

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 47/90.

Dated this Tuesday, the 7th day of April, 1998.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,  
VICE-CHAIRMAN.

HON'BLE SHRI P. P. SRIVASTAVA, MEMBER (A).

1. K. Ajit Babu,  
residing at Flat No. 2233,  
Block No. 197, Sector VI,  
C.G.S. Colony, Antop Hill, .. Since died  
Bombay - 400 037.
2. M.S. Rajan Unni,  
residing at Flat No. 884,  
Building No. 94, Sector-1,  
C.G.S. Colony, Antop Hill,  
Bombay - 400 037.
3. T. Haridas,  
residing at Flat No. 2362,  
Block No. 200, Sector VI,  
C.G.S. Colony, Antop Hill,  
Bombay - 400 037.
4. B. N. Bankar,  
residing at Flat No. 3330,  
Block No. 81, Sector VII,  
S.M. Plot, C.G.S. Colony,  
Antop Hill, Bombay 400 037.

.. Applicants

Applicant Nos. 2 to 4, presently employed  
as Controller of Imports & Exports in the  
Office of Joint Controller of Imports &  
Exports, Bombay.

| By Advocate Shri Suresh Kumar |

VERSUS

1. Union Of India through  
The Secretary,  
Ministry of Commerce,  
Central Secretariat,  
New Delhi.
2. The Chief Controller of Imports  
& Exports, 'Udyog Bhavan',  
Maulana Azad Road, New Delhi.

3. The Joint Chief Controller  
of Imports & Exports,  
Western Zone,  
New C.G.O. Building,  
New Marine Lines,  
Churchgate,  
Bombay - 400 020.

Respondents.

(By Advocate Shri R. R. Shetty)

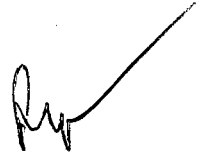
INTERVENORS

1. M. V. Alwe.
2. N. B. Parab.
3. S. A. Apte,
4. A. G. Naik.
5. V. M. Shikhare.

Intervenors.

The above intervenors are  
presently working as Licensing  
Assistants, O/o. Joint Directorate  
General of Foreign Trade, Mumbai.

(By Advocate Shri M. I. Sethna)



: ORDER :

{ PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN }

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985. The respondents have filed reply. Some officials have been permitted to come as intervenors as per order dated 04.03.1998 on M.P. No. 47/90. Those intervenors have also filed their reply. We have heard Mr. Suresh Kumar, the Learned Counsel for the applicant, Shri M.I. Sethna, the Learned Counsel for the ~~Intervenors~~, and Mr. R.R. Shetty, the Learned Counsel for the respondents. We may also point out that one of the petitioners, namely - the first petitioner, Shri K. Ajit Babu, has died during the pendency of the case.

On an earlier occasion, a Division Bench of this Tribunal, at the admission stage, by an order dated 12.01.1990 rejected the O.A. as not maintainable in view of an earlier decision <sup>given</sup> by a Bench of this Tribunal at Ahmedabad in T.A. No. 263/86. The view taken by the Bench of this Tribunal was that, when a matter is concluded by an earlier decision of any Bench of this Tribunal, then the remedy of the party is to apply for review and not to file a fresh O.A. The applicants challenged this order before the Supreme Court. The Supreme Court by an order dated 25.07.1997 in Civil Appeal No. 3520/91 allowed the appeal and set aside the order passed by this Tribunal with a direction to hear the application on merits. The said decision of the Supreme Court is since reported in A.I.R.(1997) SC 3277.

The Supreme Court has observed that if in any O.A. filed before the Tribunal it is pointed out that the point is covered by an earlier decision of any Bench of the Tribunal, then the Bench where the fresh case is filed, should hear the matter and then take a decision whether it should agree with the earlier decision or not. If it agrees with the earlier decision, then the matter ends and the O.A. can be disposed of on those lines. If however, the Bench in the new case, decides to disagree with the view expressed in the earlier case, then the matter should be referred to a larger Bench or Full Bench. After remand of the case by the Supreme Court, we have taken up the matter on board and heard all sides as mentioned above.

