IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.10.2024

PRONOUNCED ON : 19.02.2025

CORAM:

THE HON'BLE DR.JUSTICE ANITA SUMANTH
AND
THE HON'BLE MR.JUSTICE G.ARUL MURUGAN

W.P.Nos.20743 & 20744 of 2010 &
W.P.No.4669 of 2011 and
M.P.Nos.2, 1, 1 & 2 of 2013 & 1 of 2011

W.P.No.20743 of 2010

1.Aruna Venkatesh
2.A.Mariajoseph Raj
3.Bhavani Chinnachamy ... Petitioners

versus

1.Union of India,
Rep. by the Chief Commissioner of Customs,
Custom House, Chennai - 1.

2.Union of India,
The Commissioner of Customs,
Custom House, Chennai - 1.

3.Chairman,
Central Board of Excise and Customs,
Ministry of Finance,
Department of Revenue,
New Delhi - 1.

4.N.A.Nalini

5.A.Zubaida Begum
6.N.L.George
7.C.C.Sheela
8.S.N.Suresh
9.R.Ambika
10.K.V.Pushpavally
11.G.Sarvamangala
12.P.S.Rossamma
13.V.G.Bhargavi
14.T.V.Jayasri
15.P.K.Rubymol
16.T.R.Indradevi
17.Daisy K.Paulose
18.Liji.Joseph
19.V.V.Vasantha Lakshmi
20.Uma Mahesh Achalla
21.A.Srinivasa Rao
22.Jayalakshmi Veerasamy
23.S.Ravichandran
24.D.Diwakar
25.M.Ravi Kumar
26.Jahabar Sathick
27.K.P.Asokan
28.R.Kumar
29.C.U.Susan
30.S.Geetha

31.The Registrar,
Central Administrative Tribunal,
Chennai Bench,
Chennai - 104. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus, calling for the records of the 31st respondent in its order dated 03.09.2010 in O.A.No.12 of 2010, quash the same and consequently forbear the respondents 1 to 3 from effecting promotions to the post of Custom Appraiser from among the respondents 23 to 28 who were promoted as Inspector (Examiner) on

20.10.2003 which was subject to result of W.P.No.28333 of 2003 or any of the juniors to the petitioners without first promoting the petitioners as Inspector (Examiner) w.e.f. 20.10.2003 on notional basis with all consequential benefits including consideration for further promotion as Custom Appraiser.

For Petitioners : Mr.Karthik Rajan

For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel - R1 to R3
Mr.Akbar Row - R23, 27 & 28
Mr.P.V.S.Giridhar
Senior Counsel
for Ms.Y.Kavitha - R24 to R26
Tribunal - R31
R-4 to R-22, R-29 & R-30 - Given up
vide Sr.No.92329 dated 07.09.2010

W.P.No.20744 of 2010

1.K.Ramasubramaniam
2.V.Vaijeyanthi (formerly Jayanthi Natarajan)
3.Aruna Venkatesh
4.Bhavani Chinnaswamy
5.A.S.Kamalakkannan
6.N.T.Mukuntan
7.R.Saranga Rajan
8.K.Ananda Ganesh
9.P.K.Radhakrishnan
10.P.S.Vijayalakshmi
11.Nirmala Devi
12.Hema Karthikeyan
13.Shanthi Venkataraman
14.B.Usha
15.E.Devendran
16.Geetha Prakash
17.Aruna Ganesan
18.M.Elango ... Petitioners

versus

1.P.S.Narasimhan

2.Union of India,
Rep. by the Commissioner of Customs,
Custom House, Chennai - 1.

3.The Joint Commissioner of Customs (P&V),
Custom House, Chennai - 1.

4.The Registrar,
Central Administrative Tribunal,
Chennai Bench, Chennai - 104.

5.Srividya
6.K.Geetha
7.Kamakshi Muralidharan ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari, calling for the records of the 4th respondent in its order dated 03.09.2010 in O.A.No.429 of 2009, quash the same.

For Petitioners	:	Mr.Karthik Rajan
For Respondents	:	Mr.Akbar Row - R1 Mr.A.P.Srinivas Senior Standing Counsel -R2 & R3 Tribunal - R4 R-5 to R-7 - Given up vide Sr.No.92332 dated 07.09.2010

W.P.No.4669 of 2011

1.Commissioner of Customs (Imports),
Custom House,
New No.60, Rajaji Salai,

Chennai - 600 001.

2.The Joint Commissioner of Customs (P&V),
Custom House,
New No.60, Rajaji Salai,
Chennai - 600 001. ... Petitioners

versus

1.P.S.Narasimman

2.The Registrar,
Central Administrative Tribunal,
Chennai Bench, Chennai - 104.

3.K.Ramasubramaniam
4.V.Vaijeyanthi (Formerly Jayanthi Natarajan)
5.Aruna Venkatesh
6.Bhavani Chinnaswamy
7.A.S.Kamalakkannan
8.N.T.Mukuntan
9.R.Saranga Rajan
10.K.Ananada Ganesh
11.P.K.Radhakrishnan
12.P.S.Vijayalakshmi
13.Srividya
14.Nirmala Devi
15.Hema Karthideyan
16.Shanthi Venkataraman
17.B.Usha
18.K.Geetha
19.E.Devendran
20.Geetha Prakash
21.Kamakshi Muralidharan
22.Aruna Ganesan
23.M.Elango ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari, calling for the records of the 2nd respondent in its order dated 03.09.2010 in O.A.No.429 of 2009, quash the same.

For Petitioners	:	Mr.A.P.Srinivas Senior Standing Counsel
For Respondents	:	Mr.Akbar Row - R1 Tribunal - R2 R-3, 4, 6, 7, 11 to 15, 17, 18, 19, 21, 22 & 23 - No Appearance R-5, R-8, R-9, R-10, R-16 & R-20 - Not ready in notice

COMMON ORDER

[*Common Order* of the Court was made by ***G.ARUL MURUGAN, J.***]

W.P.No.20743 of 2010 is filed by the erstwhile Data Entry Operators designated as Senior Tax Assistants, challenging the order of Tribunal dated 03.09.2010 in dismissing O.A.No.12 of 2010.

2. W.P.No.20744 of 2010 is also filed by the erstwhile Data Entry Operators designated as Senior Tax Assistants and W.P.No.4669 of 2011 is filed by the Customs Department, both challenging the order of Tribunal dated 03.09.2010 in O.A.No.429 of 2009, wherein the claim of the erstwhile ministerial staff (UDC) redesignated as Senior Tax Assistant / Tax Assistant was allowed.

3. Since the issue involved in these writ petitions is in respect of the promotion to the post of Inspector (Examiner) in the Customs Department, all the writ petitions are heard together and disposed of by this common order.

4. The facts and the sequence of events to be noted in these writ petitions are as follows:-

4.1. In the Customs and Central Excise Department, initially there were two cadres, ministerial cadre and executive cadre. The ministerial cadre consists of Lower Division Clerks (LDCs), Upper Division Clerks (UDCs) and Tax Assistants (TAs). The next avenue of promotion for LDCs was to UDC and TA and for the UDCs and TAs was to the post of Inspector.

4.2. The computerisation brought in the Customs and Central Exercise Department led to some changes through bifurcation of the existing cadres in 1980s. The bifurcation resulted in 2 streams as ministerial side and technical side. Data Entry Operator cadre was created due to the computerisation and they were governed by the Electronic Data Processing Discipline (Group E Technical Post) Recruitment Rules, 1992. Hitherto Data Entry Operators ("DEOs") were not eligible to be considered as Inspector because they were constituted as a different cadre.

