

(2017) 04 AHC CK 0047

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 14897 of 2016

Union of India

APPELLANT

Vs

Sukhjinder Jit Singh

RESPONDENT

Date of Decision : 10-04-2017

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 5 ADJ 146

Hon'ble Judges : Dilip Gupta and Manoj Kumar Gupta, JJ.

Bench : Division Bench

Advocate : Saurabh Srivastava, Advocate and Satish Kumar Rai, Sr. Advocate, for the Petitioners; A.N. Roy, Ashok Khare, F.A. Ansari, Piyush Sinha, Raghav Nayar, S.C. and Shashi Nandan, Advocates, for the Respondents

Final Decision : Allowed

Judgement

1. The instant writ petition has been filed by the Union of India and Central Board of Excise and Customs challenging the orders dated 4 March, 2016 and 14 May, 2016 passed by Central Administrative Tribunal, Allahabad Tribunal in Original Application No.93 of 2015 filed by the first respondent. The first respondent is a direct recruit DR Customs Appraiser of the batch of 1982 and in due course of time was promoted on adhoc basis as Assistant Collector of Customs and Central Excise, an entry level post of Group "A" of Indian Revenue Service, by order dated 20 September 1994. Presently he is holding the post of Additional Commissioner w.e.f. 1 January, 2007. He led a challenge to the revised select list dated 4 February 2013 notifying regular promotions to Grade VI of Indian Customs and Central Excise Service Group "A" for the period 1980 to 1996-97 as well as the revised final seniority list of Assistant Commissioners of Central Excise dated 27 February 2013.

2. The Tribunal has by impugned orders quashed the revised select list dated 4 February, 2013 and the final seniority list dated 27 February, 2013 to the extent of the infirmities found therein by it. The petitioners have been directed to

redraw the revised select list and consequently, revise the final seniority list by following the observations and directions contained in paragraphs 20, 24 and 29 of the judgment. It has further been directed that while revising and recasting the final seniority list, the petitioners shall not disturb the number of slots given to the direct recruits in each of the respective year from 1 January, 1980 to 31 March, 1997. The revision and recasting of the final seniority list would only be in respect of promotion quota element of Customs Appraisers. A general direction has also been issued for extending cumulative benefit of the judgment to all Customs Appraisers. It has been further provided that for implementing the judgment, if administrative exigencies so require, the petitioners would be free to make adhoc promotions based on the date of appointment as Assistant Commissioner in case of a direct recruit and date of promotion as Assistant Commissioner in the case of a promotee. Thus, while determining the seniority of DR's and promotees, they will be placed in the seniority list by rotating them in the ratio of 1:1 till the DR's of a particular recruitment year are exhausted. Thereafter, all the adhoc promotees of a recruitment year will be bunched together in that recruitment year itself.

3. The main effect of the judgment of the Tribunal, inter alia, is to accord approval to all adhoc promotions made to Group "A" Services in the same recruitment year irrespective of the fact that the promotions had been made in excess of the 50% quota for promotion prescribed under the Service Rules. Before discussing the other implications of the judgment of the Tribunal, it is considered appropriate to narrate the background in which these directions have been issued.

The promotions to Indian Customs and Central Excise Group "A" Services is governed by the Indian Customs and Central Excise Service Group "A" Rules, 19873. The feeder cadre for promotion to Group "A" Services are :-

- (a) Superintendents of Central Excise, Group "B"
- (b) Superintendents of Customs (P), Group B; and
- (c) Customs Appraisers, Group "B"-
 - (i) Recruited directly through UPSC, as
 - (a) Non-experts on the basis of All-India Civil Services Exam., and
 - (b) Experts on the basis of specific requisitions placed with the UPSC, and ;
 - (ii) Promoted from the feeder cadres of Customs Examiner

4. Prior to enforcement of the Rules, the Group "A" posts were being filled up in the ratio of 1:1 from the direct recruits and promotees as per the executive instructions then in vogue. The promotions to Group "A" Services were made from a common list of officers of all the three feeder cadres based on their continued length of service in "B" Group in the 3 the Rules ratio of their cadre strength. This manner of filling up of the vacancies was challenged in Writ

Petition (Civil) No. 4532-33 of 1978. While the writ petitions were pending, the Service Rules were framed in pursuance of the directions given by the Supreme Court. The Supreme Court on being apprised of the said fact, disposed of the writ petitions on 23 September 1987 observing that "the promotions now in dispute will also be looked into with reference to the Rules and re-disposed of in accordance with law".

5. Rule 5 of the Rules prescribes that 50% of the vacancies are to be filled up by direct recruitment and 50% by promotion. Under Rule 18, the vacancies under the promotion quota are to be filled up in accordance with a common seniority list of three Group "B" categories of officers of the feeder cadre. The inter se seniority of the incumbents in the feeder categories has to be decided on the basis of regular length of service in their respective category. Rule 18 of the Rules was challenged by the Superintendents of Central Excise through their representative body, the All India Federation of Central Excise before the Supreme Court in Writ Petition No.306 of 1988. The grievance was that they enter Group "B" at a very late stage of their career and if Rule 18 was allowed to hold the field, they would not get their due share of vacancies in Group "A" service. While the matter was pending before the Supreme Court, the Central Board of Excise and Customs CBEC submitted a proposal for resolving the dispute that had been pending since a long time, at various levels. The Supreme Court, after examining the proposal, found the same to be equitable and fair as it took care of the legitimate interest of officers of all the three feeder categories and consequently, the same was accepted subject to certain modifications. The proposal submitted by CBEC and the extent to which it has been modified by the Supreme Court by judgment dated 22 November, 19965 (hereinafter referred to as judgement in "All India Federation") is reproduced for convenience :-

"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 5 (1997) 1 SCC 520 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-a-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 case. 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 promotion 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 post 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" Services, 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 within their quota and consequential promotions in further higher services. Their seniority be arranged accordingly."

In pursuance of the aforesaid directions of the Supreme Court, Rule 18 was amended in 1998, whereby the ratio of 6:1:2 amongst the three feeder categories was introduced. Thus, the position which emerged after the judgment of the Supreme Court in All India Federation case and the amendment carried out in the Rules is as under :-

(a) The vacancies in Group "A", Grade VI are to be filled up in the ratio of 1:1 by direct recruitment and promotion.