2. The facts necessary for the disposal of the dispute before us is as follows :

The applicants and intervenors are employees of Imports and Exports department of Government of India. They were originally appointed as Lower Division Clerks. The Lower Division Clerk is promoted as Upper Division Clerk and then as Licencing Assistant, then as Section Head and then as Controller, etc. The four applicants in this case have undergone all these promotions and are now working as Controllers since 1983 regarding the 3rd applicant and since 1985 regarding other applicants.

It is also not disputed that three of the applicants are juniors to all the intervenors in the cadre of Lower Division Clerks. One of the applicants, namely - applicant No. 2, M.S. Rajan Unni, is junior to some of the Intervenor. All the applicants came to be promoted as Upper Division Clerks in 1977 and got subsequent promotions upto the level of Controller. The applicants' case is that, as per the policy of the department, option circular was given to L.D.Cs. to go on promotion to different places. If any of the employee declines to go on promotion to a different place, then he loses his seniority and the next junior employee who agrees to go on promotion will be promoted initially on adhoc basis and then subsequently it will be regularised and he becomes senior in the cadre of U.D.Cs, though he may be junior to many of the L.D.Cs. in the lower cadre. The applicants say that they went on promotion to different places and most of the employees in the department refused to go on promotion to different places and, therefore, they lost their right to seniority.

3. The official respondents' case and the intervenors' case is that, no such option was given to the intervenors prior to 1980 when the applicants came to be promoted as Upper Division Clerks. Their further case is that, the applicants were promoted on adhoc basis, on the basis of local seniority and therefore, they cannot claim seniority over the

seniors in the L.D.C. cadre. The adhoc promotion given to the applicants on local seniority basis will not affect the position of the seniors in the L.D.C. cadre and they still continue to be seniors to the applicants.

4. P.S. John & Others, who lost seniority to some of the juniors, challenged the same by approaching the High Court of Gujarat by filing writ petition in 1983, which came to be transferred to the Bench of this Tribunal at Ahmedabad and numbered as T.A. 263/86. By an order dated 14.08.1987, the application came to be allowed with a finding that these adhoc promotees on the basis of option circular will not get seniority over others who decline to go on promotion. It is observed that such adhoc promotions do not deprive the claim of seniority of the petitioners in that case.

5. After coming to know the order of the Bench of this Tribunal at Ahmedabad, one P. Bhaskaran and others filed an application for review of that judgement before the said Bench. That review application came to be dismissed by the Tribunal. Then P. Bhaskaran & others, carried the matter in special leave before the Supreme Court. The decision of the Supreme Court is reported in 1996 (32) ATC 801 [ P. Bhaskaran & Others V/s. Union Of India & Others ]. In this judgement, the Supreme Court upheld the Government Circular regarding the optional promotion where an employee who refuses to go on promotion to a different place will lose his

seniority and the junior who gives option and goes to a different place by a transfer on promotion will march a scale over the senior. That means, the Supreme Court reversed contrary view taken by the Ahmedabad Bench of the Tribunal in T.A. No. 263/86. But however, on facts, the Supreme Court did not disturb the relief given by the Tribunal to Mr. P.S. John & others, since there was no material to show that they had been given option to go on transfer to Ahmedabad. That means, on facts the relief given to Mr. P.S. John & Others was not disturbed by the Supreme Court but on the question of law, the Supreme Court reversed the view of the Tribunal and held that the Government Circular is valid and if a senior declines to go on promotion on transfer, he will lose the benefit of seniority and the junior who goes on promotion by exercising option, will become senior to the erstwhile senior in the lower cadre.

6. In pursuance of the judgement of the Ahmedabad Bench of the Tribunal in T.A. No. 263/86, the Government revised the seniority list of different cadres in the Controller's Office by issuing one circular no. 34/88 dated 25.05.1988 and three circulars dated 17.10.1989 bearing No. 66/89, revising the seniority list. The applicants who were shown as very much seniors in the seniority list dated 12.09.1980 in Circular No. 47 of 1980, amended by circular no. 51 of 1981 dated 13.10.1981, were shown far below in the seniority list in the revised seniority list of 1988 and 1989. That is why, these four applicants

have approached this Tribunal by filing this O.A. to quash the revised seniority list of 1988 and 1989 and for consequential reliefs.

