

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CONTEMPT PETITION NO. .... OF 2012  
IN  
Writ Petition(CIVIL) NO. 385 OF 2010

In the matter of:

1. All India Association of Central Excise  
Gazetted Officers (Pune Unit)  
through its President  
Sh. Ganesh Ramachandra Desai  
ICE House, 41 A, Sesson Road,  
Pune.

2. Mr. Kiran. Sharad. Pandit.  
182/28; PCNT,  
Pune -411 044. ....Petitioners

Versus

1. Mr. R.S Gujral  
Revenue Secretary,  
Department of Finance,  
Government of India,  
North Block,  
New Delhi

2. Mr. P.K.Mishra  
Secretary DoPT  
Government of India,  
North Block,  
New Delhi

3. Prof. Sh, D. P. Agrawal  
Chairman, U P S C  
Dholpur House,  
Shahjahan Road  
New Delhi.

4. Sh. S.K. Goel,  
Chairman, C.B.S.E.  
Government of India,  
North Block,  
New Delhi

5. M/s Praveen Mahajan,  
Member PNB, CGSE,  
Government of India,  
North Block,  
New Delhi ...Respondent/Contemnors

PETITION UNDER ARTICLE 129 OF CONSTITUTION OF INDIA READ WITH SECTION 12 OF  
CONTEMPT OF COURT ACT

To  
The Hon'ble Chief Justice of India  
and His Lordship Companion Judges  
of this Hon'ble Court.

Most Respectfully Showeth:-

1. That the petitioner is filing the present petition inter alia highlighting the willful and deliberate violation of the judgement and order dated 03/08/2011 of this Hon'ble Court passed in the above referred Appeal and subsequent order passed by this Hon'ble Court in the application filed by the respondent contemnor, whereby the time for implementation of judgment dated 03/08/2011 was extended up till 30/06/2012. The contemnors above named have deliberately attempted to undermine the dignity and authority of this Hon'ble Court by sabotaging the unequivocal direction made by this Hon'ble Court on consent term of the parties to the lis.

It is pertinent to mention here that alongwith the above referred appeal the writ petition i.e. W.P.(C) No. 385 of 2010 filed by the petitioner alongwith the individual aggrieved person was also heard and disposed of. The members of the petitioner Association are the beneficiary of the judgment of this Hon'ble Court sought to be implemented by the Union Government through the contemnors. The petitioner no.2 although got promoted to Group 'A' service by order dated 12.07.2012, but his grievance has yet not been addressed. There are many more similarly situated officers either retired or service are deprived from their rightful dues flowing from the judgment of this Hon'ble Court particularly the direction for regularisation of ad-hocly promoted officers from 1997 in the revised ratio. The petitioner no.2 was the President of the petitioner no.1 Association and in view of the promotion seized to be a member of the Association. Although he got second promotion in his 37 years career span, but if the department honestly implements the judgment of this Hon'ble Court he is entitled to not less then two more promotions. There are many more aggrieved persons like him who continue to work under the illegally promoted junior officers from the Examiners/Appraisers feeder category. All of them are anxiously and eagerly waiting for the honest implementation of the Supreme Court Orders dated 03.08.2011 & 30.03.2012.

2. Before delving upon the issue pertaining to the present petition it would be appropriate to mention the dispute which was resolved by this Hon'ble Court by consent terms of the parties. For the appreciation of this Hon'ble Court the facts in brief is enumerated herein under.

A. That the petitioners had filed the writ petition seeking redressal of their grievances regarding the disparity meted out to them in their career advancement. There has been a consistent dispute going on since decades, regarding the impractical ratio of quota being fixed between three feeder classes of Group B officers for promotion to Group A services. The three feeder classes pertains to three groups namely Supdt. Central Excise, Supdt. Customs (Prev) and Customs (Appraisers). The petitioners are the Superintendents Central Excise. Admittedly, there has been all time high stagnation in this feeder cadre and the disparity is prominently visible amongst the three feeder classes. Officers of 1975 batch (of Inspector grade) from Central Excise group are still awaiting their second promotion in the entire career; whereas officers of 1992 batch (of Inspector grade) from the Appraiser Group have already been promoted twice. Though the entry level recruitment of all the three class is same, rather for inspector Central Excise additional physical fitness test is mandatory in addition to written and viva-voice test.

B. The aforesaid grievances were highlighted in the writ petition (385/2010) which was heard with the connected appeal being CA No. 1198 of 2005. It is a matter of fact, however that though the Writ Petition was a substantial petition with many more issues; the Central Board of Excise & Customs filed a counter only in 1198/2005 admitting inter-alia the stagnation in the feeder categories and expressed a desire to change the Recruitment Rules. At this point of time, this Hon'ble Court appreciated the desire of the administrative department viz. the Central Board of Excise & Customs as had been solemnly affirmed in the affidavit and directed all the feeder cadres to co-operate with the administrative department in the exercise of formation of new Recruitment Rules. Further without going into the merits of the Writ Petition as well as the Civil Appeal, the Hon'ble Court had been pleased to pass the following order in substance:-

1. *All the 3 groups of officers in the feeder categories i.e. (i) Superintendents of Central Excise; (ii) Superintendents of customs (Preventive); and (iii) Customs Appraisers, may make representations to the Union of India suggesting the changes which according to them should be made in the Recruitment Rules for their promotion to Group-A post of Assistant Commissioner (Central Excise & Customs).*

2. *The Union of India shall duly consider all such representations including those made before it in the light of the subsequent development in the cadre strength of the 3 feeder categories of group-B services and amend/revise the Recruitment Rules including altering the existing ratio to secure just and fair representation of all the 3 feeder categories.*

3. *Union of India shall try to complete the entire process by 31<sup>st</sup> December, 2011, uninfluenced by the observations made in the previous judgment of this Court in All India Federation of Central Excise vs. Union of India & Ors. [(1997) 1 SSCC 520], in which the existing ratio was approved as also the observations in the impugned judgment dated 19<sup>th</sup> December, 2003 of the High Court in Writ Petition (Civil) No. 1324 of 2002 with regard to the jurisdiction of the Central Administrative Tribunal.*

4. *Having perused one of the Office Orders (No. 51/2011 dated 18<sup>th</sup> March, 2011), whereby some officers were promoted from Group 'B' to the grade of Assistant Commissioner of Customs & Central Excise in the Pay Band 3 with Grade Pay of Rs.5400/- on purely ad hoc*

*basis, we direct that all such ad hoc promotions shall abide by the final decision to be taken by the Department in terms of this order.*

*The civil appeal and the writ petition are disposed of in the above terms. All other applications are disposed of as having been rendered infructuous.*

*(D.K. JAIN, J.)*

*(ASOK KUMAR GANGULY, J.)*

Copy of the order dated 03/08/2011 is annexed herewith and marked as **Annexure P1**

C. Perusal of the above order eminently makes it clear that there are three specific directions made by this Hon'ble Court.

i First amend and modify the Recruitment Rules postulating the promotional aspects of group B Custom and Central Excise officers to Group A posts.

ii. As per the proposal placed before the court the existing rule is 6:1:2 stands revised to 13:1:2 (although the petitioners are still aggrieved regarding the ratio granted in their favour but for the time being they have accepted it with a hope and expectation that part of the existing stagnation would be addressed to and the existing problem would be expeditiously resolved).

iii. Regularise the ad-hoc promotion from 1997 onwards by taking into consideration the revised ratio and as per the new Recruitment Rules.

3. The petitioners were hopeful that these three above directions which were culminated into the judgement of this Hon'ble Court and the petitioners have accepted the judgment, although their grievances were not fully addressed to. Be that as it may, for the purpose of the present petition the grievances which were not addressed may not be relevant and the same would be agitated in a different proceedings. The present petition is only confined to the above three directions made by this Hon'ble Court and the non-implementation of the same.