(b) The vacancies under the promotion quota are to be filled up from three feeder categories in the ratio of 6:1:2, meaning thereby that out of nine

vacancies in the promotion quota, the first six would be filled up from Superintendents of Central Excise, the seventh one from Superintendents of Customs (Preventive) and the eighth and ninth vacancies from Customs Appraisers.

(c) For the said purpose, three separate seniority lists of each feeder category would be maintained; the seniority list in respect of the first two feeder categories would be drawn on the principle of continuous officiation and seniority list of Customs Appraisers would be drawn as per the judgment of the Supreme Court in *Gaya Baksh Yadav v. Union of India* (1996) 4 SCC 23.

(d) All post 1979 ad hoc promotion to Group "A" Service were to be reviewed in the light of the directions given in *All India Federation* case.

6. It would be apposite to note that Group "B" posts in the first two feeder category i.e. Superintendent of Central Excise and Superintendent of Customs (P) are filled 100% by promotion while those in the third feeder categories i.e. Customs Appraisers are filled 50% by direct recruitment and 50% by promotion of Customs Examiner.

The dispute in relation to the inter se seniority between the promotee and direct recruit Customs Appraisers was subject matter of perennial litigation at various stages since a long time. The same was put at rest by the Supreme Court in *Gaya Baksh Yadav*. While tracing the history, the Supreme Court noticed that prior to enforcement of the Customs Appraisers Service Class II Recruitment Rules, 1961, 50% posts in the service were filled by direct recruitment and the remaining 50% by promotion. Consequently, the Supreme Court held that prior to implementation of the Rules 1961, the inter se seniority between the direct recruits and promotees had to be regulated by the rotational principles in accordance with *Mervyn Continho's* case irrespective of the length of continuous officiation. However, since after the enforcement of the Rules 1961, when the quota system was discarded, only allocation of at least 50% posts in favour of direct recruits as envisaged under the Rules 1961 was to be ensured at all times. Consequently, *Mervyn Continho's* rule would not apply. The inter se seniority has to be determined on the basis of continuous officiation. Accordingly, the Supreme Court issued the following directions for fixation of inter se seniority between the direct recruit Appraisers and the promotee Appraisers :-

"We thus go to uphold the orders of the Tribunal to this extent that a fresh All India Combined List of Appraisers be prepared by the respondents on the basis of continuous officiation of the incumbent in the post of Appraiser appointed on and from the date of the Customs Appraisers Service, Class II Recruitment Rules 1961. But for Appraisers appointed prior to that date the rule of *Mervyn Continho* would be the basis to work out the inter seniority of the incumbents to operate the quota and rotational rule."

7. In pursuance of the directions given by the Supreme Court in *Gaya Baksh Yadav*, a seniority list of Custom Appraisers appointed upto December, 1987 was

drawn and circulated in 1997. The same was challenged by the direct recruit Custom Appraisers before the Bombay Bench of Central Administrative Tribunal in O.A. No.855 of 1998. The Tribunal, by order dated 18 June, 2003 quashed the seniority list on the ground that promotees had occupied more than 50% posts, which was impermissible under the 1961 Rules. Resultantly, a revised seniority list of Appraisers was drawn up on 16 December, 2004. The revised seniority list of Custom Appraisers, according to the petitioners, was not challenged by direct recruit Appraisers. However, the promotee Appraisers challenged the same in Writ Petition No.4855 of 2004 before the Bombay High Court. The writ petition is still pending, but there is no interim order operating therein. The 1961 Rules now stand superseded by Customs Appraisers Recruitment Rules, 1961, where under 50% vacancies of Customs Appraisers are to be filled by DR and 50% by promotion.

8. The petitioners held two adhoc DPCs on 21 August, 1997 and 20 October, 1997 followed by a regular DPC in the year 2000 for promotion to Group "A" service in an attempt to review all adhoc promotions from 1 January, 1980 to 31 March 1997 in purported compliance of the directions given by the Supreme Court in All India Federation. The Appraisers seniority list issued in 1997 was the basis for filling the Appraiser quota of entry level vacancies of Group "A". A provisional seniority list was drawn on 30 November, 2000 followed by a final seniority list dated 24 September 2002. However, as the seniority list of Customs Appraisers prepared in 1997 had been quashed by the Bombay Bench by order dated 18 June, 2003, a fresh seniority list of Custom Appraisers was prepared on 16 February, 2004. The petitioners had once again proceeded to review the promotions recommended to Group "A" Service by the DPC held in the year 2000. The aforesaid exercise was conducted in January, 2013 and it remained confined to the share of Customs Appraisers, in respect of whom a fresh seniority list had been prepared on 16 February, 2004. The review DPC held the proceedings for promotion on the basis of revised seniority list dated 16 December 2004 and thereafter issued the impugned revised select list on 4 February 2013 followed by final seniority list dated 27 February, 2013. Therein, the name of the first respondent, who was promoted on adhoc basis to Group-A service by order dated 20 September 1994 is at Sl. No. 1 in the panel year 1995-96. The Tribunal dealt essentially with three issues, which are as under :-

(a) Whether twelve Customs Appraisers, who were alleged not to be in service because of resignation, recruitment, voluntary retirement or death in the relevant recruitment year/vacancy year had been wrongly adjusted against the vacancy panel of the said recruitment year. If the answer is in affirmation, then whether consequential benefit have to be given to the Custom Appraisers whose names find place below the last selected person i.e. Sri T.K. Sanyal.

(b) Whether the petitioners were justified in adjusting thirteen Custom Appraisers who had been promoted as Assistant Collectors/Assistant Commissioners prior to 31 December, 1979, against the vacancy years 1980 to

1996-97.

(c) Whether adhoc promotions made by the respondents to Group "A" Service in excess of the prescribed promotional quota by a conscious decision have to be recognised as regular promotions, despite the same being in excess of the prescribed 50% quota.

The Tribunal, while dealing with the first issue, observed that the petitioners admit that names of eight Customs Appraisers were wrongly included in the draft seniority list dated 5 February, 2013 and on consideration of the representations filed against the draft seniority list, their names had been deleted from the final seniority list dated 27 February, 2013. However, the Tribunal found as a matter of fact that consequential benefit of adjusting the first respondent and other Appraisers in earlier panel years, which is a natural consequence of deletion of name of eight Customs Appraisers, has not been done. As regards four other Custom Appraisers, namely T.A. Ratnan, V.M. Deshpandey, M.D.A. Wadia and J.L. Visva, it has been held that they had ceased to be in service for different reasons. In respect of these persons as well, direction has been issued for passing on the benefit to the persons next in the list after Sri T.K. Sanyal (the last candidate in the revised seniority list). These directions are contained in paragraph 20 of the judgment.