7. Therefore, we find that the dispute between the parties lies in a narrow campus. The question is, whether the employees who went on promotion by exercising option will scale a march over the seniors who declined to go on promotion to different places. We need not consider the validity of the Government circular on ~~the~~ first principle, since the matter is now concluded by the decision of the highest court of the land in Bhaskaran's case referred to above. The Supreme Court has clearly ruled that the Government Circular is valid and the juniors who have exercised option and went on transfer, will scale a march over the seniors who declined to go on promotion. The Supreme Court also gave a direction to the department to determine the seniority by following the principles enunciated in the judgement. Hence, in view of the direction of the Supreme Court, the Government is obliged to revise the seniority list as per the guidelines in the judgement.

8. It is now brought to our notice that the Government did revise the Seniority List and published the Seniority List dated 24.02.1997, during the pendency of this case. The applicants are aggrieved by this seniority list and they have since amended the O.A. challenging the legality and correctness of the seniority list dated 24.02.1997.



9. Now we have to mention one more development in the matter. As soon as this seniority list dated 24.02.1997 came to be published, some of the employees who were dissatisfied with the circular, namely P. Bhaskaran & Others, filed O.A. No. 632/96 before the Bench of this Tribunal at Ahmedabad. The said Tribunal by an order dated 02.01.1998 allowed the application and quashed the impugned seniority list marked as A-6 and A-14 in that case and directed the Government to publish a fresh seniority list by following the principles laid down by the Supreme Court in Bhaskaran's case and on the basis of records and evidences within a period of three months from the date of receipt of this order.

10. In view of the observations of the Supreme Court in this very case, which is since reported in AIR 1997 SC 3277, it has been held ~~as~~ as to what the Tribunal should do if there is an earlier decision covering the same issue. We have two options ~~as~~ as observed by the Supreme Court. We may hold that the question is squarely covered by the earlier decision of the Bench of the Tribunal at Ahmedabad and the matter cannot be re-opened again. The second option is, if we are persuaded to disagree with the view expressed by the Ahmedabad Bench, then we will have to refer the matter to a larger Bench.

11. Mr. M.I. Sethna, the Learned Counsel for the Intervenors, vehemently contended that the judgement

of the Ahmedabad Bench dated 02.01.1998 requires reconsideration, therefore, we should disagree with the same and refer the question to a Larger Bench. After going through the lengthy pleadings and lengthy arguments, we are not persuaded to take a different view from the view taken by the Ahmedabad Bench in the Order dated 02.01.1998 in O.A. No. 632/96.

The Learned Counsel for the applicant maintained that the applicants were promoted in 1977 on adhoc basis, which came to be regularised in 1980 or 1981 and seniority list of 12.09.1980 shows the correct position of the applicants and this cannot be set at nought now after 18 years. He therefore argued that the claim of the Intervenor now to unsettle the settled position after a lapse of 18 years is barred by the principles of delay and laches. The Learned Counsel for the official respondents and Intervenor contended that there is no such delay and each Intervenor was not issued any option circular prior to 1980 and they were not aware of the seniority of the applicants. It is an admitted case that the applicants are juniors to the intervenors. The applicants got the first promotion in 1977-78 as U.D.C. They got the second promotion as Licensing Assistant in 1980-81. They got the third promotion as Section Head in 1983. Then they got the fourth promotion as Controller in 1983 and 1985 (vide para 4 of the O.A.). The Learned Counsel for the applicant is, therefore, right in his submission that in view of

these four promotions which the applicants have secured in course of time, cannot be set at nought in one stroke and the applicants cannot be reverted back to the position of L.D.C., U.D.C., Licensing Assistant, etc. On the other hand, the argument of the respondents and the intervenors is, since the Intervenor were senior to the applicants in the L.D.C. cadre and were not informed of the circular and they have not declined promotion on transfer, they cannot be made to forego their seniority in favour of the applicants.

As already stated, we cannot go into this question of first principles since the point is directly covered by the decision of the Supreme Court in Bhaskaran's case. The judgement of the Supreme Court in Bhaskaran's case has now been interpreted by the Ahmedabad Bench.

