

Fit for Reporting

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

O.A.No.928 of 1989.

Date of decision: 21/2/92

Mrs. Hardeep Kaur Bhatia  
and Others

...Applicants

Versus

The Director-General,  
E.S.I.Corporation & Others

...Respondents

CORAM:

THE HON'BLE MR. JUSTICE RAM PAL SINGH, VICE-CHAIRMAN,  
THE HON'BLE MR. I.P.GUPTA, MEMBER (A).

Counsel:

Shri E.X.Joseph

...For the Applicants.

Shri D.P.Malhotra

...For the Respondents.

1. Whether Reports of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?

JUDGMENT

( HON'BLE MR. I.P.GUPTA, MEMBER (A) ) :

In this application, filed under Section 19 of the Administrative Tribunals Act, 1985, the applicants are working as Upper Division Clerks(U.D.C.s) under the Administrative Officer, Employees State Insurance Corporation (in short, Corporation), New Delhi.. They entered the service of the Corporation as Lower Division Clerks(L.D.C.s) and were promoted in terms of the provisions contained in the Employees State Insurance Corporation <sup>(Recruitment)</sup> ~~Regulations~~, 1965 on the basis of departmental promotion by seniority-cum-fitness. The details of

the initial appointment, ad hoc promotion and regular promotion to the post of UDC in respect of the applicants are as follows :-

No.	Name	Initial appointment as L.D.C.	Adhoc promotion as U.D.C.	Regular appointment as U.D.C.
1.	Mrs. Hardeep Kaur Bhatia (Applicant No.1)	22-12-'71	16-01-'80	19-12-'80
2.	Mrs. Veena Saxena (Applicant No.2)	11-07-'73	01-02-'80	25-01-'83
3.	Mr. Sarwan Singh Parmar (Applicant No.3)	15-09-'73	25-05-'81	09-04-'86

2. Shri B.D.Chaturvedi, Mrs. Madhu Bala and Mrs. Sita Devi, respondent no.3 to 5 respectively, are also working as UDCs under respondent no.2. Their particulars are given below : They were promoted by departmental competitive examination :

No.	Name	Initial appointment as L.D.C.	Adhoc promotion as UDC	Regular appointment as UDC
1.	Shri B.D.Chaturvedi (Respondent No.3)	4.8.'76	13.9.'80	19.12.'80
2.	Mrs. Madhu Bala Kaushik (Respondent No.4)	18.6.'80		12.03.'85
3.	Mrs. Sita Devi (Respondent No.5)	11.3.'81		23.04.'86

3. The learned counsel for the applicants contends that the seniority list has ignored the date of ad hoc appointment. Further, even though all appointments to the post of UDCs were made on the basis of promotion, the respondents applied the rule of quota-rota and carried forward vacancies in terms of the rule in regard to inter-se-seniority of direct recruits and promotees laid down in Home Ministry's OM dated 22-11-59. This is, however, not a case of inter-se-seniority of direct recruits and promotees but amongst promotees themselves from two different sources.

4. The reliefs sought are :-

- (i) The seniority list of UDCs as on 31-12-87 issued under Memo dated 30-6-1988 be quashed.
- (ii) The respondents may be directed to re-determine the seniority of UDCs, whether promoted on the basis of seniority-cum-fitness or promoted on the basis of departmental exam by basing such determination on the actual date of promotion, taking into account the ad hoc service rendered before regularisation of the promotion.
- (iii) Grant of consequential reliefs.

5. The main arguments of the learned counsel for

the applicants are :-

(i) The rule of seniority in regard to inter-service seniority of direct recruits and promotees cannot apply in the case of appointments wholly by promotion by two methods. Rule 28(2) of E.S.I.C. (Recruitment) Regulations, 1965 lays down that promotions to the post of UDC shall be made by filling 75% vacancies by promotion on the basis of seniority subject to rejection of unfit and 25% by promotion on merit on the basis of departmental competitive examination. Rule 29(3) lays down that the relative seniority between the direct recruits and promotees shall be regulated by general instructions issued by the Director-General from time to time. The seniority list of UDCs of the Punjab region issued on the basis of quota-rota was challenged, in the case of MOHINDER KUMAR & OTHERS VS. REGIONAL PROVIDENT FUND COMMISSIONER & OTHERS ( T.A.No.556/86) decided on 23-1-87, by the UDCs of the Provident Fund Department in which also promotion to UDC is similarly made from LDC on the basis of two different methods as in the case of ESI Corporation. The Chandigarh Bench ordered that