9. The next plea examined by the Tribunal was in regard to the adjustment of thirteen Customs Appraisers who had joined as Assistant Collector/Assistant Commissioner of Custom and Central Excise before 1 January, 1980 in the vacancies for the year 1 January, 1980 onwards. The contention of first respondent that All India Federation permitted review of only the promotions made after 1 January, 1980 has been accepted. The Tribunal held that these officers having been promoted prior to 1 January, 1980, their date of promotion could not have been changed. They have been wrongly adjusted against the vacancies of panel year's beginning 1989 onwards. The Tribunal, accordingly, held that the adjustment of these thirteen Custom Appraisers in the revised select list dated 4 February, 2013 and final seniority list dated 27 February, 2013 in the select panel of different years after 1980 onwards was illegal and had adversely impacted the seniority of the first respondent as well as other Custom Appraisers, who would otherwise have occupied higher positions. Consequently, the directions contained in paragraph 24 have been issued for giving benefit of the slots vacated by those thirteen officers to the first respondent and the other Customs Appraisers.

10. While dealing with the third issue, the Tribunal noted that during the period 1980 to 1996, there had been a breach of proportion of 1:1 between the promotees and direct recruits in filling up entry level Group "A" posts. As many as 801 vacancies under the direct recruitment quota were filled up by promotion from Group "B" service. It has been held that the vacancies diverted from direct recruit quota to promotion quota by a conscious decision are to be treated as regular vacancies of promotion quota and adhoc promotion granted against these

posts have to be regularised from the date of adhoc promotion. The Tribunal in holding that the prescribed quota of 50% for promotion is not sacrosanct and it could be exceeded in exigencies of service and in which event, promotions made in excess of the original quota, are to be treated as regular promotions, has placed reliance on the judgement of the Supreme Court in *G.S. Lamba and others v. Union of India and others* (1985) 2 SCC 604.

Shri Ashok Mehta, learned Additional Solicitor General appearing on behalf of petitioners has made detailed submissions challenging the conclusions arrived at by the Tribunal while deciding the third issue as regard the direction for absorption of Custom Appraisers in Group "A" service from the date of adhoc promotions irrespective of the availability of vacancies during the relevant year under the promotion quota. The findings on the other two issues have not been challenged. He further contended that the petition filed before the Tribunal itself was barred by limitation having been filed after expiry of one year from the date of issuance of final seniority list dated 27 February 2013 and thus, it should have been dismissed at the very threshold.

11. Before dealing with the arguments advanced by learned A.S.G.I. on merits of the third issue, we first proceed to deal with the submission advanced by him in relation to the issue of limitation. The Tribunal has decided the issue as a preliminary issue by impugned order dated 14 May, 2015. The Tribunal, while deciding the said issue, has taken note of the fact that the first respondent made a representation on 28 May, 2013 challenging the seniority list dated 27 February, 2013. As per own showing of the petitioners, the Association of the direct recruit Appraisers along with one Shri Navneet challenged the seniority list dated 27 February, 2013 by filing a petition before the Bombay Bench of the Central Administrative Tribunal. The Tribunal disposed of the petition by permitting representation to be made before the Chairman, CBEC and the Chairman, CBEC was directed to decide the representation by means of a speaking order. Concededly, in pursuance thereof, the Association made a detailed representation raising the pleas which are also now sought to be raised by the first and the second respondents. The Chairman, CBEC decided the representations by order dated 21 October, 2014. In such a situation, the Tribunal held that the limitation has to be counted after 21 October, 2014 and, accordingly, found the petition filed on 28 January, 2015 to be within limitation. Learned A.S.G.I has not disputed these facts, but has rather admitted that the representation filed by the Association of direct recruit Appraisers in pursuance of the directions issued by the Mumbai Bench of the Tribunal was decided by the Chairman, CBEC on 21 October 2014. We thus find no reason to take exception to the view expressed by the Tribunal in this regard.

12. We now proceed to examine the submissions made by learned A.S.G.I. on the merits of the third issue. He urged that the said issue was no more res-integra inasmuch as the Supreme Court in *All India Federation* had already issued specific directions in regard to the manner in which the adhoc promotions

granted in excess of the promotion quota are to be dealt with. The Supreme Court held that Group "B" officers when promoted to Group "A" service in excess of the prescribed quota, would have no right to claim regularization from the date of promotion. The adhoc promotions given to Group "B" officers would not have any effect, nor prejudice the interest and rights of the direct recruits of Group "A" service while re-arranging the seniority in Group "A" service. A specific direction was issued to the Government to re-arrange inter se seniority and promotions of the respective direct recruits and promotees within their quota and consequential promotions in further higher services. In other words, the submission is that in view of the said specific direction by the Supreme Court, the principles contained in G.S. Lamba cannot be applied. The Government was bound by the directions issued by the Supreme Court and had complied with the same. On the other hand, the directions given by the Tribunal, if implemented, would be in the teeth of the directions issued by the Supreme Court in All India Federation. It is further submitted that the promotions of the Group "B" officials to Group "A" service in excess of the prescribed quota were not regular promotions. In this regard, reliance has been placed on the Supreme Court judgements in Suraj Parkash Gupta and others v. State of J and K (2000) 7 SCC 561 and Syed Khalid Rizvi and others v. Union of India 1993 Supp (3) SCC 575. The Tribunal has erred in holding that the promotions granted in excess of the prescribed quota though labelled as adhoc promotions were in fact in the nature of regular promotions. It is urged that the order passed by the Chairperson, CBEC dated 21 October, 2014 rejecting the representation of the Union, which also binds the first respondent, has not been challenged by him. Consequently, the petition filed by him before the Tribunal, without challenging the said order, was not maintainable.

