

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 1147/88  
T.A. No.

198

DATE OF DECISION 21.12.1989

Shri R.D. Gupta & Ors.

Applicant (s)

Mr. E.X. Joseph

Advocate for the Applicant (s)

Union of India <sup>Versus</sup> & Others

Respondent (s)

Shri D.P. Malhotra

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. I.K. Rasgotra, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. To be circulated to all Benches of the Tribunal ? *No*

JUDGEMENT

(of the Bench delivered by Hon'ble Shri P.K.Kartha,V.C.)

This case has been remitted by the Full Bench of the Tribunal to the Division Bench for final disposal in the light of the observations contained in the judgement of the Full Bench dated 7.8.1989.

2. The applicants in the present application, who are working as Upper Division Clerks in the Employees State Insurance Corporation (ESIC), have sought for a direction to the respondents to take into account the period of ad hoc service rendered by them as promotees for the purpose of determining their seniority vis-a-vis, those promoted on the basis of the departmental examination.

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3. The facts of the case in brief are as follows. The applicants were appointed in the cadre of LDCs and promoted as UDCs in terms of the provisions of the Recruitment Rules contained in the Employees State Insurance Corporation (Recruitment) Regulations, 1965. Regulation 28 (2) of the Recruitment Rules in respect of the method of promotion to the post of Upper Division Clerk from the post of Lower Division Clerk reads as follows:-

"The promotions to the posts of Upper Division Clerks/Care Taker (E) shall be made in following manner:-

- (a) 75% of the vacancies shall be filled by promotion on the basis of seniority subject to rejection of unfit;
- (b) the remaining 25% vacancies shall be filled by promotion on merits on the basis of departmental competitive examination."

(vide Annexure R-1 to the counter-affidavit of respondents 1 to 4 at page 108 of the paper-book)

4. The applicants were promoted as Upper Division Clerks on the basis of seniority, subject to rejection of unfit.

5. The promotions of the applicants were initially made on an ad hoc basis. Their contention is that vacancies were available for promotion on the basis of quota ear-marked for them. According to them, they ought to have been promoted on a regular basis from the dates on which they were promoted on an ad hoc basis. However, regularisation of ad hoc promotions was ordered after a lapse of periods ranging from 1-3 years without any break in service in the post of U.D.C.

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6. Respondent Nos.5 to 8, who are LDCs, were promoted as UDCs on the basis of departmental competitive examination.

7. The grievance of the applicants is that the determination of the seniority of UDCs has been done by the respondents by wrongly applying the principles of rota-quota and carry forward of vacancies in terms of the Ministry of Home Affairs' O.M. dated 22.12.1959. Applicants have also been denied the benefit of the period of ad hoc service preceding the regularisation for fixation of seniority. According to them, persons promoted on the basis of the departmental examination have been given seniority prior to their date of continuous officiation in the post whereas those promoted on the basis of seniority-cum-fitness, have been shown as junior to those who are promoted much later than them.

8. The respondents have issued a seniority list on 10.2.1988 in which the seniority of UDCs as on 1.1.1988 has been shown as having been determined on the basis of the principles of quota-cum-rota applicable to direct recruits and promotees and in which the principle of carry forward of vacancies was also applied (vide Annexure A-17, p.70 of the paper-book). The said seniority list has been impugned in the proceedings before us.

9. The applicants have contended that the relative seniority of all the promotees has to be determined in the order of their selection for such promotion as laid down in Principle No.5 in the O.M. dated 22.12.1959

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issued by the Ministry of Home Affairs which reads as follows:-

"Promotees:

- (i) The relative seniority of persons promoted to the various grades shall be determined in the order of their selection for such promotion.

Provided that where persons promoted initially on a temporary basis are confirmed subsequently in an order different from the order of merit indicated at the time of their promotion, seniority shall follow the order of confirmation and not the original order of merit."

10. Respondent Nos. 1 to 4 have raised the following contentions:-

- (i) The application is not maintainable due to misjoinder of parties. A large number of employees, who would be vitally affected if the relief prayed for by the applicants is granted by the Tribunal, have not been impleaded as parties.
- (ii) The application has been filed belatedly. The cause of grievance of the applicants arose during the years 1977 to 1982, when they were promoted as UDCs on regular basis from different dates and were placed junior to the respondents. The applicants did not make any representation when seniority lists showing them junior to the respondents were circulated and finalised during the years 1979/1983, in which their names figured for the first time. The Tribunal has no jurisdiction, power or authority to entertain the present application because the cause for grievance arose between 1977 to 1982, which
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is more than 3 years old immediately preceding the extension of jurisdiction of the Tribunal to employees of the respondent Corporation w.e.f. 12th May, 1986.

(iii) As regards the merits, it has been contended that there is nothing inherently wrong in working out the quota rule by adopting the rotational rule of seniority. In this context, reliance has been placed on the decision of the Supreme Court in P.S. Mahal Vs. U.O.I., 1985 SCC (L&S) 61. Regularisation of ad hoc promotees retrospectively from a date prior to their selection by a regular Selection Board would be illegal and violative of Articles 14 and 16 of the Constitution. There was also no serious deviation in following the statutory regulations by the Respondent Corporation. The ad hoc promotions given to the applicants were not after their approval by the DPC. The seniority of the applicants have been fixed in accordance with the statutory regulations which have held the field for over two decades.

