

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

SDA Commercial Complex
Indiranagar
Bangalore - 560 038

Dated : 4 MAY 1988

APPLICATION NO. 386 to 395/87(F)

Applicants

Respondents

Shri B.S. Sreenath & 9 Ors

V/s

The Regional Provident Fund Commissioner,
Bangalore & 9 Ors

To

1. Shri B.S. Sreenath
2. Shri G. Sreenivasa Rao
3. Shri O. Shanmugam
4. Shri K. Tharanatha Setty
5. Shri J.K. Krishnoji Rao
6. Shri L. Shivanne
7. Shri R. Narasimha Murthy
8. Shri K. Ganapathy
9. Shri Ramachandra Singh
10. Shri M.S. Virupakshaiah

(81 Nos. 1 to 10 -

Head Clerks
Office of the Regional Provident
Fund Commissioner
No. 8, Rajaram Mohan Roy Road
Bangalore - 560 025)

11. Shri R.U. Goulay
Advocate
90/1, II Block, Near Ganesh Mandir
Post Office Road, Thyagarajanagar
Bangalore - 560 028
12. The Regional Provident Fund Commissioner
No. 8, Rajaram Mohan Roy Road
Bangalore - 560 025
13. The Central Provident Fund Commissioner
9th Floor, Mayur Bhavan
Connaught Circus
New Delhi - 110 001
14. The Secretary
Ministry of Labour
Shram Shakti Bhavan
New Delhi - 110 001
15. Smt Rose Clarine Fernandes
16. Shri M. Aswathanarayan
17. Shri A.K. Mitrananda

(81 Nos. 15 to 17 -

Enforcement Officers
Office of the Regional Provident
Fund Commissioner
No. 8, Raja Ram Mohan Roy Road
Bangalore - 560 025)

*Received all the 10 applicants
copies. H.S. G. 5/5/88*

*(M.S. Virupakshaiah)
Applicant*


OC

18. Shri N. Shivarani
Enforcement Officer
Regional Provident Fund Office
Madikeri
Coorg District
19. Shri K. Ramachandra
Public Relation Officer
Office of the Regional Provident
Fund Commissioner
No. 8, Rajaram Mohan Roy Road
Bangalore - 560 025
20. Shri Satish Premanand
Enforcement Officer
Office of the Provident Fund Officer
Mysore Division
Lakshmi Building, Clock Tower Square
Mysore - 570 001
21. Shri N.R. Sheeshagiri
Assistant Accounts Officer
Office of the Regional Provident
Fund Commissioner
No. 8, Rajaram Mohan Roy Road
Bangalore - 560 025
22. Shri M.S. Padmarajaiah
Central Govt. Sing Counsel
High Court Building
Bangalore - 560 001
23. Shri Harikrishna S. Holla
Advocate
34/3, 5th Main, Gandhinagar
Bangalore - 560 009

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER passed by this Tribunal
in the above said applications on 27-4-88.

Encl : As above


SECTION OFFICER
(JUDICIAL)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE TWENTY SEVENTH DAY OF APRIL 1988

Present : Hon'ble Justice Shri K.S. Puttaswamy ... Vice-Chairman

Hon'ble Shri P. Srinivasan ... Member (A)

APPLICATIONS NO. 386 TO 395/87(F)

B.S. Sreenath

G. Sreenavasa Rao

D. Shanmugam

K. Tharanath Setty

J.K. Krishnoji Rao

L. Shivanna

R. Narasimha Murthy

K. Ganapathy

Ramachandrasa Singh

M.S. Virupakshaiah

All Head Clerks
Regional Provident Fund
Commissioner's Office,
Bangalore-25

Applicants

(Shri R.U. Goulay . Advocate)

v.

Regional Provident Fund Commissioner
in Karnataka,
No.8, Rajaram Mohan Roy Road,
Bangalore-560 025

Central Provident Fund Commissioner,
9th Floor, Mayur Bhawan,
Connaught Circus,
New Delhi - 1.

Secretary to Labour Department,
Ministry of Labour,
Shramshakthi Bhavan,
Government of India, New Delhi.

Smt. Rose Clarine Fernandes,
Enforcement Officer,
Office of the Regional Provident
Fund Commissioner, Bangalore-560 025.