4.3. In the year 2002, massive cadre restructuring took place in the Customs and Central Excise Department and in the restructuring process, the ministerial cadre comprising of the post LDC, UDC, UDC (UDC-special pay), Assistant and Tax Assistants etc., were merged with DEO posts of Grade-A, B & C. By restructuring, 2 new posts were created viz. Senior Tax Assistant and Tax Assistant.

4.4. The higher posts of Inspector (Examiner/Preventive Officer) were also restructured providing for revised promotional channels from the pre-restructured as well as restructured feeder posts. The petitioners in W.P.Nos.20743 and 20744 of 2010 who were earlier working as DEOs in the Grade B & C category were merged into the post of STAs.

4.5. The Government by proceedings dated 05.06.2002 notified the posts forming part of the restructuring by revised cadre allocation. By these proceedings, 220 posts of Inspector (Preventive Officer) and 49 posts of Inspector (Examiner) in respect of Chennai Commissionerate were notified under the restructured category. Pursuant to the revised cadre allocation, direction was also issued that the vacancy in respect of the posts included in the cadre allocation restructuring, shall not be filled till further orders are issued.

4.6. The Recruitment Rules for the post of Inspector (Examiner) which is a Group 'C' post, which was earlier governed under Recruitment Rules, 1979 was issued on 29.11.2002 under Article 309 of the Constitution, in supersession of the Recruitment Rules, 1979. As per the 2002 Recruitment Rules, Column 12 prescribed the mode of promotion to the post of Inspector (Examiner) and is extracted hereunder:-

> *"**12. PROMOTION:** (a) By selection from those candidates working in the following pre-restructured cadres:*
>
> *(i) Tax Assistant with two years service as Tax Assistant or 5 years service as Tax Assistant and Upper Division Clerk put together;*
>
> *(ii) Upper Division Clerk with 5 years service in the grade; and*
>
> *(iii) Stenographer (Grade II) and Stenographer (Grade III) with 5 years regular service as Stenographer.*
>
> *(b) By selection from those Candidates working in the following restructured cadres:*
>
> *(i) Senior Tax Assistant with 2 years regular service in the grade;*
>
> *(ii) Stenographer Grade II with 2 years regular service in the grade.*
>
> *(c) Failing the method of recruitment specified under clause (b) above, by selection from Tax Assistant and Stenographers Grade III having not less than 10 years service including the service to be included for this purpose under the provisions of the rules regulating the method of recruitment to the post of Tax Assistant.*
>
> ***NOTE 1**: Promotion under clause (a) above shall be operative only for a period of two years from the date on which the restructured cadre mentioned under clause (b) come into existence.*
>
> *The service rendered under the new grade in the restructured cadres shall be counted towards considering the eligibility for promotion under clause (a) above.*
>
> ***NOTE 2**: Candidate shall be required to pass such written test as may be determined by the Central Board of Excise and Customs from time to time. The maximum age of eligibility for the departmental candidates shall be 45 years which shall be relaxable to 47 years in the case of candidates belonging to the Scheduled Castes or the Scheduled Tribes. However, those of the officials who were not considered for such promotion upto the age of 45 or 47 years, as the case may be, shall be granted the benefit of relaxation in age limit upto 50 years in order to*

enable a fair opportunity of a minimum of two chances. However, those officials who were considered for promotion upto the age limit of 45 or 47 years as the case may be, on two or more occasions and were not found fit for promotion shall not be eligible for this relaxation.
NOTE 3*: Candidates shall be required to pass physical tests and confirm the physical standards as specified in Column 8.*
NOTE 4*: The eligible officers under clause (a), (b) and (c) above shall be required to pass through an interview before promotion.*
NOTE 5*: Where juniors who have completed their qualifying or eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of the requisite qualifying or eligibility service by more than half of such qualifying or eligibility service or two years, whichever is less and have successfully completed their probation period for promotion to the next higher grade along with their juniors who have already completed such qualifying or eligibility service."*

4.7. The Recruitment Rules 2003 for the post of STA (Group 'C' posts) was also issued on 16.01.2003. Rule 5 prescribes the initial constitution of the posts of the STA. Rule 5 is extracted hereunder:-

*"**5. Initial constitution,-**(i) All the persons appointed on the regular basis at the time of commencement of these rules to the Grade of Assistant, Tax Assistant, Upper Division Clerk (Special Pay), Data Entry Operator Grade 'B' and 'C' shall be deemed to have been appointed as Senior Tax Assistants under these rules. The service rendered by them before commencement of these rules shall be taken into account for deciding the eligibility for promotion to the next higher grade.*

(ii) Assistants (Rs.5000-8000) and Data Entry Operator Grade 'C' (Rs.5000-8000) are being redesignated as unblock senior to the other categories. However, their inter-se placement shall be done according to the date from which they had actually been appointed to these grades on regular basis subject to the condition that their inter-se placement in their respective category shall not be altered.

(iii) The Data Entry Operator Grade 'B' (4500-7000) and Tax Assistants (4500-7000) have been placed in their higher scale of 5000-8000 and they shall be placed below the Assistant and Data Entry Operator Grade 'C' and their inter-se placement shall be fixed in accordance with the date of regular appointment to the respective grade subject to the condition that their inter-se placement in respective category shall not be disturbed.

(iv) Upper Division Clerk with special pay shall be placed below Assistant, Data Entry Operator Grade 'C', Data Entry Operator Grade 'B' Tax Assistants.

(v) The present employees would be required to pass the required or suitable departmental examination, as specified by the Competent Authority, from time to time, in Computer application and relevant procedures within two years failing which they would not be eligible for further increments."

4.8. Rule 5 extracted above provides for the inter-se seniority among the merged cadres, wherein the Tax Assistants, UDC special pay, DEOs Group 'B' and 'C' who have been appointed as STAs are en bloc placed as seniors in the first category.

4.9. Column 12 of the Inspector (Group "C" posts) Recruitment Rules, 2002 provides for the feeder categories in Clause (a) of Column 12 consisting of the prestructured posts of UDC, Tax Assistant and Clause (b) consisting of the new posts of STA with 2 years of regular service who were entitled to be considered. In the absence of recruitment under Column 12(a) & (b), the new posts of Tax Assistants were also eligible to be considered for promotion under Column 12(c). A provision was also made through note that consideration of promotion of the candidates in 12(a) shall be operative only for a period of 2 years from the date on which the restructured cadres in 12(b) come into existence. Further as per Rule 5 of the Senior Tax Assistant Recruitment Rules, 2003, service rendered in the erstwhile posts before commencement of the Rules shall be deemed to be service in the restructured posts of STA and TA for deciding the eligibility for promotion to the next cadre.

4.10. On 10.06.2003, the Department took steps to effect promotion to the post of Inspector (Examiner) based on the new Recruitment Rules issued on 29.11.2002. However while doing so, the Department decided to consider only the candidates available under Clause (a) of Column 12 for promotion by excluding the consideration of candidates in Clause (b) who are the petitioners in these two writ petitions for promotion.

4.11. As the DEOs (Group 'B' and 'C') in Column 12(b) under the feeder category were not considered for promotion, they had filed O.A.No.495 of 2003 before the Central Administrative Tribunal (CAT) seeking for a relief that they should also be considered for promotion to the post of Inspector (Examiner) along with the other feeder categories in 12(a).

4.12. By Order dated 04.09.2003, the O.A.No.495 of 2003 filed by the DEOs falling under 12(b) came to be allowed by the Tribunal with the observations that both the persons under 12(a) and 12(b) can be simultaneously considered even for the first two years and thereby set aside the circular dated 10.06.2003, further holding that the vacancies that are sought to be filled are only the vacancies that arose under cadre restructuring.