13. On the other hand, Sri Shashi Nandan and Sri Ashok Khare, learned senior counsel appearing on behalf of the first respondent and the Association of direct recruit Customs Appraisers submitted that the order of the Tribunal has been rendered to safeguard the interest of the promotees from the stream of Customs Appraisers, who would otherwise rank much lower in seniority as compared to the DR's of that particular year. The judgement in All India Federation primarily deals with the ratio amongst the three feeder categories while making promotion to Group "A" Service and the observations made on the aspect of seniority between promotees and DR's are obiter in nature, as no such dispute was under consideration. It is an admitted position that in the past, the Government, by taking a conscious decision, diverted the vacancies of DR's to the promotion quota. The Group "A" posts were filled up by promotion in excess of the prescribed quota in each year without exception. Since appointments were made without following the Quota Rule, the Rota also could not be applied. The only option left was to apportion each year's vacancy in the prescribed ratio between the DR's and promotees and to bunch all the remaining promotions at the bottom of that particular year, as has been directed by the Tribunal. It is urged that the power to relax the Rules is specifically vested with the Government by

virtue of Rule 34. Reliance has been placed on the decisions of the Supreme Court in *P.S. Mahal and others v. Union of India and others* AIR 1984 SC 1291, *Narendra Chaddha and others v. Union of India and others* (1986) 2 SCC 157, *M. Subba Reddy v. A.P. State Road Transport Corporation* (2004) 6 SCC 729, *O.P. Singla v. Union of India and others* (1984) 4 SCC 450 and *G.S. Lamba and others v. Union of India and others* (1985) 2 SCC 604.

14. The judgment of the Supreme Court in *All India Federation* specifically dealt with the issue relating to the manner in which promotion granted to Group "B" officers in excess of the prescribed quota is to be dealt with, as would appear from the directions contained in paragraphs 18 and 19 of the judgment. It is clear beyond any iota of doubt that there was a specific direction to the Government to review all post 1979 adhoc promotions to Group "A" service in the light of the proposal submitted by the CBEC, redetermine the respective placement of the promotee officers in the combined Group "A" seniority list and regularise accordingly the posts of adhoc promotions. The Supreme Court, while taking note of the provisions under the Rules that 50% of the cadre strength has to be filled by direct recruitment and the remaining 50% by promotion from Group "B" cadres, specifically held that Group "B" officers when promoted to Group "A" service in excess of 50% prescribed quota, would have no right to occupy the promoted posts. It was, therefore, incumbent upon the Government "to re-arrange or regularise the seniority list in Group "A" service, keeping the inter se quota of the direct recruits and promotees intact" and "not allow either to get any promotion in excess of their quota". The adhoc promotion given to Group "B" officers in Group "A" service, pursuant to interim order of the Supreme Court "would not, therefore, have any effect or prejudice the interest or rights of the direct recruits of Group "A" service while rearranging the seniority in Group "A" Service as indicated in the judgment." It was, therefore, necessary for "the Government to rearrange their inter se seniority and promotions of the respective direct recruits and promotees within their quota and the consequential promotions in further higher services".

15. It is noteworthy that post the issuance of the revised seniority list of Group "A" service in the year 2002 in compliance of the judgement in *All India Federation*, those belonging to the feeder cadre of promotee Custom Appraisers approached the Madras Bench of the Central Administrative Tribunal contending, inter alia, that they are entitled for placement in the seniority list of Group "A" service by following the principle of continuous officiation. A specific plea was taken by them that during the period 1980-1996 there was a shortage of direct recruits in Group "A" service, and so a conscious decision was taken to divert the vacancies of direct recruits to the promotion quota. It was urged that as a result of large scale deviation of vacancies of direct recruits to the promotion quota, there had been a break down of quota rota rule, which could thus not apply. In this regard, they placed reliance on an affidavit of the Chairman, CBEC filed in the contempt proceedings before the Supreme Court in contending that there had been failure of quota/rota rule in promotion to Group "A" Services. It was

pointed out that as many as 801 vacancies of direct recruits were diverted and filled up by promotion from Group "B" Services. It was urged that these promotions are to be treated as regular promotions. The only option left with the Department was to follow the principle of continuous officiation for fixing the seniority in the cadre i.e. Group "A" Services. In support of their submissions, they placed reliance on the decision of the Supreme Court in D.K. Mitra and others v. Union of India AIR 1985 SC 1558 and A.K. Subaraman and others v. Union of India AIR 1975 SC 483. The Madras Bench of the Tribunal refused to accept that there had been a break down of the quota rota rule. Apart from the said finding, it has further been held that there had been a specific direction in All India Federation that Group "B" officers upon promotion to Group "A" service would have no right to occupy more than 50% of their prescribed quota. Consequently, the principles of continuous officiation, which is also exactly the plea raised by the first respondent, could not be applied. It has been observed thus :-

"We find that there had been specific direction in All India Federation of Central Excise (I) judgement in the year 1996 that the Group "B" officers when promoted to Group "A" service, would have no right to occupy more than 50% of their prescribed quota. Similarly it was emphasised in the said judgement that inter se quota between direct recruits and promotees should be kept in tact and "should not allow either to get any promotion in excess of their quota." It is not the contention of the applicant that the said judgement has been modified, overruled or amended in any manner till date. This being the position, we are of the considered view that the direction issued in the said judgement remains binding on the parties including applicants herein and they are precluded to claim the benefit of the principles of continuous officiation or total length of service in determining for their regularisation and consequent seniority. Therefore, we do not find any arbitrariness, illegality etc. in the seniority list dated 24.9.2002 and regularisation order dated 24.6.2002."

16. The judgment of the Central Administrative Tribunal aforesaid was subjected to challenge by way of a writ petition before the Madras High Court. The Madras High Court also repelled the contention that there had been break down of quota rota rule by holding thus :-

"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 (1997) 1 SCC 520 (cited supra), 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 adhoc 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 adhoc 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 adhoc 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."

17. Though it is true that the litigation emanating before the Chennai Bench of the Central Administrative Tribunal was at the instance of those members of Group "A" service who belong to the category of promotee Customs Appraisers and not direct recruit Appraisers, the class to which the first respondent belongs, but while agitating the right to absorption and seniority in Group "A" service from the date of adhoc promotion, the officers of both the categories stand on the same footing. This is in view of the fact that under the Rules, the criteria for promotion to Group "A" Service for both the categories is one and the same. Thus, the direct recruit Custom Appraisers and promotee Custom Appraisers constitute a homogeneous class qua the criteria for promotion to Group "A" service. This aspect has been conveniently overlooked by the Tribunal in an effort to distinguish the judgement of the Madras High Court on the ground that the direct recruit Customs Appraisers were not party to the litigation before the Madras High Court.

