

CENTRSAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO:489/99 and 507/99

the 30th day of March 2001

CORAM: Hon'ble Shri Kuldeep Singh, Member (J)

Hon'ble Ms. Shanta Shastri, Member(A)

1. Umar A Qazi
2. Deoram S. Bhangare.
3. Sharad Dharamaraj Bhaye
4. Shamsunder D.Gaikwad
5. Govimata Shantiveer
6. Narayan B. Parab.
7. Ashok S.Jadhav
8. Peter E. Rodrigues
9. Mahadeo V. Alve
10. G.T. Mane
11. I.J. Fremwala
12. Smt. S.P.Samuel
13. Smt. L.M. Vaity
14. Smt. S.C. Bhaye
15. Moh'd Anisuddin
16. M.M. Shrikhande
17. Smt. S. Pushkaran
18. A.N. Jattani
19. Smt. Aleyamma Abharam
20. B.L. Gothankar
21. N.N. Amru
22. Ashok Jadhav
23. Smt. S. Loke
24. K.N. Mistry
25. A.D. Potkar
26. P.N. Bhaskaran
27. P.V. Kulkarni
28. Smt. D.P. Pandya
29. Smt. J.R. Dhotre
30. D.John
31. D.G. Mahabdi
32. W.B. Chavan
33. Smt. N.P.Thakur
34. Smt. Aruna N. Koli
35. N.K. Bunkar
36. Anil Kanse
37. Anil Kanulkar
38. Smt. B.D. Shah
39. E. Lakshman
40. Smt. S.C. Kalamkar
41. S.R. Ghandade
42. S.K. Moyte
43. V.M. Kolekar
44. Smt. V.V. Kolekar
45. M. Raghav Rao
46. S.S. Dalvi
47. Smt.P.P.Patil
48. K.S. Shirke
49. Smt. Margarate Jose
50. Smt. D.D. Tawade
51. V.M. Kanekar.

52. P.R. Kosale
53. A.V. Shivan
54. J.S. Tulaskar
55. Smt. Nita N. Sawant
56. Smt. R.H. Patil
57. Smt. K.Balakrishnan
58. C.E. Jolly
59. Smt. Kalpana Shivalkar
60. Smt. Smita Hongekar
61. Smt. N.S. Desai
62. Smt. S.S. Pednekar
63. Smt. G.G. Mayekar
64. Smt. S.S. Naik
65. A.N. Chavan
66. Smt. M.B. Pednekar
67. N.R. Jibhe
68. Smt. Francisca Carderio
69. Smt. B.P. Bhusane
70. Kum. V.C. Arondekar
71. Smt. Chitra Mahesh
72. Smt. K.V. Mangale
73. N.R. Narkar
74. Smt. R.U. Manerikar
75. Smt. S.S. Mahadik
76. Smt. L.S. Karpe
77. Smt. A.A. Lotlikar
78. D.S. Mansukhani
79. Smt. D.D. Mistry
80. R.G. Gaikwad
81. Smt. Madhusri Tutke
82. M.A. Rajgopal
83. Smt. J.K. Dave
84. Y.N. Chandekar
85. Suryakant Parab
86. Smt. S.G. Salvi
87. V.M. Shikare
88. G.K. Mishra
89. S.V. Malkar
90. A.G. Naik
91. J.S. Raut
92. Smt. Indira Ramakrishnan
93. Smt. B.P. Hainelke
94. S.A. Labhade
95. Smt. U.G. Ansurkar
96. A.H. Shaikh
97. P.I. Bhaskharan
98. S.D. Paste
99. Plato Lobo
100. Smt. S.S. Mahadik
101. Smt. A.A. Madagut
102. S.P. Sahare
103. R.K. Chaterji
104. S.J. Kerkar
105. Smt. S.R. Thakur
106. Smt. K.U. Koli
107. Smt. N.R. Madhyan
108. Smt. Meena Sali
109. Smt. Jayashri Parab

110. Smt. R.R.Kadam
111. Smt. Parinita
112. Chandrashekhar
113. Smt. S.H. Sawant
114. Smt. S.S. Satam
115. Smt. S.S. Nair
116. G.K. Dalal
117. Smt. B.R. Gangwani
118. Y.W. Damle
119. Smt. P. Violet
120. Smt. Ruth Cueria
121. N.N. Kapse
122. Smt. R.D. More
123. U.R. Chavan
124. Smt. S.P. Rane
125. Smt. S.A. Pandit
126. Smt. V.B. Kuchan
127. Smt. V.N. Chitale
128. Smt. Daisy Sunny
129. R. Gopal
130. B.M. Gaikwad
131. M.J. Kore
132. Vivek Chitar
133. George Mathai
134. Mulla M.A.