11. Respondent Nos.5 to 7, in their counter-affidavit, have, by and large, adopted the same contentions as that of Respondents 1 to 4. According to them, the case of the applicants is based on a misconception that ad hoc service is to be regularised and taken into account for the purpose of seniority. The ad hoc appointments were not made with the prior approval of the DPC. They have

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contended that according to Principle 5 of the O.M. of 1959, the relative seniority of persons promoted to the various grades shall be determined in the order of their selection for such promotions. They have relied upon an office order issued by the respondents on 26.9.1983, which indicates that respondent No.5 is senior to even applicant No.1 because he was assigned a higher place in the order of confirmation. They have also contended that there is no basis to substantiate the contention of collapse of quota in this case.

12. We have carefully gone through the records of the case and have heard the learned counsel for both the parties at length. The matter had been heard by another Division Bench of which one of us (P.K. Kartha) was a Member and having <sup>regard to</sup> the rival contentions of both the parties, a reference was made vide order dated 13.1.1989 to the Hon'ble Chairman to consider the constitution of a Larger Bench in the light of which the present application could be disposed of. The reference was necessitated because the applicants had relied upon the judgement delivered by Chandigarh Bench of the Tribunal in Mohinder Kumar & Others Vs. Regional Provident Fund Commissioner & Others (T-556/86) on 23.1.1987 relating to a similar issue which had arisen in the Office of the Regional Provident Fund Commissioner. The Supreme Court had ~~made~~ made certain observations in its order dated 11.8.1987 while dismissing the Special Leave Petition filed by the respondents against the aforesaid judgement in Mohinder Kumar's case. The petitioners also had drawn

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attention to the judgement delivered by the Hyderabad Bench of the Tribunal on 13.10.1987 in Bodapati Tulasi Das & Others Vs. Central Provident Fund Commissioner & Another (OA-490/86) in which the judgement of the Chandigarh Bench in Mohinder Kumar's case was followed. The Principal Bench had also followed the decision of the Hyderabad Bench while passing an interim order on 20.9.1988 in OA-1599/88. The question arose whether or not the observations made by the Supreme Court while dismissing the S.L.P. in Mohinder Kumar's case would be applicable as a binding precedent and the same was referred to the Full Bench for adjudication.

13. The Full Bench, in its judgement dated 7.8.1989, considered the applicability to the instant case of the decisions of the Chandigarh Bench in Mohinder Kumar's case together with the observations made by the Supreme Court while dismissing the SLP filed by the respondents against the said judgement and the decision of the Hyderabad Bench. It was held that the observation made in its order dated 11.8.1987 while dismissing the SLP in Mohinder Kumar's case was a binding precedent within the meaning of Article 141 of the Constitution. As to the true import and meaning of the observation made by the Supreme Court, the Full Bench held as follows:-

"32. The true import and meaning of the observation made by the Supreme Court appears to be that the inter se seniority of the promotee 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. Such promotion should be in accordance with the relevant recruitment rules and not de hors those rules. If an employee has been duly promoted after the D.P.C. had found him fit for promotion, that period will count even if his promotion may be termed as 'ad hoc' or temporary or officiating. For determining the actual date

by the Supreme Court

of promotion, the mere fact that an employee has been appointed on an ad hoc basis by way of stop-gap arrangement de hors the recruitment rules, will have to be ignored. The reference to the Full Bench is answered accordingly."

14. The conclusions reached by the Full Bench were the following:-

- "(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 and 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."

15. Shri D.P. Malhotra, the learned counsel for the respondents, contended that the reliefs sought in the



present application are barred by limitation, that the practice followed by the respondents in determining the seniority which has been impugned in the present proceedings has held the field for several years and that, in any event, the seniority fixed in the years prior to 1986 should not be re-opened.

16. As to the contention regarding the bar of limitation, it may be observed that the applicants are seeking for extending the benefit of a similar judgement delivered by the Chandigarh Bench in Mohinder Kumar's case. In such a case, the bar of limitation will not apply.

17. To our mind, the contention that the practice followed by the respondents in determining the inter se seniority should not be disturbed on the ground because it has held the field for a number of years, has no validity. At the same time, we are of the opinion that promotions which have already been made in accordance with the practice followed by the respondents, should not be undone as that would cause undue hardship to the persons concerned. The persons who have already been promoted, can be said to have a vested right which cannot be taken away by revision of seniority at a subsequent date by applying a different method or criterion.

18. The seniority list which has been challenged, is the one issued on 12.6.1986. The same requires to be reviewed and revised in the light of the decision of the Full Bench mentioned above. Accordingly, the application is disposed of with the following orders

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and directions:-

- (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 of 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.

The parties will bear their own costs.

*I. K. Rasgotra*  
(I. K. Rasgotra) 21/12/89  
Administrative Member

*P. K. Kartha*  
21/12/89  
(P. K. Kartha)  
Vice-Chairman(Judl.)