

Central Administrative Tribunal
Principal Bench

O.A. No. 54 of 1998

New Delhi, dated this the 1st JANUARY 2001

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HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

1. Shri Ashok Raj,
S/o Shri Dina Nath,
Ad hoc Assistant,
Employees' Provident Fund Organisation,
(Central Office),
14, Bhikaji Cama Place,
New Delhi.
2. Shri Kailash Chand
S/o Shri Sidhanand
3. Shri K.S. Dubey,
S/o Shri S.M. Dubey
4. Smt. Rita Handa,
W/o Shri B.S. Handa
5. Shri U.D. Pandey,
S/o Shri O.N. Pandey ... Applicants

(By Advocate: Shri B.S. Mainee)

Versus

1. The Central Provident Fund
Commissioner,
Employees Provident Fund Organisation,
Central Office,
14, Bhikaji Cama Place,
New Delhi.
2. Smt. Seema Bhatnagar,
Assistant
3. Shri Kalyan Krishan,
Assistant (Ad hoc),
4. Shri K.C. Rama Moorthy,
Assistant (Ad hoc)
5. Shri Devender Singh, E.O.
6. Shri Sanjeev Gupta, E.O.
7. Shri Manish Puri. Assistant
8. Shri Sunil Kumar Sharma. Assistant
9. Shri Ishwar Dayal, E.O.
10. Shri Rathnama Kurup, Assistant (Ad hoc)
11. Shri Robia Banerjee. E.O.

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12. Shri Jai Bhagwan, Assistant (Ad hoc)
 13. Shri Yogesh Sharma, Assistant
 14. Shri Lalita Kumar, Assistant
 15. Shri J.N. Sharma, Assistant (Ad hoc)
 16. Shri Vishwa Nath Sharma, Assistant (Ad hoc)
 17. Shri Subhash Chand, Assistant
 18. Smt. Meena Malik, Assistant (Ad hoc)
 19. Shri Sukbir Singh, Assistant
 20. Shri Babu Ram, Assistant
 21. Shri Duli Chand, Assistant (Ad hoc)
 22. Km. Anju Gupta, Assistant (Ad hoc)
 23. Shri A.P. Unni Krishnan, Assistant
 24. Shri N.P.S. Gussin, UDC
 25. Smt. Poonam Bhutani, U.D.C.
 26. Shri Kashi Ram, U.D.C.
 27. Shri Narender Kumar, UDC (EO)
 28. Smt. Rai Bala, UDC (EO)
 29. Shri Ompal Singh, UDC (EO)
 30. Shri Prem Prawesh Solanki
 31. Shri Rajesh, UDC (EO)
 32. Shri Satya Prakash .. Respondents
- (By Advocate: Shri V.S.R. Krishna)

ORDER

S.R. ADIGE, VC (A)

Applicants impugne the final seniority list of UDCs dated 29.8.97 as on 31.3.97 in Employees Provident Fund Organisation (Central Office), New Delhi (Annexure A-1), and seek a direction to count their ad hoc service as UDC for the purposes of seniority with consequential benefits.

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2. As per relevant Recruitment Rules (RRs) promotion to the post of UDC is made 50% through promotion from LDCs etc. on the basis of seniority subject to rejection of unfit, and 50% through promotion from LDCs etc. on the results of a competitive examination. The E.P.F. authorities treated the candidates coming through departmental competitive examination as analogous and equivalent to direct recruits, and fixed the seniority of promotees on the basis of seniority-cum-fitness and promotees on the basis of departmental competitive exam. on a rota quota system. One Shri Mohinder Kumar filed a writ petition in Punjab and Haryana High Court praying for quashing the seniority list of UDCs and for a direction to fix the inter se seniority between the two categories of promotees from the date of their appointment as UDC and not on the basis of rotation of vacancies. That WP was transferred to CAT, Chandigarh Bench, was renumbered as T.A. No. 556/86 and was disposed of by order dated 11.8.87 (Annexure IV) in which it was concluded that the promotees on the basis of the departmental competitive examination could not be considered as direct recruits. Respondents were, therefore, directed to recast the seniority list of UDCs treating all of them as promotees.

3. As certain other Benches of the Tribunal had taken a different view, SLP No. 7274/87 along with SLP No. 7752/87 was filed in Hon'ble Supreme Court. The same were not entertained by the Hon'ble

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Supreme Court who in their order dated 11.8.87 (Annexure V) held "we are of the view that the appropriate rule for determining the seniority of the officers is the total length of service in the promotional post, which would depend upon the actual date when they were promoted".

4. While respondents were in the process of revising the seniority list in accordance with the above observations, several petitions were filed in CAT, Principal Bench claiming seniority from the date of ad hoc promotion even if the said promotion was against vacancies falling within the departmental competitive examination quota, six such petitions along with T.A. No. 43/87 Ashok Mehta and Others Vs. RPFC and others and connected cases considered the matter, and by its order dated 18.4.91 (Annexure VI) referred the matter to a larger Bench to adjudicate on four issues which were framed.

