(2008) 04 MAD CK 0039

In the Madras High Court

Case No : Writ Petition No. 36940 of 2003 and WPMP. No. 44858 of 2003

I.C. and C.E.S. Association and Others APPELLANT

Vs

The Central Administrative Tribunal and Union of India (UOI) RESPONDENT

Date of Decision : 15-04-2008

Acts Referred:

Customs and Central Excise Service (Group A) Rules, 1987 — Rule 18(1), 18(2)

Citation : (2008) 04 MAD CK 0039

Hon'ble Judges : P.K. Misra, J;K. Chandru, J

Bench : Division Bench

Advocate : V. Vijayshankar, for the Appellant; S. Udayakumar, A.C.G.S.C., for the Respondent

Final Decision : Dismissed

Judgement

P.K. Misra, J.—This writ petition is directed against the judgment of the Central Administrative Tribunal dated 20.10.2003 in O.A. No.

1162 of 2002, whereunder the Tribunal has rejected the Original Application filed by the present petitioners.

2. Petitioner No. 1 is the Association representing the promotee Indian Customs and Central Excise Service Group A Officers consisting of

Assistants / Deputy / Joint / Additional Commissioners in the Central Board of Excise and Customs promoted from three Group ''B'' feeder

cadres, namely, Superintendents of Central Excise, Superintendents of Customs (Preventive) and Appraisers of Customs. Petitioners 2 to 5 are

working as Deputy Commissioners promoted from the Appraiser cadre.

3. The facts are as follows:

3.1 The Grade of Assistant Commissioner of Central Excise and Customs is the lowest Group ''A'' cadre in the Indian Customs and Central Excise

Service. As per the Recruitment Rules, 50% of such posts are to be filled up by promotion and 50% by direct recruitment. Promotions are to be

effected from the cadre of Superintendents of Central Excise, Superintendents of Customs and Customs Appraisers. There was continuous dispute

among these three feeder cadres as to the promotion within 50% quota available for the promotees. Ultimately such dispute attained finality as per

the judgment of the Supreme Court dated 22.11.1996 reported in All India Federation of Central Excise Vs. Union of India (UOI) and Others, .

3.2 The Supreme Court had concluded the issue and the relevant passages found in paras 16 to 19 may be usefully extracted:

16. The relevant portions of the proposal are set out below:

2.2 The seniority list of each of the above three feeder cadres is local and is maintained by each Collectorate/Custom House-wise. The all-India

lists of the first two feeder cadres are prepared on the basis of continuous length of regular service in the grade, subject to maintenance of inter se

seniority of each local cadre. The inter se ranking in the 3rd feeder cadre (that is, Customs Appraisers) was as per the ''General Principles of

determining seniority of various categories of persons employed in Central Service'' (generally known as quota-rota principles) stipulated in the

Ministry of Home Affairs OM No. 9/11/55-RPS dated 22-12-1959 [which were modified by the Department of Personnel and Training OM No.

35014/2/80-Estt. (D) dated 7-9-1986], prior to the framing of the Indian Customs and Central Excise Service Group ''A'' Rules, 1987. In these

Rules of 1987, it has been provided vide Sub-rule (2) of Rule 18 that-

(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.

3.1 The question of determining the seniority of the Group ''B'' Officers of the different feeder cadres in the quota for promotion to the grade of

Assistant Collector/Senior Superintendent Group ''A'' has been the subject-matter of dispute in a number of cases, and thus, unfortunately,

remained unresolved so far. There have been claims and counter-claims by the officers of the different feeder cadres. Even at present, this dispute

is the subject-matter of a number of writ petitions, inter alia before the Hon''ble Supreme Court.

3.2 Careful thought has once again been given to find a just and fair solution with a view to resolving this long outstanding dispute taking into

account the reasonable prospects of promotion of officers of different feeder cadres. It is expected and hoped that, given the goodwill and a sense

of reason on the part of all the concerned parties, it should be possible to find a solution which is just and fair to find a solution from both the

streams ? namely Customs and Central Excise.

