

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.261/93

Monday, this the 15th day of November, 1993.

SHRI N DHARMADAN, JUDICIAL MEMBER
AND
SHRI S KASIPANDIAN, ADMINISTRATIVE MEMBER

1. P Omana Amma, Assistant Accounts Officer, O/of the Regional Prvident Fund Commissioner, Trivandrum-4.
2. C Premavally, Section Supervisor, O/of the Regional Provident Fund Commissioner, Trivandrum-4.
3. K Rugmani, Section Supervisor, O/of the Regional Provident Fund Commissioner, Trivandrum-4.
4. K Parameswaran Nair, Section Supervisor, O/of the Regional Provident Fund Commissioner, Trivandrum-4.
5. B Sulochana Devi, Assistant Accounts Officer, O/of the Regional Provident Fund Commissioner, Ernakulam, Cochin-17.
6. G Raghavan, Section Supervisor, O/of the Regional Provident Fund Commissioner, Calicut-2.
7. K Vasudevan, Section Supervisor, O/of the Regional Provident Fund Commissioner, Calicut-2. - Applicants

By Advocate M/s CS Rajan and Thomas John

Vs.

1. Regional Provident Fund Commissioner, Trivandrum-4.
2. PV Bhaskaran, Section Supervisor, O/o the Regional Provident Fund Commissioner, Calicut-2.
3. CV Chandran, Section Supervisor, O/o the Regional Provident Fund Commissioner, Calicut-2.
4. AK Vijayan, Section Supervisor, O/o the Regional Provident Fund Commissioner, Ernakulam, Cochin-17.
5. PS Kesavan, Section Supervisor, O/o the Regional Provident Fund Commissioner, Trivandrum-4. - Respondents
6. PN Vijayakumaran - do -

Respondent-1 by Advocate Shri NN Sugunapalan

Respondents 2 to 6 by Advocate Shri KP Vijayan

O R D E R

N DHARMADAN, JUDICIAL MEMBER

1. A question of seniority of Upper Division Clerks coming in the 75% quota and 25% departmental examination quota arises for consideration in this case. When this Tribunal passed Annexure-A4 judgement considering the judgement, the impugned order Annexure-A8 dated 4.2.1993 was passed, giving benefit of seniority to respondents 2 to 5 above the applicants with the monetary benefit from the date of their respective promotion as shown in the order.

2. The controversy regarding the seniority and promotion to the respective quotas was prevailing for considerable length of time. It was ultimately settled by the Full Bench of the Central Administrative Tribunal, Principal Bench in the decision in TA-43/87 and connected cases dated 5.2.1993. After considering the issue, the following directions were issued:

"8. In the light of our above discussion, we answer the questions referred to us in the context of the facts of those cases as follows:

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. The 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 byway of ad hoc or stop-gap arrangement made due to administrative 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 will apply as explained by the Supreme Court in KESHAV CHANDRA JOSHI AND OTHERS ETC. Vs. UNION OF INDIA AND OTHERS only apply 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, there being power in the authority to relax the rules.

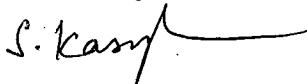
b) The quota principle of seniority is not applicable for determining the seniority to the cadre of UDCs in these cases.

c) The order of Supreme Court in Mohinder Kumar's case constitutes a binding precedent as held by the Full Bench of the Tribunal in RD Tupta's case even after the judgement of the Supreme Court in the Direct Recruit Class II Engineering Officers' Association case.

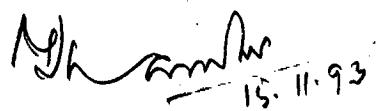
d) As the correct principles for determining seniority in the cadre of UDCs were clarified by the Supreme Court in Mohinder Kumar's case on 11.8.1987, and as cases in regard to seniority in the cadre of UDCs have been pending since long, it would not be just and proper to decline relief in regard to recasting the seniority list on the ground that it would have far reaching and unsettling effect in maning the cadres of not only of the UDCs but also the posts in the higher grades."

3. At the time when the case was taken up for final hearing, the learned counsel appearing on bothsides submitted that the impugned order cannot be sustained in the light of the decision of the Full Bench dated 5.2.1993. A fresh fixation of seniority of the applicant vis-a-vis respondents 2 to 5 is to be made after considering all the aspects in the light of the principles laid down by the Full Bench and with notice to all affected parties.

4. Accordingly we are satisfied that the OA can be allowed quashing the impugned order Annexure-A8. We do so. We further direct that respondents shall prepare a fresh seniority list of the UDCs and Head Clerks in the Regional Profident Fund Commissioners Office under the first respondent, in accordance with the Full Bench judgement as indicated above. No costs.



(S KASIPANDIAN)
ADMINISTRATIVE MEMBER


15.11.93

(N DHARMADAN)
JUDICIAL MEMBER

TRS