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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No.568/88

Date of decision: 18.08.1993.

Shri A.S. Rawat & Others

...Petitioners

Versus

Union of India through its
Secretary, Ministry of Labour, New Delhi
and others

...Respondents

Coram:-

The Hon'ble Mr. I.K. Rasgotra, Member (A)
The Hon'ble Mr. B.S. Hegde, Member (J)

For the petitioners None

For the respondents None

Judgement(Oral)
(Hon'ble Mr. I.K. Rasgotra)

This petition has been filed by S/Shri A.S. Rawat, Raj Kumar, S.B. Bansal and Narinder Singh who are working as Assistants in the office of Central Provident Fund Commissioner, New Delhi. Apart from the Union of India through Secretary, Ministry of Labour, New Delhi and Central Provident Fund Commissioner New Delhi the petitioners have impleaded Shri N.K. Ahuja, Smt. Kamla Thandani, Shri B.V. Subramaniam, Shri N. Annavu, Shri J.C. Thukral and Shri H.C. Arora who are working as Assistants in the office of C.P.F.C. Respondents Nos. 1, 2 & 8 have filed their counter-affidavit. Others forfeited their right to do so after they had been given repeated opportunities. The principal issue raised for adjudication in this case is whether the Assistants promoted against 25% quota for those who qualified in the qualifying examination can be deemed to be direct recruits and assigned seniority from the back date when the vacancy in that quota arose?

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2. By way of relief the petitioner have prayed that the respondents be directed to determine the seniority of the petitioners and other Assistants on the principle of continuous length of service following the judgements of the additional Benches of the Tribunal at Hyderabad and Chandigarh as also by the Hon'ble Supreme Court in the SLP No.7274/87 dated in the case of Regional Provident Fund Commissioner & Ors vs. Mohinder Kumar & Ors. While disposing of the said SLP the Hon'ble Supreme Court passed the following order on 23.1.1987:-

"We see no reason to entertain this Special Leave Petition. One ground in support of this Petition was that there is contrary decision by one of the Branches of the Administrative Tribunal. That difficulty will not continue by refusing to grant leave. 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 when they were promoted."

These issues had come up before the Full Bench in the case of Ashok Mehta & Ors. vs. Regional Provident Fund Commissioner and Ors. decided on 5.2.1993. The following issues were before the Full Bench:-

"a) Whether the officers promoted on the basis of seniority subject to the rejection of unfit and those promoted on the basis of being declared successful in the departmental qualifying examination should be treated as promotees and assigned seniority in accordance with the principle of seniority on the basis of length of service;

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- b) whether the rota quota principle of seniority is applicable only in the grades where there is an element of direct recruitment;
- c) whether the judgment in Mohinder Kumar & Ors. (supra) of the Hon'ble Supreme Court shall constitute a binding precedent (as held by the Full Bench of the Tribunal in R.D. Gupta's (supra) case, in the face of the judgment of the Constitution Bench of the Hon'ble Supreme Court in the Direct Recruit Class II Engg. Officers' Ass. (supra)); and
- d) whether it will be advisable to unsettle the seniority fixed on the basis of the rota quota principle in the two groups of recruitees to the grade of UDC at this point of time, as the same would have far reaching unsettling effect in managing the cadre of not only of the UDCs but also the posts in the higher grades."

The Full Bench gave the followings answers to the above questions:-

"(a) The officers promoted on the basis of seniority subject to the rejection of unfit and those promoted on the result of the competitive examination shall be treated as promotees. Persons promoted by both the modes of promotion shall be included in a common seniority list.

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

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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.

(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 the 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


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of the UDCs but also the posts in the higher grades."

3. As the issues before us already stand concluded by the Full Bench judgement, referred to above, the O.A. is allowed and the respondents are directed to assign the seniority to the petitioners herein, treating the officers promoted on the basis of the seniority subject to rejection of unfit and those promoted on the result of the competitive examination as promotees on the basis of total length of their service which shall be reckoned from the actual date of their promotion in accordance with the relevant recruitment rules.

4. The O.A. is disposed of, as above. No costs.


(B.S. HEGDE)
MEMBER(J)


(I.K. RASGOTRA)
MEMBER(A)

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