

Central Administrative Tribunal, Mumbai Bench

Original Application No.414 of 2000

Mumbai, this the 25<sup>th</sup> day of June, 2001

Hon'ble Mr.Kuldip Singh,Member (J)  
Hon'ble Mrs.Shanta Shastry,Member(A)

Shri Avinash Dattatraya Thakur  
son of late Shri Dattatraya Nathooram Thakur  
Resident of 62, Bhagya C.H.S., Anand Nagar  
Vakola, Santacruz(E), Mumbai-400 055  
Working as U.D.C. under Regional Provident  
Fund Commissioner, 341, Bhavishya Nidhi Bhawan,  
Kherwadi, Bandra (E), Mumbai-400 051 - Applicant

(Appeared in person)

Versus

1. Regional Provident Fund Commissioner  
341, Bhavishya Nidhi Bhawan,  
Kherwadi, Bandra (E), Mumbai-400 051.
2. Central Provident Fund Commissioner  
Bhavishya Nidhi Bhawan  
60, Bhikaji Cama Palace  
New Delhi-110066
3. Shri V.K.Behere, UDC  
341, Bhavishya Nidhi Bhawan,  
Kherwadi, Bandra (E), Mumbai-400 051.  
C/o RPFC MH. & Goa  
Mumbai-400051 - Respondents

(By Advocate - Shri R.K.Shetty)

O R D E R

By Hon'ble Mr.Kuldip Singh, Member(J)

Applicant has assailed three orders of the respondents i.e. Annexures A-1, A-2 and A-3. Annexure A-1 is the seniority list of UDCs which was issued on 21.2.2000 showing the seniority of UDCs as on 31.12.99. Annexure A-2 is an office order dated 31.1.2000 vide which revision of pay-scale had been allowed to those UDCs who were drawing special pay. They were directed to be placed in the pay-scale of Rs.5000-150-8000 w.e.f. 1.1.96. Annexure A-3 is the promotion list of the newly created post of Assistant. Applicant has prayed for revision of seniority list

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dated 18.4.91 and has also urged that his name should be inserted above Shri V.K.Behere in the order dated 31.1.2000 at Annexure A-2 and he should be granted all consequential monetary benefits.

2. Facts as alleged by the applicant in brief are that he was appointed as LDC on 25.4.79. Thereafter he was promoted as UDC on 7.10.81 on ad-hoc basis and was regularised from the same date as per order dated 18.4.91 (Annexure A-4). A seniority list was issued by the respondents vide Annexure A-6 which was defective and had been objected from time to time. Applicant claims that respondent no.1 had issued an office order dated 31.1.2000 with regard to revision of pay scale of UDC in which Shri V.K.Behere who was junior to the applicant was shown at Sr.No.1 and Smt.R.R. Revankar who was senior to him, had been shown at Sr.No.2. It is stated that applicant's name had been omitted as this order followed a wrong seniority list (Annexure A-2).

3. It is pleaded by the applicant that on 21.2.2000, respondent no.1 had issued a seniority list which was not circulated to the officials concerned in which his name was shown at Sr.No.502 whereas Shri V.K.Behere who had joined the service on 2.5.79 was shown at Sr.No.163. He claims that his name should have appeared at Sr.No.162 in that seniority list. It is stated that this seniority list is again defective as the persons shown at Sr.No.1 to 79 have already become Head Clerk and yet they have been shown in UDC

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seniority list. Thus it is alleged that Shri V.K.Behere who is junior to applicant has been promoted earlier to him and is drawing higher salary despite the fact that applicant had been regularised from 7.10.81 and being senior to Shri Behere, is entitled for placement of his name above him and fixation of pay accordingly.

4. Respondents are contesting the OA. They have submitted that the seniority list of the applicant was finalised vide office order dated 1.10.93 in which his name appeared at Sr.No.1432. The applicant was given notional date of seniority w.e.f. 1.1.91 whereas the present OA has been filed on 5.5.2000. It is submitted that seniority list dated 21.2.2000 (Annexure A-1) is just a repetition of seniority list dated 1.10.93 which is at Annexure R-2. Thus this OA is clearly barred by time in terms of Section 21 (1) (a) of the A.T.Act,1985 and moreover, the applicant by this OA, is seeking to unsettle seniority positions finalised vide seniority list dated 1.10.93 which is not permissible as per the law laid down by the Hon'ble Supreme Court in the case reported in SCC (L&S) 1998 page 1656.

5. On merits also, the respondents have stated that the claim of the applicant seeking seniority above Shri V.K.Behere either in the cadre of LDC or UDC is absolutely devoid of merits as Shri Behere stood higher in the merit list of LDC Examination as compared to the applicant and, therefore, applicant's date of joining being earlier to Shri Behere, is of no

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consequence. As far seniority in the cadre of UDC is concerned, the post of UDC is filled 50% by promotion on seniority basis and 50% by promotion by Departmental Examination Quota. Shri Behere passed the Departmental Examination for UDC in 1983 and was accordingly granted seniority w.e.f. 23.5.83. But the applicant never passed the departmental examination and he managed to get the promotion as UDC on regular basis under 50% seniority quote w.e.f. 1.1.91 only. Hence there is no question of the applicant seeking to compare himself with Shri V.K.Behere. It is submitted that this OA is liable to be dismissed even on merits.

