

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA No.21/0699/2022

HYDERABAD, this the 29nd day of March, 2023

Hon'ble Mr. Sudhi Ranjan Mishra, Judicial Member
Hon'ble Mr. B. Anand, Administrative Member



K. Vijaya Bhaskar Reddy, Aged 53 years,
S/o. K. Kesava Reddy, Superintendent of Central Excise (Group B Gaz),
Technical Section, Customs Commissionerate, Hyderabad.
R/o. 12-5-17/1/4, Flat No. 101, Surya Pride Apts, South Lalaguda,
Hyderabad – 500 017.

...Applicant

(By Advocate: Mr. K. R. K. V. Prasad)

Vs.

1. Union of India, Rep. by the Secretary,
Department of Revenue, Ministry of Finance,
North Block, New Delhi – 110001.
2. The Chairman, Central Board of Indirect Taxes and Customs,
North Block, New Delhi – 110001.
3. The Chief Commissioner, Customs and CGST, Hyderabad Zone,
GST Bhavan, Basheerbagh, Hyderabad – 500 004.
4. The Principal Commissioner of Central Tax,
Cadre Control Authority, Hyderabad GST Commissionerate,
GST Bhavan, Basheerbagh, Hyderabad – 500 004.
5. The Chief Accounts Officer (CCA),
Hyderabad GST Commissionerate,
GST Bhavan, Basheerbagh, Hyderabad – 500 004.
6. A. Hari Gopal, S/o. A. Madhava Rao,
Aged 59 years, Occ: Superintendent,
O/o. Medchal GST Division, Adithya Towers,
Sri Sai Enclave, Old Boinpally, Secunderabad.
7. Ch. V. Dhananjaya Rao, S/o. Ch. Sri Anjaneyulu,
Aged 59 years, Occ: Superintendent,
O/o. Assistant Commissioner of Customs,
RGI Airport, Shamshabad, Hyderabad.

....Respondents

(By Advocate : Mrs. K. Rajitha, Sr. PC for CG
Mr. J. Sudheer for RR 6 & 7)

ORAL ORDER
(As per Mr. Sudhi Ranjan Mishra, Judicial Member)

2. The OA has been filed seeking the following relief:



“...to call for the records pertaining to the Final Seniority List in the grade of Inspectors in common cadre of Hyderabad/ Vizag Zone circulated vide letter C.No.II/26/14/2020-ConSec(PF-II) dated 13.10.2022 and reply dated 29.09.2022; and set aside and quash the reply dated 29.09.2022; and direct the respondents to substantiate that the direction of the Hon'ble Supreme Court in para 62(vi) of the judgment dated 15.03.2022 in Civil Appeal No. 3968 of 2009 and batch is complied with to the extent of the Inspectors shown between Sl. No. 341 and 681 in the final seniority list dated 13.10.2022 by furnishing the information on availability of sanctioned post and also vacancy in respect of each individual Inspector promoted initially on adhoc basis during the period from 1983 to 1992, and accordingly assign correct seniority position to the applicant in the cadre of Inspector and grant all consequential benefits....”

3. It is the case of the applicant he joined as Inspector of Central Excise on 07.05.1992 pursuant to his qualifying in the written exam held in 1990 against the vacancy year 1991-92. Appointment to the post of Inspector of Central Excise is done by direct recruitment and by promotion and fixation of interse seniority among the Direct Recruit Inspectors (DRI) and Promotee Inspectors (PRI) was under litigation and the Dept has prepared a tentative seniority list dt. 22.07.2022 and after considering the objections of the officers, final list was published on 07.08.2002. He was further promoted as Superintendent w.e.f. 16.04.2003 and presently, he is working as such. Aggrieved by the said seniority, some promotee officers filed OA No. 938/2002 & batch before this Tribunal, and this Tribunal allowed the said OAs vide orders dt. 29.10.2003 directing the concerned respondents to revise, refix the seniority. The respondent DRIs in the said OAs and the respondent department filed Writ Petitions before the Hon'ble High Court of Judicature at Hyderabad, wherein the following order was passed:

“48. Thus, viewed from any angle, we are of the considered view that the order of the Tribunal dated 29.12.2013 is not sustainable and it is liable to be set aside upholding integrated seniority of Inspector of Central Excise & Customs as on 01.01.2002 duly confirming the order dated 22.07.2002 as made final by proceedings dated 07.08.2002.