Applicants in
OA-489/99

Advocate K.R.Yelwe

Uttam Baburao Manerikar
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Behind Dattapada Road
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Borivili (E), Mumbai.

Applicant in
OA 507/99

By Advocate Shri S.Ramamurthy

V/s.

1. Union of India, through
The Director General of
Foreign Trade, Udyog Bhavan,
Maulana Azad Road, New Delhi.
2. Zonal Joint Director
General of Foreign Trade,
New CGO Building, Mumbai.

By Advocate Shri R.K.Shetty

3. P.Bhaskharan
4. P.K. Pednekar

Respondents

By Advocate Shri G.K.Masand

:4:
O R D E R

{Per Smt. Shanta Shastry, Member (A)}

These two OAs involve a common issue, the impugned order is the same, applicants belong to same cadres and facts are similar. Therefore we have proceeded to dispose them off by a common order.

2. The impugned order is the seniority list issued vide circular No. 5/99 dated 1.4.1999 and the relief sought is (i) to quash and set aside the aforesaid seniority list (both OAs), to treat it as a draft seniority list and after going through the objections raised by the applicants in their representation dated 12.4.1999 publish final seniority list within a period of 3 months.(OA 489/99)

ii. Pending hearing and final disposal of OAs respondents be restrained from granting further promotions/confirmation to the posts of Licensing Assistant, Section head, Foreign Trade Development Officer (Gazetted) Assistant Director General of Foreign Trade (Gazetted) (OA 489/99).

iii. To direct respondents to redraw the seniority list of UDCs in the light of various judicial pronouncements and in the light of the draft revised seniority list of 14.1.1999.

iv. To direct respondents to place the applicant above P.Bhaskaran and below P.H. John in the seniority list of UDCs and to assign him seniority in the higher grade accordingly (OA 507/99).

3. Interim relief had been prayed for and the same was allowed on 14.6.1999. However it was vacated later on by order dated 14.3.2000 directing however that any promotions made on the basis of either seniority list of 1.4.1999 or 6.9.99 will be subject to the outcome of the OAs. The applicants filed writ petition No.2081/2000 in the High Court of Bombay against the aforesaid order. It was dismissed.

The brief facts leading to the OAs are narrated below:

OA No. 489/99

4. The applicants are working in the offices of the respondents i.e. Zonal Joint Director General of Foreign Trade, Mumbai. There are ten main applicants and 124 other applicants who have filed this OA. Applicant number 1 is ADGFT, Number 3 is FTDO and the others from 4 to 10 are working as Sectional Head, Licensing Assistant and UDCs at present. {The applicants' seniority has changed from time to time due to revision of seniority list on account of various judicial pronouncements.

5. The grievance is that the final seniority list dated 1st April 1999 is clearly in violation of Supreme Court's judgement dated 23.11.1995 and the judgement dated 17.3.1999 of this Tribunal in the case of P.K. Pednekar V/s Union of India. According to them the respondents are giving illegal seniority to some of the employees who were granted promotion according to their local seniority without following the procedure and settled position of law. The applicants have challenged the seniority of serial No. 22, 23, 24, 17, 44, 63, 69, 74, 76, 78, 83, 87, 94, 159, 160, 181, 182, 183, 192, 193, 205 and 206 in the seniority list of 1.4.1999.