5. In a catena of judgment this Hon'ble Court has been pleased to laid down the law regarding the contempt jurisdiction, it has been consistently held by this Hon'ble Court that non implementation of the dictum of this Hon'ble Court within the stipulated time frame on consent is nothing but definitely willful and deliberate, as such to invite contempt of this Hon'ble Court. Whereas implementation of the direction of this court by prolongation to sabotage the spirit of the judgment was tantamount to attacking of the majesty of this Hon'ble Court. The Contemnors are out to do everything to ensure non-compliance or if complied the same would be in such a manner that the petitioner should not get the appropriate benefit as desired by the judgment. Much need not be said to substantiate this submission of the petitioner, suffice it to rely upon the subsequent application filed by the Union of India seeking clarification / modification of the direction of this Hon'ble Court contains in the judgment dated 03/08/2011.

The copy of the said application is enclosed and marked as **Annexure P – 2**.

6. The Union of India through the contemnors has made every effort to ensure that the benefit which are flowing from the judgment dated 03/08/2011 to the Suptd. Of Central Excise are not given and diluted. It is pertinent to mention here that the existing problem of stagnation between three feeder categories i.e. Suptd. Of Central Excise, Suptd. Of Custom and Customs (Appraisers) has been consistently and repeatedly recognized by the Union of India before various court of law including before this Hon'ble Court by filing affidavit. Even after having admitted that the grievances of the members of the petitioners i.e. Suptd. Of Central Excise is correct and they have been deprived from their rightful dues, the contemnors have been attempting to take away the benefits generated out of the judgment of this Hon'ble Court. That is the reason an application was filed by the union of India on apparently frivolous grounds. The matter was heard at length for two consecutive days i.e. 23<sup>rd</sup> March and 30<sup>th</sup> March 2012 but having realized the game plan of the Union of India, this Hon'ble Court was very critical about the manner in which the matter was delayed and the hidden agenda of the Union government behind filing the said application, Therefore, this Hon'ble court out rightly, rejected the said application. However, at the request of the Union Government to implement the order to its letter and spirit, this Hon'ble Court was pleased to extend the time period for implementation of the judgment dated 03/08/2011 up till 30/06/2012.

Copy of the order dated 03/08/2011 is annexed herewith and marked as **Annexure P – 3**.

7. That the petitioner Association through its then president viz. petitioner no.2 gave various representations to the contemnors apprising them regarding the direction of this Hon'ble Court and reminded them to stick to the time frame fixed by the Court at the instance of the Union Govt. In the said representations the petitioners have also gave valuable suggestions to meet the immediate problems existing in the name of all time high stagnation in the cadre in the light of the spirit of the judgement of this Hon'ble Court. The conduct of the contemnors leave no room of doubt that they have not paid any heed to those representations rather they have contemptuously thrown those documents in the dustbin. Needless to say the behavior of the contemnors is not only reflecting the beaurocratic red tapism but also shows scant disregards to the dictums of this Hon'ble Court. The contents of the representations are basically the highlights of the grievances sought to be redressed by the petitioner, therefore the petitioners rely upon the contents and seek leave of this court to read the same as part of this application. However, for the sake of brevity and to avoid repetition the contents are not set out in the application.

Copies of the representations given by the petitioners to the contemnors on various dates are enclosed & marked as **Annexure P4**. (Colly)

8. That after repeated persuasion at various levels nothing was substantially done by the contemnors to honour the time-bound directions of this Hon'ble Court. Initially the time was fixed upto 31.12.2011 as per the consent of the Union Government. Subsequently on their application the time was extended upto 30.06.2012. This Hon'ble Court has stipulated the time frame for the implementation of the judgment as per the convenience and on the consent of the Union Government. However, the contemnors have not honoured their own commitment to this Hon'ble Court. Till date after the judgment two office orders were passed on 18.05.2012 and 12.07.2012. The reading of the first order invites contempt and the second order multiplies the offence.

As per the order dated 18.05.2012 the department proceeded to comply the order in their own way but the time frame fixed is expressly beyond the time granted by the Court. This should be apparent from the date indicated against the task no. 3 which is fixed to be completed by 30.06.2012 viz. the last date by which they are supposed to complete the entire process. Against task no. 4 the contemnors have fixed the date as 05.07.2012 which is beyond the stipulation fixed by this Hon'ble Court. Therefore this itself invites severe contempt. The cumulative effect of the said letter further a serious doubt regarding the honesty of the contemnor regarding the implementation of the judgment. Despite the fact that the ratio of promotion has already been revised from 6:1:2 to 13:2 :1; the contemnors are bent upon to give promotion in the earlier ratio by disregarding the direction of this Hon'ble Court.

Copy of the order dated 18.05.2012 is enclosed and marked as **Annexure P5**.

The second office order is dated 12.07.2012 which is 12 days beyond the deadline fixed by this Hon'ble Court. The contents of the said order speaks volumes regarding the wilfulness and deliberateness of the contemnors to violate the dictum. The implementation of the said office order would further complicate the issue rather than solving the same. The order is mainly aimed at diluting the spirit and intent of the judgment and sabotaging the same. The contemnors have given the promotions to the Group B officers again in ad-hoc basis in the earlier ratio rather than the revised one. Therefore this order clearly violates two directions of this Hon'ble Court out of three as enumerated in para 2 (c) of this petition.

Copy of the order dated 12.07.2012 is enclosed and marked as **Annexure P6**

Except and apart from the aforesaid two orders nothing else has been done as yet. In so far as amending or modifying the Recruitment Rules is concerned nothing has been done as yet except a draft RR is circulated on CBEC site on 09.10.2011. Till date not a single step is progressing in the matter despite categorical time-bound direction was given by this Hon'ble Court. This admitted non-compliance invites contempt of this Hon'ble Court which is deliberate and intentional.

9. The contemnors have further committed contempt by not complying the specific direction of the Court regarding the regularisation. In regard to regularisation, this Hon'ble Court in unequivocal terms have mandated that all ad-hoc promotions are required to be regularised from 1997 on the basis of revised ratio viz. 13:2:1. The contemnors have not done anything regarding the same rather in the office order dated 12.07.2012 they have again resorted to promotions on ad-hoc basis. This order clearly militates against the direction of this Hon'ble Court. Non-compliance of the direction with a malafide intentions

calls for action against all the contemnors under the Contempt of Courts Act. The contemnors have willfully and with impunity disregarded the unequivocal direction of this Court and they have been mis-leading the Court time and again to avoid compliance.

10. That right from the inception of the dispute in subject the Union Govt. has been Dilly dallying the issue and try to defer the resolution of the problem, therefore, the problem has been spiraled manifold. The respondent, Union of India has never honestly attempted to address the issue, rather to avoid the same. They have been misleading the courts including this Hon'ble Court. The following few facts would substantiate this aspect of the matter:-

a. The petitioner filed the substantive petition before this Hon'ble Court being W.P.(C) No. 105 of 2009 raising the question of all time high stagnation in the feeder class and seeking variation of existing ratio of 6:1:2 between three class for the purpose of promotion to group 'A' services.

The Writ Petition was heard by this Hon'ble Court on 20/03/2009 and has been pleased to pass the following order.

*"We are of the view that Article 32 of the Constitution may not be invoked as the petitioners have better remedy to move the Tribunal. The Writ Petition is accordingly dismissed as withdrawn with a liberty to the petitioner to move the Tribunal.*

b. In pursuance to the said order the petitioner filed original application No. 2793 of 2009 before the Central Administrative Tribunal, Principal Bench, New Delhi. In response to the said original application the Union Government of India filed a counter affidavit before the CAT. In para 4 of the counter affidavit it is categorically mentioned that the Union government is intending to vary the existing ratio. The paragraph reads as under:-

*"That Central Board of Excise and Customs has, in principle, agreed that the existing ratio of 6:1:2 amongst the feeder cadres for promotion to Group A fixed long back, needs revision. The department is willing to initiate this exercise, taking into account all the relevant facts e.g. length of service in Group 'C' and 'Group B' put together, total number of post in each cadre etc.*

c. Meanwhile a Civil Appeal No. 1198 of 2005 relating to the same issue came up for hearing before this Hon'ble Court on 30/03/2010. In the said proceedings also the Union of India conceded the facts that the ratio needs to be changed. The counsel for the Union Government assured the court that by the end of June 2010 everything will be sorted out. Therefore, the matter was finally placed for disposal on 20/07/2010.

d. The original application filed by the petitioner came up for hearing before the CAT. In view of the fact that the Union government has already made statement before this Hon'ble Court that the existing problems would be solved by June 2010. The Tribunal was pleased to dispose off the Original Application and to approach Hon'ble Tribunal after disposal of the appeal by this Hon'ble Court and if any grievance is left un-addressed.

e. Even after categorical statement made by the Union Government regarding resolution of the existing problem by the end of June 2010. Nothing was done by them. The statement was simply made to mislead this Hon'ble Court. Although the Civil Appeal No. 1198 of 2005 was listed for hearing several times. Same could not be heard for various reason. Therefore, the petitioner had no other option rather to file a substantive writ petition no. W.P.(C) No. 385 of 2010. The said application was moved in the month of Nov. 2010, because till then the Union Government did not do anything despite assurance being given by them to this Hon'ble Court as well as to the Hon'ble CAT. The said writ petition was tagged with the pending appeal and was heard and disposed off by this Hon'ble Court on 03/08/2011.