where all appointments are by promotion through two methods, the principle of Home Ministry's Memorandum dated 22-12-89 in regard to inter-se seniority of direct recruits and promotees would not apply. The Regional Provident Fund Commissioner and Others filed Special Leave Petition challenging the said judgment of the Chandigarh Bench. The Hon'ble Supreme Court by its Order dated 11-8-87 did not entertain the SLP and observed that "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." Therefore, amongsts promotees, the length of service should be relevant.

(ii) In a Full Bench judgment of the Principal Bench dated 7-8-89 in OA No.1147/88 (R.D.GUPTA & OTHERS VS. U.C.I. & OTHERS), it was held as follows :-

"34. In the result, we hold as follows:-

(i) The observation made by the Supreme Court in its order dated 11-8-1987 while dismissing the Special Leave Petition filed by the respondents against the judgement of the Chandigarh Bench of the Tribunal in Mohinder Kumar's case, constitutes a binding precedent in the instant case.

(ii) The observation made by the Supreme Court in its order dated 11-8-1987 while

dismissing the Special Leave Petition in Mohinder Kumar's case, cannot be construed as referring to any general rule or principle of seniority de hors the rules or as laying down any such rule or principle. Its true import and meaning is that inter se seniority of the promotees in the cadre of UDCs is 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. If an employee has been promoted after the D.P.C. has found him fit for promotion, that period will also count, even if his promotion may be termed as ad hoc, or temporary, or officiating. For determining the actual date of promotion, the period during which the employee had been promoted on an ad hoc basis by way of stop-gap arrangement de hors the recruitment rules, will have to be ignored.

(iii) The decision of the Hyderabad Bench of the Tribunal dated 13.10.1987, in the case of Bodapati Tulasidas to the extent that it relied upon and followed the decision in Mohinder Kumar's case, and the observation of the Supreme Court in its order dated 11-8-1987 was right, but the reference to the reliance upon the decision of the Supreme Court in A.N. Pathak's case by the Tribunal was not correct as, in our opinion, the principle for determining inter se seniority between direct recruits and promotees which was in issue in A.N. Pathak's case, cannot be applied to determine the inter se seniority of two categories of promotees which was in issue before them, as it is before the Full Bench. "

(iii) When the case of Shri R.D. GUPTA & OTHERS, referred to above, was remitted by the Full Bench of the Tribunal to the Division Bench, with the observation quoted in para 4(ii) above, the Division Bench observed as follows on 21-12-1989 :-

"(i) The inter se seniority of the promotees in the cadre of UDCs shall 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 Regulation 28(2) of the Employees State Insurance Corporation (Recruitment) Regulations, 1965, read with Principle No.5 of O.M. dated 22-12-1959 issued by the Ministry of Home Affairs. If an employee has been promoted after the D.P.C. has found him fit for promotion, that period will also count for the purpose of reckoning seniority, irrespective of whether his promotion may be termed as ad hoc, or temporary or officiating. The period during which an employee had been promoted on an ad hoc basis by way of stop-gap arrangement, is not to be counted for the purpose of seniority.

(ii) Where an employee promoted initially on a temporary basis is confirmed subsequently in an order different from the order of merit indicated at the time of his promotion, seniority shall follow the order of confirmation and not the original order of merit.

(iii) The respondents are directed to revise the seniority list of UDCs on the basis principles mentioned in (i) and (ii) above. Persons already promoted on the basis of the existing practice shall not be reverted and they shall be accommodated in the promotional post by creating supernumerary posts, if necessary. Further promotions should, however, be on the basis of the revised seniority list.

(iv) The respondents shall comply with the above directions within a period of three months from the date of communication of this order."