4.13. The order of the Tribunal was challenged by the erstwhile ministerial staff, UDC's placed under 12(a) before this Court in W.P.No.28333 of 2003. Even though initially an order of *status quo* was granted, ultimately by order dated 14.10.2008 the writ petition was dismissed confirming the orders of the Tribunal thereby allowing both the erstwhile ministerial staff (UDC) and the erstwhile DEOs who are all redesignated as STA to be considered for promotion to the post of Inspector.

4.14. In the meantime, the orders passed in O.A.No.495 of 2003 by CAT was taken note in the case of similarly placed STAs and the Bombay High Court by order dated 17.10.2003 had passed orders on similar lines as decided by the CAT. The decision of the Bombay High Court was also challenged before the Hon'ble Supreme Court and by order dated 09.02.2004, the SLPs in Appeal (Civil) Nos.2203 to 2204 of 2004 were dismissed confirming the decision of the Bombay High Court and pursuant to which, the decision of the Bombay High Court was also implemented on 10.03.2004 and the STAs working in the Bombay Customs Office who were redesignated from erstwhile DEOs were granted promotion as Inspector (Preventive Officer).

4.15. However, dehors the same, the Chennai Customs Department by proceedings dated 20.10.2003 promoted persons to the post of Inspector (Examiner) both on regular basis and also on ad-hoc basis by only considering the candidates in Clause (a) of Column 12 i.e., erstwhile ministerial staff (UDC) redesignated as STA / TA. However, these promotions were made subject to the result of the writ petition pending as on that date in W.P.No.28333 of 2003.

4.16. In the meantime, the erstwhile ministerial staff, UDCs who were redesignated had challenged the Rule 5 of STA Recruitment Rules 2003 which governed the inter-se seniority among the erstwhile posts in the newly formed posts of STA / TA. The Tribunal by order dated 30.12.2003 allowed the O.A. and set aside Rule 5 by which DEOs were placed as seniors to the ministerial staff.

4.17. The Customs Department eventually accepted the decision of the Bombay High Court as confirmed by the Hon'ble Supreme Court in respect of allowing both the ministerial staff under under Column 12(a) and the erstwhile DEOs under Column 12(b) to be simultaneously considered for promotion and by proceedings dated 04.10.2004 directed all the Commissionerates to implement the said decision. In view of this proceedings of the Department dated 04.10.2004 taking a policy decision to implement the judicial pronouncement in all the Commissionerates, the issue was settled by making the erstwhile DEOs redesignated as STAs eligible to be considered for promotion in the restructured posts along with the erstwhile ministerial staff.

4.18. In fact, the Department had earlier challenged the decision of the CAT in O.A.No.495 of 2003 by preferring W.P.No.31245 of 2003. However in view of the above decision of CBEC dated 04.10.2004, by order dated 19.10.2004 the Department withdrew the writ petition in W.P.Nos.31245 and 31246 of 2003 challenging the orders passed by the CAT in O.A.No.495 of 2003.

4.19. However, the ministerial staff association of the Department filed W.P.No.31478 and 31479 of 2004 challenging the CBEC instruction dated 19.10.2004 before this Court and obtained an interim order and thereby the instruction was not implemented in Tamil Nadu alone. However by orders dated 15.06.2009, this Court had ultimately dismissed both the writ petitions filed by the Association challenging the CBEC instruction dated 19.10.2004 in view of the orders passed in W.P.No.28333 of 2003.

4.20. While so, in a writ petition filed before the Andhra Pradesh High Court in W.P.No.7963 of 2004, by order dated 02.03.2005 the Andhra Pradesh High Court held that the vacancies in the cadre of Inspector arising prior to coming into force of the new Recruitment Rules on 07.12.2002 have to be filled up in accordance with the earlier 1979 Recruitment Rules. The decision of the Andhra Pradesh High Court was challenged by the DEOs before the Hon'ble Supreme Court and when notices were issued and the SLP was pending, the CBEC issued proceedings dated 26.09.2005 directing all the Commissionerates to implement the decision of the Andhra Pradesh High Court. By a clarification dated 17.05.2006, CBEC issued instructions in respect of the manner of implementation whereby all the vacancies in existence in the post of Inspector / PO or EO prior to the date of restructuring i.e. 07.12.2002 shall be filled as per the 1979 Recruitment Rules.

4.21. In the meantime, some of the STAs were promoted as Inspector (Examiner) on 17.01.2006 and they have challenged the applicability of the circular dated 17.05.2006 in respect of the Chennai Commissionerate in

O.A.No.511 of 2006. The O.A. was disposed of on 05.02.2007 holding that the cadre strength of the Inspector (PO) was fixed at 220 and the assessment has to be restricted to that alone.

4.22. The erstwhile DEOs had challenged the orders of the Tribunal in O.A.No.538 of 2003 whereby the inter-se seniority under Rule 5 was set aside in W.P.No.8361 of 2005. However, by order dated 13.04.2007, the Division Bench of this Court dismissed the writ petition confirming the orders of the Tribunal. The decision of this Court was challenged before the Hon'ble Supreme Court and by interim order dated 04.04.2008, the Hon'ble Supreme Court ordered that the STA and TA Recruitment Rules have to be given effect to and any promotion made on that basis would be subject to the result of the SLP. The erstwhile ministerial staff also challenged the orders passed in W.P.No.28333 of 2003 in SLP No.22916 of 2009 and notices were issued.

4.23. The ministerial staff filed O.A.No.429 of 2009 to restrain the Department from reviewing the DPC of 2003 and to regularise their ad-hoc promotion from 20.10.2003. The STAs from the erstwhile DEOs also filed O.A.No.12 of 2010 seeking to restrain the Department from making any further promotions to the post of Appraisers. Both the O.As were heard together and the Tribunal by order dated 03.09.2010 allowed O.A.No.429 of 2009 and dismissed O.A.No.12 of 2010. The Tribunal had also held that the applicants in O.A.No.12 of 2010 are not entitled to be considered for notional promotion as Inspector (Examiner) w.e.f. 20.10.2003 till the issue is finally decided by the Hon'ble Supreme Court. As against the common order passed by the Tribunal, the above three Writ Petitions have been preferred by the respective parties as indicated earlier.

4.24. Immediately after the orders were passed by the Tribunal, the Department had effected promotions to some of the persons to the post of Appraisers and since when the writ petitions were entertained on 08.09.2010 an order of *status quo* was passed as on 03.09.2010, the promotions granted on 07.09.2010 were recalled.

4.25. Subsequently, by order dated 08.03.2011, the interim orders were also modified to the effect that all eligible persons are entitled to be considered as Customs Appraisers which would be subject to the result of the writ petitions. Inspite of the modification of the interim order, even though the STAs redesignated from erstwhile ministerial staff were considered and promoted to Appraisers, the STAs redesignated from the erstwhile DEOs were not considered for promotion. Only on 19.12.2014, these persons were considered and promoted to the post of Customs Appraisers w.e.f. 30.09.2014.

4.26. While so, in the SLPs filed challenging the decision of this Court in confirming the orders of the Tribunal by setting aside the inter-se seniority as under Rule 5 of STA Recruitment Rules 2003, by order dated 26.03.2015, the Hon'ble Supreme Court allowed the SLP as reported in (2015) 6 SCC 727, whereby the Rules providing for inter-se seniority for the newly created posts of Inspector PO/EO were upheld. Further the SLP No.22917 of 2009 filed by the ministerial staff challenging the order in W.P.No.28333 of 2003 was also dismissed by the Hon'ble Supreme Court by order dated 24.10.2017, and reported in (2018) 13 SCC 193.

4.27. While the issue stood thus, the SLPs filed challenging the decision of the Andhra Pradesh High Court came to be disposed of by the Hon'ble Supreme Court by order 05.02.2020 in Civil Appeals Nos.1970 to 1975 of 2009. The Hon'ble Supreme Court held that the decision of the Andhra Pradesh High Court was in error as the promotion to vacancies existing prior to 07.12.2002 and which were not filled up cannot be made as under the Recruitment Rules 1979 but had to be made only in accordance with the 2003 Rules.