The Union of India through their counsel once again assured the court that the entire process of resolution of the existing problems would be completed by 30/12/2011. The said assurances of the Union Government was culminated in the final order dated 03/08/2011. Despite the said assurance the respondent once again failed to stick to their assurances rather to multiply their default. The Union Government on 22/03/2011 moved a frivolous application seeking clarification of the order dated 03/08/2011. Be that as it may, the time for compliance of the order dated 03/08/2011 was further extended by this Hon'ble Court uptill 30/06/2012.

Even after lapse of the final extension of time nothing has been done by the Union Government of India, which is a scant disregard to the dictum of this Hon'ble Court, for which the contemnors are solely responsible.

From the above conduct it is apparently clear that the Union Government has been buying the time by assuring this Hon'ble Court repeatedly and there is no intention to resolve the issue despite specific directions. Therefore, the contempt is multiplied by the conduct of the contemnors.

11. The petitioners were however, hopeful that the judgment dated 03/08/2011 would be complied with though belatedly and part of their problem would be solved. It is noteworthy to mention here that every month on an average 60 Supdt. Of Central Excise are retiring out of which maximum are in the Zone of consideration for promotion. That's precisely the reason the contemnors are deliberately trying to delay the implementation of the judgment of this Hon'ble Court so that maximum officers particularly the officers those who are active in pursuing the cause get retired.

Despite these representations, given by the petitioners the Contemnors have not acted on judgment of this Hon'ble Court. Therefore the present petition.

12. That it is humbly submitted that the Respondent/ Contemnors being the organs of the State are duty bound to protect the fundamental and statutory rights of every citizen. They are also duty bound to strictly comply with the directions of the court of law. The judgement of this Hon'ble Court being the law of land is to be complied to its letter and spirit by all concerned. Article 141 of the Constitution of India commands that the order of this Hon'ble Court being the law of the land is binding on all authorities in the territory of India. The present judgment which is being flouted by the contemnors being a judgment in-rem, was required to be implemented to the benefit of all the feeder class of group A officers.

13. The petitioner has not filed any other petition before this Hon'ble Court or any other court seeking initiation of contempt proceeding against the contemnors.

#### PRAYER

Therefore it is most respectfully prayed that this Hon'ble Court may graciously be pleased to :

(A) Issue notice to the Contemnors calling upon them as to why contempt proceedings shall not be initiated against them for having wilfully violated order dated 03/08/2011 and 30/03/2012 passed by this Hon'ble Court in Civil Appeal No. 1198 OF 2005.

(B) Punish the contemnors for having committed contempt of this Hon'ble Court;

(C) Pass such other and further orders as this Hon'ble Court deems fit and proper in the interest of justice.

New Delhi

Dated :

File and drawn by

(Sibo Sankar Mishra)  
Advocate of the Petitioners

Government of India  
Ministry of Finance  
Central Board of Excise & Customs

North Block, New Delhi

Dated 18<sup>th</sup> May 2012

Office Memorandum

In respect of Group A posts of I.R.S. (C%CE), the regular DPCs chaired by UPSC are required to be conducted for vacancies from the panel year 1997 – 98 onwards in the entry post of Assistant Commissioner (Grade VI); for vacancies from the panel year 1998 – 99 in the post of Joint Commissioner (Grade IV) and for vacancies from the panel year 2007-2008 in the grade of Commissioner (Grade-II).

2. The process of regularisation has to be completed in a time bound manner as per the directions of different Hon'ble Courts as well as advice of UPSC various groups / teams have been working on this process since past few months. In order to get the process of regularization done in mission mode, following teams are constituted to work under the supervision of Sh. Jayant Mishra, ADG, H.R.D. The teams will now complete the task assigned to them as indicated below in the prescribed time-limit.

A) **Teams for regularisation in the entry post of Assistant Commissioner (Grade VI) and in subsequent grades:**

**Team 1: Task** - Calculation of Year wise vacancy in various Grades

1. Sh. Shailesh Kumar, Addl. Director DGHRD,
2. Sh. Sandeep Rawal / Sh. Atul Singh / Sh. Sachin Ghusia D.D., DGCEI
3. Sh. Rajnish, Supdt. HRD
4. Sh. N.P. Pant – S.O., Ad.II
5. Sh M.S. Raman, Suptd., Central Excise Delhi / Sh. Ashwani Lau, Supdt. Central Excise Delhi / Sh. K.P. Suresh, Inspector, Central Excise Delhi

Time line:- To be completed and approved on file by 30/05/2012

**Team 2- Task - Identification of zones of consideration for promotion in various grades starting from Gr 'B' to Gr 'A'**

1. Sh. Nikhil Meshram, D.D. DGICCE, Mumbai
2. Sh. Jayprashan T.O. TRU
3. Sh. N.P. Pant – S.O. Add.II
4. Sh. Anil Kr. Trivedi, Suptd. Central Excise / Sh. Jagdish Bhatt, Supdt, Central Excise Delhi / Sh. S. Krishna Kumar, Inspector, Central Excise Delhi

Time line:- To be completed by 06/09/2012

**Team 3 Task:-** Compilation of ACR folders and Vigilance clearance for relevant periods

1. Sh. R. Sanehwal, Director Ad-II / Sh. Joseph Antony, Under Secretary, Ad.-II,
2. Sh. Shailesh Kumar, Addl. Director DGHRD
3. Sh. Jitendra Singh Kandhari DDDRI / Sh. Asim Nanda, D.D.D.R.I.
4. Sh. Vivek Pandey, D.D. Dte of Vigilance
5. Sh. Rajnish, Supdt. HRD
6. Sh. Ashwani Sharma, Suptdt. Central Excise Delhi / Sh. Abhishek Malik, Inspector Central Excise Delhi / Sh. Gopi Inspector, Central Excise Delhi
7. Sh. Santosh Kumar, SO. Pers. CBEC/Sh. Raju Chander, SO, ADII

Time Line – To be completed by 30/06/2012

**Team 4- Task**; Preparation of yearwise panel to be sent to UPSC

1. 1. Sh. R. Sanehwal, Director Ad-II / Sh. Joseph Antony, Under Secretary, Ad.-II,
2. Sh. Shailesh Kumar, Addl. Director DGHRD
3. Sh. Rajnish, Supdt. HRD
4. Sh. N.P. Pant – S.O. Add.II
5. Sh. Ashwani Lau, Supdt. Central Excise Delhi / Sh. Neeraj Garg, Supdt. Central Excise, Delhi



Timeline:- To be completed by 05/07/2012

**B) Teams for regularisation in the entry post of Joint Commissioner (Grade IV) and in subsequent grades**

(1) Following officers are designated batch wise to ensure timely ACR compilation and preparation of regularization proposal of their respective batches to be sent to UPSC alongwith necessary documents in consultation with Ad-II.