49. Accordingly, the Writ Petitions are allowed and the OAs filed by the PRIs stand dismissed."



4. The successful applicants before this Tribunal in OA No. 938/2002 approached the Hon'ble Supreme Court vide CA No. 3967/2009, 3968-85/2009, wherein the Hon'ble Supreme Court vide its judgment dt. 15.03.2002 restored the order of this Tribunal with certain directions. The applicant, who is a DRI of 1992 against the vacancy of 1991-92, who is now promoted as Superintendent, was not a party to the said litigation. The respondent department ordered promotions to some of the feeder cadre employees as Inspectors initially on adhoc basis during the years 1983-1991, followed by regular promotion at different points of time. Consequently, the respondent department issued a draft seniority list dt. 15.09.2002 while requesting the concerned individuals to submit representations/ objections, if any, within 14 days.

5. It is contended by the applicant that on noting that the earlier seniority list dt. 07.08.2002 has undergone change from S. No. 555 to 732 in the draft seniority list, submitted a representation on 20.09.2002 seeking information about the sanctioned strength and availability of vacancies with reference to the specific direction of the Hon'ble Supreme Court extracted above, followed by representations dt. 27.09.2022 and 29.09.2022, to which the respondent No.5 replied on 29.09.2022 asking me to go through the order of this Tribunal in OA 938/2002 & batch and the order of the Hon'ble Supreme Court dt. 15.03.2022 and to draw information sought from the said orders. He also filed RTI application on 9.10.2022 and the reply is awaited to make an effective representation to the draft seniority list dt. 15.09.2022. Without giving furnishing the said information, the respondents issued final seniority list on 14.10.2022, wherein the applicant is placed at Sl. No. 732, whereas, in the earlier seniority list



dt. 07.08.2002, he was at Sl. No. 555 and some of the PRIs who were from Sl. No. 558 onwards and who were earlier juniors to the applicant have been placed between Sl. No. 341 to 681 in the impugned seniority list. It is further stated by the applicant that all the PRIs, who were given adhoc promotions and regularized even after 1992 against the regular vacancies, were also shown above the applicant from Sl. No. 571 to 601, as if they were promoted in 1991. Based on the said seniority, a review DPC is being held to revise the promotions ordered earlier from the cadre of Inspector to Superintendent. It is further contended by the applicant that, though he, being DRI, was senior to several PRIs as per the seniority list dt. 07.08.2002, in the impugned seniority list dt. 13.10.2022, he is shown junior to about 180 Inspectors due to non-adherence of the parametres laid down by the Hon'ble Supreme Court at para 62(vi) of its judgment dt. 15.03.2022.

6. The official respondents contested the OA. In their reply statement, they stated that the issue involved in this case is inter-se seniority dispute between DRI and PRIs vis-à-vis the seniority list dt. 22.07.2002 issued as on 01.01.2002, which was prepared as per the directions of this Tribunal dt.27.08.1999. The said seniority list was quashed by this Tribunal in OA 938/2002 & batch vide order dt. 29.12.2003. Aggrieved by the said orders, some of the DRIs filed RA No. 17/2004 & 18/2004, which were dismissed on 26.04.2004. The DRIs challenged the orders of this Tribunal in the batch of OAs as well as the orders in the RAs and the Department also challenged the orders of this Tribunal before the Hon'ble High court. The Hon'ble High Court, vide a common order dt. 16.03.2005 in WP Nos.11620/2004 & Batch, while upholding the integrated seniority list dt. 22.07.2002, set aside the order of this Tribunal dt. 29.12.2003. The said order of the Hon'ble High Court was challenged before the Hon'ble Apex Court by the promotee Inspectors and the Apex Court, vide order dt.

