

A ALL INDIA FEDERATION OF CENTRAL EXCISE ETC.

v.

THE UNION OF INDIA AND OTHER

NOVEMBER 22, 1996

B [K. RAMASWAMY, K. VENTAKATASWAMI
AND G.B. PATTANAİK, JJ.]

C *Service Law—India Customs and Central Excise Service Group 'A' Rules 1987—Rules 18(2), 19(2) and 20—Promotion—Distribution of promotees quota amongst various feeder cadres—Central Government's proposal for promotion quota for Group 'B' feeder Cadres comprising Central Excise Superintendents Customs (P) Superintendents and Customs Appraisers in the ratio of 6 : 1 : 2—Held, just, fair and equitable—However 50 : 50 quota of direct recruits and promotees in the Group 'A' service directed to be kept intact—The 1987 Rules directed to be modified accordingly.*

D **The constitutional validity of Rule 18(2) of the Customs and Central Excise Service Group 'A' Rules, 1987 is challenged by the present writ petitions. The feeder cadres for promotion to Indian Customs and Central Excise, Group 'A' Services are :**

E (a) Superintendents of Central Excise, Group 'B' :

(b) Superintendents of Customs (p) Group 'B' and

(c) Customs Appraisers, Group 'B' -

F (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 :

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(ii) Promoted from the Feeder-cadres of Customs Examiner.

H **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 percent by promotion. Those in the feeder-cadre(c) above (i.e.**

Customs Appraisers) are filled 50 percent by direct recruitment consisting of (c)(i) above and 50 percent by promotion consisting of (c)(ii) above. A

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. When the 1987 Rules were framed these petitions were disposed of on 23.9.1987 with the observation that "the promotions now in dispute, will also be looked into with reference to the Rules and re-disposed in accordance with law." The petitioners in W.P.(C) Nos. 306 and 1200 of 1988 challenged the constitutionality of Rule 18(2) of the Indian Customs and Central Excise Service Group 'A' Rules 1987. The petitioners in W.P.(C) No. 1200/88 additionally challenged the list of seniority published on 22.8.1988 pending disposal of W.P.(C) No. 306/88. The petitioners in W.P.(C) No. 1093/90 have prayed for the issue of Writ of Mandamus directing the respondents to make promotions strictly in accordance with law, namely following Rules 19(2) and 20 of the 1987 Rules and based on the seniority list dated 12.1.1989 and also for certain other connected reliefs. The Union of India placed before the Court a communication from the 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 with copies to similar federations/Association of concerned officers, alongwith which certain proposals were enclosed for resolving the disputes pending for a long time. B
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Accepting the proposals and disposing of the Writ Petitions on the basis of these proposals with certain modifications, this Court F

HELD : 1. The proposal is fair, just and equitable as it has taken care of the legitimate interests of all the three feeder categories. The proposal is therefore, accepted with some modification in para 7 thereof. On the basis of the proposal, 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. [97-A; 100-F-G] G

2. 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 Su- H

A perintendents of Customs on the other hand, would be drawn up first on
 all india basis. The 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'. So far as *inter-se* seniority
 B 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. [101-A-D]

Gaya Baksh Yadav v. Union of India, [1996] 4 SCC 23, referred to.

C 3. Union of India is directed to amend the 1987 Rules so far as Group
 'A' service is concerned, review all post-1979 *ad-hoc* promotions to the
 posts 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. [101-E-F]

D 4. In Group 'A' service of the Customs and Central Excise Depart-
 ment, 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
 E 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
 interest 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
 F 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 the *inter-se* seniority
 and promotions of the respective direct recruits and promotees within their
 G quota and consequential promotions in further higher services. Their
 seniority be arranged accordingly. [101-F-H; 102-A-B]

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 306 of
 1988 Etc.

H (Under Article 32 of the Constitution of India.)

Yogeshwar Prasad, P.P. Malhotra, K. Madhava Reddy, (K.T. Anantharanman) for Khaitan & Co., Ms. Rachna Gupta, P.K. Bajaj, (R. Vasudevan) (NP), A.K. Srivastava, P. Parmeshwaran, V.J. Francies, Ms. C. Ramamurthi, L.R. Singh, Ms. Anu Mohla, K.K. Mohan, S.K. Mehta, Probir Mitra, M.A. Krishnamoorthy, V. Balachandran for the appearing parties.