1. 1986 Batch – Sh. O.P. Dadhich, Commissioner Central Excise, Jaipur – I.
2. 1987 Batch – Sh. Sandeep Kumar, Commissioner Customs, C.B.E.C.
3. 1988 Batch – Sh. Satish Kumar Agarwal, Commissioner Coord, C.B.E.C. & Sh. Atul Dikshit, ADG, Systems
4. 1989 Batch – Sh. S. M. Tata, ADG DGRCCCE Kolkata & Ms. Neeta Lal Butalia, Comm. DPPR
5. 1990 batch – Sh. Yogendra Garg, Director, T.R.U & Sh. M.M. Parthiban, OSD to Chairman, C.B.E.C. / Sh. Amitabh Kumar, Addl. Director, NACEN
6. 1991 Batch- Sh. Rajiv Ranjan, Addl. Director H.R.D. / Smt. Prachi Swaroop Addl. Director, WCO Cell.
7. 1992 Batch – Sh. Vikas Kumar Addl. Comm, Customs Delhi & Smt. Kajal Singh, Addl. Director, WCO Cell.
8. 1993 Batch:- Sh. G. D. Lahoni, Director, Legal. C.B.E.C
9. 1994 Batch:- Sh. J M Kennedy, Director, T.R.U. C.B.E.C. & Sh. Alok Jha, Addl. Commr. DPPR
10. 1995 Batch – Sh. Manish Mohan, Addl. Dir. DGCEI, New Delhi
11. 1996 Batch:- Sh. G. S. Karki, Addl. Commr. Customs Delhi

(II) Officers at Sl. No. 1 – 7 above are requested to complete the missing ACRs as communicated by Board's letter of F.No. A32012/31/2011-Ad.II dt. 4<sup>th</sup> January 2012 (available on C.B.E.C. website) and Vigilance certificates and prepare the proposal by 25/05/2012

(III) Officers at Sl. No. 8 – 11 are requested to complete the ACR status by 25/7/2012 and complete the missing ACRs by 31/7/2012

(IV) Under Secretary, Ad-II and S.O. (pers) are requested to complete the disposal of below benchmark certificates of officers of above batches by 31/07/2012.

3. In addition to above, Joint Secretary admin. C.b.E.C. and Director AD-II are requested to follow up with the Cadre Controlling Chief Commissioners of the three Customs Houses Viz. Mumbai, Kolkata & Chennai so that it is ensured that the process of publication of seniority list in Appraiser feeder grade is completed by 21/05/2012.

(Praveen Mahajan)

Member (P&V)

Copy to:

1. Sh. Jayant Mishra, ADG, HRD, New Delhi with a request to brief the undersigned regarding progress made by above teams on every Monday, Wednesday and Friday at 17:00 Hrs till the completion of the above process.
2. All officers concerned.

Sd/-

(Praveen Mahajan)

Member (P&V)

# ALL INDIA ASSOCIATION OF CENTRAL EXCISE GAZETTED EXECUTIVE OFFICERS

**PRESIDENT, PUNE UNIT**

**41A, ICE HOUSE, SASSOON ROAD, PUNE 411001.**

Pune, DT. 14.06.2012

To,

The Chairman / The Member (P & V)

Central Board of Excise & Customs

North Block, New Delhi

Respected Sir/ Madam,

Subject:- Supreme Court decision in Civil Appeal no.1198/2005 and Writ Petition no. 385/2010 – Implementation - Regarding –

During the last few months, we had sought appointments on a number of times and the office bearers of the Associate Unit came over to Delhi to meet Your Honour. As we are now almost at the end of the time slot given by the Supreme Court, we have decided to make our submissions in writing and further if it interests Your Honour then we could be called for further discussions and /or work.

## **SITUATION PREVAILING IN CBEC AFTER 03.08.2011 DECISION OF SC:-**

1. A consensus decision in the above petitions between the parties including the CBEC was given on 03.08.2011. Time limit for the implementation of the said decision was given upto 31.12.2011.
2. The decision of the Supreme Court was based on the affidavit of the CBEC made in the petition 1198/2005 that the said CBEC shall review and make new Recruitment Rules and make all administrative changes for the implementation of the same on or before 31.12.2011.
3. The CBEC conducted its Board meeting on 16.09.2011 and decided that the ratio for promotion amongst the three feeder categories Supdt. Central Excise: Supdt. Customs (Prev): Customs Appraisers would be 13:2:1 respectively; this being the integral part of the new Recruitment Rules as was the case earlier. However, after the retirement of the Board members and the Chairman on or around 31.10.2011, it seems that the CBEC had decided to decelerate on the process started with a flourish by the then Chairman Shri S. Dutta Majumder.
4. Though the decision of 03.08.2011 was a consensus decision, it was decided in the said Board meeting, that the above new ratio would only be implemented prospectively and shall not be implemented retrospectively. It was decided that to do so, a clarificatory petition would be filed on behalf of the CBEC in the Supreme Court. **However, the said clarificatory petition was not filed in the Supreme Court till 22.03.2012, thus not bothering for the time-limit given by the Supreme Court for the implementation of its order upto 31.12.2011.**
5. Further on 09.10.2011, the new draft Recruitment Rules were put on the site of CBEC. We, the 'petitioners' filed our reactions to the draft Recruitment Rules in good time. But, there was no response available from the CBEC to these proposals presented by us. We thought that the responses were not forthcoming because the CBEC must be in a hurry to get the same notified with the help / interaction with the UPSC and the DoPT. **It shall be relevant to place this fact on record also that in an official meeting with the representatives of All India Association office bearers, it was promised that the new RR's shall be notified on or before 31.03.2012. But, the new Recruitment**

**Rules have not been notified even today after a lapse of eight months from the day of exhibiting the same on the site of CBEC.**

6. Coming back to the act of the CBEC of filing the clarificatory petition in the Supreme Court on or around 22.03.2012, it is worthwhile to note that whereas it was required to serve the notices on all the parties to the petitions; the notices were only served upon the promotee and direct Appraisers Association. A letter to that effect was presented by the Advocate of the CBEC. A complaint registered with the Registry on the 22nd March 2012 is therefore relevant. **It is difficult to comprehend the action of the Advocate to CBEC and it remains to be seen whether it was as per the instruction of the CBEC or otherwise.**
7. The clarificatory petition from the CBEC came up first on board on 23.03.2012. The petition was dismissed on 30.03.2012 with time-limit for the implementation of the decision of 03.08.2011 being extended by 90 days from that day i.e. upto 30.06.2012.
8. This petitioner viz. the Pune Unit has shown keen interest in helping the administration in view of the special perspective of having team of members of the Association at Pune, who have been training the entire country in CAAP Audit techniques and are considered as experts in the field of data organisation and analysis. **The office bearers of the Pune Unit visited the offices of CBEC to further convince the administration about the efficacy of such an arrangement.**
9. **Though the Member (P & V) and Commissioner DoPM (who are considered as the mainstay authorities in respect of the implementation of the SC judgments) were convinced, the officers associated viz. Joint Secretary (Administration) and the Directors had other ideas.** A letter conveying the ideas expressed by the JS (Admin) were written to Member (P & V) dated 16.04.2012.
10. In the meantime, it has so happened that from 1<sup>st</sup> November 2011, the top administration of the CBEC have been showing signs of conducting DPC for the posts of entry grade Group 'A' in consonance with the UPSC. **However, as a matter of fact, from that day upto date, they have not been able to conduct a single DPC. It would be improper to attach motives to this behaviour of the top administrators of the CBEC in doing so, but it is difficult to comprehend how the Officers of the caliber of JS (Admin) who has been doing at least 100 DPC's per year could falter at this?**
11. **The set of protracted correspondences made by the Member (P & V) with the Chief Commissioners and the other officers in the field indicates the pathetic position in which the top officials of the CBEC are put in by the officials like the JS (Admin) and the Directors working as experts in the department, to bail out the top administration in questions needing administrative acumen. The state of affairs was also communicated to the Revenue Secretary by a letter dated 24.04.2012 with the set of the Supreme Court orders as well as the copies of these correspondences.**
12. **Now as the things stand, as our luck would have it, the normal promotions would not happen as decided by the UPSC and communicated to the CBEC that unless, the entire process of regularisations are not completed. We are further in a quandary as the CBEC has a subtle desire to protect the positions illegally-attained by the Customs (Appraisers) over the last two decades and as such there is a motive not to follow the dictates of the Supreme Court. This motive / desire comes to the fore as forgetting the parental duties it sought to do so by its I/A 8/2012 in the petition Civil Appeal no. 1198/2005 (and Writ petition 385/2010). Further it is not known how much less the desire has been after their above petition had been dismissed on 30.03.2012.**
13. **Hence, the entire department has come to a halt - the department does not want to do regularisation as per the Supreme Court decision and the UPSC following suit with stoppage of promotions until the regularisations are not complete.**

**OFFICE MEMORANDUM DATED 18.05.2012:-**

14. On 18.05.2012, Your Honour Madam Member (P & V) has brought out an Office Memorandum on the various actions contemplated in the process of retrospective regularisations from 1997 upto date. It may kindly be noted that as per the Supreme Court judgments, the regularisations have to be done in terms of the new RR's.

