

PETITIONER:
ALL INDIA FEDERATION OF CENTRAL EXCISE ETC.

Vs.

RESPONDENT:
THE UNION OF INDIA & ORS.

DATE OF JUDGMENT: 22/11/1996

BENCH:
K. RAMASWAMY, K, VENKATASWAMY, G.B. PATTANAIAK

ACT:

HEADNOTE:

JUDGMENT:
THE 22ND DAY OF NOVEMBER, 1996

Present:

Hon'ble Mr. Justice K. Ramaswamy
Hon'ble Mr. Justice M. Venkataswami
Hon'ble Mr. Justice G.B. Pattanaik

Yogeshwar Prasad, P.P. Malhotra, K. Madhaya Reddy, Sr. Advs., (K.T. Anantharaman) Adv. for Khaitan & Co., ms. Rachna Gupta, P.K. Bajaj, (R. Vasudevan) Adv. (NP), A.K. Srivastava, P. Parmeshwaran, V.J. Francis, Ms. C. Ramamurthy, L.R. Singh, Ms. Anu Mohla, K.K. Mohan, S.K. Mehta, Probir Mitra, M.A. Krishnamoorthy, V. Balachandran, Advs. with them for the appearing parties.

J U D G M E N T

The following Judgment of the Court was delivered:

The Group 'B' posts in the feeder-cadres (a) and (b) above (i.e. Superintendents of Central Excise and Superintendents of Customs (P) are filled 100 per cent by promotion. Those in the feeder-cadre (c) above (i.e. Customs Appraisers) are filled 50 per cent by direct recruitment consisting of (c)(i) above and 50 per cent by promotion consisting of (c)(ii) above.

Prior to the coming into force of the 1987 Rules, promotions to Group 'A' posts were given on the basis of the respective cadre strength of feeder categories. This manner of filling up the vacancies was challenged by a group of officers by filing Writ Petition (Civil) Nos.4532-33/78 in this Court. Inter alia in the said Writ Petitions, the petitioner challenged promotions of 174 Superintendents of Central Excise and 10 Superintendents of Customs (Preventive) on the basis of panel prepared by the DPC held in 1978. One of the main contentions raised in those Writ Petitions was that for promotion to Group 'A' Service, all eligible officers belonging to three Group 'B' feeder categories should be arranged in one common consideration list based on their continued length of service in 'B' Group. It may be noted that when those Writ Petitions were pending, statutory rules were under-contemplation and factually were not there. This Court gave directions in those writ petitions fixing a time for framing the statutory rules. When this Court was informed about the framing of the

rules, those writ petitions were disposed of on 23.9.1987 observing 'the promotions now in dispute, will also be looked into with reference to the Rules and re-disposed of in accordance with law'.

The petitioners in W.P.(C) No.306 of 1988 were aggrieved by Rule 18 and hence they have challenged that Rule. Rule 18 is set out below:-

"18. Appointment by promotion to Grade VI of service:-

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

a) superintendents of Central Excise in the Central Excise. Department and District Opium Officer of Intelligence Officers of Superintendents (Executive) in the Narcotics Department.

b) Appraisers of Customs in the Customs Department.

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

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

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

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

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

The arrearage of the petitioners in W.P.(C) No.306 and 1200/83 is that having regard to their cadre strength and the time taken by them to reach Group 'B' status, they may not get their due share if Rule 18(2) is allowed to hold and field.

The petitioners in W.P.(C) Nos.4532-33/78, moved this court again by filing application for contempt for not complying with the order of this Court in not preparing a seniority list within the stipulated time. This Court extended the time and thereafter a common seniority list was prepared. Challenging that, W.P.(C) No.1200/83 came to be filed.

Thereafter, certain directions were given pending disposal of these writ petitions. The petitioners in W.P.(C) No.1093/90 felt that unless they move this court and project their point of view, their interests may be jeopardised. Hence they have filed W.P.(C) No.1093/90.