The Judgment of the Court was delivered by

VENKATASWAMI, J. The petitioners in W.P.(C) Nos. 306 and 1200 of 1988 challenge the constitutionality of Rule 18(2) of the Indian Customs and Central Excise Service Group 'A' Rules 1987 (hereinafter referred to as the "Rule"). The petitioners in W.P. (C) No. 1200/88 additionally challenge the list of seniority published on 22.8.1988 pending disposal of W.P.(C) No. 306/88. The petitioners in W.P. (C) No. 1093/90 have prayed for the issue of Writ of Mandamus directing the respondents to make promotions strictly in accordance with law namely, following Rules 19(2) and 20 of the 1987 Rules and based on the seniority list dated 12.9.1984 and also for certain other connected reliefs.

Common arguments were addressed by counsel on both sides and, therefore, these writ petitions and connected Interlocutory Applications are being disposed of by this common judgment.

Let us briefly state the background facts leading to the filing of these petitions.

The feeder cadre for promotion to Indian Customs and Central Excise. 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

A the UPSC, and :

(ii) Promoted From the Feeder-cadres of Customs Examiner.

B 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.

C 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 petitioners challenged D 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. E 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 F 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 the Rule. Rule 18 is set out below :

G "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 rule 5 shall be by promotion of the following categories of Group 'B' H officers in the Central Excise, Customs and Narcotics department

who have completed three years regular service in the Group 'B' posts of - A

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

(b) Appraisers of Customs in the Customs Department.

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

(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 (i) 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. D

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

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

The grievance of the petitioners in W.P.(C) No. 306 and 1200/86 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 the field. G

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. 1200/88 came to be filed. H

A 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.

B 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 *Gaya Baksh Yadav v. 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.

D 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.

G 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

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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, therefore, 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 :-

"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 or 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

A Ministry of Home Affairs O.M. No. 9/11/55-KPS dated 22.12.1959 (which were modified by the Department of personnel and Training O.M. No. 35014/2/80-Estt. (D) dated 7/9/86), 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 -

B (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.

C (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.

D 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 the 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 in the subject matter of the number of writ petitions, *inter alia* before the Hon'ble Supreme Court.

F 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.

H 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' Officer in the ratio of 2 : 1, the number of vacancies falling to 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'.

A 6.1. It is noticed that Central Excise Group 'B' officers get their
 B promotion to Group 'B' after having put in, by and large, very long
 C years of service in Group 'C' and, consequently, they are of much
 D older age-group as compared to Customs Appraisers. Therefore,
 E placing the Superintendents of Central Excise first and placing
 F Customs officers thereafter, in the promotion panel would not
 G present any material disadvantage to Customs Officers. The age-
 H group of Superintendents of Central Excise is, by and large, such
 I that they would retire before their turn for next promotion to the
 J grade of Deputy Collector comes. As of now, there is hardly any
 K Deputy Collector of Central Excise anywhere in India who is a
 L promotee from Group 'B' in the Central Excise Central Excise
 M officers would generally retire as Assistant Collectors, thereby
 N increasing the chances of Officers of younger age-group from the
 O Customs stream for their next promotion to the grade of Deputy
 P Collector.

D 6.2. By and large, similar position would be there in the case of
 E Customs (P) Superintendents vis-a-vis Direct recruit Customs Ap-
 F praisers. Therefore, a reasonable placement in the combined all-
 G India seniority list may be in the following order :

- E (i) Superintendents of Central Excise, Group 'B'
- F (ii) Superintendents of Customs (P) Group 'B'
- G (iii) Customs Appraisers.

F 6.3. To sum up, according to the above formula, each bunch of 9
 G vacancies in the promotion quota for Group 'B' feeder- cadres will
 H be apportioned in the ratio 6 : 1 : 2 consisting of Central Excise
 I Superintendents, Customs (P) Superintendents and Customs
 J Appraisers respectively. To illustrate, if 9 vacancies exist for the
 K promotee quota in Group 'A' entry point, the first six vacancies
 L would go to Superintendents of Central Excise, the seventh vacancy
 M to Customs (P) Superintendent and the eighth and ninth to Ap-
 N praisers; further vacancies to be filled up on the basis of a 'cycle'
 O in the above order.

H 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."

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, re-determine the respective placement of the promotee officer 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

- A 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.

- C 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.

H.K.

Petitions disposed of.