In respect of the new RR's,

- The CBEC decided the ratio between the three feeder categories on 16.09.2011 which was 13:2:1;
- Further, the draft RR's were exhibited on site of the CBEC on 09.10.2011;
- and further having been repeatedly briefed – at last by a specific letter from us, the petitioners on 22.03.2012 as to how, the same had to be further arrived correctly(at 17:2:1) as per the legal terminologies used in the accepted document(DoP&T's guidelines) as stated in the minutes of the CBEC meeting dated 16.09.2011;

Nothing seems to have progressed in terms of notifying the new Recruitment Rules correctly. Without the Recruitment Rules having been notified, it is incomprehensible how the task of regularisation could be achieved.

**15. It is obvious that on the issue of retrospective regularisations, the next important task after notifying the new Recruitment Rules is to agree in conjunction with the UPSC on the rules of regularisations. It may be brought to Your Honour's notice that the most harm was caused by the nitty gritty of the process of regularisations adopted during regularisation accomplished in August 2000. Last time over, as may be recapitulated, there were 873 Direct Recruits and 2670 Promotees during 1980 - 1996. In order to decide how many officers could be regularised, the process accepted was that they totaled 873 and 2670 and divided this by 2 – which was directly in contrast to the Recruitment Rules. Due to the regularisation of as many officers, there was a quota worked out against the C. Ex Supdt. Of 183 which was given to Cust (Appra) 135 and Customs (Prev) Supdt 48; due to which in the next period from 1997 to 2011, no order in the ratio 6:1:2 could be issued. As per the RR's it had to be 873 only to be regularised Had it been done in that manner, there would not probably be any extra quota and the ratio between the three feeder categories, which was the integral part of the RR could have been followed properly.**

16. As in 1980 to 1996, in the current period of regularisation of 1997 to 2011 the statistics in respect of the Promotee Officers and Direct Recruit Officers are as under:-

Sr. No.	Year	C. Ex.	Cus (Prev)	Cus (Appr)	Total Promotee Officers	Total Direct Recruits
1	1997	151	46	61	258	46
2	1998	64	41	34	139	41
3	1999	03	02	02	07	26
4	2000	01	01	02	04	20
5	2001	06	00	00	06	06
6	2002	432	92	71	595	11
7	2003	63	10	29	102	02
8	2004	04	01	03	08	57
9	2005	01	75	95	171	47
10	2006	02	00	01	03	49
11	2007	71	12	20	103	67
12	2008	37	23	00	60	109
13	2009	87	15	00	102	179
14	2010	58	17	85	160	169
15	2011	03	01	07	11	--

	<b>Total</b>	<b>1126</b>	<b>331</b>	<b>419</b>	<b>1876</b>	<b>690</b>
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The above statistics is similar to the one which existed in the earlier regularisation process for 1980 to 1996 which was accomplished in August 2000.

17. **In the year 2000, there was no RTI Act. Therefore this dubious act could be passed under the carpet which resulted in deliberate stagnation in the Supdt. Central Excise feeder category. Now under RTI, the information shall always be available on request, Hence, it is requested that this information be brought to the notice of the stake holders while getting the approval for the same from the UPSC By doing so, it can be ensured that every cadre is given a proper deal.**

18. About the OM brought out by the madam Member (P & V) we have to say as under:-

- **The issues of regularisations based on revised Seniority List in Appraisers case for 1980 to 1996 and revision of RR's as per Supreme Court order dated 03.08.2011 have un-necessarily been clubbed.**
- **This pre-supposes that the review from 1997 also will be in 6:1:2 ratios, which cannot be justified. As the Supreme Court has rejected a petition of CBEC proposing to do so in the I/A 8/2012 in the petition 1198/2005 on 30.03.2012; they have re-iterated that their directions on 03.08.2011 shall prevail i. e. that regularisations of ALL ad-hoc promotions are to be done as per revised RR's.**
- **It would follow that before the review from 1997, the revised RR's should be notified. Moreover, the zone for consideration for new DPC every year can be decided only after finalizing the number of posts available to each cadre, since it is decided to follow quota.**
- In the absence of above actions, the Member's directions cannot be implemented and it can be only seen as an attempt to show before Court, in case Contempt petition comes up.
- Therefore we reiterate that RR's in correct ratio i.e. 17:2:1 with respect to the Sanctioned Strength as per the policy-decision in the CBEC meeting dated 16.09.2011 should be quickly adopted and notified.
- **As the OM broaches the subject of regularisations even of the period 1980 to 1996 and if the promotions are given equal to the DR's, it has to be only 873 from 1980 to 1996 as against wrongly worked out 1675 done in 2000. There will not be any carry forward / backlog to be given to the Customs cadres; as they have already been given much above the eligible quota from 873.**
- The CBEC needs to be seen sincere in the finalization of the disputes due to unparalleled levels of stagnation thrust upon the Supdt. Central Excise feeder category; the actions / steps as enlisted in the Member's letter shall definitely fall short of the proposed purpose. **The revised Recruitment Rules should be notified first, after which the process of regularisation be started by "notifying the rules of regularization" as agreed between the department and the UPSC. Then regularise the promotions from 1997, by drawing year-wise panel on the lines of the DoPT guidelines on such DPC's; further- allow notional date/s to the officers of Central Excise and Customs (Prev.) cadres deserving higher ascendancy.**

19. The ad-hoc promotions issued by the CBEC are rather strange unlike the same as understood in common parlance of Central Government Employees.

- It may be seen that there were no annual DPC's and orders issued thereon. The number of promotions issued never followed the Recruitment Rules in the consideration period for regularisation.
- There were Direct Recruits every year against vacancies reported to UPSC. But the promotion orders were issued erratically and also no orders were issued in many years as seen from the said table. There have been no promotion orders now from 2010.
- It may also be noted that the reasons for providing ad-hoc promotions have differed in different periods of its issuance. In a way it proves that universally making every promotion ad-hoc was an untenable idea as for example, the disputes in seniority lists were only in the seniority list of the 'promotee and direct appraisers' which was always a separate seniority list from that of the other two feeder categories. Also as the ratio was

at 6:1:2 in the said period the slots allocable to 'Appraiser' only could have been kept 'ad-hoc'.

- Since the Cadre Restructuring posts / vacancies were ordered to be filled up by one time relaxation by promotions, all the promotions as AC's in 2002/2003 against Cadre Restructuring posts would be regularised among the three feeder categories as per the quota / policy in the revised Recruitment Rules.
- At any rate, the wrong short cut method adopted in the review from 1980 to 1996 which was carried out in August 2000 shall never be applied in this current process of regularisations. In the above background, year-wise DPC's will have to be held for the no. of vacancies as per the zone of consideration for the three feeder categories with respect to the eligible quota as per the revised RR's. The seniority of relevant years will have to be relied to draw the consideration zone of each cadre.