18. The other reasoning given by the Tribunal for not following the judgment of the Madras High Court is that there was no discussion in the judgment regarding the implication of the affidavit of the Chairman, CBEC in which the diversion of the vacancies was admitted, nor about the decision of the Government of the year 1995 consciously reducing the number of direct recruit vacancies. This reasoning, in our view, is equally fallacious. The affidavit under reference dated 23 January 1998 was filed by the Chairman, CBEC in contempt proceeding which had been initiated against the department for alleged non-compliance of the direction given by the Supreme Court in All India Federation. The proceedings were initiated by the Superintendents of Central Excise with the grievance that promotion order of the Department dated 8 September, 1997 on the basis of adhoc DPC held on 21 August, 1997 was illegal, as thereby, the Department had earmarked 46 vacancies (31 for Superintendent of Customs (P) and 15 for

Custom Appraisers) in excess of the ratio of 6:1:2 which had been fixed by the Supreme Court in All India Federation and which also stood incorporated in the "Rules" by amendments made in 1998. The department in the affidavit filed by it admitted that from 1980 to 1996, 3349 appointments of Group "A" Services has been made. Going by the formula of 50:50, the share of direct recruits and promotees was worked out to 1675 each. However, it was found that 2476 vacancies had been filled by promotion. Thus, 801 vacancies of direct recruits were diverted for appointment by promotion from the three feeder categories of Group "B" services. It was further found that the ratio of 6:1:2 was also not adhered to. As a result, the stream of Superintendents of Customs (P) and Customs Appraisers suffered a loss of 125 and 58 vacancies regularly. While implementing the judgement of the Supreme Court, apart from regularising the promotions made in excess of promotion quota from the date vacancies became available as per the formula 1:1, the Board decided to make good the loss suffered by the two streams of the feeder-cadres by diverting in a phased manner certain percentage of vacancies from the share of Superintendents of Excise, until the deficit is made good.

The Supreme Court by judgment dated 22 September, 1999 decided the aforesaid contempt petition along with Writ Petition No.651 of 1991 filed by the Superintendents of Central Excise. The Supreme Court upheld the stand taken by the Department in seeking to offset the loss suffered by the two streams by allocating more posts for promotion to them, so that in future the ratio of 6:1:2 is maintained. It has been held thus :-

"20. There was a grievance raised by the writ petitioners that pending consideration of names by the UPSC for promotion to Group A, ad hoc promotions have been made to Group A and members from the first feeder category, namely, Superintendents of Excise Group B were not promoted. This was particularly so after the earlier judgment. In other words, the complaint is that for the said ad hoc promotions, the quota rule of 6:1:2 has not been followed. The answer of the Union of India in this behalf is that it has been found that earlier there have been excess promotions to Group A from the petitioners' category of Excise Superintendents Group B and, therefore, presently, more officers from the other two feeder channels have been promoted on an ad hoc basis so that there will be no imbalance when the final review takes place. Even assuming that for purposes of ad hoc promotions it would have been fair to follow the ratio of 6:2:1, the respondents have shown adequate justification for not following the said ratio while making ad hoc promotions. Thus if one of these groups in the quota has had more promotions earlier and if the Government of India wants to off-set the said advantage, such an action cannot be said to be unfair."

19. The affidavit filed by the Chairman, CBEC setting out the facts and figures before the Supreme Court in the contempt proceedings is to be understood in the context in which it had been filed. The facts and figures disclosed therein cannot

be construed as a policy decision by the Central Government to relax the ratio of 1:1 prescribed under the Service Rules, except and in so far as the said action was necessitated by administrative exigencies. The facts remain that all these aspects were well within the knowledge of all members of the feeder cadre including the direct recruit Customs Appraisers at the time the litigation was pending before the Supreme Court. It can therefore safely be assumed that these facts were brought to the knowledge of the Supreme Court. It so also appear from the contents of paragraphs 11 and 12 of the judgement in All India Federation. In fact, the Supreme Court having noticed that the dispute relating to inter se seniority between three feeder categories had remained unresolved for a number of years, had proceeded to accept the proposal submitted by the CBEC. While accepting the proposal, the Supreme Court was conscious of the fact that it was not possible to address to the rival claims of each feeder category unless the proposal is accepted in a spirit of accommodation and goodwill coupled with a sense of appreciation of the point of view of the other party. It is in the said spirit that the proposal was accepted, inter alia, providing for ratio of 1:1 in Group "A" service being maintained between direct recruits and the promotees as well as the ratio of 6:1:2 between the three feeder categories. The clarification given by the Supreme Court in paragraph 19 that no right would accrue in favour of Group "B" officers when promoted to Group "A" service to occupy more than 50% of the posts as well as the specific direction to the Government to re-arrange/regularise the seniority list in Group "A" service keeping the inter se quota of direct recruits and promotees intact as well as all consequential promotions in further higher services set at rest all issues relating to the manner in which the inter se seniority between the promotees and direct recruits was to be determined as well as the manner in which the adhoc promotions to Group "A" service were to be regularised. In our considered opinion, the Supreme Court having categorically laid down the principles for reckoning the seniority with a specific direction to review all posts 1979 adhoc promotions, it was not open to the Tribunal to go into the said issue on the pretext of there being a break down of quota rota rule or any other ground whatsoever. The Tribunal had entered into an arena which stood occupied by the law declared by the Supreme Court in All India Federation and the same was binding on not only the members of the feeder cadre as well as other members of Group "A" Service but also on all Courts and Tribunals in view of Article 141 of the Constitution. We are unable to accept that these specific directions given by the Supreme Court are obiter dicta, or could be ignored for any other reason. The direction contained in the impugned orders for according seniority to the direct recruit Appraisers in Group "A" service from the date of adhoc promotions, even though the promotions were in excess of the quota prescribed for promotees, is not sustainable in law, being in the teeth of the directions issued by the Supreme Court.

20. The first respondent as well as the Association representing the direct recruits had placed much emphasis on the decision of the Revenue Secretary taken in the year 1995 for under-recruiting direct recruits; office memorandum

of Department of P and T restricting intake of direct recruits to 1/3rd of the direct recruit vacancies arising in the year; the decision of Cabinet taken in the year 2001-2002 to fill up all existing vacancies including carry forward vacancies by promotion and imposing ban on direct recruitment in that year, to bring home the point that there was an implied decision by the Government relaxing the recruitment rules prescribing 1:1 ratio between direct recruits and promotees. Reliance has also been placed on a number of decisions of the Supreme Court particularly on G.S. Lamba to buttress the submission that even if no proper procedure has been followed for relaxing the quota rule, but if in exigencies of service, the quota rule was relaxed, then promotions made in excess of the original quota are to be treated as regular promotions and seniority has to be reckoned accordingly.

