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O.A.NO. 908 OF 1996

Order dated <sup>28th</sup> January, 2003

Shri Raja Solomon, the applicant had approached this Tribunal, through O.A.No.908 of 1996, seeking the following reliefs:

- (a) to quash the orders issued by respondent no.4 (Annexures 3 and 5);
- (b) to direct Respondent Nos.1 to 4 to maintain seniority of the applicant vis-à-vis respondent nos. 5 to 11 as published vide Annexure 1; and
- (c) to declare the applicant as senior to respondent nos. 5 to 11 in the cadre of UDC.

The O.A. was heard and disposed of by this Tribunal on 18.12.2001 with the following directions:

“We have heard Shri H.P.Rath, learned counsel for the petitioners, Shri U.B.Mohapatra, learned Addl. Standing Counsel for Respondent No.1 and Shri S.S.Mohanty, learned special counsel appearing on behalf of the other departmental respondents. Shri Mohanty has filed a Memo stating that during pendency of this O.A., Additional Commissioner of Provident Fund has issued Circular dated 23.5.2001 directing re-fixation of seniority on the basis of the principle laid down by the Madras Bench of the Tribunal, which has been upheld by the Hon’ble Supreme Court vide Civil Appeal No.4456-59/92, enclosed to the Memo. It is submitted by the

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learned special counsel that as the seniority is going to be drawn up in the light of the principles decided, as above, this O.A. has become infructuous. Shri Rath, the learned counsel for the petitioners submitted that in order dated 23.5.2001 directing re-fixation of seniority, it has been specifically mentioned in Para 12 that the seniority list prepared and finalized in respect of any cadre in the Region consequent upon specific direction of the C.A.T. and High Courts may not be reopened and therefore, while drawing up the seniority list afresh this direction in Para 12 must be scrupulously followed. After hearing learned counsels for the parties, we hold that the O.A. has become infructuous in view of the fact that the departmental authorities have already directed for fixation of seniority afresh. We also direct that while drawing up of the seniority list afresh, instruction in Para 12 of the circular dated 23.5.2001 should be scrupulously followed."

With the above direction, it was hoped that the official Respondents would ensure that the seniority list of UDCs, as determined on the direction of this Tribunal in T.A.Nos.417 to 444 of 1986, decided on 31.1.1989, will remain undisturbed. That was also the assurance given by the respondents during the hearing of O.A.No.908 of 1996. However, things seem to have not moved on that expected line as seen from the Misc.Case No. 650 of 2002 filed by the applicant making the following allegations. It is stated that although the Tribunal had disposed of the O.A. No.908 of 1996 and some other cases vide order dated dated 18.12.2001 directing the official Respondents to maintain seniority of the applicants as per the provisions of paragraph 12 of the

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principles contained in the circular dated 23.5.2001 issued by respondent No.3, the official Respondents were in fact drawing up a fresh seniority list making the applicant junior to private respondent nos.5 to 11. He further alleged that the mischief has been created by the official Respondents by applying the condition of paragraph 10 of the said circular, dated 23.5.2001. In the circumstances, he prayed that respondent No.4 be directed not to re-open the seniority finalized by the order dated 8.6.1989 at Annexure 1 of the O.A. in pursuance of the decision of this Tribunal. He, therefore, prayed for a direction to the official Respondents not to implement the guidelines contained in the office circular issued by respondent No.4 on 2.5.2002 enunciating new principles for re-casting seniority list of all officials including that of the applicant.

2. From the facts of the case, as brought out in this M.A.No.650 of 2002 filed by the applicant, it would appear that the official Respondents have not been acting on the assurance given by them to the Tribunal nor are they complying with the direction of the Tribunal, as contained in the order dated 18.12.2001. In the said order the Tribunal, in no uncertain terms, had directed that "while drawing up

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the seniority list afresh, instruction in para 12 of the circular dated 23.5.2001 should be scrupulously followed".