**Again coming to the regularisations, this is not the first time that we are regularising over such a long periods of time. The process undertaken in July / August 2000 for the period of 17 years from 1980 to 1996 was completed in less than a calendar month. In that context, the speed of the work when the Computers would be helpful could be less than the said period.**

**We have already offered Your Honour the help in terms of officers who have proven records in the field of data management and analysis. In a specific communiqué we had also named the officers who at that point had confirmed availability. However, we do not understand why the help is not being accepted in the dire circumstances where the work will spill over the allotted time by the Supreme Court.**

**As Your Honour is well aware that there is spate of retirements of officers who after serving for 35-39 years had to retire with only one promotion. In the last 8 months about 500 such officers must have retired in spite of Your Honour having been in-charge of the situation for giving promotions. As mentioned supra, Your Honour is aware of the stipulations of the UPSC as also of the Supreme Court. The situation is in Your Honour's control as to how the work could be quickly completed as per the stipulations of both the above authorities.**

**In an earlier correspondence, we had made a reference to the Rule 5(3) of the present (and the proposed) Recruitment Rules. In case of loss of records and its unavailability for the desired reviews; which is the most likely situation as we understand, that the most favoured feeder category in the history of the department faces its worst crisis; the help of the said Rule 5(3) of the Recruitment Rules can be handy to arrive at almost a similar result as the retrospective regularisations in the new ratio ordered by the Supreme Court, by promoting the eligible officers directly to the Grade/s of VI, V ,IV etc. The department shall be required to be proactive in this case.**

**We once more request that the Supreme Court order dated 03.08.2011 and 30.03.2012 may be implemented at the earliest so that the maximum number of our officers / members are benefited from Your Honour's urgent actions, please.**

**Thanking you,**

**Yours Sincerely,**

**(Mr. K. S. Pandit)**

**President, Pune Unit**

**Petitioner in Writ Petition**

**No. 385/2010**

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1198 OF 2005

IN THE MATTER OF:-

SHRI S P DUDEJA & ORS.

APPELLANTS

VERSUS

UNION OF INDIA & ORS.

RESPONDENTS /

APPELLANTS

To,

The Hon'ble Chief Justice of India and

His companion judges of the Supreme Court of India

APPLICATION FOR MODIFICATION CLARIFICATION

Most Respectfully Showeth

The humble application on behalf of the respondent named above:-

Most Respectfully Showeth:-

1. That this Hon'ble Apex Court in the judgment dated 03/08/2011 in the Civil Appeal No. 1198 of 2005 (S P Dudeja & Others vs. Union of India & Ors.) inter-alia directed.

(i) the respondent to duly consider all representations (including those made before) of the three groups of officers in the feeder categories i.e. Superintendents of Central Excise (ii) Superintendents of Customs (Preventive), and (iii) Customs Appraisers, in light of the development subsequent to the previous RRs in the cadre strength of 3 feeder categories of Group – B services and amend / revise the Recruitment Rules including altering and existing ratio to secure just and fair representation of all the 3 feeder categories.



(ii) that having reference to one of the office order of 51 / 2011) dated 18/03/2011 all such ad-hoc promotions from feeder categories should abide by the final decision to be taken by the Department in terms of the order dated 03/08/2011 in Civil Appeal No. 1198 / 2005 and

(iii) to complete the entire process by 31<sup>st</sup> December 2011.

2. That as directed by this Hon'ble Court, the Respondents viz the Central Board of Excise & Customs (CBEC hereinafter) considered the matter in its entirety taking into account in detail the suggestions / representations old as well as fresh from Associations / federations representing the three feeder categories (viz All India Association of Central Excise Gazetted Executive Officers, All India Customs Preventive Service Federation), besides unrecognized Associations, viz. All India Customs Officers Direct Recruit (Appraisers) Association, All India Customs Appraising Officers Federation and All India Central Excise Inspectors Association as well as interested individuals to address views and aspirations as diverse as possible in the interest of equity fair play and justice.

3. That the CBEC after carefully weighing the said suggestions as indicated above and in view of the instructions of the Department of Personnel & Training (DOP&T) vide CM No. 2011/1/2010-Estt (D) dated 11/11/2010 in respect of fixing ratio for promotion in case there are more than one feeder stream to a promotion post, inter alia decided the following with the approval of the Competent Authority, i.e. Hon'ble Finance Minister of India.

(a) prospective alteration of the feeder cadre quota for promotion to the Junior Time Scale in IRS (C&CE) on the basis of the existing regular sanctioned strength of the three feeder categories (Superintendent Central Excise 11507, Superintendent of Customs Preventive 1152, Appraiser 859) in the ratio of 13 (Superintendent of Central Excise) 2 (Superintendent of Customs Preventive) 1 (Appraiser),

(b) making provisions in the Recruitment Rules for IRS (C&CE) for review of the promotion quotas (ratios) after every two years, or, whenever there is any significant change in the regular sanctioned strength of any of the feeder cadres.

3. That the decision of the Competent Authority to revise the ratio of the feeder cadres prospectively has been based on the following grounds:-

(i) the promotions made since the year 1997 from Group B feeder categories to Junior Time Scale of IRS (C&CE) are adhoc, and hence any retrospective application of ratio 13:2:1 would lead to huge shortfall / excess promotions from the three feeder grades viz. Superintendent of Central Excise Superintendent of Customs (P<sup>⊙</sup>) and Appraiser.

(ii) Majority of those promoted to the JTS on ad hoc basis since 1997 have either since superannuated or many of the remaining officers have been further promoted to the higher grades.

(iii) Review of the adhoc promotions made to JTS since 1997 on the basis of the revised ratio i.e. 13 (Superintendent of Central Excise) 2 Superintendent of Customs Preventive) 1 (Appraiser) may at this distance of time of 14 years cause reversion of many such officers, who are still in service and is fraught with adverse personnel issues.

(iv) Such reversion of officers may cause administrative anarchy jeopardizing the best interest of the indirect taxes administration, as it may slow-down the pace of revenue collection, which may eventually lead to loss of revenue.

4. That the amendments to the recruitment rules and further steps to promote the officers on the above principles and in compliance to the decision of the Hon'ble Apex Court are in progress.

5. That in the above facts this application is being filed bonafide seeking the modification / clarification of the order dated 03/08/2011 passed by this Hon'ble Court in Civil Appeal No. 1198 / 2005. A copy of the order dated 03/08/2011 is annexed as Annexure A.

#### ORDER

In the above premise it is most respectfully prayed that this Hon'ble Court may kindly please:

a) modify / clarify the order dated 03/08/2011 passed by this Hon'ble Court in Civil Appeal No. 1198 / 2005 to the effect that the respondents are permitted to alter the existing ratio of 6:1:2 in the three feeder cadres, namely (i) Superintendents of Central Excise (ii) Superintendents of Customs (Preventive) and (iii) Customs Appraisers to 13:2:1 respectively on the basis of the existing regular sanctioned strength of the respective feeder cadres, for promotion with effect from the date the amended Recruitment Rules are notified, together with kind permission to extend the time limit by another three months to complete this exercise;

b) pass any other order or orders which are necessary in the facts and circumstances of the case.

DRAWN BY

FILED BY

RAJIV NANDA

ADVOCATE

(ARVIND KUMAR SHARMA)

Advocate for Respondents / Applicant

Drawn on: 22/12/2011

Filed on: 22/12/2011

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1198 OF 2005

IN THE MATTER OF:-

SHRI S P DUDEJA & ORS.

APPELLANTS

VERSUS

UNION OF INDIA & ORS.

RESPONDENTS /

APPELLANTS

AFFIDAVIT

I, Ratan Kumar Sharma presently posted as Under Secretary and having my office at North Block, New Delhi do hereby solemnly affirm and state as under:-

1. That I am conversant with the facts of the present case on the basis of the official record. I am competent in my official capacity to swear this affidavit.
2. That I have gone through the accompanying application for modification / Clarification of order date 3/8/2011 passed by this Hon'ble Court. I CA 1198 / 2005. The same has been drafted as per instructions of the Respondents. The contents of the same are true and correct. Nothing material has been concealed.

Deponent

Verification

Verified at Delhi on this day of December 2011 that the contents of the above affidavit are true and correct. Nothing material has been concealed.

Deponent

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO. .... OF 2012

In the matter of:

All India Association of Central Excise

Gazetted Officers (Pune Unit) .....Petitioner

Versus

Mr. R.S. Gujral & Ors .....Respondent/Contemnors

AFFIDAVIT

I, Ganesh Ramchandra Desai , aged about 52 years S/o Sh. Ramchandra P.Desai R/o Flat D-308, Shubhashree Residential Phase-I, Behind Jai Ganesh Vision, Akurdi, Pune-35 (Maharashtra) do hereby solemnly affirm and state as under:

1. That the deponent of the affidavit is the President of All India Association of Central Excise Pune Unit and has been pursuing the present case, therefore, he is well conversant with the facts of the case as such competent to swear this affidavit.
2. That the statements made in para No. 1 to in the Contempt petition at page No. to are true to my knowledge.