On the other hand, Sri Ashok Mehta learned Additional Solicitor General of India placed reliance on Suraj Parkash Gupta in contending that the decision in G.S. Lamba was not followed by the Supreme Court itself, in the later decisions.

21. The Supreme Court in Suraj Parkash Gupta while distinguishing G.S. Lamba with the facts of the case under consideration observed that the ratio in Narender Chaddha supported the case of the promotees seeking regularisation of adhoc promotions even in respect of posts under the recruitment quota. However, the Supreme Court did not end there but went on to trace the recent trend of the decisions and observed that recruitment rules could not be relaxed unless the procedure prescribed is strictly followed. The relevant observations are extracted below :-

"Relaxation Rules - scope of : If recruitment rules can be relaxed : A previous view :

26. Some relaxation rules permit relaxation of conditions of service and some permit relaxation of rules. Some permit relaxation in any particular case and some permit relaxation in favour of a person or class of persons. In J.C. Yadav v. State of Haryana, [1990] 2 SCC 189, a three Judge Bench while dealing with Rule 22 of the relevant rules which permitted relaxation, in case of hardship, in "any particular case", held that the above words did not mean a particular person but meant "pertaining to an event, situation or circumstances". The power could therefore be exercised even in favour of a group.

Two earlier decisions :

27. Promotees relied upon the ruling in Q.S. Lamba v. Union of India, [1985] 2 SCC 604 but the said decision cannot, in our view, apply. There the promotees were appointed regularly but were allowed to occupy the posts of direct recruits, for long periods. It was held that it must be deemed that the relevant recruitment rule was relaxed in their favour and their service in such direct recruit posts could be counted. This case in our view is distinguishable because there the promotees were regular promotees though appointed outside the promotee quota. The position before us is different because here the promotees

are ad hoc promotees and further the issue relates to all posts, within the outside promotion quota. *Narender Chadda v. Union of India*, [1986] 2 SCC 157 no doubt supports the case of promotees. There the promotees occupied not only their own quota but also the direct recruitment quota to some extent. After 15 to 20 years, the temporary service of those who had put in 4 years service in the feeder category was regularised. It was held that all the promotees were entitled to regular promotion and the seniority of all promotees (including some of those selected by DPC) was to be reckoned from date of continuous officiation. This was done on the theory of implied relaxation of recruitment rule to all posts within and outside the promotion quota. But this case, in our view, is to be treated as an exception because the promotees there were not regularised for 15 to 20 years (see p. 171) and it was held that the non-regularisation over such a long period violated Articles 14 and 16 of the Constitution of India. It is no doubt true that the Constitution Bench in the *Direct Recruit Class II Engineering Officers Assistant v. State of Maharashtra*, [1990] 2 SCC 715 referred to *Narender Chadda's* case at p. 726 and it observed : "There is considerable force in this view also" but as we shall presently show, the recent trend of cases in this Court is entirely different.

Recent trend of cases : Recruitment rules cannot be relaxed :

28. The decisions of this Court have recently been requiring strict conformity with the recruitment rules for both direct recruits and promotees. The view is that there can be no relaxation of the basic or fundamental rules of recruitment. In *Keshav Chandra Joshi v. Union of India*, [1992] Suppl 1 SCC 272 the Rule permitted relaxation of conditions of service and it was held by the three Judge Bench that the rule did not permit relaxation of recruitment rules. The words "may consult the PSC" were, it was observed, to be read as "shall consult PSC" and the rule was treated mandatory. In *Syed Khalid Rizvi v. Union of India*, [1993] Suppl. 3 SCC 575 at 603, decided by a three Judge Bench, a similar strict principle was laid down. The relevant Rule-Rule 3 of the Residuary Rules (see p. 603) (para 33) in that case did permit relaxation of "rules" Even so, this Court refused to imply relaxation of recruitment rule and observed :

"the condition precedent, therefore, is that there should be appointment to the service in accordance with rules and by operation of the rule, undue hardship has been caused,.....It is already held that conditions of recruitment and conditions of service are distinct and the latter is preceded by an appointment according to Rules. The former cannot be relaxed".

(emphasis supplied)

29. Similarly, in *State of Orissa v. Sukanti Mohapatra*, [1993] 2 SCC 486, it was held that though the power of relaxation stated in the rule was in regard to "any of the provisions of the rules", this did not permit relaxation of the rule of direct recruitment without consulting the Commission and the entire ad hoc service of direct recruit could not be treated as regular service. Similarly, in *Dr. M.A. Hague*

v. Union of India, [1993] 2 SCC 213 it was held that for direct recruitment, the rules relating to recruitment through the Public Service Commission could not be relaxed. In Jammu and Kashmir Public Service Commission v. Dr. Narinder Mohan, [1994] 2 SCC 630 it was held that the provisions of the J and K Medical Recruitment Rules could not be relaxed for direct recruitment. Backdoor direct recruitments, could not be permitted. See also Dr. Anundhati Ajiti Pargaonkar v. State of Maharashtra, [1994] Suppl. 3 SCC 380. In Dr. Surinder Singh Jamwal and Anr. v. State of J and K, [1996] 9 SCC 619, this Court directed the direct recruits to go before the Public Service Commission".

After noticing the law on the point, the Supreme Court did not approve the decision of the Cabinet granting relaxation, as the procedure prescribed for exercise of such power had not been followed. It has been held thus :-

"31. The result of the discussion, therefore, is that the wholesale regularisation by order dated 2.1.1998 (for the Electrical Wing), by way of implied relaxation of the recruitment rule to the gazetted category is invalid. It is also bad as it has been done without following the quota rule and without consulting the Service Commission. Further, power under Rule 5 of the J and K CCA Rules, 1956 to relax rules cannot, in our opinion, be treated as wide enough to include a power to relax rules of recruitment".

22. In the instant case, concededly there is no specific order of the Government under Rule 34, relaxing the rigour of the quota rule (Rule 5). Even the respondents admit the said factual position. What they, however, contend is that there was conscious and deliberate waiver of quota rule coupled with implied consent of the Public Service Commission to whom the decision to recruit less number of direct recruits or not at all, and to fill the resultant vacancies by promotion, was duly communicated. While noting the recent trend of judgments on the issue, we do not feel necessary to go into the said issue nor would be it proper for us to do so. As already held, these questions are no more open for adjudication in view of the directions contained in All India Federation, which do not permit diversion of vacancies from the DR quota, nor permits regularisation of adhoc promotions from the date of promotion, if the same is in excess of the prescribed quota. Any adjudication made by this Court which even has the effect of diluting the quota/rota rule, would be circumventing the direction given by the Supreme Court. We thus reiterate that all post 1979 adhoc promotions were to be reviewed by strictly abiding by the quota rota rule. The principles laid down by the Tribunal are in complete derogation of the parameters laid down in All India Federation, which are binding on all the parties.

