

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH BANGALORE

DATED THIS THE 14th NOVEMBER 1986

Present : Hon'ble Sri Ch. Ramakrishna Rao - Member (J)
Hon'ble Sri L.H.A. Rego - Member (A)

APPLICATION No. 310/86

1. S.R. Ashwathanarayana Rao
UDC, Office of the Regional
Provident Fund Commissioner
Bangalore 25 - Applicant
(Sri. S.B. Swethadri, Advocate)

1. The Regional Provident Fund Commissioner
Bangalore 25

2. Celine Pinto
Head Clerk, Office of the Regional
Provident Fund Commissioner
Bangalore 25

3. The Union of India by its
Secretary in Ministry of Labour
'Shrama Shakti Bhavan'
New Delhi 1 - Respondents
(Sri M.S. Padmarajaiah, Senior C.G.S.C.)

This application came up for hearing
before this Tribunal and Hon'ble Sri Ch. Ramakrishna
Rao, to-day made the following

O R D E R

This application was initially filed in the
High Court of Karnataka and subsequently transferred
to this Tribunal. The facts giving rise to this
application are, briefly, as follows. The applicant
entered service as Lower Division Clerk ('LDC') on
16-5-1963 and he was confirmed in that post on
16-5-1965. Respondent No. 2 entered service as LDC
on 7-12-1967 and confirmed in the same cadre on 1-4-1971.

In the Seniority List of LDCs the applicant is at sl.no. 55 wherein the 2nd respondent is ranked at sl.no.130. The applicant was promoted as Upper Division Clerk ('UDC') under Office Order ('OO') dated 29-12-1972 by the 1st respondent on the basis of his seniority in the cadre of LDC. The department did not conduct examinations regularly each year considering the vacancy position. The 2nd respondent passed the examination subsequent to the applicant's promotion and she was wrongly placed above the applicant in the seniority list of UDCs ('SL'). Hence the applicant has filed this application challenging the SL of 9.4.1980 (Annexure F) placing the 2nd respondent, Celine Pinto, Junior Stenographer, at sl.no.38 in the SL.

2. Sri S.B.Swethadri, learned counsel for the applicant, invites our attention to the filling up of posts of UDC in the office of the 1st respondent on the following quota basis laid down in the Employees Provident Fund (Staff & Conditions of Service) Regulations, 1962 ('Regulations').

"50% - Promotion of LDCs including Steno-Typists, Telephone or Telex Operators in the Regional Office on a regional basis on the basis of seniority subject to rejection of the unfit ...

50% - Promotion of LDCs including Steno-typists, Telephone or Telex Operators in the Regional Offices on the result of Competitive examination restricted to LDCs including Steno-typists etc."

The contention of Sri Swethadri is that the provision embodied in the Regulations extracted above envisages promotion to the post of UDCs from LDCs both on the basis of seniority-cum-fitness and on the basis of the results of competitive examinations restricted to LDCs; that choosing LDCs for promotion to the post of UDCs by two different methods is violative of Article 14 (equality clause) of the Constitution and illegal.

Ans

Sri M.S.Padmarajaiah, learned counsel for the respondents, submits that the object underlying the Regulations is to give due opportunity to seniors among LDCs who are found fit for promotion as UDCs and also afford an opportunity to LDCs, ~~as well~~ ^{all} to appear at a competitive examination so that meritorious candidates, irrespective of seniority, could also be selected as UDCs.

3. We have considered the matter carefully. In our view, there is nothing discriminatory in the method of recruitment laid down in the Regulations. The two modes of selection have a reasonable nexus with the object sought to be achieved viz. giving due recognition to seniority without detriment to merit.

4. Sri Swethadri next contends that respondent 2 a Junior Stenographer, had never worked as UDC and in view thereof she could not rank higher to his client in the SL. Shri M.S.Padmarajaiah submits that it is not essential that a candidate should have worked as ~~as~~ UDC before being appointed as UDC ~~and her appointment~~ and her appointment was valid since ~~she~~ ^{-ed} _{from} she belong to a category ~~to~~ which she could be promoted as UDC. Sri Padmarajaiah, however, submits that the grievance of applicant against respondent 2 now stands removed since she had preferred to go over to the original post of Junior Stenographer.

5. In view of the submission made by Sri Padmarajaiah we do not consider it necessary in this application to resolve the controversy raised by the applicant against R2.

6. Sri Swethadri strenuously contends that his client was promoted as UDC alongwith 25 others in and by OO dated 29.12.72 on a purely temporary and ad-hoc basis; that their seniority vis-a-vis those promoted against 50% merit quota would be regularised in accordance with the ratio of vacancies between the two categories and should reversion take place at any stage, the junior-most amongst the appointees would revert. According to Shri Swethadri, departmental examinations ('DE') for promotion to the post of UDC were held in October 1971, December 1972, July 1973 and April 1977. According to Sri Swethadri, the DE was held annually in 1971, 72 and the candidates selected on the basis of the results of DE should have been appointed against the quota for merit candidates while the candidates, including the applicant, appearing in the OO dated 29.12.72 should have been appointed against the quota for promotees on seniority-cum-fitness.

