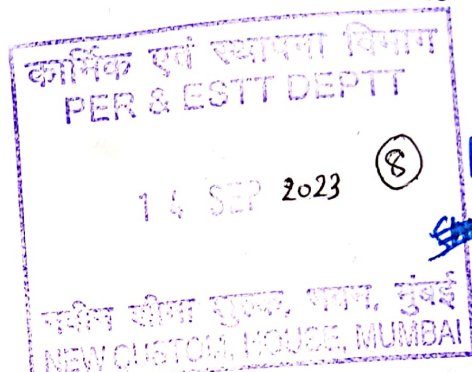
	<p>OFFICE OF THE PR. COMMISSIONER OF CUSTOMS (GENERAL) केंद्रीय प्रशासनिक अधिकरण कक्षा, नवीन सीमाशुल्क भवन, बेलाई इस्टेट, CAT CELL, NEW CUSTOM HOUSE, BALLARD ESTATE, मुंबई/MUMBAI - 400001 ई-मेल/E-mail : mum.cus.catcell@gov.in दूरभाष/Tel No. (022) 22757714</p>	
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न्यायालय प्रकरण / अति तत्काल COURT MATTER/MOST URGENT  
F.No. S/21-66/2019-CAT Cell

Date 14.09.2023

To,  
The Asst. Commissioner of Customs,  
P&E Section (Appraising Table),  
Commissioner of Customs (Gen),  
NCH, Mumbai.

Sir,



Sub: O.A. No. 708/2019 filed by Shri Gaurav Narayan Shede Vs. U.O.I. & Ors before Hon'ble CAT, Mumbai Bench -reg.

Please refer to your office letter dated 08.09.2023 on the above mentioned subject.

2. In this regard, please find enclosed herewith **certified true copy** of judgement order dated 22.02.2023 given by Hon'ble CAT, Mumbai bench.

With regard to put for acceptance of the said order, a copy of the order was forwarded to Deputy Commissioner of Customs, P&E Section, vide letter F.No. S/21-66/2019 CAT Cell dated 17.07.2023 for necessary action at their end.

भवदीय/Yours sincerely,

*Tiwary*  
14/9/23

(Om Prakash Tiwary)  
Deputy Commissioner of Customs  
केंद्रीय प्रशासनिक न्यायाधिकरण/CAT Cell,  
मुंबई अंचल-I/Mumbai Customs Zone-I

Encl:

1. Original Certified True Copy (7 pages)

O.A. No.708/2019

Central Administrative Tribunal  
Mumbai Bench, Mumbai

O.A. No.708/2019

Date of decision: 22<sup>nd</sup> February, 2023

Hon'ble Mrs. Harvinder Kaur Oberoi, Member (J)  
Hon'ble Mr. Shri Krishna, Member (A)

Gaurav Narayan Shede,  
Son of Narayan Hiraji Shede,  
Date of birth: 12.05.1985  
Age: 34 years 05 months,  
Working as: Inspector  
(Group "B" post) in the office  
Of Mumbai Customs, Mumbai  
And residing at: 21/582, 1<sup>st</sup> Floor,  
Shree Ashirwad CHS, Nehru Nagar,  
Kurla (East), Mumbai 400024,  
State of Maharashtra.

...Applicant

(Mr. R G Walia, Advocate)

Versus

1. Union of India  
Through: Revenue Secretary,  
Government of India,  
Department of Revenue,  
Ministry of Finance,  
North Block, New Delhi-110001.
2. Chairman,  
Central Board of Indirect Taxes & Customs  
Government of India,  
Department of Revenue,  
Ministry of Finance,  
North Block, New Delhi-110001.
3. Chief Commissioner of Customs,

O.A. No.708/2019

Mumbai Customs Zone-I,  
Ministry of Customs,  
Department of Revenue,  
New Customs House,  
Mumbai 400001.

4. Chief Commissioner of Customs (General)  
Mumbai Customs Zone-I  
Ministry of Customs,  
Department of Revenue,  
New Customs House,  
Mumbai 400001.

...Respondents

(Mr. R.R. Shetty, Advocate)

**ORDER (ORAL)**

**Mrs. Harvinder Kaur Oberoi:-**

This is the second round of litigation. By way of the instant OA, the applicant is challenging the impugned action of the respondents of keeping his case under sealed cover in the DPC which was conducted by them in February, 2019, which led to the issuance of promotion order dated 19.03.2019 (Annexure A-1) from the post of Examiner / Preventive Officer to the post of Appraiser. Following relief has been sought:-

“a) This Hon’ble Tribunal may be pleased to call for the records of the case in respect of non-promotion of the Applicant to the post of Appraiser by keeping his case under SEALED COVER in the impugned DPC which was conducted by the Respondents in February 2019 which led to the issuance of Promotion Order dated 19.03.2019, i.e. Annexure “A1” (Challenged only to the extent that his case has been kept under SEALED COVER and his juniors