3. We have heard Shri H.P.Rath, the learned counsel for the applicant and Shri S.S.Mohanty, learned special counsel for the official Respondents. We have anxiously enquired from Shri Mohanty about the reason for deviating from the direction given by this Tribunal. We also find, as pointed out by the applicant in his Misc. Application, that the Respondents were working more on the basis of the instructions contained in Para 10 of the circular, dated 23.5.2001, than on the instructions contained in para 12 of the said circular. For the sake of clarity, we would like to quota these two paragraphs:

"10. In view of the above, all appointments/promotions made on regular basis on or after 9<sup>th</sup> December 1989 will be governed by EPF Staff (Fixation of Seniority) Regulations,1989. As regards the seniority disputes regarding regular appointments made before 9<sup>th</sup> December 1989, the principles laid down by judgement of Central Administrative Tribunal, Ernakulam Bench in O.A. 265/90, i.e., Shri N.Ravindran Vs.CPFC (All India Services Law Journal1993 (1) (CAT), are to be strictly complied with.

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12. The seniority list prepared/revised and finalised in respect of any cadre in the Region consequent to the specific directions of Central Administrative Tribunal/High Courts, may not be re-opened."

4. We have carefully gone through the said circular. While we appreciate the efforts made by Respondent No.3 in clearly enumerating the principles of seniority in preparation of the seniority list of the direct recruits and promotees in various cadres in the organization through his circular of May 2001, the objective of issuing the circular has remained unfulfilled because of the contents of paragraph 10 as also the contents of paragraph 6 vis-à-vis paragraph 12. The main objective of the circular is to put in clear terms the principles for determining seniority of all cadres of LDC/UDC/Head Clerk/Section Supervisors and thereby to steer clearing of all ambiguities which very often have resulted in disputes in the organization for over last two decades. As mentioned in the circular, the principles of seniority in appointment/promotion were for the first time enunciated on 9.12.1989 by virtue of the Gazette Notification dated 16.11.1989. These regulations were called, "the Employees' Provident Fund Staff (Fixation of Seniority) Regulations, 1989". In the said Regulations, it was stated that no case relating to seniority of an employee, which had already been finally decided should be reopened by virtue of any provision contained in these Regulations. The said Regulations were applicable for determination of seniority on

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promotion/appointment occurring on or after 9.12.1989 and that determination of seniority of individuals on appointment/promotion made prior to 9.12.1989 would be governed by the principles laid down by the judgment of Ernakulam Bench of the Tribunal in OA No. 265 of 1990. However, this was subject to the condition put in paragraph 12 of the said circular dated 23.5.2001 that in case a seniority list in respect of a Region had been finalized/revised consequent to specific direction of C.A.T./High Court, that would not be re-opened. In other words, if the seniority list of a Region had been drawn up on a particular date on the direction of C.A.T./High Court, that should not be reopened.

5. The circular dated 23.5.2001, issued by respondent No.3 is an administrative instruction to the field units to follow the principles of seniority for determining interse seniority in all appointments/promotions in the cadre of LDC/UDC/Head Clerk/Section Supervisor in respect of its employees appointed before and after 9.12.1989 when the Seniority Regulations of 1989 were issued.

6. From the history of the case, it appears that the organization did not have any notified seniority rules although it had introduced the

system of promotion from one cadre to another, like from LDC cadre to UDC cadre both by seniority-cum-fitness method as also by departmental examination method. It is also seen that the departmental examination system was introduced around the year 1970-71, but the departmental examination for promotion to the cadre of UDC was held only on three occasions between 1972 and 1987 resulting in total break down of rota quota system, which led to large scale appointment on ad hoc basis against Examination Quota (E.Q.). It generated incessant conflicts among the examination qualified candidates, seniority-cum-fitness quota candidates and also those who were promoted on ad hoc basis. The latter were demanding that their ad hoc period should be treated as regular for the purpose of seniority and promotion to the cadre of Head Clerk/Section Supervisor. The whole organization, in effect, was reduced to a battle field, everyone running to the Court for justice. During 1980s the Courts/Tribunal looked into the grievances of the employees and laid down principles for determination of seniority between seniority quota (SQ) and examination quota (EQ) in the grade of UDC/Head Clerk and also laid down the principles to be followed for regularizing ad hoc service of long tenure made on the recommendation of a duly constituted DPC

and so on. In result, almost all the Regions had, towards the end of 1980s, seniority list in the grade of LDC/UDC/Head Clerk/Section Supervisor prepared on the specific direction of the Court/Tribunal. It was then in 1989, on 9.12.1989, Respondent No.3 notified in the Gazette of India the regulations, called, "the Employees Provident Fund Staff (Fixation of Seniority) Regulations,1989". In the said Regulations, it was stated that whereas these Regulations would come into effect on the date of their publication in the Official Gazette, i.e., 9.12.1989, no case relating to the seniority of an employee which had already been finally decided, should be reopened by virtue of any provisions contained in these Regulations. The Regulations of 1989 are statutory in nature and, therefore, enforceable at all points of time. In effect, all questions in this organization relating to seniority are to be answered with effect from 9.12.1989 with reference to these Regulations. This has also been the finding of the Full Bench of the Tribunal, when it directed the Madras Bench of the Tribunal to dispose O.A.Nos.1156/96, 1275/96, 819/97, 1052/97,1091/97 and 1105 of 1997, of on merits in accordance with the law, i.e., the Regulations of 1989. We quote the relevant portion of the order of the Full Bench for clarity as to the impact of coming into operation of the