Respondents



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N. Shivaram,
Enforcement Officer,
Madikeri Coorg,

M. Aswanathanarayan
Enforcement Officer,
O/o the Regional Provident
Fund Commissioner,
Bangalore-25.

K. Ramachandra
Public Relation Officer,
O/o Regional Provident
Fund Commissioner,
Bangalore-25.

Satish Premanand,
Enforcement Officer,
Mysore Division,
Mysore.

N.R. Sheshagiri,
Assistant Accounts Officer,
O/o the Regional Provident
Fund Commissioner,
Bangalore-25.

A.K. Mitrananda,
Enforcement Officer,
O/o Regional Provident
Fund Commissioner,
Bangalore-25.

Respondents

(Shri M.S.Padmarajaiah . Advocate)
(Shri H.K.Holla . Advocate)

These applications came up for hearing before this Tribunal
on 21.4.1988. Hon'ble Shri P. Srinivasan, Member (A) made the
following:

ORDER

The applicants - 10 in number - before us are working as
Head Clerks in the Office of the Regional Provident Fund
Commissioner, Bangalore. Their grievance is that in the seniority
list of Head Clerks as on 1.1.1980 brought out on 17.4.1985
they have been wrongly shown as junior to Respondents 4 to 10



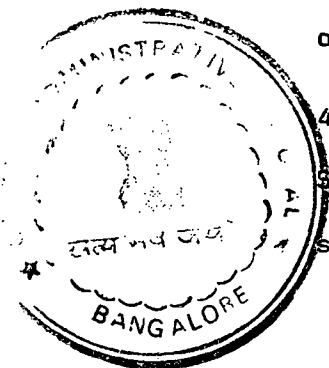
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and on the basis of this wrong seniority R-4 to 10 have been given promotion to the higher post of Enforcement Officer while the applicants still continue to work as Head Clerks. There are two prayers in the application viz. that directions be issued to R-1 to 3 to finalise the seniority list of Head Clerks assigning proper places to the applicants and R-4 to 10 and thereafter to consider the cases of the applicants for promotion to the post of Enforcement Officer along with the cases of R-4 to 10 and to give the applicants all consequential benefits flowing therefrom.

2. The applicants were represented by Shri R.U. Goulay, Advocate and R-1 to 3 by Shri M.S. Padmarajaiah, Senior Central Government Standing Council. Shri H.K. Holla, Advocate, appeared for R-4, and 6 to 10. R-5 who has been duly served has remained absent and is unrepresented.

3. Shri Padmarajaiah raised a preliminary objection to the effect that the provisional seniority list of Head Clerks in the Karnataka region as on 1.1.1980 was brought out on 17.4.1985 and it is against this seniority list that the applicants are aggrieved. They should have filed the applications within one year of the date when the seniority list was brought out i.e., on or before 17.4.1986 but these applications having been filed on 14.5.1987, long after the expiry of limitation should be dismissed as barred by time. Shri Padmarajaiah was supported in this objection by Shri H.K. Holla.

4. Opposing the objections of Shri Padmarajaiah and Shri Holla Shri Goulay appearing for the applicants submitted that the seniority list brought out on 17.4.1985 was termed a provisional



list subject to finalisation after receiving objections thereto. The applicants did not know what happened thereafter. R-1 to 3 claim to have finalised the same list on 4.10.1985 but the applicants had no information about this. It was much later, that is, in 1986 that the applicants came to know of the wrong seniority assigned to them and made representations and even till date the final seniority said to have been brought out on 4.10.1985 had not been intimated to the applicants. He, therefore, submitted that the applications are well in time.

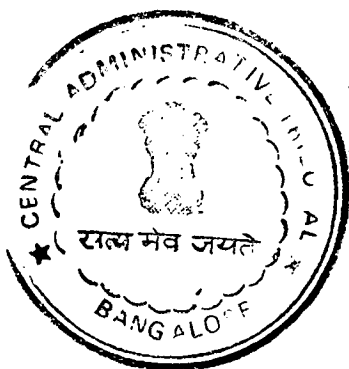
5. After careful consideration we are persuaded to agree with Shri Goulay that the final seniority of Head Clerks not having been communicated to the applicants till the date of hearing, their applications cannot be rejected as barred by time. The Respondents are unable to show that the final seniority list brought out on 4.10.1985 was brought to the notice of the applicants at that time or till now. The preliminary objection of Shri Padmarajaiah is, therefore, rejected.