We have heard counsel on both sides. The question of determination of seniority of Group 'B' Officers of the different feeder cadres in their quota of promotion to the entry grade of Assistant Collector/Senior Superintendent in the Indian Customs and Central Excise Service Group 'A' has been the subject matter of dispute for quite sometime. As noticed above, apart from moving this Court, a number of cases were pending before various High Courts and Central Administrative Tribunals. Fortunately, one aspect of the dispute was given a quietus by this Court recently by a judgment dated 8.5.1996 in *Gaya Baksh Yadav vs. Union of India and Others* (JT (1996) 5 SC 118). That was a dispute between directly recruited Appraisers of Customs and promotees belonging to that category.

Generally speaking, the cause for all these litigations appears to be that an impression has gained ground, unfortunately, both among the Customs Officers and Central Excise Officers of the feeder cadre that the other side is encroaching upon its legitimate chances of promotion to Group 'A' posts. In other words, a feeling has come to stay that the other side is trying to benefit at its cost. This feeling, in the absence of statutory rules, has got complicated on account of the claims and counter-claims on both sides and also on account of its having been unresolved for quite a number of years. In this background unless there exists a spirit of accommodation and goodwill on the part of all concerned coupled with a sense of appreciation of the other party's point of view a solution to satisfactory settlement of disputes may not be possible.

It is obvious that these matters are pending in this Court since 1988. When we heard the matter on the last occasion, learned counsel appearing for the Union of India placed before us a communication from the Government of India, Ministry of Finance, Department of Revenue dated 8.6.1989 addressed to the first petitioner in W.P.(C) No.306/88 in his capacity as Secretary to the Federation and copies were marked to other similar Federations/Associations of concerned officers. Enclosed with the said communication, we find certain proposals for resolving the disputes pending for a long time suggested by the Central Board of Revenue. While finalising the proposal, they have taken into account various aspects including the long pendency of the cases at various levels. The proposal, according to them, is equitable and fair and it takes care of legitimate interest of officers of all the three feeder categories.

We have gone through the above-mentioned proposal carefully and applied our mind and we find that the said proposal is fair, just and equitable in the facts and circumstances of the case. We also find that well-founded reasons are given for the ultimate solution given in the proposal. In order to further justify/strengthen the proposal and the ultimate ratio suggested, we make the chart given at the time of hearing by the learned counsel for the petitioners in W.P. (C) No.306/88 as an annexure to this judgment. A look at the chart will give a panoramic view of both the streams and would help for easy understanding of the issues. None of the learned counsel appearing for the respondents in W.P. (C) No.306/88 pointed out any mistake in the chart. We, therefor, accept the said proposal.

It is seen from the communication dated 8.6.1989 that

the proposal was forwarded to Federations/Associations concerned in order to enable them to arrive at a consensus and on arriving at such a consensus to report to this Court for disposal of these matters on that basis. Unfortunately, even after lapse of seven years, the parties could not arrive at a consensus and consequently, we have to step in to settle the issue. We may also point out that when the learned counsel for the Union of India handed over the proposal, none of the counsel appearing for the parties seriously objected to the terms of the proposal.

The relevant portions of the proposal are set out below

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"2.2 The seniority list of each of the above three feder-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 O.M. No.9/11/55-RPS dated 22.12.1959 (which were modified by the Department of Personnel and Training O.M. 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 a 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 Appraiser 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% 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 promote 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 Directed 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) Superintendent 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 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"

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's case (supra). To that extent, last portion in para 7 (underlined portion) in the above proposal stands modified.

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.

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 re-arrange 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 re-arranging the seniority in Group 'A' Service as indicated in the judgment. It would, therefore, be of necessity that the Government should re-arrange 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 arranged accordingly.

The Writ Petitions are accordingly disposed of.

In view of the disposal of main Writ Petitions, no further orders are necessary in the Interlocutory Applications including the Contempt Petition and they stand disposed of accordingly. There will be no order as to costs.