

Central Administrative Tribunal  
Principal Bench

O.A. 1333/96

New Delhi this the 31st day of March, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).  
Hon'ble Smt. Shanta Shastry, Member(A).

1. Shri N.S. Saini,  
S/o Shri Bhim Singh Saini,  
R/o Village - Ajroundi,  
18/1, Mathura Road,  
Faridabad (Haryana).
2. Shri Om Prakash,  
S/o Shri Baraf Singh,  
R/o Vill & PO - Dayalpur,  
Distt. Faridabad (Haryana).      ... Appliccants.

(Applicants present in person)

Versus

1. Regional Provident Fund  
Commissioner (Haryana),  
Bhavishya Nidhhi Bhavan,  
Sector 15-A,  
Faridabad - 121007.
2. Shri L.R. Yadav,  
Now working as AAO under  
Respondent No. 1 and service  
to be effected through Respondent 1.
3. Shri L.C. Batra,  
working as Head Clerk,  
under Respondent No.1 and  
service to be effected through  
Respondent No.1.      ... Respondents.

(Shri G.C. Sharma, Assistant, Departmental Official present)

O R D E R (Oral)

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicants are aggrieved by the position assigned to them as Head Clerks in the final seniority list of Head Clerks as on 31.12.1993 issued by the respondents by letter dated 24.11.1994.

2. The applicants have submitted that they have been working as Head Clerks since 15.1.1988 but they have been

8

17

given notional seniority from later dates i.e. 9.1.1991 and 14.1.1991, respectively, and persons, who were promoted later as Head Clerks have been shown senior to them in the seniority list of Head Clerks.

3. The brief relevant facts of the case are that Applicant 1 joined as LDC with the respondents on 15.1.1977. He was promoted as UDC on 30.1.1980 and later promoted as Head Clerk on ad hoc basis, on 15.1.1988. Applicant 2 joined as LDC on 17.1.1977. He was also promoted as UDC on 30.1.1980 and promoted as Head Clerk on ad hoc basis w.e.f. 15.1.1988. According to them, they were confirmed as Head Clerks by a duly constituted DPC, in the case of applicant 1 w.e.f. 15.1.1988, and in respect of applicant 2 w.e.f 1.12.1989 (which facts have been brought out in the rejoinder filed by them). Their contention is that as the respondents themselves have confirmed them as Head Clerks from an earlier date, namely, 15.1.1988 and 1.12.1989, respectively, there was no reason why the respondents could have ignored the services rendered by them in the grade of Head Clerks even though it was on ad hoc basis initially. Their grievance is that their deduction of service as Head Clerk has resulted in their becoming junior to their erstwhile juniors, namely, Respondents 2 and 3. According to them, Respondent 2, who had been confirmed/promoted as Head Clerk on 9.5.1988 has been given notional seniority w.e.f. 14.2.1986 and Respondent 3, who was promoted as Head Clerk by order dated 4.12.1989 has been given seniority w.e.f. 1.11.1988. They have also relied on the judgement of the Hon'ble Supreme Court in Regional Provident Fund Commissioner & Ors. Vs. Mohinder Kumar & Ors. (SLP (Civil) No. 7274/87), decided on

(18)

11.8.1987 (Annexure 'C'). In this order, the Supreme Court has held that "the appropriate rule for determining the seniority of the officers is the total length of service in the promotional posts which would depend upon the actual date when they were promoted". They have also contended that the respondents cannot also fix the seniority of the juniors on the basis of the date of passing the departmental examination but have to be fixed on the basis of the date of actual promotion, in terms of the order passed by the Supreme Court. They have also relied on the averments made by them in the rejoinder, namely, to the effect that as per the respondents' own order dated 22.8.1990 applicant 1 had been promoted on regular basis in the cadre of Head Clerk on the recommendations of review DPC w.e.f. 15.1.1988 and in the case of applicant 2, he has been regularised as Head Clerk w.e.f. 1.12.1989. In the circumstances, the applicants have prayed that the respondents may be restrained from making promotions on the basis of the impugned seniority list. They have also prayed that the respondents may be directed to assign correct seniority to them in accordance with the rules and instructions by giving them seniority as Head Clerks on regular basis w.e.f. 15.1.1988 and 1.12.1989, respectively.