6. The case of the applicants is covered by the order of the Supreme Court dated 11-8-1987, referred to above, and by the judgement and order passed by the Principal Bench as also the Division Bench in O.A No.1147 of 1988, cited above. The attention of the learned counsel for the applicants was drawn by the learned counsel for the respondents to the SLP No.16335/90

decided on 7-10-91 filed against the order in the case of R.D.GUPTA & OTHERS (supra) where the Hon'ble Supreme Court observed that "the direction of the Central Administrative Tribunal as agreed <sup>to</sup> by learned counsel for the respondents is clarified that while the directions are implemented, the quota-rota shall be kept in view."

The learned counsel for the applicants contended that this quota-rota rule would apply to the proceedings of the DPC in a particular year so as to put three promotees by seniority and one promotee by departmental examination in a panel by rotation. It would not be relevant for a panel prepared after 2 or 3 years.

7. The learned counsel for the respondents contended that :-

(i) The application is not maintainable due to misjoinder of parties and is barred by limitation since the seniority lists were finalised during the year 1981 to 86 in which the names of the applicants figured for the first time. Photo copies of extracts of seniority lists as on 31-7-82 and as on 31-1-85 and 23-10-86 are enclosed with the counter. The cause for grievance to the applicants no.1 and 2 arose between 19-12-80 and 25-1-83 which is more than 3 years old immediately

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proceeding the extension of the jurisdiction of the Tribunal to employees of resident Corporation. The application was filed only on 28th April, 1989 before the Tribunal. However, the representations made by the applicants during February and March, 89 against the impugned seniority list issued on 30-6-86 are infructuous and the applicants have rushed to the Tribunal without waiting for six months for reply from the respondents as required under Section 21(1) (b) of the Act.

(ii) Ad hoc promotion given de hors the rules does not count for seniority.

(iii) The adoption of quota-rota rule is perfectly justified in view of the Supreme Court's order dated 7-10-91 in SLP No.16335/90.

8. While analysing the facts and arguments in this case, we shall first take up the issues of misjoinder of parties and of limitation. The learned counsel for the applicant brought out that Administrative Officer (AO), <sup>was the executive head of office,</sup> at Hqrs office, while Director-General was the Chief Executive Officer of the Corporation. Regarding limitation, while para 3 of the counter says that 'the applicants have rushed to the Tribunal without waiting for 6 months for a reply from the respondent', elsewhere

the argument of limitation has been adduced.

While it is true that seniority list circulated on 31-7-82 contained the name of the applicant 1, the names of Mrs. Madhu Bala and Mrs. Sita Devi who have also superseded applicants 2 and 3 were not there. Of course, applicant 1 was shown junior to Shri B.D. Chaturvedi in the list of 31st July, 82 but the list was not final. It invited objections. Again in the seniority list circulated on 31-1-85, the names of Mrs. Madhu Bala and Mrs. Sita Devi do not appear and they are alleged to have superseded applicants 2 and 3. In any case, the names of Madhu Bala and Sita Devi could not appear in the seniority list of 31-12-84 circulated on 31-1-85, since they were promoted only on 12-3-85 and 23-4-86.

Again, a seniority list was circulated on 23-10-86 giving the position as on 30-6-86. Madhu Bala had become senior to Veena Saxena and Seeta Devi had become senior to Sarwan Singh; B.D. Chaturvedi was shown senior to Hardeep Kaur as before. This list contained the names of the applicants and of the respondents, but this list was circulated for inviting objections. It was only on 30-6-88 that a final seniority list as on 31-12-87 was issued in

respect of persons upto S.No.69 and from S.No.70 to 95, it was again for inviting objections Applicants 1 & 2 are above S.No.70 and so also respondents 3, 4 & 5. Applicant 3 is still below S.No.70 at S.No.78. Applicants filed objections on 8-3-89, 10-3-89 and 24-2-89. The O.A was filed on 27-4-89 without waiting for 6 months. Therefore the application could at best be treated as premature. Since nearly 3 years have passed, we would like to direct the respondents to dispose of their representations within four months, keeping in view the judgements of the Hon'ble Supreme Court and Tribunals.

9. Coming to the judgements, since controversies have been raised on the interpretation by the learned counsels, we would like to discuss them briefly. So far as regularisation of ad-hoc service is concerned, both the counsels for the applicants and the respondents are agreed on the point that ad-hoc service de hors the rules would not count and that if an employee has been promoted after the DPC has found him fit, that period will count, even if his promotion may be ad-hoc. This is consistent with the judgement of The full Bench dated 7-3-89 in O.A 1147/88.