Regulations of 1989 with effect from 9.12.1989 on the question of determination of seniority of the employees of the organization before 9.12.1989 and on and after 9.12.1989:

“8. On a perusal of the aforesaid decisions rendered by the Chandigarh Bench in T.A.No.556/86, referred to above and by the Full Bench at New Delhi in T.A.No.43/87 also referred to above, we find that no reference has been made to the Regulations of 1989 and the same have been decided on the earlier guidelines which were in the nature of instructions. It is seen that the Regulations of 1989 have statutory force. Since the aforesaid regulations were not brought to the notices of the Tribunal the aforesaid decisions, rendered by the Chandigarh Bench and the Full Bench at New Delhi and also in the two orders passed by this Bench of the Tribunal in O.A.Nos. 176/89 (S.Natarajan Vs. The Central Provident Fund Commissioner, New Delhi and others) decided on 10.4.1992 and in O.A.No.483/93 and batch decided on 8.12.1995 can no longer hold the field as they are per incurium. The same are therefore liable to be ignored. As far as the decision rendered by the Ernakulam Bench is concerned, the same has taken into account the aforesaid Regulations and has issued directions in the light of the instructions contained in the Regulations. It is also seen that the above decision was taken in appeal to the Supreme Court by the official respondents and the Supreme Court has upheld the decision of the Ernakulam Bench.....”

Had the Respondents kept the above directions of the Full Bench in mind, the said circular could have covered the following points:

- a) For the purpose of determining seniority in the cadre/grade of LDC/UDC/Head Clerk/Section Supervisor, the matters are to be divided in two groups; the first group relating to those cases where appointments/promotions were made before 9.12.1989

and those which took place on or after 9.12.1989 (This provision has also been incorporated in the Regulations quoted earlier);

- b) Those matters arising before 9.12.1989 and settled on the specific direction(s) of the Court(s)/Tribunal will continue to hold the ground so long those officials continue in those grades;
- c) All matters arising on or after 9.12.1989 will be governed by the principles of seniority enshrined in the Regulations of 1989;
- d) In view of the position stated in (b) above, the judgment in Ashok Mehta's case or any other case decided by the Tribunal, without reference to the Regulations of 1989, will not hold the ground. That is why the decision of Ernakulam Bench in O.A.No. 265 of 1990 in N.Ravindran's case will hold the ground, because that decision of the Ernakulam Bench not only applied the Regulations of 1989 but also that that judgment was upheld by the Apex Court.

7. Having gone through the entire gamut of the long march of the Respondent-Organization in its search for finding a permanent solution to the disputes in fixing seniority of its employees, we would like to conclude by observing that we uphold the plea of the petitioner

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in this M.A. that Respondent No.3 was committing error in recasting the seniority of UDCs already determined by virtue of the order of this Tribunal, dated 31.1.1989, passed in TA Nos.417 to 444 of 1986. We also uphold the plea of the applicant that the office circular dated 2.5.2002 issued by Respondent No.4 could not be applied to the employees whose seniority had already been fixed under orders of the Tribunal prior to promulgation of the Regulations of 1989.

8. In the circumstances, the prayer made in MA No.650 of 2002 is allowed and the Respondent Nos. 3 and 4 are directed to act as follows:

- i) The seniority of UDCs of the office of Respondent no.3 as finalized and circulated on 8.6.1989 in pursuance of the orders of this Tribunal shall not be recast;
- ii) The seniority principles as enshrined in the Regulations of 1989 are to be applied in determining seniority of all the employees recruited/promoted on or after 9.12.1989, if not done already;
- iii) Respondent No.3 shall revise his circular dated 23.5.2001.

  
(M.R.MOHANTY)  
MEMBER(JUDICIAL)

  
(B.N.SOM)  
VICE-CHAIRMAN