3. That the annexures enclosed with the petition at page to are true copies of their respective originals.

4. That statements made in the accompanying applications are true to my knowledge.

DEPONENT

VERIFICATION

Sworn and verified at New Delhi on July 2012 that the contents of this affidavit are true and correct to the best of my knowledge.

DEPONENT

# ALL INDIA ASSOCIATION OF CENTRAL EXCISE GAZETTED EXECUTIVE OFFICERS

PRESIDENT, PUNE UNIT,  
41A, ICE HOUSE, SASSOON ROAD, PUNE -411 001.  
MOBILE: 09890301231.

Pune, DT. 24.04.2012

To,  
The Secretary,  
Department of Revenue,  
Ministry of Finance,  
Government of India,  
North Block, New Delhi 110001.

Respected Sir,

Subject:-Supreme Court decision in Civil Appeal no.1198/2005 and Writ Petition no.385/2010 dated 03.08.2011 - Non-implementation of the same - Regarding -

1. This is to bring to Your Honour's kind attention that this unit of the All India Association of Central Excise Gazetted Executive Officers was an intervener in the Civil Appeal no.1198/2005 and was the chief petitioner in the petition 385/2010. That the Supreme Court gave decision in the said petitions on 03.08.2010 which was a consensus decision between the parties concerned. The decision is annexed hereto at Annexure I to this letter for ready reference please.
2. It may be seen that time limit was given to the CBEC for the implementation of the said decision was upto 31.12 2011. However, only the following things were done/ not done in the interim:-
  - a. The meeting of the Central Board of Excise and Customs took place on 16.09.2011, in which a new ratio between the three feeder categories for promotion from Group B to Group A was decided and it was also decided that the CBEC would not implement the decision of the Supreme Court in toto but would go in for clarificatory petition in respect of the part of the decision.
  - b. The decision above-mentioned warranted change in Recruitment Rules. The draft Recruitment Rules were put on **the site of the CBEC on 09.10.2011**. Merely changes warranted by Fifth Pay Commission and change of ratio as mentioned at (a) above were introduced in the earlier Recruitment Rules. Even the objections expressed were not taken on board.
  - c. Though the time limit of 31.12.2011 was given to the CBEC for the execution of the entire work in the gambit of the said decision; only (a) & (b) was done not only in the time span given, but is till today in the same condition.
  - d. **The new Recruitment Rules are not yet notified, thus lawfully permitting the issuance of orders in the old ratio thus further perpetrating stagnation in one of the cadres' viz. the Superintendents of Central Excise.** The condition of stagnation is already at **all time high** in as much as the first officer to be promoted from the three feeder cadres is as follows:-

Superintendents of Central Excise	February 1992.
Superintendents of Customs (Preventive)	October 1997

- e. As decided by the CBEC in the board meeting on 16.09.2011 the clarificatory petition in respect of the Supreme Court was filed on 22<sup>nd</sup> March 2012. **The Supreme Court however dismissed the same on 30.03.2012 giving further extension of time for the implementation of the order by 30.06.2012.** The petition and the Supreme Court decision is placed at Annexure II to this letter for favour of perusal please.
3. **Since the time the Supreme Court decision of 03.08.2011 has come in, there is confusion reigning in the administrators of the department of CBEC. This is because the department had been running an ad-hoc system in respect of chiefly the promotee officers in Group A and the order of the Supreme Court warranted its regularisation. The natural consequence would be that the hyped position in respect of one of the feeder categories and the continuous support of the administration would have to be given up and the positions of the other feeder categories vis-à-vis that feeder category would have to be accepted as a reality.**
  4. **However, contrary to the reality, it is found that very important sections under CBEC dealing with this subject matter including the Joint Secretary (Administration) are still not convinced about the reality of the effects of the Supreme Court decisions and contrarily are found to be working to maintain the pre 03.08.2011 position in defiance of the Apex Court verdict. It is very difficult to understand the psych of these officers who even today insist that we should go to the Courts again. Hence, this reference to Your Honour.**
  5. **These elements in the CBEC are working specifically towards a particular goal which is helpful to the career progression of promotee Appraisers and are therefore allowing developments to happen at snail's pace so as to enhance the chances of most of the elements of the said cadre to progress to the Group A before the new developments are ushered in.**
  6. The draft Recruitment Rules were announced on 09.10.2011. If the ethos of the old rules are maintained it is difficult to understand how the nodal departments of UPSC and DoPT should take more than six months to allow notifications of the said RR's? As per the Hand Book of Recruitment Rules, these nodal departments have to ensure the constitutionality of the RR's. RR's not being much different from the RR's which were cleared in 1998 - the time taken is incomprehensible.
  7. These elements have deliberately not allowed the promotions to happen from Group B to Group A since the decision of the Supreme Court and the consequential changes in the ratio for the promotion was approved by the CBEC. The process was commenced by a letter on 01.11.2011 but the process continues six months down the line. A glance at the letters issued since then would prove how naively the procedure is under way. All letters are enclosed at Annexure III for favour of perusal please. These are the same set of officers especially the Joint Secretary (Administration) etc. who have carried out hundreds of DPC's in their tenure in the CBEC. This includes the most complicated cadre of Customs Appraisers whose seniority lists are continuously under a state of flux.
  8. Unfortunately, this is happening in respect of the cadre of Superintendents of Central Excise whose seniority list in respect of the officers in the list of consideration has existed without changes for ages. Sir, this is happening in spite of the fact that we have offered help as one of our officers has maintained a website for the welfare of the officers and we have absolutely an updated seniority list. Also, every month more than 60 officers retire on superannuation after completing 35 years or more service with only one promotion in their lifetime.
  9. Your Honour's attention is drawn to the fact that the cadre review is round the corner. These elements including the Joint Secretary (Administration) in being sub-servant to the cadre of Customs promotee Appraisers are desirous of awarding them the maximum benefit. In the present circumstances, it can happen if the old ratio remains in vogue which is possible under the circumstances as the new RR's are not notified. There is so much of delay that there is a strong rumor that the orders in respect of promotions to vacant posts and the restructured posts would be issued together so that the same could be issued in the ratio 6:1:2 most beneficial to the cadre to which the administration is sub-servant in different ways. Hence, this request please.
  10. We request the following in the earnest please:-
    - (i) To get the new Recruitment Rules notified
    - (ii) To get all the orders to the vacancy posts issued forthwith in the new ratio approved by the CBEC in September 2011.
    - (iii) To compel the administration to adhere to the decision of the Supreme Court of 03.08.2011 and 30.03.2012 in letter and spirit, please.

Thanking you,

Yours faithfully,



(K. S. Pandit.)

President, Pune Unit.

Petitioner in

Writ Petition 385/2010

# ALL INDIA ASSOCIATION OF CENTRAL EXCISE GAZETTED EXECUTIVE OFFICERS

PRESIDENT, PUNE UNIT

41A, ICE HOUSE, SASSOON ROAD, PUNE 411001.

MOB:-9890301231

New Delhi, DT 28<sup>th</sup> May 2012

To,

1. The Chairman,

Union Public Service Commission

Dholpur House, Shah Jahan Road,

New Delhi.

2. The Secretary,

DoPT, North Block,

New Delhi.

