member, CEGAT. Accordingly in our considered view the petitioner is not entitled to any relief. The Tribunal rightly rejected his application whereby he had challenged the action of the respondents in not allowing him to continue in the post of Member, CEGAT. This petition is dismissed. However, in the facts and circumstances of the case the parties are left to bear their respective costs.