15.03.2022, while restoring the orders dt. 29.12.2003 of this Tribunal in OA 938 of 2002, held as under:

62. For the above reasons it is held, that the High Court fell into error in setting aside the order of the CAT, which is hereby restored. Therefore, it is held that:



(i) No excess promotions took place during the period 1983 and 1991. 25% of the actual vacancies arising every year during that period were for the promotees. No direct recruit vacancy for any year was filled by promotees.

(ii) Indents/requisitions placed with, the SSC for the recruitment of DRIs were for a part of the vacancies and not for the exact 75% of the actual vacancies available in each year.

(iii) The record does not bear out instances of suppression or underreporting of vacancies available for direct recruits out of the permanent cadre strength in any year, to help the promotees. As a result, there is no justification for invoking para 5 of the O.M. of 1986. The department erroneously proceeded as if there were excess promotions by wrongly estimating the promotee quota on the basis of the indents placed for direct recruitment;

(iv)(a) The date of appointment of direct recruits the date for counting seniority- it is not from the date of receipt of the dossiers from the recruiting authorities or the date of recommendation. Resultantly seniority of direct recruits appointed after 01.03.86 has to be revised only from the date of their respective appointments but not earlier to 01.03.1986 as was done in the impugned seniority list,

(b) Direct recruits of 1992 could be given seniority only in that year but not earlier, or in 1991 as was erroneously done in the impugned seniority list;

(v) The seniority of five applicants in O.A.NO. 156/86 originally fixed in terms of the order, had to be restored and could not be altered.

(vi) Those promoted ad hoc basis in any year in the vacancies available to them were eligible for seniority from the date of their continuous officiation, if -they were promoted within their eligible quota of that year under the Recruitment Rules;

(vii) Those promoted in 1983 against 17 posts diverted from Shillong, were entitled to seniority in terms of 1959 O.M;

(viii) *Of 137 promotees regularised on 27.10.1988, seniority of those applicants regularised under the earlier order in 1985 has to be fixed prior to 1.3.1986, on the said earlier date of their regularisation in 1985;*

(ix) *Seniority of promotees functioning in temporary posts not forming part of the cadre, is to be fixed from the date of promotion/ appointment.*



63. *The impugned judgment and order is accordingly set aside; the appeals by the PRIs are allowed in terms of the above findings. The consequential action, by way of drawing and publishing a final seniority list, in accordance with the present findings, shall be completed within three months. The writ petition is also disposed of in the above terms. There shall be no order as to costs."*

7. It is further submitted by the respondents that since the issue involved in the instant case is revision of seniority from 1983 to 2001 and the same would take time, IA 18289/2002 was filed for extension of time by six months for implementation of the orders. In due course, the Board vide letter dt. 06.09.2022 directed to implement the orders of the Hon'ble Supreme Court with certain directions. In the application filed, the Hon'ble Supreme Court granted time up to 26.12.2022. In compliance of the orders of the Supreme court dt. 15.03.2002 and the letter of the Board dt. 06.09.2022, a draft revised seniority list of Inspectors as on 01.01.2002 for the period from 1983 to 2001 was issued on 15.09.2002 and final seniority was published on 13.10.2022 after considering the representations received on the draft seniority list dt. 15.09.2022. In the said seniority list, some Promotee Inspectors (1991 batch adhoc PRIs) moved upward by gaining seniority over Direct Recruit Inspectors (1992 batch DRIs). Consequently, the promotions ordered in the cadre of Superintends based on the seniority list issued in 2002, which was in force at that time, are to be reviewed as per the revised seniority list dt.13.10.2002 issued in the cadre of Inspectors in terms of the directions of the Hon'ble Supreme Court. Accordingly, complying with the Apex Court directions, promotions for the period from 1993-94 to 2013-14 were revised based on the revised seniority list dt. 13.10.2022, vide EO (GO) No.