10. Regarding counting of seniority inter-se promotees by two sources in the ratio of 3:1 (promotion by seniority : promotion <sup>by</sup> departmental exam ), the order of the Hon'ble Supreme Court on 11-8-87 in SLP against order of the Chandigarh Bench of the Tribunal in TA No.556/86 was that the total length of service in promotional posts (which would depend upon the actual date when they were promoted) would be the guiding principle. In the case of R.D. Gupta & Ors. (O.A 1147/88 decided on 21-12-89), the Tribunal had observed inter-alia that inter-se seniority of the promotees shall be determined on the basis of total length of service which will be reckoned from the actual date of promotion in accordance with Regulation 28(2) of ESIC (Recruitment) Regulations, 1965 read with principle No.5 of OM dated 22-12-59 issued by MHA. Regulation 28(2) ESIC (Recruitment) Regulation 1965 lays down that vacancies by promotion on the basis of seniority and vacancies by promotion on merit on the basis of departmental Competitive examination would be filled in the ratio of 3:1 MHA's OM of 22/12/59 lays down that among other things permanent officers in each grade shall rank senior to persons who are officiating in a grade and as between direct recruits <sup>and</sup> promotees seniority shall

be according to the rota-quota rule. The Hon'ble Supreme Court ordered on 7-10-91 in SLP 16235/90 (Naresh Kumar & Ors. Vs. R.D. Gupta & Ors.) against O.A No.1147/88 (R.D. Gupta & Ors. Vs. U.O.I. ) (decided on 21-12-90 by the Principal Bench) that the direction of the C.A.T. as agreed to by learned counsel for the respondents is clarified that while the directions are implemented the quota and rota shall be kept in view. It would be observed that Hon'ble Supreme Court had only clarified the order of the Chandigarh Bench and not modified or overruled it. Further the Hon'ble Supreme Court had earlier ordered in SLP No.7274/87 dated 11-8-87 (REGIONAL PROVIDENT FUND COMMISSIONER & ORS Vs. MOHINDER KUMAR & ORS.) filed in TA No.556/86 (decided by Chandigarh Bench on 23-1-87) that 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 posts which would depend upon the actual date of promotion. Regulation 28(2) of ESIC (Recruitment )Rules does not lay down any mandatory quota amongst promotees. A harmonious interpretation would therefore mean that while length of service would be the guiding principle for seniority of promotees, the DRC while

drawing up the panel merit-wise or seniority-wise would keep persons from 2 sources (promotion by seniority and promotion by departmental examination) in the ratio of 3:1. The quota-rota, has therefore to be respected in drawing up the panel by the DPC. It would not imply that vacancies against a quota would be carried forward and filled after 2-3 years and persons promoted much later would rank senior to persons promoted earlier because of quota-rota principle, more so when mandatory quota amongst promotees has not been provided in the Regulations. This view is further confirmed by third Schedule to Rule 11(3) of Central Secretariat Clerical Service Rules 1962, which the learned counsel for the respondents quoted as having provisions whose spirit was applicable to ESIC also. Paragraph 2(1)(b) of the said schedule mentioned that persons of the two categories (Amongst promotees) should be included in the Select List by taking alternately three persons from one category and one person from the other. It refers to a particular select list, which would imply select list of the year and not mandatory quota amongst promotees to enable grant of seniority even to these promotees in subsequent years against

the quota.

11. In the light of the judgments quoted in paras 5 to 10 and keeping in view the clarification given above from para 19 onwards, the respondents are directed to dispose of the representations of the applicants filed against the seniority list as on 31-12-87 circulated on 30-6-83 <sup>by speaking orders</sup> within a period of six months after giving an opportunity <sup>also</sup> to those affected adversely to represent.

With the above direction, the case is disposed of, with no order as to costs.

/PKK/

*I.P.Gupta*  
(I.P.GUPTA)  
MEMBER (A)

21/2/92

*Ram Pal Singh*  
(RAM PAL SINGH)  
VICE-CHAIRMAN.