4.28. However, the Hon'ble Supreme Court, by considering the fact that the promotions had been effected during the pendency of these appeals, did not disturb the promotions effected but had directed that the cadre restructuring vacancies to be filled up in accordance with the new 2003 Rules considering both the cadre from feeder category in Col.12(a) and Col.12(b) of the new rules and further directed notional promotions with seniority to be accorded to those persons who have not been considered for promotion as on that date.

5. Mr.Karthik Rajan, learned counsel for the petitioners in W.P.No.27473 of 2010 and 27474 of 2010 argued that, even though earlier the feeder category with regard to the posts of Inspector (Examiner / Preventive Officer) was governed by the 1979 Rules, pursuant to the restructuring in the Department, the ministerial cadre and the DEOs cadre were merged and the posts of STAs and TAs were created for which separate Recruitment Rules have been framed in the year 2002-2003 respectively.

5.1. It is his contention that the petitioners were redesignated as STAs and the posts of STAs have been included in the feeder category for promotion to the post of Inspector (Examiner) in view of Column 12 of the

Recruitment Rules. Further, as per Rule 5 of the Recruitment Rules dated 16.01.2003, the petitioners who were under Grade 'B' and 'C' and appointed as STAs are placed higher in the seniority list than the other categories of the posts which got merged with the STAs and TAs.

5.2. He further contended that in fact after the posts of STAs were created on 15.01.2003, the promotions were called for on 10.06.2003 in which the petitioners ought to have been allowed to be considered along with the category of persons under Column 12(a) simultaneously as the vacancies called for in the promotions are all restructured vacancies. By placing reliance on the proceedings dated 05.06.2002 issued by the Department, he asserted that the restructured vacancy for the Chennai Commissionerate for Inspector (Examiner) was in fact reduced from 79 to 49 and for Inspector (Preventive Officer) it was reduced from 266 to 220 with a direction that the cadre restructured vacancies shall not be filled.

5.3. It is his further contention that there had been a spate of litigations initiated by the erstwhile ministerial staff who were redesignated as STAs / TAs and also the petitioners seeking promotion to the post of Inspector (Examiner / Preventive Officer). The bone of contention in almost all the litigation was as to whether the petitioners who became STAs and placed under Column 12(b) could be simultaneously considered along with the ministerial staff redesignated as STA / TA who are placed under Column 12(a).

5.4. He contended that the issue was ultimately decided by the decision of the Hon'ble Supreme Court dated 05.02.2020 wherein it has been held that all the cadre restructured vacancies have to be filled in accordance with the new rules by considering the feeder categories both in Column 12(a) and 12(b) simultaneously.

5.5. He further submitted that the fixation of inter-se seniority based on Rule 5 of the 2003 Rules which, even though was set aside by the Tribunal and confirmed by the High Court, was ultimately upheld by the decision of the Hon'ble Supreme Court dated 26.03.2015 reported in (2015) 6 SCC 727. In such event, the learned counsel asserted that when it has been settled that the erstwhile DEOs redesignated as STAs like the petitioners would rank senior to the erstwhile ministerial staff UDC redesignated as STA / TA in view of the Rule 5 and further it has been settled that both the STAs placed under Column 12(a) and 12(b) are to be considered simultaneously for promotion, the promotions illegally given to the private respondents in the writ petitions who were erstwhile ministerial staff, which was only subject to pendency of those litigations ought to be reversed.

5.6. However, the learned counsel also submitted that in view of the settled decision of the Hon'ble Supreme Court, even though the petitioners have been given promotion to the post of Inspector and subsequently also to the post of Appraiser at later dates, they are entitled to be promoted w.e.f. 20.10.2003 on notional basis and considered for the further promotion to the post of Customs Appraiser and be given effect to. In view of the above, decision of the Tribunal in allowing the O.A. filed by the private respondents cannot be sustained he contended and sought for indulgence of this court.

6. Ms.Y.Kavitha, learned counsel for the private respondents argued that the private respondents were all working in the ministerial cadre as LDC / UDC/ TA, who alone were placed under the feeder category to be promoted to the post of Inspector as governed by 1979 Rules and even when the cadres were merged and the cadre restructuring took place, still the respondents are entitled to be promoted to the post of Inspectors as the vacancies were in respect to the pre-restructuring vacancies. It is her further contention that when the vacancies arose in the year 2001, the petitioners herein who were only borne in the cadre for the post of STAs on 20.01.2003 cannot stake a claim to the post of Inspector by having a march over these respondents.

6.1. The learned counsel contended that only since these respondents were eligible to be promoted in the precadre restructuring vacancies and further even as per the new rule, the promotion of the respondents who were placed under Column 12(a) will be operative for a period of 2 years from the date on which the restructure cadre came into existence, the respondents had been rightly considered and promoted.

6.2. The learned counsel further submitted that the promotions of the respondents had also been regularised pursuant to the directions of the Hon'ble Supreme Court reported in (2018) 13 SCC 193. Further the learned counsel contended that all these promotions have been effected to these respondents long before and in fact they have also retired from service from the respective promoted posts. Therefore, the order of the Tribunal is perfectly justified she contended and sought for dismissal of the writ petition.

7. Mr.A.P.Srinivas, learned Senior Standing Counsel for the official respondents and also the petitioners in W.P.No.4669 of 2011 submitted that the promotions had been effected only pursuant to the notifications issued and also the rules framed. It is his further contention that the inter-se seniority fixed under Rule 5 was set aside by the Tribunal and confirmed by this Court and further the Andhra Pradesh High Court had directed the respondent Department to give promotion to the post of Inspector based on the 1979 Rules, holding that the vacancy that had arisen to this post prior to 20.01.2003 ought to be filled only by the 1979 Rules that was in force.

7.1. He further contended that the Department had issued Circular to implement the decision of the Andhra Pradesh High Court based on which the promotions have been effected and the private respondents i.e., the erstwhile ministerial staff who were redesignated as STA / TA were promoted to the post of Inspector. He further contended that the vacancies to which the private respondents were promoted are the precadre restructuring vacancies and when the DEOs were borne in the cadre only on 20.01.2003, they cannot claim to be promoted to those vacancies and their claim of promotion has been considered to those vacancies when they became entitled and they have also been promoted subsequently.

7.2. It is his further contention that in fact based on the vacancies that arose and following the circular issued by the Department, the Commissionerate had issued the ad-hoc promotions and subsequently pursuant to the directions by the Hon'ble Supreme Court, the services had also been regularised which they are legally entitled to and submitted that the petitioners in the other writ petitions who were erstwhile DEOs are not entitled for the promotion from 20.10.2003 but only entitled to the date they have been actually promoted and sought for suitable orders to be passed in these cases.

8. Heard the submissions of the respective counsels and perused the materials available on record.

9. Originally in the Customs Department, there were two sets of cadres, one ministerial cadre and the other Technical cadre - Group 'C' posts. The ministerial staff were incharge of the clerical work and the technical officers were incharge of the Data Entry work in computers. The DEOs in one cadre and UDC/LDC, TAs, UDC Special Pay under the ministerial cadre were all functioning separately under different set of Recruitment Rules and they had different promotional avenues and pay structures.

10. In the erstwhile regulations, the posts of Inspector (Examiner and Preventive Officer) were governed under the 1979 Rules. Only the ministerial cadre was the feeder category for promotion to the post of Preventive Officer and Examiner which was later redesignated as Inspector (Preventive Officer), Inspector(Examiner), in which the DEO cadre were not eligible to be promoted as they were not placed under the feeder category.