7. Sri Swethadri relies on the decision of the Supreme Court in Col A.S. Iyer v Balasubramanian 1980 S.C.C. (L&S) 145 wherein it was laid down that the reasonable period for the application of quota rota principle is three years and if steps are not taken to fill up the posts within three years it would be reasonable to infer

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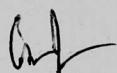
that the quota rota principle has broken down. Applying the ratio of this decision to the present case Shri Sreethadri submits that the DE was held after 1973 only in 1977 and in view of the enormous delay the ratio of the decision of the Supreme Court cited supra would be applicable.

8. Sri Padmarajaiah submits that it was not possible to hold the DE annually after 1973 due to administrative difficulties and therefore the upsetting of quota rota principles would not be justified.

9. We have considered the rival contentions carefully. The period was made sufficiently long fixing it at three years only to enable the departments of the Central Government to tide over administrative difficulties. We, therefore, hold that in the present case the quota rota rule prescribed by the Regulations has broken down during the period 1974 to 1977. In T.N. Saxena v. State of U.P., (1982) 2 SCC 319, the Supreme Court has had occasion to observe

"The quota and rota rules must be applied in a practical fashion so as not to cause injustice to any employee. The rule of alternate seniority does not mean that the genuine seniority based on length of service by a previous employee should be completely overlooked or obliterated. Promotees regularly appointed during a particular period in excess of their quota for want of direct recruits can claim their whole length of service for seniority even against direct recruits who may turn up in succeeding periods. However, the promotees who had exceeded their quota would have to be pushed down to accommodate direct recruits coming after their appointment."

The dicta of the Supreme Court extracted above would be applicable in respect of promotions made during the period 1974-76.



The following observations of the Supreme Court in N.K.Chauhan v. State of Gujarat 1977 SCC (L&S) 127 have a bearing on the application of quota rota rule

"While laying down a quota when filling up vacancies in a cadre from more than one source, it is open to Government, subject to tests under Art. 16, to choose 'a year' or other period of the vacancy by vacancy-basis to work out the ~~qu~~ quota among the sources. But once the court is satisfied, examining for constitutionality the method proposed, that there is no invalidity, administrative technology may have free play in choosing one or other of the familiar processes of implementing the quota rule.

"Also later direct recruits cannot claim 'deemed' dates of appointment for seniority in service with effect from the time, according to the rota or turn, the direct recruits' vacancy arose. Seniority will depend on the length of continuous officiating service and cannot be upset by later arrivals from the open market save to the extent to which any excess promotees may have to be pushed down as indicated earlier.

"Promotees who have been fitted into vacancies beyond their quota during the period B--the year being regarded as the unit--must suffer survival as invalid appointees acquiring new life when vacancies in their quota fall to be filled up. To that extent they step down, rather be pushed down as against direct recruits who were later but regularly appointed within their quota."

The legal position regarding promotions made in excess of the quota rule has been enunciated in B.S.Gupta v. Union of India 1973 SCC (L&S) 1 as follows:

"If there were promotions in any year in excess of the quota, those promotions were merely invalid for that year but they were not invalid for all time. They could be regularised by being absorbed in the quota for the later years."

10. The legal position has been epitomised in the Department of Personnel & Training O.M. No. 35014/2/80-Estt.(D) dated 7.2.86 as follows :

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"If adequate number of direct recruits do not become available in any particular year, rotation of quotas for the purpose of determining seniority would take place only to the extent of the available direct recruits and the promotees.

"In other words, to the extent direct recruits are not available the promotees will be bunched together at the bottom of the seniority list below the last position upto which it is possible to determine seniority, on the basis of rotation of quotas with reference to the actual number of direct recruits who become available. The unfilled direct recruitment quota vacancies would, however, be carried forward and added to the corresponding direct recruitment vacancies of the next year (and to subsequent years where necessary) for taking action for direct recruitment for the total number according to the usual practice. Thereafter in that year while seniority will be determined between direct recruits and promotees, to the extent of the number of vacancies for direct recruits and promotees as determined according to the quota for that year, the additional direct recruits selected against the carried forward vacancies of the previous year would be placed en block below the last promotee (or direct recruit as the case may be), in the seniority list based on the rotation of vacancies for that year. The same principle holds good for determining seniority in the event of carry forward, if any, of direct recruitment of promotion quota vacancies (as the case may be) in the subsequent year."

11. DE seems to have been held in 1977 but is it is not known whether the DE was held in the years 1978 and 79. The appointments would be governed by the quota rota rule if DE was held in 1978 and 1979; if not held, the dicta of the Supreme Court in the decision cited supra would apply.

12. In view of the legal position enunciated above, the SL has not been validly prepared and requires to be re-done in the light of the foregoing and in accordance with law. The SL is accordingly quashed. We also direct R1 and R3 to prepare provisional SL superseding the previous SL within a period of three months from the date of receipt of this order. The same may be circulated among the concerned candidates including the applicant and in the light of the objections, if any received

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