5. The Full Bench after considering the matter in its order dated 5.2.93 held as follows:

".....we answer the questions referred to us in the context of the facts of these cases as follows:

- (a) The officers promoted on the basis of seniority subject to the rejection of unfit and those promoted on the result of the competitive exam. shall be treated as promotees.

Persons promoted by both the modes of promotion shall be included in a common seniority list.

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Their inter se seniority has to be determined on the basis of their total length of service which will be reckoned from the actual date of their promotion in accordance with the relevant recruitment rules.

Promotion by way of ad hoc or stop-gap arrangement made due to administrative exigencies and not in accordance with rules cannot count for seniority.

Principle 'B' laid down by the Supreme Court in the DIRECT RECRUIT CLASS II ENGINEERING OFFICERS' ASSOCIATION AND OTHERS VS. STATE OF MAHARASHTRA AND OTHERS will apply as explained by the Supreme Court in KESHAV CHANDRA JOSHI AND OTHERS ETC. VS. UNION OF INDIA AND OTHERS only to cases where the initial appointment is made deliberately in disregard of the rules and the incumbent allowed to continue in the post for long periods of about 15 to 20 years without reversion till the date of regularisation of service in accordance with rules, there being power in the authority to relax the rules.

- (b) The rota quota principle of seniority is not applicable for determining the seniority to the cadre of UDCs in these cases.
- (c) The order of the Supreme Court in Mohinder Kumar's case constitutes a binding precedent as held by the Full Bench of the Tribunal in R.D. Gupta's case even after the judgment of Supreme Court in the Direct Recruit Class II Engineering Officers' Association's case.
- (d) As the correct principles for determining seniority in the cadre of UDCs were clarified by the Supreme Court in Mohinder Kumar's case on 11.8.1987, and as cases in regard to seniority in the cadre of UDCs have been pending since long, it would not be just and proper to decline relief in regard to recasting of the seniority list on the ground that it would have far reaching and unsettling effect in managing the cadres of not only of the UDCs but also the posts in the higher grades."

6. It is in implementation of the aforesaid order of the Full Bench that respondents revised the seniority list and after issuing a provisional revised

seniority list and inviting objections to the same, have published the final revised seniority list dated 29.8.97 which is now impugned in the present O.A.

7. We note from the pleadings that different Division Benches of the of the Tribunal has interpreted the Full Bench decision dated 5.2.93 differently. We as a Division Bench of the Tribunal are bound strictly by the Full Bench decision. That decision categorically and unambiguously states that


"Promotion by way of ad hoc or stop-gap arrangement made due to administrative exigencies and not in accordance with rules will not count towards seniority."

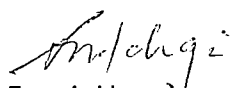
8. Respondents in their replies to Paras 4.18 4.19. 4.20 and 4.21 of the O.A. have categorically stated that the promotion of applicants as UDCs on ad hoc basis was made against vacancies not in their own (Promotion through seniority) quota and, therefore, they have no right to claim seniority on the basis of their ad hoc service. The fact that applicants were promoted as UDCs on ad hoc basis, against vacancies not in their own (promotion through seniority) quota has not been specifically and unambiguously denied by applicants in the corresponding paras of their rejoinder. All that is stated in the corresponding paras of the rejoinder is that "paras 4.18 to 4.21 of the counter affidavit are wrong and denied and paras 4.18 to 4.21 of the application are reiterated, but there is no categorical and unambiguous averment in paras 4.18 to 4.21 of the O.A. that applicants' promotion as UDC

on ad hoc basis was made against vacancies in the promotion through seniority quota. In other words applicants were promoted on ad hoc basis against vacancies which arose in the promotion through competitive examination quota. This cannot be said to be promotion made in accordance with the rules. (16)

9 These findings are supported by applicants' own pleadings. Paras 4.6 of the O.A. gives the dates of applicants' ad hoc promotion and the date of their regular promotion. There is a gap of nearly 7-11 years between their dates in respect of each of the applicants. The dates of the regular promotion were in respect of the 50% vacancies falling in the promotion through seniority quota. From this it would follow that the dates of their ad hoc promotion were in respect of vacancies falling in promotion through departmental competitive quota, and it is because candidates were not available in the promotion through departmental competitive quota either because the departmental competitive examination was not held, or for any other reason that applicants were given ad hoc promotion against vacancies arising in the 50% promotion through departmental competitive examination quota without actually participating in or qualifying in the departmental competitive examination. No materials have been furnished to us to warrant a different conclusion. 2

10. Hence, applying the Full Bench decision dated 5.2.93 to the facts and circumstances of the present case, applicants' claim to count their ad hoc service towards seniority as UDCs fails. The O.A. is dismissed. No costs.


(Dr. A. Vedavalli)
Member (J)


(S.R. Adige)
Vice Chairman (A)

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