11. A major restructuring of the cadres took place in the Central Board of Excise and Customs Department in the year 2002. In the cadre restructuring, both the ministerial and technical cadres were merged and two new cadres were formed by redesignating those cadres as Senior Tax Assistant (STA) and Tax Assistant (TA). In the cadre restructuring, the post of Assistant, TA, UDC Special Pay in the erstwhile ministerial cadre and the post of DEO (Grade 'B') and DEO (Grade 'C') in the technical cadre were merged and redesignated as STA with a basic pay of 5000-8000. The post of UDC and LDC ministerial cadre and DEO Grade 'A' in the technical cadre were merged together and formed new Tax Assistant cadre with a basic pay of 4000-6000.

12. In the restructuring process, the Recruitment Rules for the post of Inspector (Examiner) was framed on 29.11.2002 as referred earlier and as per Column 12 of these Rules, the feeder category for promotion to the post of Inspector were from the post in pre-restructured cadres under 12(a) and the candidates in the post in restructured cadres in 12(b) and failing which, the categories as mentioned in Column 12(c).

13. The private respondents who were working as UDC in the post under the erstwhile ministerial cadre, who were redesignated as STAs, were even originally entitled to the promotion to the post of Inspector as they had been placed under the feeder category under the old 1979 Rules. Even pursuant to the new Rules, they are placed under the feeder category under Column 12(a) which shall be operative for a period of 2 years from the date on which the restructured cadre mentioned in Clause (b) comes into existence.

14. While so, the Recruitment Rules to the posts of STAs was issued on 16.01.2003 and gazetted on 20.01.2003. As such, the new post of STA was technically borne on the cadre as on 20.01.2003 by merging the LDC / UDC / TA and DEOs as indicated earlier. In the Senior Tax Assistant (Group-C posts) Recruitment Rules 2003, Rule 5 prescribes the initial constitution as extracted earlier which provides for inter-se seniority among the posts and cadres from which they are merged.

15. After the proposal of cadre restructuring in the Central Excise Department was approved, the staff strength for each of the Commissionerates was identified and the Government issued the revised cadre allocation on 05.06.2002. In the annexure to the proceedings, 220 vacancies to the posts of Inspector (Preventive Officer) and 49 vacancies to the posts of Inspector (Examiner) had been identified as the vacancies in the Chennai Commissionerate, under cadre restructuring.

16. In fact, when the Department issued Circular No.41 of 2003 dated 10.06.2003 for filling up the vacancies to the post of Inspector PO/EO and the same was challenged by the petitioners in O.A.No.495 of 2003, the CAT by order dated 04.09.2003 while allowing O.A. and declaring that the petitioners are eligible for promotion to the post of Inspector (Examiner) and directing the Department to consider them along with the other feeder categories for promotion, it has been clearly extracted in para 20 of the order that Circular dated 10.06.2003 issued for filling up vacancies is for only the vacancies that arose after cadre restructuring, pursuant to the rules being notified. The relevant para is extracted hereunder:-

> *"**20**.It is neither pleaded in the reply filed nor contended during the course of oral arguments that the vacancies which are sought to be filed by respondents by issuing Circular No.41/2003 dated 10.06.2003 are those vacancies which arose prior to the promulgation of the RRs for the post of Inspector (Preventive Officer/Examiner). In the absence of such*

stand, no doubt can be raised that the vacancies for which options have been sought by the impugned communication arose after the new rules were notified."

17. In view of the above, neither the private respondents nor the Department can now take a stand that the vacancies that were sought to be filled up pursuant to Circular No.41/2003 dated 10.06.2003 were the vacancies that arose prior to cadre restructuring. Therefore, the vacancies being that arose after cadre restructuring are to be governed as per the new 2003 Rules.

18. After the promulgation of the Recruitment Rules for the post of Inspector (Examiner), feeder category for promotion to the post of Inspector is contained in Column 12. Column 12(a) pertains to selection from those of the candidates working under different posts under pre-restructured cadres from the erstwhile ministerial cadre. As per Column 12(b), it is in respect of the selection from those candidates working in the restructured cadres mentioned therein, failing which the category under Column 12(c) will be considered. In view of the note contained in Column 12, the promotion from the category under Clause (a) shall be operative only for a period of 2 years from the date on which restructured cadre mentioned under Clause(b) comes into existence.

19. In fact as noted above, the erstwhile DEOs who were redesignated as STAs who come under Column 12(b) were entitled to be considered for promotion along with the candidates under 12(a) to the post of Inspector. When the circular was issued in Circular No.41/2003 dated 10.06.2003 whereby only the candidates from the erstwhile ministerial staff contained in Column 12(a) were called for to be considered for promotion, the petitioners had preferred O.A.No.495 of 2003 challenging the Circular and also for consequential direction to consider the petitioners also for promotion along with the candidates in Column 12(a). By order dated 04.09.2003, O.A.No.495 of 2003 came to be allowed by which the official respondents were directed to consider the petitioners also along with the other categories for promotion to the post of Inspector (Examiner) and the Circular was set aside.

20. Though the petitioners succeeded before the Tribunal, the private respondents therein from the ministerial staff had filed W.P.No.28333 of 2003 before this Court. While the writ petition was pending, the Department by proceedings dated 20.10.2003 had promoted candidates to the post of Inspector (Examiner) on regular basis and further also on ad-hoc basis by applying Column 12(a) alone. The private respondents herein are among those who were promoted, but however all these promotions were made only subject to the outcome of the writ petition.

21. Ultimately this writ petition was dismissed by the order of this court dated 14.10.2008 confirming the orders of the Tribunal holding that both the candidates under Column 12(a) and 12(b) have to be considered simultaneously. Further the appeal preferred before the Hon'ble Supreme Court challenging the orders of the Division Bench of this Court in S.L.P.No.22917 of 2009 was ultimately dismissed by the decision of the Hon'ble Supreme Court dated 24.10.2017 reported in (2018) 13 SCC 193. In effect, the petitioners herein are eligible to be considered for promotion w.e.f. 20.10.2003 along with the candidates, particularly the private respondents herein, who were in the feeder category under Column 12(a).

22. In fact, even when the decision was rendered by the Tribunal in O.A.No.495 of 2003 dated 04.09.2003, taking note of that decision, the Bombay High Court in an identical issue arising from the Bombay Bench of CAT, by order dated 17.10.2003, has decided on similar lines approving the orders of the CAT, Chennai. As against the decision of the Bombay High Court, appeals were preferred before the Hon'ble Supreme Court in S.L.P.(C)Nos.2203 to 2204 of 2004, which were ultimately dismissed by order dated 09.02.2004. The decision of the Bombay High Court was implemented in respect of the STAs in Bombay Customs Office and by proceedings dated 10.03.2004, STAs who were designated from the erstwhile DEOs were promoted to the post of Inspector (PO).