4. We have perused the reply filed by the Respondent 1. No replies have been filed by the Respondents 2 and 3. They have submitted that they have taken necessary action in terms of the orders passed by the Tribunal (Chandigarh Bench) in the case filed by one Mohinder Kumar, later the Full Bench judgement of the Tribunal in Ashok Mehta Vs. R.P.F.C. (1993(2) SLR P-91) and also the judgement of the Supreme Court, referred to above. Their contention is that they have recast the seniority list ignoring the ad hoc services for  
YB:

(19)

purposes of seniority and have taken into account the principles of fixation of seniority, as laid down in the aforesaid judgements. They have stated that the rules for fixing the seniority in the E.P.F. organisation were revised and notified on 19.12.1989. Accordingly, their contention is that the seniority of <sup>the</sup> person promoted to the post of Head Clerk after 16.11.1989 is to be fixed on the basis of the seniority rules dated 16.11.1989. It follows from this that prior to the date of revision of the Recruitment Rules, the fixation of seniority of the promoted officers has to be done in terms of the rules existing earlier. (See the judgement of the Supreme Court in Y.V. Rangiah Vs. State of Gujarat (AIR 1983 SC 853).

5. The respondents have explained how they have gone about determining the vacancies in the two quotas available under the Rules which is set out in Paragraph 13 of the reply. They have submitted that the date of regular promotion as Head Clerk has been mentioned as a notional date in the impugned order because these dates had to be determined and assigned with retrospective effect in the light of the directions and orders of the Full Bench judgement of the Tribunal dated 5.2.1993. According to them, the applicant has concealed the fact that he had been promoted as Head Clerk on 15.1.1988 on ad hoc basis only.

6. We have carefully considered the pleadings and the submissions made by the applicants and documents on record.

7. The contention of the respondents that the applicant has concealed the fact that he was promoted as Head Clerk on 15.1.1988 on ad hoc basis cannot be accepted in the

85

20

light of the order passed by them dated 22.8.1990 (Annexure RA-1). In this order, it is stated that on the recommendations of the review DPC, the date of regular promotion in the cadre of Head Clerks has been changed in respect of the officials mentioned in the list enclosed, which includes the name of applicant 1 at Serial No. 11 showing his date of regularisation in the cadre on 15.1.1988. The respondents have not stated in their reply that this order has since been cancelled by them and reasons thereof. It appears that although applicant 1 has been initially appointed as Head Clerk on ad hoc basis w.e.f. 15.1.1988, the respondents themselves have regularised the promotion in that cadre w.e.f. 15.1.1988. Similarly, in the case of applicant 2, he has stated that he has been regularised as Head Clerk w.e.f. 1.12.1989. From the documents on record, we do not find that these averments have been contradicted or any other order <sup>has</sup> ~~has~~ superseded, for example, the earlier order passed by the respondents dated 22.8.1990. Applicant 2 has submitted that the regularisation order in his case had been passed separately w.e.f. 1.12.1989 and in any case it was for the respondents to have placed the facts before the Tribunal in the first instance. In the circumstances, it is seen that the applicants have been regularised by the respondents on promotion in the cadre of Head Clerks w.e.f. 15.1.1988 and 1.12.1989, respectively. However, in the impugned seniority list, the respondents have not counted their seniority from the aforesaid dates of regular promotion, but from a notional date of promotion i.e. 9.1.1991 and 14.1.1991, respectively. If the applicants have been regularly promoted to the post of Head Clerks on regular basis from the dates mentioned above, they would be entitled to assignment of seniority in terms of those dates on the

(21)

basis of the order by the Hon'ble Supreme Court dated 11.8.1987 i.e. the determination of seniority of the officers is to be based on the total length of service in the promotional posts which would depend upon the actual date when they were promoted. In the circumstances, it is for the respondents to verify the facts and in case applicant 2 has also been promoted w.e.f. 1.12.1989 as he claims by order No.151/10/Adm/89/4360 dated 22.8.1990, then he would be entitled for counting his services as Head Clerk w.e.f. 1.12.1989.

8. In the result, the application succeeds and is allowed to the following extent:

(i) The respondents shall revise the seniority list of Head Clerks as on 31.12.1993 to assign correct seniority to the applicants with effect from their regular promotion in the grade, that is with effect from 15.1.1988 and 1.12.1989, respectively. They shall also be entitled to all consequential benefits flowing from it;

(ii) Necessary action as provided above shall be taken within three months from the date of receipt of a copy of this order.

No order as to costs.

*Lanka*

(Smt. Shanta Shastry)  
Member (A)

'SRD'

*Lakshmi*

(Smt. Lakshmi Swaminathan)  
Member (J)