6. The Western Zone of the office of the Joint Director General of Foreign Trade comprises of offices at Mumbai, Pune, Ahmedabad, Surat Rajkot, Baroda, Bhopal and Goa. A common seniority list of LDCs is maintained. During 1978 and 1979 some junior LDCs were promoted as UDCs out of turn against vacancies occurring outside their existing place of posting as their seniors had either refused or had not exercised the option to go over to outlying places on promotion as UDCs on transfer. Initially the promotions were adhoc. From 1980 onwards the respondents issued circulars asking employees to exercise their option to go over to other places on promotional transfer. It was also stipulated that if the senior employees failed to opt or declined to take the promotion on transfer basis, the juniors who were willing to accept the promotion on transfer will become senior to the originally senior LDCs.

7. Six such option circulars were issued between 1980 to 1985 as follows:

Circular No.	32/80	dated	22.7.1980
"	7/81	"	14.1.1981
"	43/81	"	1.8.1981
"	52/82	"	9.11.1982
"	3/84	"	9.1.1984
"	16/85	"	19.3.1985

8. This practice of giving options and giving seniority was adopted by the respondents because there was a tendency on the part of the senior LDCs to refuse to go on promotion on transfer to outlying port offices. Accordingly those juniors who opted for transfer on promotion were granted seniority over their seniors. The respondents Nos.3 and 4 are such juniors who became senior to the applicants.

9. One P.S. John and others who lost their seniority to some of the junior LDCs challenged this policy of the respondents in TA No. 263/86 in the Ahmedabad Bench of the Tribunal. The application was allowed by order dated 14.8.1987 by the Ahmedabad Bench of the Tribunal with the finding that the adhoc junior promotees on the basis of the option exercised will not get seniority over others senior who declined to go on promotion. It was observed that such adhoc promotions do not deprive the claim of seniority of the petitioners in that case. Being affected by the above said order one P. Bhaskaran (the present respondent No.3) and others filed a review application No. 986/88 but it was dismissed on 29.9.1989. Directions were also issued to the respondents to prepare a seniority list on the basis of length of service in the cadre of LDCs. Shri Bhaskaran and the three others then approached the Hon'ble Apex Court by filing SLP No.2062/90. This was subsequently heard as Civil Appeal No. 11560 of 1995. This was decided on 23.11.1995. It was ruled that due to administrative exigencies when the options were given to senior LDCs for transfer on promotion though on adhoc basis those junior LDCs who had exercised their option get the seniority in

the cadre of UDCs if the seniors refused it. Thus the juniors would ~~make~~^{steal} a march over senior LDCs who were unwilling for promotion on transfer. The earlier decision of the Tribunal as far as Shri John and others were concerned was not disturbed. The respondents were directed to prepare a fresh seniority list. A draft seniority list was published vide circular No.66/89 dated 18.7.1989 fixing the seniority of UDCs on the basis of appointment in the grade of LDC and final seniority list was circulated on 27.3.1991. Thereafter the promotions were reviewed and the respondents 3 and 4 were reverted alongwith some other juniors who had got out of turn seniority.

10. Being aggrieved the respondent No. 3 in the present OA filed OA No.632/96 in the Ahmedabad Bench of the Tribunal alongwith others, challenging the reversion and claiming seniority on the basis of continuous officiation. The OA was allowed vide order dated 2.1.1998. The Tribunal quashed the seniority list of 24.4.1997 and the reversion orders of the applicants therein and directed the respondents to prepare a revised seniority list following the principles laid down by the Supreme Court and on the basis of record and evidence. This judgement was appealed against in the Gujarat High Court through SCA 264/98. It was rejected on 22.7.1998. The Respondents again carried it in appeal to Supreme Court vide SLP(C) No.CC 8109/98. The SC dismissed it on 10.12.1998. Thus the issue was finally settled in terms of the judgement of the Tribunal dated 2.1.1998 and the earlier judgement of the Supreme Court dated 23.11.1995.

11. Earlier to this some other persons similarly placed to Shri Bhaskaran and others also filed OA 47/98 in the Mumbai Bench of the Tribunal. The same was allowed on 7.4.1998 relying upon the judgement dated 2.1.1998 of the Ahmedabad Bench of the Tribunal. Another OA 314/93 was filed by Shri Pednekar i.e. respondent No.4 in the present OA. It was disposed off on 17.2.1999 directing the respondents to consider the representation of the applicants therein in the light of the judgement already pronounced by a speaking order to be passed about the proper place to be given to the applicant in the seniority list.