4. With this object in view, the Board have taken stock of the nature of Group ''A'' entry grade posts (Senior Superintendents/Assistant

Collectors) which are the subject-matter of dispute. For this purpose, the total number of posts in the entry grade of Group ''A'' Service have been

divided as (i) Central Excise posts and (ii) Customs posts, on the basis of functions which each post is required to perform. Posts required to

perform wholly or predominantly functions under the Central Excise posts. Similarly posts required to perform wholly or predominantly functions

under the Customs Act have been treated as Customs posts. The ratio so arrived at has been applied for dividing the common posts in the

Directorates and CEGAT. This calculation gives the ratio of 65:36 as between Central Excise and Customs posts. Since the posts and persons

manning them cannot be divided into fractions, the figures have been rounded to 67:33 so as to give the workable ratio of 2:1.

5.1 The proposal is that the promotee quota vacancies in the Group ''A'' grade of Senior Superintendent/Assistant Collector may be filled from

Central Excise and Customs Group ''B'' Officers in the ratio of 2:1, the number of vacancies falling to the share of Customs Group ''B'' Officers

being further apportioned between the two feeder cadres of customs ? namely, Customs Appraisers and Customs (Preventive) Superintendents in

the ratio of their respective sanctioned strength (which, rounded off to workable ratio, comes to 2:1).

5.2 The need to further sub-divide the number of vacancies in the share of the

Customs Group ''B'' Officers between the Customs Appraisers and

Customs (P) Superintendents arises because: (a) the two feeder cadres of Customs Appraisers and Customs (P) Superintendents are different and

separate, (b) their seniority lists are separate, (c) whereas recruitment to Customs (P) Superintendents'' Grade is 100% by promotion, in the case

of Customs Appraisers, it is 50% by direct recruitment and 50% by promotion, and (d) in terms of the General Principles governing determination

of seniority laid down by the M.H.A./DOP&T, where there are more than one feeder cadres, the inter se seniority of each feeder cadre is required

to be maintained while preparing the seniority list in the higher grade to which promotions are to be made, which is also the promotion in the 1987

Recruitment Rules of IC & CES Group ''A''.

6.1 It is noticed that Central Excise Group ''B'' Officers get their promotion to Group ''B'' after having put in, by and large, very long years of

service in Group ''C'' and, consequently, they are of much older age group as compared to Customs Appraisers. Therefore, placing the

Superintendents of Central Excise first and placing Customs Officers thereafter, in the promotion panel would not present any material

disadvantage to Customs Officers. The age group of Superintendents of Central Excise is, by and large, such that they would retire before their

turn for next promotion to the grade of Deputy Collector comes. As of now, there is hardly any Deputy Collector of Central Excise anywhere in

India who is a promotee from Group ''B'' in the Central Excise; Central Excise Officers would generally retire as Assistant Collectors, thereby

increasing the chances of officers of younger age group from the Customs stream for their next promotion to the grade of Deputy Collector.

6.2 By and large, similar position would be there in the case of Customs (P) Superintendents vis-`-vis Direct Recruit Customs Appraisers.

Therefore, a reasonable placement in the combined all-India seniority list may be in the following order:

(i) Superintendents of Central Excise, Group ''B''

(ii) Superintendents of Customs (P) Group ''B''

(iii) Customs Appraisers.

6.3 To sum up, according to the above formula, each bunch of 9 vacancies in the promotion quota for Group ''B'' feeder cadres will be apportioned in the ratio 6:1:2 consisting of Central Excise Superintendents, Customs (P) Superintendents and Customs Appraisers respectively. To

illustrate, if 9 vacancies exist for the promotee quota in Group ''A'' entry point, the first six vacancies would go to Superintendents of Central

Excise, the seventh vacancy to Customs (P) Superintendents and the eighth and ninth to Appraisers; further vacancies to be filled up on the basis of

a ''cycle'' in the above order.

7. For the purpose of making promotions to Group ''A'' separate consideration lists of Superintendents of Central Excise on the one hand, and

Appraisers (both direct recruits and promotees) and Preventive Superintendents of Customs on the other hand, would be drawn up first on all-

India basis. While Group ''B'' Officers of the two feeder cadres ? namely, Superintendents of Central Excise and Superintendents of Customs (P) ?

may be placed in their respective consideration lists on the basis of their continuous length of service in Group ''B'', the Group ''B'' Officers of the

feeder cadre of Appraisers may be placed in their list on the basis of the principles of quota-rota as in the General Principles laid down from time

to time in the instructions of MHA/DOP&T applicable to all the Services under the Union of India, circulated on 22-12-1959 and 7-2-1986.