23. In the alternative, it is urged that the diversion of vacancies from direct recruit quota could be regularised by taking recourse to Rule 5 (3), which is extracted below :-

"5. Methods of recruitment to the Service and percentage of vacancies to be filled in certain grades of the Service.

- (1) Recruitment to the Service shall be made by the following methods, namely
- (a) by examination, in accordance with the provisions in Part III of these rules;
 - (b) by promotion in accordance with the provisions of Part IV of these rules.
- (2) Vacancies in Grade VI of the Service shall be filled in the following manner :-
- (i) 50% of the vacancies shall be filled in accordance with the provisions in Part III of these rules; and
 - (ii) 50% of the vacancies shall be filled in accordance with the provisions in Part IV of these rules.
- (3) Notwithstanding the provisions contained in sub-rule (1) and (2) above, Government may recruit to any of the grades when so required from other sources, for good and sufficient reasons to be determined in consultation with the Commission, of persons having qualifications or experience in any speciality:
- Provided that when such recruitment is made to Grade VI of the Service, the number of persons so recruited shall count against the percentage of vacancies to be filled by direct recruitment."

The submission is that the Government consciously and for justifiable reasons under-recruited direct recruits in successive years. The Commission was duly intimated about the same. The Commission did not raise any objection. Thus, it has to be assumed that the diversion of vacancies and consequent promotions granted to Group B officials in excess of the prescribed quota was in consultation with the Public Service Commission. In view of the above, persons promoted in excess could count against the percentage of vacancies to be filled by direct recruitment. Sri Shashi Nandan, learned senior counsel appearing on behalf of second respondent, while making the said submission, contended that this is the only course left to balance the equities.

On the other hand, learned A.S.G.I. refuted the contention by submitting that Rule 5 (3) would not be attracted to the controversy at hand.

24. Rule 5 (3) is an exception to sub-rule (1) and (2) of Rule 5, which prescribes the ratio of 1:1 between direct recruits and promotees for filling up Group A vacancies. Being an exception to the main provision, it has to be strictly construed. Sub-rule (3) permits the Government to recruit persons having qualifications or experience in any speciality when so required. While doing so, the Government is not bound to adopt one of the two methods of recruitment provided under sub-rule (1) and (2) i.e. by promotion or direct recruitment. The power is circumscribed by the existence of the conditions stipulated therein, namely the requirement to recruit person having qualifications or experience in any speciality. Thus, where the Government of the opinion that it requires persons having specialised knowledge, it has been given the power to recruit such person to the service. The recruitment so made, though not made by following the procedure prescribed for making direct recruitment, is none the less

treated as a direct recruitment and such person is to be adjusted against the vacancies of the direct recruit quota. The adhoc promotions made by the Government in successive years in excess of the prescribed quota was not for inducting persons having any specialised knowledge. The adhoc promotions were granted solely for the reason that there had been under-recruitment of the direct recruits. In case these adhoc promotions are permitted to be regularised by taking recourse to Rule 5(3), it would result in total annihilation of the quota prescribed under sub-rule (2). A provision of this nature could not be resorted to regularise adhoc promotions made in excess of the prescribed quota, otherwise, the rule prescribing the quota would be rendered otiose. It is not even the case of the respondents that they were granted adhoc promotions to Group "A" service because they possess qualification or experience in any speciality. Concededly, the promotions were granted in a routine course as per the seniority list then in existence without having any consideration to any special experience or knowledge or qualification possessed by the incumbents. In case these adhoc promotions are permitted to be regularised taking recourse to sub-rule (3), it would be a subterfuge, a device, to circumvent the directions given by the Supreme Court in All India Federation, which this Court is unable to permit.

25. At this stage, it would be apt to refer to an intervenor application filed by the DR Custom Appraisers before the Supreme Court in the contempt proceedings relating to alleged non compliance of the directions in All India Federation. The prayer made in the application filed was for fixing a time limit for implementation of the judgment and for a further direction for preparation of inter se seniority list of DR Assistant Collectors and promotee Assistant Collectors within their quota and to review all promotions. The application filed was allowed by the Supreme Court. The narration in this regard in the judgement of the Supreme Court dated 22 February 1999, (1999) 3 SCC 384 is as under :-

"22. In I.A. No.4, the applicants are the Customs Appraisers (Direct recruits) and their learned Senior Counsel, Shri Rajeev Dhawan contends that it will be sufficient that this Court fixes some time limit for implementation of the judgment of this Court dated 22.11.1996 and directs preparation of an inter se seniority list of direct recruits Assistant Collectors and promotee Assistant Collectors within their quota and also for review of all promotions. There can be no objection for fixing some reasonable time limit.

26. I.A. No.4 in Writ Petition No.306 of 1988, there will be a direction to the Union of India to take steps for implementation of the judgment of this Court dated 22.11.1996 in Writ Petition No.306 of 1988 as expeditiously as possible and at any rate within a period of six months from the date of receipt of this judgment."

(emphasis supplied)

26. Thus, the direct recruit Custom Appraisers even in the subsequent round of litigation before the Supreme Court felt satisfied with the proposal of the CBEC

as approved by the Supreme Court by judgment dated 22 November 1996 in All India Federation and never raised any grievance regarding the directions given by the Supreme Court for rearranging the inter se seniority between the promotees and direct recruits and further promotions to higher services by strictly ensuring the balance of 1:1 between them, rather on the contrary, they themselves prayed for seniority list of direct recruit Assistant Collectors and promotee Assistant Collectors within their quota being prepared forthwith by reviewing all promotions. The plea now sought to be raised by the first respondent in the petition filed before the Tribunal as well as the support lent to him by the Association of the DR Custom Appraisers was diametrically opposed to the stand taken before the Supreme Court. The Tribunal, in utter disregard of these facts, has proceeded to enter into a controversy which, in our opinion, stood sealed with the directions given in All India Federation.