6. The crux of the case of the applicants is that they were promoted as Head Clerks before the Respondents and so on the basis of continuous officiation in the post they should have been treated as senior to R-4 to 10. Recruitment to posts of Head Clerks at the relevant time was under the rules to be made entirely by promotion from lower posts but two separate methods of selection were prescribed. 75% of the posts in the cadre of Head Clerks was to be filled by promotion from lower ranks on the basis of seniority while 25% of the posts



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was to be filled in through limited competitive examination for which officials in lower posts were allowed to compete. According to the Respondents this represented recruitment from two sources though persons eligible for promotion under the one or the other method were departmental officials. Persons promoted through limited competitive examination were treated as Direct Recruits while those promoted on the basis of seniority were treated as Promotees and inter se seniority between the two groups was regulated by rotation of vacancies in the ratio of the quotas. The applicants were promoted to posts of Head Clerks in the 75% quota while the R-4 to 10 were "direct recruits" to the same posts in 25% quota. In the absence of candidates who had qualified in the limited competitive examination ad hoc promotions on the basis of seniority were resorted to and the applicants got promoted on ad hoc basis in this way. Subsequently when persons qualifying in the limited competitive examination in the 25% quota became available, the applicants were adjusted and regularised in the years in which posts in the 75% quota became available to them for the purpose. On the basis of regularisation in the year of occurrence of the vacancies in their quota they were regularised and allowed seniority. Similarly persons promoted in the 25% quota were also regularised in vacancies which arose in their quota from time to time and given seniority on that basis. Thus the regular absorption of the applicants in posts of Head Clerks came to be made much later than they were initially appointed to those posts on ad hoc basis. Since recruitment to posts of Head Clerks was, according



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to the respondents, made from two sources in fixed quotas of 75% and 25%, inter se seniority between the recruits from the two sources was regulated by rotation of vacancies which has been upheld by the Supreme Court in so many cases.

Application of the rota rule of seniority where quota rule of recruitment was in existence is, therefore, perfectly legal and on that basis the applicants had been allowed seniority

/with

vis-a-vis the Respondents/which this Tribunal cannot interfere.

21 with.

7. On the other hand Shri Goulay contended that persons promoted in the 75% quota on the basis of seniority in lower posts and persons promoted from lower posts in the 25% quota through limited competitive examination did not constitute two sources of recruitment like promotees and direct recruits. The source of recruitment was the same but the method of selection was different. That being so, the seniority of persons promoted either in the 75% quota or in the 25% quota had to be regulated on the basis of continuous officiation and for this purpose ad hoc promotions should also be taken into account. If that be so the applicants should be ranked senior to the Respondents 4 to 10 in the grade of Head Clerks and further promotions to the post of Enforcement Officer should ~~be~~ considered on the basis of that seniority. Shri Goulay relied on the decision of the Chandigarh Bench of this Tribunal in Mohinder Kumar and Others v. Regional Provident Fund Commissioner (OA No.T-556/86 decided on 23.1.1987) and the judgment of ¹¹ ~~the~~ Supreme Court in appeal in the same case in SLP No.7274/1987. The principle laid down in these decisions had also been followed by the Hyderabad Bench of this Tribunal in A.Siva Rao and Others v.

6 have been



Central Provident Fund Commissioner, Hyderabad (O.A. No.491/86 decided on 13.10.1987) relating to seniority of Head Clerks under the Regional Provident Fund Commissioner, Hyderabad. Shri Goulay, therefore, contended that the same principles which were applied in the decisions rendered by the Chandigarh Bench of this Tribunal and the Supreme Court in Mohinder Kumar's case and followed by the Hyderabad Bench in Siva Rao's case should be applied for determining seniority of persons working as Head Clerks under the Regional Provident Fund Commissioner, Bangalore (R-1 in this case).

8. ^{81 and Shri Holla} Shri Padmarajaiah resisted the contentions of Shri Goulay. The decision of the Chandigarh Bench in Mohinder Kumar's case was regarding seniority in the grade of Upper Division Clerks in the office of the Regional Provident Fund Commissioner. Moreover in that case the Chandigarh Bench had erred in holding that promotees taken through limited competitive examination could not be regarded as direct recruits and thereby holding that the rota rule of seniority was not applicable. The Department has treated the two methods of promotion, one on the basis of seniority and the other on the basis of limited competitive examination, as representing recruitment from two sources, calling one "promotees" and the other "direct recruits" in fixed quotas. The Chandigarh Bench was wrong in holding to the contrary. The decision rendered by the Supreme Court in appeal filed by the Government against the order of Chandigarh Bench not being a reasoned order is not binding on this Tribunal. Though the decision of the Hyderabad Bench in Siva Rao's case was in respect of relative seniority of Head Clerks that ^{again}, Shri Padmarajaiah submitted, was an erroneous decision in so far as it followed