23. After the decision of the Bombay High Court was confirmed by the Hon'ble Supreme Court, the CBEC by proceedings dated 04.10.2004 had decided to implement the decision and had issued proceedings to all the Commissionerates for All India Implementation. The relevant portion of the circular of CBEC dated 04.10.2004 is extracted hereunder:-

> *"**2**. A Special Leave Petition (SLP) filed by the ministerial employees in the Hon'ble Supreme Court against Mumbai High Court judgement dated 17.10.2003 was dismissed by the Hon'ble Supreme Court. After dismissal of SLP filed by the Ministerial employees, it was decided to implement the judgement of Hon'ble High Court in the case of 47 applicants to the Writ Petitions No.6857/2003 and 6958/2003.*
>
> ***3**. Later, various Benches of CAT as well as High Court have allowed the petitions in favour of the applicants (erstwhile Data Entry Operators) reiterating the decisions of other Benches of CAT and Hon'ble Mumbai High Court decision. Considering that the judgement of the Mumbai High Court though delivered in Writ Petition filed by 47 officers of Mumbai Custom addressed an issue having all-India ramification, the Board has decided that the ratio of the Mumbai High Court decision should be applied to all cases. Further, CAT judgements passed relying on Mumbai High Court Judgement should also be on accepted, particularly since, the Branch Secretariat, Mumbai, Ministry of Law and Justice has opined on 21.7.2004 not to file any appeal against the CAT decision in O.A.No.632/2003 filed by Shri K.A.Jaisinghania, Data Entry Operator before the CAT Bench, Mumbai and the Special Leave Petition filed by the ministerial employees against Mumbai High Court judgement dated 17.10.2003 has also been dismissed by Hon'ble Supreme Court.*
>
> ***4**. It is, therefore, requested that in the light of the above decision of the Board, you may implement the judgments of various Benches of*

CAT which are in accordance with the Mumbai High Court decision in Writ Petition No(s).6957/2003 and 6958/2003. You may also take necessary action to concede the cases where the Department has filed appeal in High Court against CAT's decision based on aforesaid judgement of Mumbai High Court."

24. In view of the above circular of CBEC dated 04.10.2004 to accept the decision and implement the same in respect of the DEOs who were redesignated as STAs and further withdraw the cases filed by the Department and pending before CAT and High Courts, the Department which had earlier challenged the orders of the Tribunal in O.A.No.495/2003 separately in W.P.Nos.31245 and 31246 of 2003, had withdrawn the writ petitions and the same were dismissed on 19.10.2004.

25. As referred earlier, the Recruitment Rules for the post of STAs was issued on 16.01.2003 and as per Rule 5 which deals with the initial constitution, the petitioners herein were placed as seniors to the private respondents in view of the inter-se seniority fixed among the merged cadres. The erstwhile ministerial staff as such had challenged the Rule 5 governing the inter-se seniority before the CAT, Chennai in O.A.No.558/2003. By order dated 30.12.2003, O.A.No.558/2003 was allowed and the rule governing the inter-se seniority was set aside.

26. The decision of the Tribunal was confirmed by the orders of this Court dated 13.04.2007 in W.P.No.8361 of 2005. However in the appeal filed before the Hon'ble Supreme Court, by order dated 26.03.2015 in Civil Appeal Nos.2485-2490 of 2010 batch, reported in ***(2015) 6 SCC 727* [*Dhole Govind Sahebrao v. Union of India]***, the orders of the Tribunal as confirmed by this Court was set aside, whereby the Rule providing for inter-se seniority among the erstwhile posts in the newly created cadres was upheld. Para 52 and 53 of the decision is extracted hereunder:-

> *"**52.** It is in the background of the aforesaid submission advanced at the hands of the learned counsel, that we would consider the validity of the merger of cadres contemplated by Rule 4 of the 2003 TA Rules and Rule 5 of the 2003 STA Rules. The position in the present controversy is not comparable to the position examined by this Court in the judgments referred to hereinabove. It needs to be understood, that the cadre of Data Entry Operators, was created out of the original Ministerial Cadre. It is, therefore apparent, that the members of the two cadres were originally discharging similar duties. It is only as a consequence of the administrative decision to computerise the functioning of the Customs and Central Excise Department, that a separate cadre of Data Entry Operators came to be created. The newly created cadre, exclusively functioned towards giving effect to the decision to computerise the functioning of the Department. There was thereafter a division of duties discharged by the original members of the Ministerial Cadre. One cadre of employees exclusively thereafter discharged procedural duties of the Department, whereas, the other cadre of employees exclusively thereafter discharged duties aimed at computerisation of the functioning of the Department. Even though, it is apparent, that the Data Entry Operators exclusively functioned towards the process of computerisation of the functioning of the Customs and Central Excise Department, yet that could not be possible without their existing experience in the erstwhile Ministerial Cadre. Consequent upon the merger of posts, consequent upon the promulgation of the 2003 TA Rules and the 2003 STA Rules, the nature and duties of the two cadres were combined. Consequent upon their appointment as Tax Assistants and Senior Tax Assistants, members*

of the erstwhile Ministerial Cadre, and members of the cadre of Data Entry Operators, were required to perform both procedural duties and duties relating to Computer Applications. The deficiencies in the two cadres sought to be merged, were sought to be overcome, by subjecting the members of the two cadres to different examinations, whereby, the two cadres were trained for discharging their duties efficiently, on merger, whilst holding the posts of Tax Assistants/Senior Tax Assistants. It is, therefore, not possible for us to accept, that there was any serious difference between the two merged cadres, either on the issue of nature of duties, or on the subject of powers exercised by the officers holding the post, or the extent of territorial or other charge held, or responsibilities discharged by them, or for that matter, the qualifications prescribed for the posts. On account of the aforesaid, by and large similarity, we are satisfied, that the merger of the cadres, and the determination of the inter se seniority on merger, were justifiably determined, on the basis of the different pay scales of the cadres merged, under the 2003 TA Rules and the 2003 STA Rules. By the mandate of the above Rules, all the posts in equivalent pay scales were placed at the same level. Posts in the higher scale of pay, were given superiority on the subject of inter se seniority, with reference to posts in the lower scale of pay. In our considered view, the above determination, at the hands of the rule-framing authority, on the issue canvassed before us, cannot be termed either arbitrary or discriminatory. We are, therefore satisfied in concluding, that the provisions of Rule 4 of the 2003 TA Rules and Rule 5 of the 2003 STA Rules, cannot be faulted on the touchstone of Articles 14 and 16 of the Constitution of India.

***53.** For all the reasons recorded hereinabove, we are satisfied, that the different orders passed by the Administrative Tribunal, and the common order dated 13-4-2007 [S. Lakshmi v. State of T.N., 2007 SCC OnLine Mad 1264, decided on 13-4-2007 (Mad)] passed by the High Court, are liable to be set aside. The same are accordingly hereby set aside. The appeals filed by those who moved to the cadre of Data Entry Operators from the Ministerial Cadre, and were thereupon amalgamated in the cadre of Tax Assistants/Senior Tax Assistants, are allowed. The connected appeals preferred by the Union of India, are also allowed. In the above view of the matter, the authorities shall give effect to Rules 4 and 5 of the 2003 TA Rules and the 2003 STA Rules, respectively, without any further delay."*

27. As such, the petitioners herein who rank as seniors in the post of STAs as on 20.01.2003 in view of the Rule 5 will be entitled to be considered for promotion prior to that of all private respondents herein who had been given promotion on 20.10.2003.

28. Inspite of these proceedings, when the CBEC has issued circular dated 04.10.2004 for All India Implementation of the decision of the Bombay High Court as confirmed by the Hon'ble Supreme Court to allow the claim of the DEOs redesignated as STAs and based on which they had also withdrawn the writ petition filed by them challenging the orders of the Tribunal in O.A.No.495/2003, the ministerial staff association had challenged the CBEC instructions dated 04.10.2004 in W.P.No.31478 and 31479 of 2004 and obtained an interim order. In view of the same, the decision was not implemented in the State of Tamil Nadu alone and the petitioners herein were not considered or promoted.

29. In the meantime, in a proceedings initiated by the ministerial staff, the Andhra Pradesh High Court by order dated 02.03.2005 in W.P.No.7963 of 2004 had held that all the vacancies in the cadre of the Inspector arising prior to coming into force of the new Recruitment Rules have to be filled only in accordance with the earlier 1979 Rules.