27. We would also like to dwell on one more aspect which has been made a ground by the Tribunal for not following the judgment of the Madras High Court. The Tribunal has held that after the preparation of the revised select list dated 4 February, 2013 and revised final seniority list dated 27 February, 2013, the matter required a fresh adjudication, inasmuch as the seniority list dated 27 February, 2013 is not an updation of the seniority list dated 24 September, 2002, which was under challenge before the Madras High Court. We are unable to accept the said reasoning. After the judgment of the Supreme Court in All India Federation, wherein the Supreme Court directed the Government to prepare the seniority list of the Custom Appraisers by following the principles laid down in Gaya Baksh Yadav, the Government prepared a fresh seniority list of Custom Appraisers in the year 1997. The direct recruit Custom Appraisers challenged the same before the Central Administrative Tribunal, Bombay in O.A. No.855 of 1998. The Tribunal by order dated 18 June 2003 quashed the same on the ground that promotees had occupied more than 50% vacancies which is not permissible under 1961 Rules and is contrary to the principles laid down in Gaya Baksh Yadav. In between, the Government in purported compliance of the directions given by the Supreme Court in All India Federation held a review DPC in the year 2000 to regularise the promotions to Group "A" service. It was followed by issuance of final seniority list of Group "A" service in the year 2002. The direct recruit Custom Appraisers did not challenge the seniority list so prepared by the Department. However, since the seniority list of Custom Appraisers prepared in the year 1997 had been quashed by the Bombay Bench of the Tribunal in O.A. No.855 of 1998 by judgment dated 18 June, 2003, the Government, as noted above, on the basis of the revised seniority list of Custom Appraisers dated 16 December, 2004 proceeded to hold a review DPC to review the recommendations of the DPC made in the year 2000, based on the seniority list of Custom Appraisers of the year 1997. The review DPC which held the meeting in January, 2013 reviewed only the promotions to Group "A" service from the feeder cadre of Custom Appraisers, as a result of a fresh seniority list for the said category issued on 16 December 2004. The review DPC did not review the promotions

from other two feeder categories to Group "A" service and in regard to them, the seniority list of Group "A" service issued in the year 2002 was permitted to occupy the field. Thus, even after the issuance of the revised select list dated 4 February, 2013 and the revised seniority list on 27 February, 2013, there had been no alteration in the slots allotted to the promotees from the two other feeder categories, namely Superintendents of Central Excise and Superintendents of Customs (P), nor the slots occupied by the direct recruit Group "A" officers. The plea by the first respondent and its Association for regularising adhoc promotions from the date of adhoc promotions was available for being raised when the seniority list was issued in the year 2002, as was raised by the promotee Custom Appraisers in the petition filed before the Madras Bench of the Tribunal. The first respondent was promoted as Assistant Collector of Customs and Central Excise on 29 September 1994 and in the year 2002 when the revised seniority list was issued on the basis of DPC held in the year 2002, the first respondent was very much a member of Group "A" service, directly affected by the seniority list. However, neither the first respondent nor the Association of DR Custom Appraisers challenged the same at that time. The seniority list issued on 27 February 2013, as noted above, was only a corrective step for assigning the slots occupied already by the stream of Custom Appraisers in the seniority list issued in the year 2002. Thus, the Tribunal committed an error in holding that the seniority list issued in the year has no co-relation with the seniority list issued in the year 2002, which was under challenge before the Madras Bench of the Tribunal.

28. This leads us to determination of a more basic issue as to whether the petition filed before the Tribunal was maintainable in the absence of direct recruits and officers of the other two streams of the feeder categories as party to the proceedings. The Tribunal has observed that as a result of the directions, nobody in service at present is likely to suffer at this stage because diversion of vacancies of direct recruit quota to promotion quota had taken place in the distant past. The same, in our view, is not a correct statement of the factual position. In case the promotees to Group "A" service belonging to the stream of Custom Appraisers are granted regular promotion from the date of adhoc promotion ignoring the ceiling of 50%, it would directly affect the seniority of the direct recruits of Group "A" service. A large number of Custom Appraisers, who have been shifted to the lower rung in the seniority list on account of non-availability of vacancies under the promotion quota during the year they had been promoted on adhoc basis would then be shifted to higher slots to the recruitment year in which they had been granted adhoc promotions. Not only that, the direction in paragraph 29 of the impugned judgment is also to bunch together all adhoc promotees of a particular recruitment year in that recruitment year itself. The necessary corollary of the said direction is that the last slot in a particular recruitment year would be occupied by the remaining adhoc promotees of that particular year by following the principle of bunching.

29. This would directly impact the seniority of the direct recruit Group "A"

officers as otherwise these adhoc promotees had been shifted to much lower slots because of non-availability of vacancies under the promotion quota during the relevant year. Apart from it, since the direction is for extending the benefit only to the stream of Custom Appraisers the officers of the other two streams would also be adversely affected. Concededly, the direct recruits nor the officers of other two streams of the feeder categories were made party individually or in a representative capacity. In the absence of the same, such a relief could not have been granted. The Tribunal erred in proceeding to adjudicate upon the merits of the issue, totally overlooking the said aspect of the matter rendering the impugned orders vulnerable.

30. Irrespective of what has been noted above, we are unable to appreciate how the benefit of the principle of continuous officiation could be restricted only to the stream of Custom Appraisers, though, as noted above, the other two feeder categories stand on the same footing in matters of promotion to Group "A" Service. If the Government is permitted to implement the judgment of the Tribunal in relation to the stream of Custom Appraisers alone, its action would in all likelihood become subject matter of challenge by the other two streams on the ground of discrimination and violation of Article 14. In pith and substance, the impugned judgment of the Tribunal is not only contrary to the directions issued by the Supreme Court in All India Federation but would open pandora's box leading to multifarious litigation and is thus in complete negation of the spirit of accommodation and goodwill in which the proposal submitted by CBEC was accepted by the Supreme Court in All India Federation in an effort to settle the long pending disputes.

31. Thus, for all these reasons, we quash the directions issued by the Tribunal while deciding the third point in regard to the regularization of all adhoc promotions in the same recruitment year, even if the same were in excess of the quota prescribed. In consequence, all directions contained in paragraph 29 of the impugned order as also all consequential directions shall stand quashed. Since, the findings on the other two issues as contained in paragraphs 20 and 24 have not been challenged, we express no opinion on the same, leaving it open to the petitioners to implement the same, as the same does not affect either the direct recruits or the promotees from the other two streams.

32. As a result of the above discussion, the writ petition shall stand allowed in part.

33. There shall be no order as to costs.