12. Based on the aforesaid judicial pronouncements the respondents prepared a fresh seniority list and issued the draft on 14.1.1999. Objections were invited. After receipt of the same and after examining them the respondents issued a further fresh revised draft seniority list on 1.4.1999. Again objections received, were considered and revised seniority list was issued on 10.6.1999 and finalised on 6.9.1999.

13. It is the grievance of the applicants that the seniority list of 1st April 1999 is illegal and in violation of the Supreme Court judgement and statutory provisions on the subject. The applicants submitted that the list published on 14.1.1999 was about 163 ^{persons}. Without ⁴officials without going into the objections raised by the applicants a final seniority list was published on 1.4.1999 for about 224 employees, 173 new employees have been added after publishing the draft. Only 51 employees are common to both the lists. The applicants have been denied opportunity

to make objections against 173 employees if any. According to the applicants the respondents have wrongly interpreted the judgement of 2.1.1998 in OA 632/96 while granting seniority by counting adhoc promotions to the post of UDCs. The respondents have not relied on any records or evidence while granting adhoc promotion to the post of UDC as to whether seniors were given notice or not, whether the so called option circulars were issued or not.

14. The ^{respondents / applicants} respondents have stated that the draft prepared prior to 3.9.1987 showing regular / adhoc UDCs as on 31.12.1986 was considered as the basis. ^{According to the applicants, it} This is not correct because the correct eligibility seniority list of LDCs was drawn on 16.11.1979 and it was finalised on 24.5.1980. This should have been the basis for the seniority list of 1.4.1999. This list is in violation of the CAT judgement dated 14.8.1987 in OA 263/86. The seniority granted to several juniors is illegal.

15. The applicants are opposed to the said list on the following grounds.

The list of 1.4.1999 is clearly in violation of Supreme Court judgement dated 23.11.1995 and the judgement in P.K. Pednekar V/s Union of India decided on 17.3.1999.

Respondents have completely failed to obey and implement the judgement dated 2.1.1998.

Further, the Department did not examine the vital aspects going to the root of the matter.

Respondent 3 and others were not promoted to post of UDCs in 1979 on the basis of zonal seniority after following the procedure of refusal of promotion by seniors etc. Their promotion was made by local office on local seniority. It was purely a stop gap arrangement on adhoc basis.

The first circular calling for option for promotion was issued on 27.7.1980 but no vacancy in Ahmedabad was notified. There is no evidence to show that the seniors had been issued the options and yet they refused to accept the option. Not all cases were such where options were given yet seniors had refused. In some of the cases, even those who had been promoted locally without involving any transfer and who had not given any option higher seniority has been granted which was not intended in the judgement. The seniority list of 1/4/99 is defective and deserves to be quashed and set aside.

The applicants have cited details of some individuals to show how the seniority of some persons was not as a result of option but due to some other factors.

Even those whose cases were dismissed by courts have been shown higher in the seniority list.

Seniority is based neither on length of service nor on the actual dates/presumptive date of promotion.

No DPC was held to regularise adhoc promotions changing settled seniority after a decade without reliable record and evidence.

The applicants have therefore prayed for setting aside the impugned seniority list of 1.4.1999.

OA 507/99

16. The applicant joined as a LDC in the O/O R-3 at Bombay on 24/8/1966. He was transferred to Ahmedabad in the same capacity in 1969 and was re-transferred to Bombay in 1974. He was then promoted as UDC w.e.f. 10/12/1982 in Bombay and was further promoted as licencing assistant from 13/7/94 in Bombay. A seniority list of the UDCs was published vide circular 27/80 dated 24/5/80 In this list the applicant was at serial no 198 while the respondents 4 & 5 were much lower down in the seniority list.

During this period from 1977 to 1979 no options were invited or given to any seniors. The first option letter was issued vide circular 32/80 dated 22/7/80. It did not indicate any vacancies at Ahmedabad. Further options were provided vide specify vacancies at each office. The applicant was not aware of the option and in 1982 he was promoted regularly. Therefore the question of exercising option after 1981 did not arise.