17. So far as inter se seniority between direct recruit Appraisers and promotees is concerned, that should be finalised in the light of judgment of

this Court in Gaya Baksh Yadav case1. To that extent, last portion in para 7 (underlined portion) in the above proposal stands modified.

18. As stated above, we find that the above modified proposal is just, fair and equitable and accordingly we direct the Union of India to amend the

impugned Rules so far as Group ''A'' Service is concerned. Review all post- 1979 ad hoc promotions to the post of Senior

Superintendent/Assistant Collector in the promotee quota in the light of the present proposal, redetermine the respective placement of the

promotee officers in the combined Group ''A'' seniority list and regularise accordingly the posts of ad hoc promotions.

19. 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 regularise 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 or rights of the direct recruits of Group ''A'' Service

while rearranging the seniority in Group ''A'' 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.

3.3 Thereafter, rather belatedly, the respondents published an order dated 21.11.2000, whereunder the promotee vacancies from the years 1980

to 1996 to be shared among the 3 feeder cadres was worked out. Subsequently, a combined seniority list of Assistant Commissioners (Junior

Time Scale) dated 30.11.2000 was circulated by the respondents on the basis of regularisation order dated 21.11.2000. The petitioner

Association made several representations to the respondents against the order of regularisation dated 21.11.2000 and the draft seniority list dated

30.11.2000. Since the Respondents 2 and 3 did not take any appropriate action on the representations made on 19.12.2000 and 3.9.2001, the

petitioner Association filed O.A. No. 1262 of 2001.

3.4 The Tribunal on 5.12.2001, disposed of the Original Application with the following directions:

In view of the said submissions, we only direct the first respondent to dispose of the representations and pass orders on the same within a period

of eight weeks from the date of communication of this order. The applicants may also take a copy of this order along with the copy of the O.A.

and annexures and produce the same before respondents for early action.

3.5 In the meanwhile, the petitioner Association had earlier filed O.A. No. 1216 of 2001 challenging the regularisation of promotions for not

correctly identifying the vacancies for promotions, which was disposed of by the Tribunal by order dated 20.9.2002 with a direction that the official respondents should finalise the inter se seniority list and thereafter issue orders of promotion. While the matter stood thus, the impugned

inter se seniority list dated 24.9.2002 was issued in a hurry without proper application of mind and without considering the contentions raised by

the petitioners.

3.6 At that stage, the petitioners filed O.A. No .1162 of 2002 claiming the following reliefs:

...to call for the proceedings of the 1st respondent in the file A-32012/8/2000 AD II dated 24-9-2002 and also the order passed in F. No. C-

18011/11/2002 AD II dated 24-62002 and quash the same and direct the respondent.

(1) to correctly identify the vacancies for promotees in the Group ''A'' Indian Customs and Central Excise Service in the ratio of 6:1:2 by adopting

the principle of continuous officiation.

(2) to adopt the principle of bunching up while drawing inter-se seniority of direct recruits and promotees of Group ''A'' entry stage of Indian

Customs and Central Excise Service from 1980 to 1985.

Such Original Application having been dismissed by the Tribunal vide order dated 20.10.2003, the present writ petition has been filed.

4. Before the Tribunal, the petitioners had raised the following contentions:

(a) Since no sufficient direct recruits were available during 1980-1996 in the cadre of Assistant Commissioners and the respondents in the affidavit

filed in Contempt Petition No. 513 of 1997 before the Supreme Court had clearly admitted that there had been failure of quota/rota rule in the

matter of promotion to the cadre of Asst. Commissioners of Central Excise and Customs in determining the seniority in the cadre, the respondents

could not have applied quota/rota rule and instead of following the quota/rota rule, the respondents should have followed the well recognised

principle of fixing seniority from the date of continuous officiation.

(b) The Office Memorandum dated 7.2.1986 issued by the Department of Personnel and Training, which provided bunching of vacancies where

the required percentage of recruitment had not been adhered to, has been violated by the respondents, inspite of the observation of the Ernakulam

Bench of the Tribunal vide order dated 26.3.1991 in O.A. No. 473 of 1989 that the said Official Memorandum was to be applied retrospectively.

Because of such faulty implementation, the direct recruits, who had been recruited even after a long gap of five years after the promotion of the

promotees, had been shown seniors.