O.A.No.708/2019

have been promoted vide the Order dated 19.03.2019), and Order dated 03.10.2019 i.e. Annexure "A2" and after going through its propriety, legality and constitutional validity be pleased to quash and set aside the same in respect of the non-promotion or inclusion of the Applicant's name in the said Promotion Order dated 19.03.2019, with further direction to the Respondents to open the SEALED COVER and to give effect to the Result/Recommendation of the DPC and if the Applicant is found "FIT", for promotion to the post of Appraiser, to promote him with all consequential benefits w.e.f. 13.03.2019 of seniority, promotion, fixation of pay, arrears of pay, etc in the post of Appriaser.

b) This Hon'ble Tribunal will be pleased to hold and declare that non-promotion of the Applicant to the post of Appraiser by keeping the Applicant's case under SEALED COVER by the DPC which was conducted by the Respondents in February 2019 which led to the issuance of Promotion Order dated 19.03.2019, and that "SEALED COVER PROCEDURE" could not have been adopted in the case of the Applicant by the DPC, was an illegal and wrong act and accordingly quash and set aside the same with all consequential benefits.

c) This Hon'ble Tribunal be pleased to order and direct the Respondents to open the SEALED COVER and to promote the Applicant to the post of Appraiser from the date his junior was promoted vide order dated 19.03.2019 w.e.f. 13.03.2019 with full consequential benefits of pay fixation, arrears of different of salary if any, Seniority etc.

d) Any other and further orders as this Hon'ble Tribunal may deem fit, proper and necessary in the facts and circumstances of the case.

e) Cost of this Original Application be provided for".



O.A.No.708/2019

2. Counsel for the applicant submits that pursuant to the order of the Tribunal in OA No.467/2019, the respondents have passed a speaking order dated 03.10.2019, which was received by the applicant on 09.10.2019. He alleges that the said speaking order, on the face of record, is against the law, as laid down by the Apex Court in several cases and also by this Tribunal. He submits that the adoption of the sealed cover could not have been only on the basis of contemplation when the actual departmental charge-sheet/criminal case was not initiated or pending as on the date of the DPC, and thus, the order dated 03.10.2019 (Annexure A-2) is absolutely against the law of the land and the applicant has been denied his rightful promotion from the post of Examiner to the post of Appraiser. He submits that insofar as the applicant is concerned, departmental charge-sheet came to be issued against him only on 12.06.2019 and the same was a minor penalty charge-sheet and he has already denied the allegations made against him in the said charge-sheet of 12.06.2019. Thus, on the date of the DPC and also on the date when the actual promotion order has been issued and the juniors have been promoted, none of the three conditions as per the DoPT OM dated 14<sup>th</sup> September, 1992 existed and his case could not have been kept under the sealed cover. He further submits that the juniors of the applicant have been granted promotion w.e.f. 13.03.2019 and thus he is also entitled to be promoted w.e.f. 13.03.2019 to the post of appraiser.





O.A.No.708/2019

3. Counsel for the applicant, in support of his arguments, has placed reliance on the following judgments of the Apex Court and the Tribunal:

(i) Union of India & Ors vs. K.V. Jankiraman & Ors, (1991) 4 SCC 109.

(ii) Union of India & Ors vs. Anil Kumar Sarkar, (2013) 4 SCC 161.

(iii) Union of India & Ors vs. Sangram Keshari Nayak, (2007) 2 SCC (L&S) 587.

(iv) Coal India Ltd. & Ors vs. Saroj Kumar Mishra, (2007) 9 SCC 625.

(v) Judgment dated 3<sup>rd</sup> of December, 2018 in OA No.658/2015 of the Tribunal and

(vi) Judgment dated 18<sup>th</sup> of December, 2018 in OA No.743/2017 of the Tribunal.

4. Counsel for the respondents submits that the applicant's case was put in sealed cover based on non-grant of vigilance clearance by virtue of name of the applicant figuring in the list of officers with doubtful integrity and impending charge-sheet. The charge-sheet was served upon the applicant on 12.06.2019 and 19.07.2019, despite which, the DPC dated 13.03.2019 put his case in a sealed cover based on lack of vigilance clearance on account of his name figuring in the list of officers with doubtful integrity.



5. Heard the learned counsel for the parties at length and perused the entire material placed on record.

6. Department of Personnel & Training has issued various instructions on sealed-cover procedure and its implications on the Government servants at the time of promotion, mainly being DoPT OM dated 14<sup>th</sup> September,



O.A. No.708/2019

1992. Recently, DoPT, vide its OM dated 30.08.2022, has consolidated the procedure to be followed in this regard by the authorities concerned. As per the OM issued from time to time at the time of consideration of the cases of Government servants for promotion, details of Government servants in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee: -

- 
- 
- (i) Government servants under suspension;
  - (ii) Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and
  - (iii) Government servants in respect of whom prosecution for a criminal charge is pending.