17. The applicant submits that the seniority list of UDCs daterd 1.4.99 is as on 31/12/1986 and not in continuation of the

list of 14.1.99 which was drawn up as on 31.12.98. In the list of 1.4.99 the applicant's name figures at Sr.No.151 while his juniors i.e. respondents nos.4 and 5 are placed higher at Sr.No.24. This change in seniority will adversely affect his further promotions. According to the applicant the respondents have failed to undertake a proper exercise based on the ratio laid down by the Hon'ble Supreme Court and based on evidence and record. Persons like Respondent No.4 were promoted only on ad hoc basis in 1977-79. There was no option. They cannot be given seniority over his original seniors including the applicant.

18. The official respondents have filed an exhaustive reply. Their stand is that they have strictly followed the directions in the judgement dated 23.11.1995 of the Supreme Court in SLP 11060/96 and the order dated 2.1.1998 of the Ahmedabad Bench of the Tribunal in OA 632/96. When they found that the draft seniority list of 14.1.1999 was not exactly as per the principles laid down in the order dated 2.1.1998, they discussed the matter with the Ministry of Law and after considering all objections / representations received prepared a seniority list to fix the inter se seniority of regular and adhoc UDCs figuring in the list of UDCs / Stenographers issued on 3.9.1987 based on the position as on 31.12.1986. It was circulated on 1.4.1999. However many representations were received against the revised positions shown in the draft seniority list. These were examined in detail and necessary corrections were carried out and final combined seniority list has been issued on 6.9.1999. Categorywise seniority list would be prepared based on the decision of the DPC thereafter.

According to the learned counsel for the respondents the applicants know the position regarding the promotion of respondent No.4 (in OA 489/99) ^{but} never challenged it.

19. It has been explained that there is no discrepancy in the number of employees covered under seniority list of 1.4.1999 and that of 14.1.1999. There were two lists of 1/99 and 2/99 dated 14.1.1999, together the no. of employees covered comes to 224 while the list of 1.4.1999 is a combined one covering 224 persons.

20. The respondents have overruled the objections raised by the applicants in respect of certain individuals with detailed clarifications. They have also produced details of those who were promoted on the basis of options and those who were promoted in regular course. The issues raised by the applicants had already been considered by various courts, the seniority list is based on the interpretation of those orders. These issues have already been settled vide Exhibit R-1 (page-226 of OA 498/99).

21. Shri Masand appeared for respondent no.4 in OA 507/99, respondent no.4 is respondent no.3 in OA-489/99. A written statement has been filed. The respondent no.4 while agreeing with the official respondents' stand has added a few details to justify the correctness of the seniority list of 1.4.99. The learned counsel submits that among the applicants in OA 489/99 those who were promoted as UDC after 1986-87, numbering about 75 are not at all concerned with the dispute of seniority yet their names have been added as applicants in the OA. Even assuming that the applicant might not be aware of the promotions of his

juniors, considering that the applicants of OA 47/90 were working in Bombay, he was aware if not earlier atleast from 1983 that his juniors had been promoted while he continued to work in lower post. Yet he did not raise any dispute against it. Applicant's claim is time barred, stale. The applicant had intervened in OA 47/90 decided on 7/4/98 which went against him. Similarly about 58 seniors and 35 of the applicants in OA 489/99 had intervened at the hearing of OA 47/90 and arguments had been advanced against them. They did not challenge the decision.

22. The applicant tried to controvert the same by stating that the Ahmedabad Bench of the Tribunal had not been made aware of proper facts. He tried to bring the facts on record by intervening in OA 47/90.

23. The seniority list of 14.1.99 was prepared on the basis of the judgement dated 14.8.87 which had been reversed by the judgement of 23.11.95. When this was brought to the notice of the respondents they had to modify the list, states the learned counsel. ^{for R-4} The learned counsel also made a point that while he was posted in the Administration Branch the applicant in 507/99 had been instrumental in preparation of draft list of 14.1.99. On learning of the deliberate mischief of the applicant, he was shift^{ed} to another branch. He had a vested interest.

24. None appeared for Respondent No.5. Three individuals had filed MP 169/2000 to join as intervenors. Learned Counsel Shri Suresh Kumar represented them. He was heard on their behalf.