90/2022, dt. 11.11.2022. In the meanwhile, DGHRD, Central Board of Indirect Taxes, New Delhi vide letter dt. 28.07.2022, forwarded draft Integrated All India Seniority List of Superintendents of CGST & Central Excise appointed from 01.01.2007 to 31.12.2011. It is further submitted by the respondents that the orders of Hon'ble Apex Court to issue revised seniority list has been complied within the stipulated time and the promotions ordered in the cadre of Superintendents have already been revised. The Department vide orders dt. 30.11.2022, published the final seniority list of Superintendents of Zonal level based on the revision of promotions ordered vide EO (GO) No. 90/2022 dt. 11.11.2022 and the same has been forwarded to the Board vide letter dt. 30.11.2022.



8. It is further stated by the respondents that the applicant joined in the year 1992 and his seniority was fixed in the year 1992 in terms of the directions of the Hon'ble Apex Court. Seniority list has been prepared in compliance of the orders of the Hon'ble Apex Court and there is no wrong compliance of the order of the Hon'ble Apex Court. It is further stated that the promote Inspectors referred by the applicant, were recruited as UDC/ Stenographers and promoted as Inspectors in the years 1991/1992 on adhoc basis. In terms of the Inspector Recruitment Rules, 1979, 5 years qualifying service in the feeder cadre is prescribed as eligibility for promotion as Inspector. But, they were promoted on adhoc basis in terms of CBIC letter dt. 04.02.1981 after rendering 4 years of qualifying service in 1991/1992 and they were subsequently promoted on regular basis after completion of qualifying service of 5 years as RRs. It is further submitted that since the officers were promoted within their 25% quota and were on continuous officiation, they were given seniority from their date of adhoc promotion in terms of para 62(vi) of the order of the Hon'ble Apex Court.

9. Heard learned counsel for the parties and perused the pleadings on record.

10. The main contention of the applicant is the improper implementation of the direction of the Hon'ble Supreme Court in sub-para (vi) in para 62 of its judgment dt. 15.03.2022, in CA No. 3968/2009 & Batch and thereby, his seniority has been changed and he has been placed below his juniors in the seniority list. For better appreciation, the direction of the Hon'ble Supreme Court is extracted as under:



“Those promoted adhoc basis in any year in the vacancies available to them were eligible for seniority from the date of their continuous officiation, if they were promoted within their eligible quota of that year under the Recruitment Rules;”

This contention of the applicant has been answered by the respondents in their reply statement, by referring to the observations of the Hon'ble Supreme Court in para 62(i), which reads as under:

“No excess promotions took place during the period 1983 and 1991. 25% of the actual vacancies arising every year during the period were for the promotees. No direct recruit vacancy for any year was filled by promotees.”

11. It is the case of the respondents that the change in seniority position was occasioned due to implementation of the orders of the Hon'ble Apex Court dt. 15.03.2022 and the applicant cannot claim seniority as existed in the seniority list issued in 2002 since the present seniority list has been drawn in terms of the orders of the Hon'ble Supreme Court dt. 15.03.2022 and also the directions of the CBIC dt. 06.09.2022. It is also seen from the record that the Committee of Commissioners constituted for the purpose, examined all the representations and also heard the individuals personally and finalized the seniority vide proceedings

dt.13.10.2002 and the same was published with the approval of the competent authority. Further, review DPC also revised the promotions ordered from the year 1993-94 to 2013-14 and an order was issued on 11.11.2022. Thereafter, seniority of in the cadre of Superintendent at Zonal level has already been finalized on 30.11.2022, and DGHRD/CBIC will take up the revision of seniority at all India level in the said cadre.



12. As seen from the above, the revision of seniority has been done in compliance of the order of the Hon'ble Supreme Court. The representations/objections submitted on the same have been examined and a final seniority has been issued on 13.10.2022 in the cadre of Inspectors. Consequently, promotions ordered earlier based on the previous seniority were reviewed in terms of the seniority list dt. 13.10.2022 and respondents published final seniority list of the Superintendents at the zonal level and they are about to finalize the seniority in the said cadre at the all India level.

13. In view of the above, we see no merit in the OA and the same is dismissed, with no order as to costs.

(B. ANAND)
ADMINISTRATIVE MEMBER

(SUDHI RANJAN MISHRA)
JUDICIAL MEMBER

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