Applicant submits that the adoption of the sealed cover could not have been only on the basis of contemplation when the actual departmental charge-sheet/criminal case was neither initiated nor pending as on the date of the DPC. This position has not been controverted by respondents, rather they have stated that his name was placed in sealed cover based on non-grant of vigilance clearance by virtue of name of the applicant figuring in the list of officers with doubtful integrity and impending charge-sheet. Non-grant of vigilance clearance certificate is not valid reason for keeping applicant in sealed cover, this could not have been done as the same is in violation of the law laid down by the Apex court and instructions on



O.A. No.708/2019

the subject issued by DoPT. As a result respondents are directed to open the SEALED COVER and give effect to the Result/Recommendation of the DPC, if the Applicant is found "FIT" for promotion to the post of Appraiser, and further to promote him with all consequential benefits w.e.f. 13.03.2019 of seniority, promotion, fixation of pay, arrears of pay, etc in the post of Appraiser. This shall be done within a period of two months from the date of receipt of certified copy of this order. With the aforesaid direction OA is allowed. MAs pending, if any, also disposed of accordingly. No Costs.



*SL*  
(Shri Krishna)  
Member (A)

*SL*  
(Harvinder Kaur Oberoi)  
Member (J)

/sk/

Certified True Copy  
Date.....13/3/2023.....

*[Signature]*  
Section Officer  
Central Administrative Tribunal  
Mumbai Bench, Mumbai

*JD*  
*02/03/23*





**मुंबई सीमाशुल्क अंचल - I**  
Mumbai Customs Zone - I  
**प्रधान आयुक्त सीमाशुल्क (सामान्य) का कार्यालय**  
Office of the Principal Commissioner of Customs (General)  
**नवीन सीमाशुल्क भवन, बेलार्ड इस्टेट, मुंबई**  
New Custom House, Ballard Estate, Mumbai,  
Maharashtra - 400 001  
Telephone - 022-22757736 / 7422  
E-mail: [p.estt-mum-cus-zone1@gov.in](mailto:p.estt-mum-cus-zone1@gov.in)

**F. No. II/(26)/16/2021-P and E****Date:15-02-2024****EOO No. 64 /2024**

Consequent upon Hon'ble CAT Mumbai in O.A. No. 708/2019 dated 22.02.2023, partial modification in EOO No 176/2022 dated 05.08.2022 (issued as per recommendations of the DPC dated 04.07.2022 to 06.07.2022), the following changes are ordered with immediate effect:

S.No.	Name of Officer	DOB	Category	Deemed Promotion	Date of
01	Shri Gaurav Narayan Shede	12.05.1985	UR	13.03.2019	

2. The officer concerned need not assume the charge as he is already working in the capacity of Appraiser.
3. The officer concerned may exercise the option for fixation of pay in terms of FR-22(1)(a)(i) as per DoPT OM dated 27.07.2017 issued vide No. 13/02/2017-Estt(Pay-I) in the higher grade afresh within one month of issuance of this order. Such option once exercised shall be treated as final.
4. Any change in the inter-se seniority of Appraiser/seniority position of the concerned officer consequent upon issuance this order shall be reflected in the seniority list.
5. The officer is entitled to all the consequential benefits w.e.f. 13.03.2019 as per Hon'ble CAT, Mumbai Bench Order in OA No. 708/2019 dated 22.02.2023.
6. The subject promotions being effected under this order are subjected to the final outcome of any other case pending before any court of law having any impact on the seniority and promotion in the grade of Appraiser and any review measures taken by this Department regarding seniority and promotion in pursuance of any decision in any Court/ Tribunal cases.

This issues with the approval of the Competent Authority.

Dr. Kundan Yadav

I/1755978/2024

ADDITIONAL COMMISSIONER  
ADC/JC-II-O/o Pr Commissioner-Customs-General-Zone-I-Mumbai

Copy to:

1. The Pr. Chief Commissioner of Customs, Mumbai – I, II & III.
2. All Pr. Commissioner/ Commissioner of Customs, Mumbai – I, II & III.
3. Liaison Officer for SC/ST/OBC/PH.
4. O/o The Development Commissioner, SEEPZ SEZ, Andheri (East) Mumbai- 400 096
5. O/o The Pr. ADG, DRI, MZU Mumbai- 400 020
6. The Deputy Commissioner of Customs, EDI – for uploading on the website.
7. CAO/PAO
8. CCR/IPR Section.
9. Concerned Officer.
10. Office copy.