25. We have heard the learned counsel Shri Ramamurthy for applicant in OA 507/99, Shri V.S.Masurkar for the applicants in OA 489/99, Shri R.K.Shetty for respondents in both the OAs and Shri G.K.Masand for respondent no.4 in OA 507/99 and have given careful consideration to the arguments and counter arguments advanced by them. We also heard Shri Suresh Kumar on behalf of three intervenors. We have also perused the relevant material.

26. In our view we have to focus on the ratio laid down finally in the judgements relied upon by the parties on both sides. The main issue which has given rise to the present seniority dispute is that certain junior L.D.C.s were promoted as U.D.C.s out of turn without reference to their basic seniority because they shared willingness to go on transfer on promotion while their seniors either declined to go on transfer on promotion or did not exercise their option. The juniors thus became senior to their erstwhile seniors. This issue became the subject matter of judicial proceedings. The issue was finally concluded by the judgements dated 23.11.95 in SLP No.11560 of 1996 of the Supreme Court and the order dated 2.1.98 of the Ahmedabad Bench of the Tribunal later on confirmed by the Hon'ble Supreme Court on 16.12.98. In these judgements it was clearly laid down that the juniors who opted for transfer promotion vis-a-vis their seniors who chose not/ did not choose to go on transfer on promotion, would scale a march over their seniors in seniority. It was directed that the seniority list should be revised on the basis of evidence and record. Accordingly the respondents came out with a draft seniority list of 14.1.99 inviting objections. A large number of representations were

received. After consulting the law Ministry and scrutinising the representations, the respondents were convinced that the list was not correctly drawn up as the judgement of 2.1.98 in OA 632/96 had not been made applicable. So they prepared a fresh list on 1.4.99 and again called for objections. After considering them the respondents came out with another draft combined seniority list of UDCs, Licensing Assistants, Section Heads on 10.6.99. This list also was thrown open for objections. Thereafter the same was finalised on 6.9.1999.

27. It is evident that the respondents have given full opportunity to all concerned from time to time. Principles of natural justice have been followed. What is to be seen is whether the respondents have followed the ratio and directions given in the final judgements mentioned above. The respondents claim that they have done so. In support they have produced detail statements to show who had exercised the option and who had been promoted in normal course vide exhibit R-1 of OA 489/99. We find that the applicants had filed their detailed objections vide letter dated 12.4.99 immediately after the list of 1.4.99 was issued. We are thus satisfied that the respondents have taken care of the directions in the final judgements. They have given proper opportunity to all concerned also. We cannot find fault with the seniority list on this count. Moreover the list of 1.4.99 was only a draft list yet the applicants rushed prematurely to the Tribunal. The OAs should not have been entertained at all however due to further developments in the meantime with the final seniority list of 6.9.99 this point does not hold good.

28. The respondents have also clarified the position with regard to the correctness of the seniority of certain individuals in respect of whom the applicants have raised serious doubts. These have been answered satisfactorily according to us.

29. Much has been made by the applicants about there being no options prior to 1980, the option circulars of 1980-85 not being given wide circulation and some of the juniors having been promoted on local basis without option on adhoc basis. In our considered view these points and facts relating to them were very much before the courts when the OA 632/96 and SLP 11560/96 were decided. The arguments advanced are only a repetition of the arguments already advanced in the earlier application. It amounts to reagitating the same issue. We cannot accept the same. The applicants did not challenge the final judgements including the judgements in OA 47/90 decided on 7.4.98 wherein a large number of the present applicants were intervenors. They never challenged the promotions given to their juniors before 1980 even after becoming aware. It is also to be borne in mind that the judgement of 2.1.98 in OA 632/96 was filed by Respondent No.4 who had been reverted earlier. He succeeded and he was ~~restored~~ ^{restored} his earlier seniority. It cannot now be challenged again after the stamp of finality put on the judgement by the Hon'ble Supreme Court.

30. In our considered view the seniority lists of 1.4.99 and 6.9.99 do not call for any interference.

:19:

31. In, the facts and circumstances of the case, the OAs fail. Accordingly OAs are dismissed. We do not order any costs.

(SHANTA SHASTRY)
MEMBER(A)

(KULDIP SINGH)
MEMBER (J)

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