(c) The seniority of the persons, who are promoted as appraisers and those who are directly recruited, were not fixed in accordance with the

directions of the Supreme Court in the decision reported in Gaya Baksh Yadav Vs. Union of India (UOI) and Others, .

5. The Tribunal has rejected all such contentions. So far as the first contention is concerned, the Tribunal found that merely because during some of

the years, the number of direct recruitment did not match the quota available, it cannot be said that quota-cum-rota rule had broken down.

Regarding the applicability of the Office Memorandum, the Tribunal has referred to para 7 of such Office Memorandum, which clearly indicated

These orders take effect from 1st March, 1986. Seniority already determined in accordance with the existing principles on the date of issue of

these orders will not be reopened in respect of vacancies for which recruitment action has already been taken, on the date of issue of these order

either by way of direct recruitment or promotion, seniority will continue to be determined in accordance with the principles in force prior to the

issue of this OM."". The contention relating to erroneous fixation of seniority among the Appraisers either promoted or directly recruited was also

negatived.

6. While challenging the seniority list as well as the order of the Tribunal, the petitioners contended that from the affidavit filed by the respondents,

which was filed before the Supreme Court in the Contempt Application, and from the materials on record, it is admitted that quota rule had broken

own as there was no sufficient number of direct recruits and the vacant posts had been filled up from the promotees and, therefore, it is stated that

since quota rule had broken down, seniority list could not have been fixed by following the principle of rotation.

7. We have already extracted the relevant portion of the observation made by the Supreme Court in All India Federation of Central Excise case.

The underlined portion contained in paragraph 19 of the decision leaves no room for doubt that the promotees could not be regularised in excess

of 50% of the quota available to them. The contention to the effect that since the quota rule had broken down, the fixation of seniority by adopting

the method of rota should not have been followed, cannot be accepted. As a matter of fact, the Tribunal has exhaustively dealt with that aspect by

referring to several decisions of the Supreme Court and also the relevant observations made by the Supreme Court in the case reported in All India

Federation of Central Excise Vs. Union of India (UOI) and Others, , which was between the parties.

8. Similarly the allied contention to the effect that there was a long gap between the direct recruits and the ad hoc promotees and, therefore, the

policy of seniority from the date of continuous officiation should have been followed, is also bereft of any merit. This is more so in view of the

categorical observation of the Supreme Court that the promotees cannot occupy more than the 50% of the quota available to them.

9. From the materials on record, it is apparent that ad hoc promotions had been given to the promotees in excess of the quota available for them

and, therefore, such persons have to be regularised within the quota was available for them and obviously for the aforesaid purpose seniority of

such persons has to be depressed. This is not a case where direct recruits have been shown as seniors from a date earlier to the actual recruitment

of the direct recruits, but the seniority of the promotees has been depressed to subsequent years as the ad hoc promotions of the promotees were

in excess of the quota. While considering the matter, the Tribunal has rightly placed upon the decisions of the Supreme Court and we do not find

any case made out to interfere with the order of the Tribunal.

10. Apart from the above, we find that essentially the petitioners were challenging the seniority of many of the direct recruits and the claim was that

the promotees should be given seniority from the date of continuous officiation. If such seniority from the date of continuous officiation would be

granted, obviously the promotees would occupy more than the 50% quota available to them which in result would have make them seniors above

the direct recruits, who have been recruited within their 50% quota. In our opinion, such a course cannot be adopted, which is likely to affect the

direct recruits who are not impleaded either in their individual capacity or even in their representative capacity. Since the direct fallout of the

acceptance of the contentions of the petitioners would result in re-fixation of seniority, which had been finalised, we are of the considered opinion

that, in the absence of those persons, the Original Application as well as the present writ petition are bound to be dismissed.

11. Learned Counsel for the petitioners has submitted that the Tribunal had imposed a cost of Rs. 10,000/- on the ground that litigation was

frivolous and such a direction should be deleted. It is contended by him that several representations had been made and keeping in view the fact

that there are several decisions of the Supreme Court recognising the factum of seniority on the basis of continuous officiation and also recognising

the principle that quota rule had broken down and the seniority should not be fixed on the basis of representation, it cannot be said that litigation

was a vexatious litigation imposing a heavy cost of Rs. 10,000/-.

12. In the facts and circumstances of the case, while dismissing the writ petition, we feel interest of justice would be served by directing deletion of

imposition of costs. The writ petition is accordingly dismissed, subject to the aforesaid observations. No costs.