30. The DEOs had challenged the decision of the Andhra Pradesh High Court before the Hon'ble Supreme Court. However, the CBEC by a further circular dated 26.09.2005 had directed the Commissionerates to implement the direction in the decision of the Andhra Pradesh High Court. Further by another circular dated 17.05.2006, the CBEC clarified the manner in which the decision has to be implemented i.e., all vacancies in the post of Inspector (PO) or (EO) only prior to the date of restructuring i.e., 07.12.2002 were to be filled up in accordance with the old Rules.

31. This circular was also challenged by the DEOs before the CAT, Chennai in O.A.No.511 of 2006 and the Tribunal by order dated 05.02.2007 disposed of the applications recording a fact that there was a reduction of cadre strength on 05.06.2002 for the post of Preventive Officer from 266 to 220 and the assessment of vacancies has to be restricted to this 220 only.

32. However in the appeal preferred challenging the decision of the Andhra Pradesh High Court in the case of ***D.Raghu & Ors v. R.Basaveswarudu & Ors***, reported in ***(2020) 18 SCC 1***, the Hon'ble Supreme Court held that the decision of the Andhra Pradesh High Court was in error, but however did not disturb the promotions that have been effected based on the decision, during the pendency of the appeals.

33. The Hon'ble Supreme Court directed that all the cadre restructuring vacancies have to be filled up in accordance with the new rules by considering the feeder categories both under Column 12(a) and 12(b) and notional promotions with seniority has to be accorded to those who were not considered. Para 128 to 130 of the decision is usefully extracted hereunder:-

> *"**128.** In such circumstances, there is no scope for any ambiguity and we are unable to find fault with the order [S.S.L. Narayana v. Central Board of Excise & Customs, 2005 SCC OnLine AP 1231] of the High Court.*
>
> ***Summary of conclusions in CAs Nos. 1970-75 of 2009***
>
> ***129.** Summary of conclusions in CAs Nos. 1970-75 of 2009, is as follows:*
>
> ***129.1.**Promotion to the post of Inspector was governed by the 1979 Rules till 7-12-2002.*
>
> ***129.2.** Under the 1979 Rules, Data Entry Operators were not among the feeder categories for promotion as Inspector.*
>
> ***129.3.** By 19-7-2001, the Cabinet approved restructuring of certain posts including the post of Inspector. The number of posts of Inspector fell from a little over 22,000 to a little over 18,000. Thereunder, the post of Data Entry Operator Grade 'B' among other categories, were merged and the cadre of Senior Tax Assistants emerged. However, the restructured cadre of Senior Tax Assistants, did not come into being.*
>
> ***129.4.** The restructured cadre of Senior Tax Assistants was born with the bringing into force of the Senior Tax Assistant Rules, 2003, on 20-1-2003. Data Entry Operators Grade 'B', among other categories, were redesignated as Senior Tax Assistants under Rule 5.*
>
> ***129.5.** The Inspector Rules, 2002, were brought into force on 7-12-2002 superseding the 1979 Rules relating to Inspectors.*
>
> ***129.6.** The post of Senior Tax Assistant, which was not among the feeder categories under the 1979 Rules, became one of the feeder categories for promotion as Inspector, under the Inspector Rules, 2002 under clause (b) of Column 12.*
>
> ***129.7.** There was a ban of promotion to the posts of Inspector. This is clear from communications dated 10-9-2001, 3-1-2002 and 5-6-2002. The communication dated 28-10-2002 read with communication dated 14-11-2002, establish that the draft Recruitment Rules which were finalised on 29-11-2002 and brought into force on 7-12-2002 as far as Inspectors are concerned and draft Recruitment Rules finalised and brought into force on 20-1-2002 as far as Senior Tax Assistants are concerned, were to be basis for promotion to the post of Inspector. As per order dated 28-10-2002, Departmental Promotion Committee ("DPC"), was to*

operate, based on the draft Rules but no promotion orders were to be issued till the draft Rules were finalised. With order dated 4-11-2002 even the promotion orders were permitted. The authority apparently contemplated simultaneous bringing into force of the Inspector Rules and the STA Rules.

129.8. *The High Court [R. Basaveswarudu v. Union of India, 2005 SCC OnLine AP 163 : (2005) 5 ALT 252] was in error in holding that it has to be necessarily held that the vacancies which arose prior to the revised Recruitment Rules coming into force has to be filled up under the then existing Rules (the 1979 Rules) relying upon case law including Y.V. Rangaiah [Y.V. Rangaiah v. J. Sreenivasa Rao, (1983) 3 SCC 284 : 1983 SCC (L&S) 382] . There was a conscious decision taken to not fill up vacancies based on the restructuring, and what is more, letters dated 28-10-2002 and 14-11-2002 show that promotion to the post of Inspector was to be effected based on the new Recruitment Rules.*

129.9. *It is while so, that in the Hyderabad Commissionerate, by Notice dated 5-11-2002, persons falling under clause (a) of Column 12 of the Draft Inspector Rules who also corresponded to the feeder categories under the "extant" statutory rules, the 1979 Rules, alone were called for selection as Inspector.*

129.10. *The benefit of reckoning service under Note 1 to categories in clause (a) would be available only after the restructuring came into effect which was on 20-1-2003. This also indicates that the powers that be contemplated simultaneous operation of the Inspector Rules and the Senior Tax Assistant Rules.*

129.11. *However, the Inspector Rules and the Senior Tax Assistant Rules were enforced with a gap of about six weeks.*

129.12. *The appellants even proceeding on the basis that they were to be treated as Senior Tax Assistant as on 7-12-2002, were not having the two years' experience required under the 2002 Inspector Rules.*

129.13. *With the 2003 Senior Tax Assistant Rules brought into force on 20-1-2003 under Rule 5(1), the appellants who were working as Data Entry Operators Grade 'B' could take into consideration their service as Data Entry Operators Grade 'B' for reckoning the period of two years stipulated under the 2002 Inspector Rules. In this regard, the finding of the Tribunal is correct. The appellants in OA have stated that they were promoted as Data Entry Operator Grade 'B' in April 2000. If so, their service as such would count and even as on 7-12-2002, they would have 2 years' service as contemplated under the 2002 Rules. As on 20-1-2003, certainly, they would be eligible to be considered for promotion as Inspectors.*

129.14. *The Tribunal not having granted Prayer 8(b), the Draft Recruitment Rules, 2002 relating to Inspectors as finalised which was impugned remained intact. The Tribunal clearly erred in granting the declaration, as sought for in Para 8(c), recognising exclusive right to the restructured cadre.*

129.15. *The restructuring order under letter dated 19-7-2001, fructified and became complete and effective relating to the post of Senior Tax Assistant only on 20-1-2003. The findings to the contrary by the Tribunal stood correctly set aside by the High Court.*

129.16. *The Tribunal has not interfered with the promotion already granted to persons drawn from the categories other than the Senior Tax Assistant pursuant to the Notice dated 5-11-2002.*

129.17. *Ban of direct recruitment was to end on 31-12-2002. In respect of promotion made earlier and not interfered with, the Tribunal could not have directed review of seniority based on later promotions as Inspector. The appellants cannot be given seniority based on later promotions qua promotions given, which cannot be termed illegal, when as on the date of earlier promotions, the appellants were not even in the cadre. Promotion from Senior Tax Assistant could have been made only 20-1-2003 at the earliest. Even the categories in clause (a) could have been promoted under the 2002 Inspector Rules, vide Note 1 only for two years starting from the date the restructured cadre in clause (b) came into force i.e. 20-1-2003.*

129.18. *We reject the contention that persons in clause (a) of Column 12 of the Rules, who were also in the feeder categories for promotion under the 1979 Rules, had an exclusive right to be considered for promotion for a period of two years.*

129.19. *While promotions can be made based on draft Recruitment Rules, it cannot be so made, if the draft Rules are in the teeth of existing statutory rules [V. Ramakrishnan [Union of India v. V. Ramakrishnan, (2005) 8 SCC 394 : 2005 SCC (L&S) 1150]]. In this case, however, under orders dated 28-10-2002 and 14-11-2002, what was contemplated was processing by DPC under the draft Recruitment Rules and issue of the promotions orders after the draft Rules were finalised.*

129.20. *However, till 7-12-2002, under the 1979 Rules, being also feeder categories under the said Rules, those in clause (a) Column 12 of the 2002 Inspector Rules could be promoted. While it may be contrary to what was contemplated by the Central Authority (as evident from letters dated 28-10-2002 and 14-11-2002) promotions were made, which could not be termed illegal. Even the Tribunal has not set aside the promotions.*

__129.21.__ The High Court has directed [R. Basaveswarudu v. Union of India, 2005 SCC OnLine AP 163 : (2005) 5 ALT 252] the filling up of vacancies prior to 7-12-2002 as per the 1979 Rules. In this regard, having regard to the fact that the vacancies were not filled up as per the ban, as can be seen from 10-9-2001 and 5-6-2002, and it was specifically contemplated under letter dated 28-10-2002 that vacancies arising from restructuring be filled up, as per the new Recruitment Rules, the principle in Y.V. Rangaiah [Y.V. Rangaiah v. J. Sreenivasa Rao, (1983) 3 SCC 284 : 1983 SCC (L&S) 382] may not apply and it was the Rules as on date of filling up the vacancies, that would count. As on the date of the High Court order, the STA Rules, 2003, had come into force on 20-1-2003. Thus, vacancies existing prior to 7-12-2002 and which were not filled up, must be filled up by considering STA (appellants) including their service as Data Entry Operators Grade 'B'.

__129.22.__ But it is here that the impact of the matter remaining pending, and in the meantime, implementation of the judgment and what is more, further promotions being made cannot be lost sight of. We bear in mind the principle laid down in Taherakhatoon [Taherakhatoon v. Salambin Mohammad, (1999) 2 SCC 635] and would not disturb the directions to fill up vacancies which arose prior to 7-12-2002, as directed.

__129.23.__ However, in case of vacancies of Inspector, which arose after 7-12-2002, the appellants would, undoubtedly, have a right to be considered as explained hereinbefore. In regard to such vacancies, the matter must be looked into and seniority fixed, based on Rule 5 of the STA Rules. The persons working in clause (a) are also entitled to be considered for a period of two years from 20-1-2003 under the Inspector Rules to be considered for promotion.

Relief in Civil Appeals Nos.1970-75 of 2009

__130.__ Civil Appeals Nos. 1970-75 of 2009 are disposed of as follows : the restructured cadre of Senior Tax Assistants came into force on 20-1-2003. The appellants are not entitled to have seniority determined in respect of vacancies of Inspector which arose prior to 7-12-2002. The appellants are eligible to be considered for promotion from 20-1-2003 and they are entitled to add their service as Data Entry Operator Grade 'B' for the purpose of the 2002 Inspector Rules and considered for vacancies to be filled by promotion, which arose after 7-12-2002. The persons in clause (a) under Column 12 of the 2002 Rules, are also entitled to be considered for two years from 20-1-2003. Seniority is to be considered based on Rule 5 of the STA Rules. The exercise, as above, if not carried out already shall be carried out. Further promotions based on the above will be granted. However, we direct that the promotions shall be notional where promotions have already been effected, however, entitling the parties to *seniority and pensionary benefits. The above exercise shall be completed at the earliest."*

34. In the instant cases, an argument is sought to be made based on the averments in the additional reply statement of the Department that the private respondents have been promoted on 20.10.2003 only in respect of the vacancies that arose prior to cadre restructuring and thereby sought to advance the promotion of the private respondents as Inspector (Examiner) from 20.10.2003 to a date prior i.e.17.12.2002 and thereby operating the full strength of 79 instead of 49 which was fixed in the cadre restructuring.

35. However, as referred in the earlier paragraphs, even when the Tribunal decided O.A.No.495 of 2003 as early as on 04.09.2003, it has been clearly held and observed that the vacancies in the post of Inspector (PO) or (EO) that were sought to be filled by the respondents through Circular No.41 of 2003 dated 10.06.2003 are the vacancies that arose after the new rules were notified which could be only the vacancies that arose in the cadre restructuring.

36. Further by proceedings dated 05.06.2002 issued by the Department, the restructuring cadre vacancies as contained in the Annexure for the Chennai Customs Commissionerate is 220 for the post of Inspector (PO) and 49 for the post of Inspector (Examiner).

37. In view of the same, there is no doubt that the promotion given to the private respondents to the post of Inspector (Examiner) on 20.10.2003 was only from the restructured cadre vacancy, for which the petitioners herein ought to have been considered for promotion along with the candidates contained in the feeder category in Column 12(a) , with these petitioners being senior to private respondents in view of the merger of cadres by fixing the inter-se seniority under Rule 5.

38. It is brought to the notice that the private respondents who had been given promotion to the post of Inspector (Examiner) on 20.10.2003 had been regularised and further they had also been promoted to the post of Customs Appraiser as early as in the year 2011 and they also got superannuated from service. The petitioners, who are in service and are entitled to have been promoted prior to their juniors / private respondents as on 20.10.2003 to the post of Inspector (Examiner), were only promoted on 17.01.2006. Based on which they had been subsequently promoted to the post of Customs Appraiser only on 30.09.2014, which they would have got in the year 2011 itself when the private respondents were promoted as Customs Appraiser.

39. When the private respondents had been originally given promotion to the post of Inspector (Examiner) in the restructured cadre vacancy without considering the petitioners for promotion as decided by the Tribunal and confirmed by the Hon'ble Supreme Court, they ought to be reverted and given the promotional benefits only on subsequent dates when they get entitled. However, since the private respondents had been promoted as Inspector during the pendency of these proceedings and had also been subsequently promoted to Customs Appraiser and they had also retired from service and further as per the decision of the Hon'ble Supreme Court in *D.Raghu*'s case, we are not inclined to disturb the benefits extended to the private respondents.

40. Admittedly the petitioners were entitled to be considered for promotion as on 20.10.2003 when their juniors i.e., the private respondents were promoted to the post of Inspector (Examiner) and in view of the decision of the Hon'ble Supreme Court in *D.Raghu*'s case, the petitioners are entitled for notional promotion with seniority.

41. In view of the above deliberations, impugned orders of the Tribunal are set aside and the Writ Petitions are ***disposed of***, by directing the respondents to notionally promote the petitioners to the post of Inspector

(Examiner) w.e.f. 20.10.2003, entitling them to seniority, consequential promotion and pensionary benefits. No costs. Consequently, connected Miscellaneous Petitions are closed.

[A.S.M.J.,] [G.A.M.J.,]
19.02.2025

Speaking order
Index : Yes
Neutral Citation : Yes

sri

To

1.The Chief Commissioner of Customs,
Union of India,
Custom House, Chennai - 1.

2.The Commissioner of Customs,
Union of India,
Custom House, Chennai - 1.

3.The Commissioner of Customs (Imports),
Custom House,
New No.60, Rajaji Salai,
Chennai - 600 001.

4.The Joint Commissioner of Customs (P&V),
Custom House,
New No.60, Rajaji Salai,
Chennai - 1.

5.The Chairman,
Central Board of Excise and Customs,

Ministry of Finance,
Department of Revenue,
New Delhi - 1.

6.The Registrar,
Central Administrative Tribunal,
Chennai Bench, Chennai - 104.

Dr. ANITA SUMANTH, J.
AND
G.ARUL MURUGAN, J.

sri

Pre-Delivery Common Order made in W.P.Nos.20743 & 20744 of 2010 & W.P.No.4669 of 2011

19.02.2025