6. Respondents have further submitted that the applicant was promoted as UDC on purely temporary and ad-hoc basis as per his inter-se-seniority in the cadre of LDC but at no point of time, Shri Behere was junior to him. Even in the promotion order, the name of Shri Behere appears at Sr.No.49 whereas that of the applicant at Sr.No.61. The ad-hoc promotion was subject to certain conditions and the respondents had issued regularisation order dated 18.4.91 which was subject to outcome of decision of CAT, Bombay Bench in OA-430/88 wherein the respondents had been directed that the seniority list in respect of Upper Division Clerks onwards should be revised by applying the principle as laid down in the judgement in SLP No.7274/87 in T.A.556/86 decided by CAT, Chandigarh Bench. Thereafter a Full Bench of the Tribunal in O.A-1147/87 and T.A.43/87 had also interpreted the ratio of the judgement of the Hon'ble Supreme Court in

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SLP No.7274/87. The regularisation order was thus revised on 1.10.93 in accordance with the aforesaid decisions and this also shows that the applicant has challenged the seniority list dated 1.10.93. Respondents have submitted that since order 23.4.93 dated circulating draft seniority list of UDCs had not been challenged by the applicant, therefore, this OA is barred by time and liable to rejected.

7. We have heard learned counsel for the parties and gone through the records.

8. The averments of the respondents that Shri Behere was high in the merit list of LDC examination has not been controverted by the applicant and therefore, he cannot claim seniority over Shri Behere merely because he had joined service a week or ten days earlier to him. Even in the order dated 7.10.81 whereby the applicant and Shri Behere were given ad-hoc promotion as UDC, the name of Shri Behere appeared at Sr.No.49 whereas that of applicant at Sr.No.61 and the applicant failed to challenge that order also. Subsequently the seniority list dated 1.10.93 was issued and that also was not challenged by the applicant. It is only the seniority list issued in the year 2000 which has been challenged by the applicant which shows that all throughout, he was junior to Shri Behere but failed to challenge the same earlier. Now after the lapse of such a long period, he cannot challenge the seniority list and seek to unsettle the settled position.

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9. Even otherwise, the applicant cannot compare himself with Shri Behere because both of them had got promotion to the post of UDC through different channels. Shri Behere got the promotion by competing in the Departmental Examination whereas the applicant had never qualified the departmental examination and had attained promotion to the post of UDC by virtue of his seniority. Shri Behere had qualified the departmental examination in the year 1983 and was accordingly granted seniority w.e.f. 23.5.83 whereas the applicant was given promotion as UDC after regularisation in the year 1991 only. Even in the order dated 7.10.81 whereby the LDCs were granted ad-hoc promotion to the post of UDC, name of Shri Behere appeared at Sr.No.49 whereas that of applicant at Sr.No.61. That order, which had not been challenged by the applicant at that time, possibly could not have been challenged in the present OA after such a long time.

10. So from whatever angle we may examine, the applicant's case is altogether different from that of Shri Behere and he cannot claim comparison with him. Even otherwise, Shri Behere stood higher in the merit list of LDC examination also as compared to the applicant.

11. Under these circumstances, we feel that this OA does not call for any interference and deserves to be dismissed. It is, therefore, dismissed. No costs.

*Shanta Shastry*  
(Mrs. Shanta Shastry)  
Member(A)

*Kuldip Singh*  
(Kuldip Singh)  
Member(J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, MUMBAI BENCH

RA No. 56 of 2001 In  
OA No. 414/2000

Mumbai this 3<sup>rd</sup> day of September, 2001

HON'BLE MR. KULDIP SINGH, MEMBER (J)  
HON'BLE MRS. SHANTA SHAstry, MEMBER (A)

Avinash Dattatraya Thakur

..Review Applicant

Versus

1. Regional Provident Fund Commissioner,  
341, Bhavishya Nidhi Bhawan,  
Kherwadi, Bandra (E),  
Mumbai-400 051.

2. Central Provident Fund Commissioner,  
Bhavishya Nidhi Bhawan,  
60, Bhikaji Cama Palace,  
New Delhi-110 066.

3. Shri V.K. Behere, UDC (VRS)  
341, Bhavishya Nidhi Bhawan,  
Kherwadi, Bandra (E),  
Mumbai-400 051  
C/o RPFC MH. & Goa,  
Mumbai-400 051.

... Respondents

ORDER BY CCIRCULATION

By Hon'ble Mr. Kuldip Singh, Member (J)

The applicant has filed RA No. 56/2001 In OA No. 414/2000  
his  
whereby OA was dismissed on 25.6.2001.

2. After going through the RA, we find that all the  
in paras 8 to 10  
groundstaken in the RA were considered by us in detail/while  
delivering the judgment. No new error has been pointed out  
in the RA which may call for its review and more so the  
RA does not fall with the ambit of Order 47 Rule 1 CPC read  
with section 22(3)(f) of the AT Act.

3. In view of the above, nothing survives in the RA  
which is accordingly dismissed.

*Shanta Shastry*  
(Mrs. Shanta Shastry)  
Member (A)

*Kuldip Singh*  
(Kuldip Singh)  
Member (J)