Respected Sir/ Madam,

Subject: - Notice against probable Contemptuous Act from UPSC – Regarding –

1. The Associate Unit of Pune of the All India Association of Central Excise Gazetted Executive Officers, was the chief petitioner in the Writ Petition 385/2010 before the Supreme Court which was decided on 03.08.2011. The said Supreme Court decision is enclosed as Appendix I for favour of perusal and kind supervision of implementation by your Commission over the CBEC, please.
2. It is understood that way back in October 2011 the UPSC had notified the CBEC for an earlier completion of the process of confirmations of all the ad-hoc promotions which were made from 1997 upto date. The Supreme Court had similarly directed the CBEC to complete the process by 31.12.2011. The Supreme Court had however, directed the CBEC to do so in the new ratio which was decided by the CBEC in its meeting dated 16.09.2011. However, no action was initiated from CBEC prior to 31.12.2011.
3. The CBEC filed a clarificatory petition (IA no. 8/2012) on 22.03.2012 seeking implementation of new ratio prospectively; which was dismissed by the Supreme Court on 30.03.2012 with an extension of time for its implementation upto 30.06.2012. Copy of the petition as well as the decision marked as Appendix II and Appendix III resp. is enclosed herewith. There is no progress in the matter of regularisation as of today as the CBEC maintains its attitude inspite of the fact that the petition has been dismissed.
4. As the Chairman, UPSC may be aware, there was one earlier process of confirmation which had happened on the directions of the Supreme Court issued on 22.11.1996 in a Writ Petition no. 306/88 as a result of a similarly worded order. This decision was quickly implemented and the process of confirmations was completed on 31.08.2000.
5. **At that point of time, no resistance had been shown by the CBEC for the process which was similar in all aspects including retrospective as is the one under**

**consideration today. The resistance shown today has to be seen in terms of the different contentions given in the I/A at Appendix III and appreciated please. This also calls for a judicious role from the Chairman UPSC and the Secretary DoPT and calls for a very vigilant action in the context.**

6. At this juncture an explanation may seem necessary in respect of some of the text in the IA 8/2012 where not following the SC order is sought to be justified on the contingency that there shall be absolute anarchy affecting the collection of the indirect taxation etc. It suffices to mention that the officers who are given the higher hierarchical posts illegally are from the Customs Appraisers feeder category which is at the most 4% of the total Group B officers. In fact, it has to be emphasized that if the proper corrections in the service prospects as ordered by the Supreme Court are not carried out the entire 96% of the balance cadres which chiefly consists of about 85% Supdt. Central Excise and 11% Supdt. Customs (Prev) shall lose faith in the administration and could result in ultimate anarchy.
7. The CBEC in its chastity to protect the illegal positions attained by Appraiser promotee officers; does not understand the efficacy of the judgement in its effects on the rank and file i.e. the majority of Group 'B' cadres and hence there is a possibility of an irresponsible attempt to cheat the mainstay of its work force. **Hence, now the responsibility rests on the next constitutional authorities which are the UPSC and the DoPT to stem the rot in the bud and check the CBEC. These agencies are rightly put in Your Honour's control for proper and just enforcement of the constitutional provisions; including guidelines issued by DoPT in 1993 & 2010)and UPSC regulations 1958.**
8. **We are writing to Your Honour today understanding fully well that there shall be some skewed action from our department 'the CBEC'; to regularise illegally promoted officers of 'Appraiser' feeder category since 1997 by keeping Your Honour's office mis-informed about the Supreme Court judgments dated 03.08.2011 and 30.03.2012 as referred supra; with further request to your department to kindly act in conformity with the Supreme Court decision. Hence, this notice.**

**We caution each of Your Honour to kindly desist from acceding to any special requests from any hierarchical position from the department of CBEC, please; but for which the action shall be held as contemptuous action against the orders of the Supreme Court.**

**Thanking you,**

**Yours sincerely,**

**(K. S. Pandit)**

**President, Pune Unit**

**Petitioner in Writ**

**Petition 385/2010.**

**ALL INDIA ASSOCIATION OF CENTRAL EXCISE GAZZETTED  
EXECUTIVE OFFICERS;**

PUNE UNIT

41A,ICE HOUSE, SASSOON ROAD, PUNE 411001

Punr DT:- 16.04.2012

To,

The Member (P & V)

Central Board of Excise & Customs

North Block, New Delhi

Respected Madam,

Subject:- Meeting with J S (Admin) at the direction of Member (P & V) –  
Regarding –

1. As per Your Honour's directions, we sought the appointment of JS Admin in the afternoon on the same day, i.e. on 11.04.2012. However, it seems that he had come to office for some specific work only and inspite of telling him that we were meeting him on Your Honour's behest he said that he did not have time on that day to meet us. We therefore sought an appointment from him for the next day to which he said that we could try to see him after 3.00 pm on 12.04.2012.
2. We sent a request chit with the names of the delegates at around 4.00pm on 12.04.2012 and waited at the corridor since then. We were called at 5.40pm. As we went in, it seems he was quite busy in his work and though he made us sit in the chairs, he was standing /moving here and there doing some other work for another ten minutes or thereabouts.
3. After a while, he asked us what work we had. I asked him about the ratio that would be taken for the promotions to the existing vacancies. He said that it would be the ratio which would be a part of the RR in force on the day of issue of the orders. If the new RR's are not notified, then it shall be the old ratio of 6:1:2.
4. I brought to his notice that in the last 14 years except for the first order, no orders were issued in the said ratio. How could the said ratio be taken in spite of the fact that the Supreme Court had directed to get the RR's approved prior to 31.12.2011. He said that the approved RR's on the day of issuance of the order would only matter.
5. I showed him the sheet which I had made showing the tabulated numbers of promoted officers from the three cadres in different orders during the 14 years. I told him that he may see that no order was issued in the ratio 6:1:2 in the last 14 years. Having failed to have got the new Rules notified after putting the draft RR's on the CBEC site on 09.10.2011, deliberately or otherwise; how could the old ratio be resorted to?
6. I mentioned then that the intentions of the CBEC which were given in the rejoinder filed by the CBEC in our petition no. 2793/2009 had also not been included in the draft Recruitment Rules declared on the 09.10.2011.
7. To this, he said that the work relating to the forming and notification of the new RR's is the responsibility of the DGHRD. He also said that most of the things are decided by the board in its meetings and that he may not be considered responsible for the same.
8. Further, I requested him that as there was deceit in the earlier exercise of regularisations in July/August 2000, there could be a special team which may be constituted by taking officers from different feeder categories to undertake the regularisations in the light of the recent Supreme Court judgment of 30.03.2012. **To this he said that this may not happen as they had different interpretation of the Supreme Court order and the Supreme Court had not given any order on the retrospective regularisations. I had the**

**certified copy of the judgment with me which I showed him and I pointed out to him that the department had sought SC's directions on various issues raised in the I/A and as this I/A has been dismissed by the Supreme Court regularisation needs to be done with retrospective effect in the new ratio as per the decision taken by the board in the meeting dated 16.09.2011. On this he suddenly became defensive and vehemently denied that they had sought directions of the Supreme Court and took up a totally new stand that we had merely enumerated these points to bring it to the notice of the Supreme Court that they would be considered. Subsequent to this order he has further stated that these issues have now been considered and not found feasible. He also said that if you are feeling aggrieved you may go back to the Court again.**

9. He told us that he had some urgent meeting with somebody at 6.00pm and that he cannot postpone the same and he said that he would talk to us while going in the corridors. So in the corridors, he told us that the Administration has taken decisions on the basis of existing DoPT guidelines to which we brought to his notice that the existing Recruitment Rules including the ratio are neither as per the then DoPT guidelines issued in 1993 nor as per the one issued in 2010.
10. Further it was also pointed out to him that the existing Recruitment Rules are not within the constitutional provisions as required under UPSC Regulations 1958 - to which he again replied that all these decisions have been taken by the CBEC in the board meetings and thus he would not like to comment further.
11. **In the light of the tenor and the actual talks that we had with the J S (Admin), we feel that even after the decision of 30.03.2012 and no improvement shall come in our lives, as he was still adamant on his own old views and wanted us to knock at the Supreme Court again.**
12. **In the circumstances, may we request Your Honour to please allow us to have a meeting on all the points coming up in the discussions as mentioned herein above with the JS (Admin) in Your Honour's presence at Your earliest please.**

Thanking you,

Yours faithfully,

(K. S. Pandit)

President, Pune Unit

Petitioner in Writ 385/2010

In Supreme Court.

Copy to OSD to Member (P & V) with a request to kindly organise a meeting as contemplated in the last para of the letter above, with an adequate information to us, please.