12. In the case before the Ahmedabad Bench in O.A. No. 632/96, the very same question arose for the consideration, namely -/validity and legality of the recent seniority list dated 24.02.1997. The Ahmedabad Bench considered all the facts and circumstances of the case and the law bearing on the point and in particular, the observations of the Supreme Court in Bhaskaran's case and held that the promotion of the juniors in view of the option circular is perfectly valid and justified and held ~~revised~~ <sup>seniority list</sup> is incorrect and is not in conformity with the decision of the Supreme Court in Bhaskaran's case.

Infact, the Ahmedabad Bench has considered all the aspects and has directed the department to revise the seniority list on the basis of the observations of the Supreme Court and reliable records and evidences. They have also taken into consideration the delay on the part of the seniors in not objecting to the promotion of the juniors for a period of 14 years or so.

In para 14, the Ahmedabad Bench of this Tribunal in the said case has observed as below :-

"some of the employees have claimed that they were not aware of issuance of such circulars and that they did not refuse promotion on transfer. If that is so, the seniors would have objected to the seniority list or the promotion order of juniors at the relevant point of time. Absence of any such objection in the last 15 years or so indicate that the circulars appear to have been circulated and brought to the notice of all concerned staff members. After lapse of 14 years or so, it is not proper for the department to determine the question of exercise of option on the basis of a general circular only @seeking the comments of the employees concerned as to whether the earlier circular issued sometime in 1982-83 onwards were brought to their notice or not. The exercise conducted in this case by the respondents, to our mind, is totally incorrect and improper. The department ought to have examined the matter on the basis of available records to show whether there were any records to show that circulars issued from 1980-81 onwards have never been circulated. The Supreme Court in

the above judgement has clearly directed the Joint Chief Controller of Imports and Exports to determine the seniority by the principles laid down in this case after considering the objection if any by the concerned employees. Any decision of the department with regard to the seniority list should be based on reliable records and evidence. The Department cannot go only by the comments of the affected employees. The procedure adopted in this case is improper and invalid in law."

Then in the operative portion the Ahmedabad Bench has observed as follows :

"In the circumstances, we quash and set aside the impugned order (A-6 and A-14) and direct the Respondents to publish the revised seniority of the applicants by following the principles laid down by the Supreme Court in this case and on the basis of records and evidence. The respondents are directed to publish the revised seniority list within a period of three months from the date of receipt of this order. No costs."

We are in respectful agreement with the above observations. We are not persuaded to take a different view inspite of voluminous records, voluminous pleadings and lengthy and persuasive arguments by the Learned Counsel for the official respondents and intervenors. In our view, the Ahmedabad Bench has considered all relevant facts and circumstances and has reached this conclusion, with which we respectfully agree. We do not find any reason to take a different view and then refer the matter to a Larger Bench.

13. The applicants had to rush to the Court since in view of the revised seniority list of 1988, they were sought to be reverted. We have passed an interim order that the applicants should not be reverted. Now we find that the Ahmedabad Bench has quashed the latest seniority list of 1997. Unless and until the department revises and issues a fresh seniority list, the applicants should not be reverted from the present post which they are occupying. The status-quo as on today, has to be maintained till the department issues a fresh and revised seniority list.

In the circumstances, we hold that the direction given by the Ahmedabad Bench of this Tribunal is perfectly justified and should be followed.

14. In the result, the application is allowed. We agree with the view taken by the Ahmedabad Bench that the recent Seniority List dated 24.02.1997 is incorrect and invalid and should be quashed. As directed by the Ahmedabad Bench of the Tribunal, the department has to prepare a revised seniority list in line with the guidelines given by the Supreme Court in Bhaskaran's case [ 1996 (32) ATC 801 ]. Till such fresh revised list is prepared, the respondents are directed to maintain the status-quo of the present post of the applicant and not to revert them till the revised seniority list is published.

In the circumstances of the case, there will be no order as to costs.

  
(P.P. SRIVASTAVA)  
MEMBER (A).

  
(R.G. VAIDYANATHA)  
VICE-CHAIRMAN.