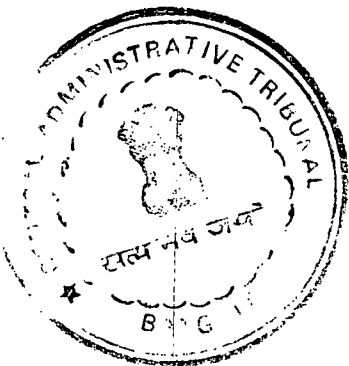


P. L. Ho

the decision of the Chandigarh Bench in ignoring the difference between persons promoted as Head Clerks on the basis of seniority and those promoted through limited competitive examination. Shri Padmarajaiah relied on the judgment of Supreme Court in AIR 1975 SC 1269 M.L.C.D'Souza v. Union of India, AIR 1975 SC 538 Amruth Lal v. R.N. Kapur and AIR 1972 SC 670 Union of India v. Ravi Varma.

9. We have given careful consideration to the rival contentions. As we have already stated promotions to posts of Head Clerks from lower ranks were to be made by two methods viz. on the basis of seniority and on the results of limited competitive examination. These were ^{also} the two methods of recruitment adopted for promotion to posts of Upper Division Clerks in the Central Provident Fund Organisation which came up for consideration in Mohinder Kumar's case before the Chandigarh Bench of this Tribunal. That Bench did not agree that persons promoted by the two methods represented separate categories viz. promotees and direct recruits to whom the rota rule of seniority would apply. ^{The} Hon'ble Supreme Court passed the following order in appeal against the decision of the Chandigarh Bench:-

"We see no reason to entertain this Special Leave Petition. One ground in support of this petition was that there is contrary decision by one of the Benches of the Administrative Tribunal. That difficulty will not continue by refusing to grant leave. We are of the view that the appropriate rule for determining the seniority of the officers is the total length of service in the promotional posts which would depend upon the actual date when they were promoted."



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10. From the above it will be seen that the Supreme Court clearly spelt out the rule of seniority to be applied on the facts before it. We cannot agree with Shri Padmarajaiah that this is not a reasoned order and that we are not bound by it. The facts in the present case are similar to those which obtained in Mohinder Kumar's case decided by the Supreme Court namely that recruitment was by promotion on the basis of seniority and on the basis of limited competitive examination. Though in Mohinder Kumar's case the issue before the Court was relative seniority in the grade of Upper Division Clerks in the same organisation, the principle of seniority enunciated by the Supreme Court will hold for determining the relative seniority of Head Clerks also on a parity of reasoning ^M. Moreover keeping in view the decision of ^{the M} Supreme Court in Mohinder Kumar's case the Hyderabad Bench of this Tribunal applied the same principle of seniority applied by the Supreme Court to the cadre of Head Clerks in the Central Provident Fund Organisation in Hyderabad. We have carefully read the judgment of the Hyderabad Bench in Siva Rao's case and we see no reason to differ from it. In the view that we have taken in the matter ^H the decisions^H relied on by Shri Padmarajaiah have no bearing on the facts of the present case.

11. In view of what we have said above, we quash the provisional seniority list as on 1.1.1980 brought out by R-1 on 17.4.1985 and the final seniority list brought out on 4.10.1985 and direct the Respondents 1 to 3 to redraw the seniority list

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in accordance with the principles enunciated in Mohinder Kumar's case by the Chandigarh Bench of this Tribunal and the Supreme Court and in Siva Rao's case by the Hyderabad Bench of this Tribunal and to give all consequential benefits, if any, to the applicants arising therefrom.

12. The applications are allowed. Parties to bear their own costs.

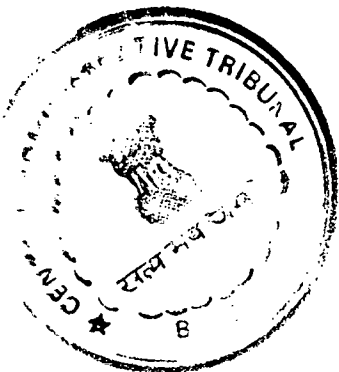
Sd/-
VICE CHAIRMAN

27/4/1988

Sd/-
MEMBER (A)

bsv

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AP 7/4/5/88
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE