

REPRESENTATION TO CBEC

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REPRESENTATION TO CBEC

1. Problems during the formation of the Recruitment Rules 1998

- a. The share of Group A posts given to Excise was defined as the no. of AC/DC's posts working under the Central Excise Act and so was the Customs. A scheme was floated for appreciation before all the Associations in 1989; which was brought to the court in 1996 and was proposed in terms of Recruitment Rules.
- b. Service tax came into existence in 5th July 1994; and quite many Group A officers were working under this Act also upto the time i.e. 1996. Officers therefore should have been trifurcated instead of being only bifurcated.

- c. Whereas the intra Customs share was made directly dependant in the ratio of the Group B cadre strengths i.e. in the ratio of the number of appraisers and the number of Supdt. (PO).

2. Problems associated to the implementation of Recruitment Rules 1998

- a. Except for the first promotion order in 1997, which was the only order in proportion of 6:1:2; none of the subsequent promotion orders were in that proportion but all were in **skewed** proportions **against the Central Excise?**
- b. When the Association approached the administration, they were told that these were ad-hoc orders and were subject to confirmations. Hence, the Association may kindly wait till the confirmation was done.
- c. Practically confirmations were not done at all in the last 14 years. In other words, the Central Excise officers were just told to shut up.
- d. These circumstances led them to go to the Supreme Court for justice.

3. Changes in the interim which deserve attention before taking up the need to form new set of Recruitment Rules;

- a. The recruitment of the direct appraisers has been stopped from the year 2002.
- b. The recruitment of direct Supdt. of C.Ex. (Experts) has been done only twice in last four decades i.e. in 1980 (50 nos) and in 1992 (100 nos).
- c. There were lot of litigations in the interim between direct and promotee appraisers which recently have resulted in the finalization of all the parameters regarding their seniority matters.
- d. There was no dispute in the Supdt. (Expert) cadre and the issue of seniority is therefore settled issue at Gr-B Central Excise level.
- e. Presently, the situation for the promotee-Appraisers [i.e. E-P Appraisers] is that- An Examiner is allowed qualifying service of 3 years to be promoted as Appraiser; while their associated cadres of Inspector Central Excise and Customs Preventive Officers have to put in qualifying service of 8 years for qualifying for promotions as Supdt. Hence, the examiner- promote-Appraisers are getting a better deal in their career progressions.

These changes need to be factored into the Recruitment Rules at appropriate levels.

4. Problems emanating from the implementation of the erstwhile Recruitment Rules.

- a. The major problem due to the implementation of the Recruitment Rules 1998 is the large Disparity in the matters of career progression of the THREE feeder cadres viz: Superintendents of Central Excise, Superintendents Customs (P.O.) & Customs (Appraisers).

Presently the situation is that the first officer to be promoted from

Supdt. C Excise is promotee to his cadre of 1992;

Supdt. Of Customs is promotee to his cadre of 1996

and

Customs (Appraisers) is promotee to his cadre of Dec. 2001.

- b. The Base Executive cadre in which recruitment is made through one and the same examination(Staff Selection Commission) is being sought to be artificially divided into three different cadres. There is no issue if for the administrative convenience the said division is established; however, **then it becomes the responsibility of the said**

- Administrative authority to **maintain parity in all matters of promotion and service benefits**. In addition, difficulties of the Administration are compounded by giving a different qualifying service criterion only to the Examiner-Appraiser cadre.
- c. This division can not find a single justification in the modern day Central Excise & Customs department. Earlier days the customs clearances were limited to the ports and hence there was exclusivity to the Customs. With the customs clearances now shifted in the hinterlands, the so called Customs in the ports remained to the confines of the ports and the work relating to the customs clearances/verification was handed over to the Central Excise department who had presence in every nook and corner of the country, only second to the Police formations.
 - d. It is therefore well-known fact that the officers of Central Excise are performing duties **on regular basis**, that of 'Customs Preventive' as well as of 'Customs Appraising'. All the land & Sea Border Customs Preventive formations are manned by the Central Excise officers. Similarly, all the Custom Appraising duties at hinterland i.e. the formations of Customs Freight Stations[CFS], the Inland Container Depots[ICD], the Special Economic Zones[SEZ], Software Technology Parks[STP/ITES] and the 100% Export Oriented Units[EOU] etc are manned and managed by the Central Excise side of the officers of the Central Excise & Customs department, **as a natural extension** of their duty of supervision of the manufacturing sector of the country.
 - e. Therefore, the administration is found to be badly lacking in awarding common and similar career progressions to the Central Excise contingent stream. The Administration shall have to endeavor continuously and without fail in the efforts to equate the prospects of the service benefits to Central Excise cadre which has been already awarded to the other section i.e. the Customs. Hence, it is the ardent duty of the administration to maintain 'Parity' in these 3 streams in view of the base executive cadre (Inspector-level), either on the parameter of 'Length of Service in Executive cadre' or 'as One Time up-gradation'.
 - f. These Recruitment Rules have, instead of alleviation, helped to lift the disparities to an all time high in as much as the junior officers from the Customs are placed at 2 to 4 stages higher to their 'Natural Seniors'. To specifically define the state of affairs - 'Examiner' has reached to the level of Joint/Additional Commissioner, while his coeval 'Inspector Central Excise' is forced to while-away his entire career- spanning 35-39 years- at Group 'B' Superintendent level. Immediate corrective steps are needed, including changes as suggested in the next section to solve these 'Disparities' once and for all. The utter neglect shown to the Basic guidelines in the matters of 'Seniority', that are in vogue in the department, will thus **have to be clinically cleansed**.
5. **Basis suggested for formation of new Recruitment Rules by the SC.**
- a. As per law any order has to be interpreted as a whole and not part by part. Here the SC order has ordered that the Recruitment Rules be revised/changed so as to have proportional representations amongst all the 3 feeder cadres in the matters of promotion to the post of Asst. Commissioner. For example so far as reservation policy is concerned, there is a law of proportional representations of reserved categories in promotional posts. Similarly we can say that there must be proportional representations of all 3 feeder categories in promotion to the post of Asst.

Commissioner. In this case Recruitment Rules will have to be amended, duly revising the ratio which will be determined basing on cadre strength of 3 feeder categories.

- b. Another important matter is that in the SC order the SLP filed by the Superintendent Customs (Preventive) Association, has been allowed by the Apex Court. The Superintendent Customs (Preventive) Association has filed the case for revision of ratio due to change of cadre strength during 96-97. Since this was accepted by Apex Court, now Board has no other option except to revise the ratio to provide proportional representations of 3 feeder cadres in promotion to the post of AC.
- c. Therefore we hereby demand the change of ratio taking into consideration the group 'B' cadre strength. This has to be done with the natural service benefits including notional promotion, din view of the SC directions on change of ratio and regularizations of such ad-hoc posts since 1.1.97. The promotions from Gr-B to Gr-A are/were ad-hoc and such ad-hoc promotees have been further allowed promotion to senior levels. Therefore, in changed ratio, the grant of 'Notional Promotion' to Central Excise officers becomes mandatory to provide just and fair representations, in all ad-hoc promotions since 1997.
- d. While giving directions in the Civil petition no.1198/2005 and the Writ petition 385/2010 the Supreme Court has said that "the Cadre strengths of the three feeder categories of group 'B' services should be made as the basis of the division of the Group 'A' posts" and has suggested further to "amend / revise the Recruitment Rules including altering the existing ratio to secure just and fair representation of all the 3 feeder categories" in the Group A.

6. Discussion on the feeder cadre strengths:

Sr. No.	Year	C.Ex Supdt's SS	C.Ex Supdt's WS	Cust Supdt's SS	Cust Supdt's WS	Cust Appr SS	Cust Appr WS	Ratio SS	Ratio WS
1	1997	5017	5017	691	691	684	684	8:1:1	8:1:1
2	2000								
3	2005	10515	10084	1442	1227	809	663	13:1.78:1	15:1.85:1
4	2007	10526	10072	1431	1161	809	589	13:1.77:1	17:1.97:1
5	2008	11491	11054	1576	1232	809	563	14:1.78:1	20:2.18:1
6	2009	11507	11038	1582	1211	859	597	13:1.84:1	19:2:1
7	2010	11507	11179	1582	1137	859	542	13:1.84:1	21:2.23:1
8	2011	11507	11123	1582	1042	859	528	13:1.84:1	21:1.97:1

Source:- Sourced from Compilation by Directorate General of Human Resource Development; Customs, Central Excise & Service Tax New Delhi being published twice every year on 1st Jan and 1st July.

- a. The above table is proper representative of the nature of the emerging ratios. It may be seen that there is variation in the ratios. From amongst the two ratios viz. from Sanctioned Strengths and the Working Strengths; the ratio calculated from the Working Strengths is taken up as the point of view of human resource management, which is the ethos of the subject. As there is variation, **the CBEC may take the average of the ratio** emanating from Working Strengths as the ratio

for the amendment purpose. This comes about 17.28:1.88:1 i.e. 17:2:1 [Supdt CEx : Supdt Cus(P):Cus(Appr)].

- b. The changes in the Sanctioned Strengths are; notably due to the upgradations of 1997, discontinuation of Gr-B direct recruitment 2002 onwards & restructuring of 2001-02.

7. Recruitment Rules 1987 - Exhibit A

8. Recruitment Rules 1987 as amended in 1998 – Exhibit B

9. Making changes to the Recruitment Rules 1998

AMENDMENT - I

We seek an amendment to the basic Recruitment Rules 1987. It may be mentioned that the amendment to this Rule made in 1998 was only in respect of the recruitment by promotion mentioned in Part IV of the Rules. We seek a change in the percentage of the two methods of recruitments. We request and suggest an amendment to the sub-rule 2(i) & (ii) of Rule 5 under Part II – Methods of Recruitment; **which shall read as follows:-**

(2) Vacancies in Grade VI of the Service shall be filled in the following manner

(i) **20 percent of the vacancies** shall be filled, by examination in accordance with the provisions in Part III of these Rules; and

(ii) **80 percent of the vacancies** shall be filled, by promotion in accordance with the provisions in Part IV of these Rules.

The basis for seeking this amendment to the Rules is explained as under:-

- i. In the entire history from 1987 to till date, the recruitment of the Direct quota (Gr-A) officers was never made to the extent of 50% of the vacancies per year. In fact it was much lesser. The recruitment in the years of the yore is categorically given in the Annexure to this document.
- ii. The Gr-B cadres down below are extremely stagnated and the 30% point spared from the DR Quota, would help liquidate the stagnation to a greater extent in those cadres.
- iii. On the other hand the Direct Recruits too have expressed fear of stagnation creeping into their cadres, due to higher recruitment per year in the Cadre. The Commissioner DoPM in a meeting of the CBEC conducted on 18.02.2011 brought up this request of reducing and keeping it much below 3% of the total strength and also mentioned of a recent UPSC circular permitting such reduction. This was quickly acceded to by the CBEC as per the minutes of the said Board meeting. (Minutes enclosed)
- iv. The department has now got used to a melancholic procedure by which the ad-hoc orders are issued illegally for umpteen years. Last such procedure was regularised in July/August 2000, for period 1980 to 1996 i.e. 18 years. Now SC has ordered regularisation for 14 years i.e.1997 onwards. As at such times, the contemporariness

is lost and the regularisations are proposed to be done with some mutually agreed terms, by the members of the DPC which are not always legal. In other words, the regularisations are required to be carried out in a mannerism which is not specified in any books of contemporary law probably because such instances are only seen in our department.

- v. The minutes of the last regularisation DPC held in July/August 2000 may kindly be perused. Many postulates were made in this respect and the process was carried out in the most illegal manner which ended up in the gross loss to the Central Excise section of the department. The same may be perused for the justification as described herein above. The results were damaging at that time for the Central Excise stream and was put to use at the cost of general principles of Service jurisprudence.
- vi. So as per the foregoing, the demand for the reduction of quota has been from both the recruitee cadres [Direct recruitee as well as the promottee cadre]. In addition, one of the cadre is involved with the management of the department and hence it may be said that the demand had been acceded to by the Administration also. As the Recruitment Rules are not amended every year, this opportunity could be the right opportunity to get the change okayed.

AMENDMENT II (to implement the directions of the Supreme Court).

- i. Rule 18(2) (a) shall be amended to read as follows:- The vacancies to be filled from out of the three Group 'B' officers mentioned at categories (a), (b) and (c) to sub-rule 1 in the ratio 17:1:2 respectively for each bunch of 20 vacancies. Out of these 20 vacancies, the first 17 vacancies would go to the officers at category (a), the 18th & 19th vacancy would go to the category (c) and the 20th vacancy would go to category (c) of the sub-rule (1) above and seniority of these officers also shall be fixed in this order. This Rule shall come into effect from 01.01.1997 as ordered by the Supreme Court in Civil Appeal no.1198/2005 and Writ Petition no.385/2010. The ad-hoc orders of promotions issued earlier shall be regularised in the manner prescribed hereinabove. The fresh orders shall be issued in accordance to the above-mentioned ratio.
- ii. A new Rule prescribing the prohibition of year to year crossing to be codified & introduced.

10. Coverage of all factors in the matter of formation of Recruitment Rules.

- a. The DoPT rulings categorically say that the qualifying service for the analogous cadres and also having same channel of promotion should be same. However,

there has been a glaring difference in the qualifying service requirement made for the examiners which is 3 years and the qualifying service that for the Inspectors of C. Ex. and Preventive Officer of Customs which is 8 years.

- b. Therefore, effectively the Examiner qualifies for the promotion to Group 'A' in about 8 years (also as there is no stagnation) whereas the Inspector of C. Ex. and the Customs Preventive Officers take minimum of 13 years for the same qualification albeit it is a fact that it is further more, due to existence of rampant stagnation in these cadres.
- c. Therefore the correction in respect of the qualifying service has to be brought by correcting the difference and single parameter should be made forthwith for all these streams. The amendment may be brought by bringing out changes in the rules governing seniority lists or should be by stipulating some additional rules in the Recruitment Rules.
- d. Since the Recruitment Rules are proposed to be revised, the minimum service of 4 yrs in Assistant Commissioner's cadre to become Deputy Commissioner for promotees should be withdrawn for certain time as after the change of RR's it may come to light that many of the Central Excise officers are found equally senior to some of the coevals from the Customs. Such change has been accorded approval and is available to Telecom Engineering Service in rule 27(b) of TES Rules--which reads--

"Posts in STS may be filled up as purely temporary measure in an officiating capacity to hold charge by promotion of permanent TES class II who are on approved list of promotion to JTS".
- e. In addition, after MACP, almost all who get promoted from Central Excise and Customs Superintendents are already in GP 6600/-. This is the GP for Deputy Commissioners. To take care of long wait in Inspector/Preventive Officer's grade; it is suggested that the concept of weightage in the Seniority Lists of Assistant Commissioners be provided after promotion. Such system is available to the officers conferred / promotee IAS and drafted from state services to Central Services – all such officers are given 4 years weightage for first 12 yrs of their state service, with additional weightage of 1 year for every 2 yrs subject to max of 5 yrs by the 1987 amendment ♦ IAS (Regulation of seniority) Rules, 1954. Also, Para 10 of chapter 13 of Third CPC report recommended that some weightage should be accorded for service rendered in Class II -- at least in Class I services, where promotion from Class II is for all practical purposes to Senior Scale of class I.
- f. Hence our claim for weightage for service above 8 plus years, in the Seniority List of Assistant Commissioners is well justified and this would provide solace in turn for the long wait in Inspector / Superintendent level. Case laws on weightage--1997(11)SCC 758, and AK Nigam's case in SCC pp247-248. also 1992 (2) SCC 241/1992 (20)ATC 226.

11. Conditionalities attached to the procedures of confirmations need to be properly defined and need not be the one's adopted during the procedure in August, 2000.

- a. We now consider how the proceedings took place in the review of the ad-hoc promotions from 1980 to 1996 was done, during July / August 2000. The Review DPC had adopted short cut method which at the end proved non-beneficial to any cadres. As we are aware, the recruitment in the Direct-Group 'A' was very much less than the 50% mark of the vacancies every year. The total Direct Recruits were 873nos. only. Whereas, the promotees were as many as 2476nos. Going strictly by the Rule-books, only 873 promotees need to be confirmed; as per year to year promotions.
- b. However, the DPC adopted the most partisan view of the times by which, it not only adversely affected the Central Excise side for the future two decades but also took the department into a process of perennial ad-hocism – so much so that even the Commissioners are now ad-hoc.
- c. Initially, of 2476 though there were 1874 nos. officers from the Central Excise, most of them had retired immediately on promotions or there-about and there was hardly any interest to them, in the process of regularisation. However, out of the balance 602 for Customs it is believed that many would have been confirmed in the then ratio of 6:1:2.
- d. But the most horrendous mannerism was chosen. They totaled the number of direct and promotees and divided them by 2 thus arriving at the figure as— $873+2476=3349/2=1675$. Then these numbers were distributed in the ratio 6:1:2 given for 3 cadres. This resulted in loss of seniority of 4 to 5 yrs for Central Excise men.
- e. The book method prescribes the review of annual documents of DPC's held from 1980. This could have been done by considering the eligible men on relevant dates. However, by the short cut method, the backlog was given only to customs men those promoted and were also given notional earlier dates. Reversion from Central Excise was averted naturally as many retired before turn of regularisation/confirmation in new formula.6:1:2
- f. The most deplorable thing was that the drawback arrived at by following this manipulative methods was upheld by the administration for the next almost 10 years by throwing the rules of service laws through the windows and the most juniors from the Customs were made the bosses of the natural-seniors from Central Excise who were deplorably kept at the level of Superintendent only.
- g. We must ensure that this is averted this time though the Central Excise is expected to be in an advantageous position. We say that any such short cut method cannot be allowed now.
- h. In the period from 01.01.1997 uptill now, there have been total number of 1596 (Promotions + Direct Recruits). The process of regularisation should be done with each DPC being viewed separately and the no. of excess Customs men be arrived properly. While doing so the exact number of Central Excise officers need to be identified, who suffered ignominious retirements - when they would have earned promotions, had the CBEC

bettered their human resource policies in time. Also our claim for reduction of Direct Recruits shall stand in good stead vis-a-vis the malfunctioning of the department in this respect.

12. Need to regularise with all service benefits including Notional promotions to the personnel not given benefits due to estoppels' arising from earlier Recruitment Rules.

- a. The Group 'A' Recruitment Rules were challenged by the two of the three feeder cadres and were on the verge of being proved against the Articles 14, 19 & 21 of the Constitution of India. However, after a much delayed filing of the Affidavit in 2011 by CBEC, in a SC Civil Appeal no.1198/2005 (filed in 2005); the Supreme Court has averted a major embarrassment to the department by allowing it an opportunity to improvise its record and stop all unconstitutional practices.
- b. In spite of the proclamations of the then Chairman and the opinion of the Supreme Court expressed, here we are after 14 years of the implementation of the said proposal with the promotional-positions of the three cadres, as under:

: Superintendents of Central Excise	February 1992
: Superintendents of Customs	September, 1996
: Appraisers of Customs	December 2001
- c. It may be noted that the earlier ratio was not a judiciously derived ratio and the suggested new ratio of 15:2:1 in the Courts is also not a scientific one, given the prevailing disparities, at sub-feeder levels. Both the ratios find its bearings on a DoPT ruling which specifies a ratio depending on the relative cadre strengths of the feeder cadres. Now the Supreme Court in its order dated 03.08.2011 has again suggested its adherence to the feeder cadre strengths as the basis for the ratio. Therefore judicious approach by considering grant of weightage for the length of service in executive cadre, in sub-feeder levels; is need of hour.
- d. The reservations about the success of the formula applied in the DoPT rulings and now suggested by the Apex Court are that, since at no point of time the recruitments in the feeder cadres was done in the said ratio; therefore reasonably speaking it will always happen that in future at given point of time any one cadre shall be leading the other two cadres in the promotional matters. And therefore the considered approach of the department implementing the formula plays a very vital role.
- e. As per the records of the Court, it is a fact that - it is after greatest persuasion and pressures from the Courts, that the CBEC now proposes to bring in a change of ratio. Again, the CBEC feels that by merely changing the ratio – it will be a magic wand and all problems will be settled. This will certainly not be. The Supreme Court realising that the past damage could not have been rectified only by change of ratio, has ordered the regularisations since 1997 in the new ratio.
- f. So, in substance, the earlier formula was nothing more than an experiment and the next formula shall be one more such experiment

where the department and the Courts shall probably guarantee its success as in the earlier case.

- g. Just to mention before the shift to the new set of Recruitment Rules, let the consequences of the first experiment be realised by all concerned. What has the experiment given to this cadre is -
- i. The stagnation of un-imaginable quantity and unacceptable levels, with juniors of more than a decade ruling over more than 40% of their seniors in cadre.
 - ii. Totally irresponsible and insensitive administration – insensitive to the needs of normal administration as well stoically unaware to the basic tenets of service jurisprudence.
 - iii. Unconstitutional short circuiting the careers of about 4000 C.Ex. officers of caliber- as at a point of time when the juniors were being promoted it was only this ratio which precluded the administration from promoting them- and they retired without a second most-deserving promotion.
 - iv. And, one more case in the Supreme Court; which itself was a colossal job in 1987 and it remains an equally arduous task even today. After the petition and the wait, the merits of the case are yet to be considered by the Supreme Court, but we have been given a break until the CBEC again performs dismally.
- h. We do not know where this second exercise shall take us. At the end of the first experiment, we find ourselves totally enslaved to the king-class of the combined Customs. This conclusion is based on facts, which are once again laid on the tables of CBEC.
- i. In order to instill confidence in this cadre, the primary and rudimentary principles of service jurisprudence needs to be attended with impunity – That is that being analogous posts, the officer from the Customs (Appraisers) is at least four pedestals higher than his co-evil Central Excise officer. In fact, they would have been still higher had the overlords of CBEC the IRS cadre not stopped their advance. This needs urgent correction before the next experiment is commenced, by change of ratio or otherwise.
 - j. As we do not know where the next exercise shall take us, we have to cause initialization. The next Recruitment Rules could be formulated for the future experimentation; but not before the parity is established between the three cadres at the feeder cadre level as it existed at the commencement of the erstwhile Recruitment Rules, which are being declared ultra-virus, so that the new Rules could take effect.

13. Need to protect the position gained by the beneficiaries under the erstwhile Recruitment Rules.

- a. As we believe that the exercise of formulation of new Recruitment Rules is an on-going exercise for perfection[until we reach 'parity' at Inspector-Grade], we consider that the positions attained by the leading feeder cadre amongst the 3 feeder cadres [which today is the feeder cadre of the

Appraisers] should not be controverted and allowed as far as possible to maintain their positions. As the restructuring is on the anvil, lot of posts are coming in all the cadres including Joint and Additional Commissioners.

- b. Another possibility which is most likely to happen can be broadcasted as follows:- In the case of Appraisers the new ratio is most likely to come down to 1 from the present figure of 2. In the process of confirmations therefore from 1997 in the new ratio, almost 50% is likely to be categorised as excess and in most likelihood, they would remain unconfirmed at the bottom of the table.
- c. However, they are in the age-group comparable to the Inspectors of 1975 or Superintendents of 1992. Today we find that out of 604 Superintendents of 1992 only 134 are in wait for promotion to Group 'A' i.e. about 75% have retired by now and the remaining would super-annuate by 2012-13. Therefore there is every likelihood that more than 75% of then Appraiser, too, have super-annuated and hence none of the Appraiser promotee would have to be brought down.
- d. Secondly, as the Restructuring is on the anvil, many extra posts to every cadre is likely to be a saving grace for all the revolutionary changes that are being brooded.
