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CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH  
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Original Application No: 829/91.

Transfar Application No:

DATE OF DECISION: 28.7.94

Shri L. S. Gunjal, Petitioner

Shri R. R. Dalvi, Advocate for the Petitioners

Versus  
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Regional Provident Fund Commissioner,  
Bombay. Respondent


Shri R. K. Shetty. Advocate for the Respondent(s)

CORAM :  
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The Hon'ble Shri V. Ramakrishnan, Member (A).

The Hon'ble Shri B. S. Hegde, Member (J).

1. To be referred to the Reporter or not ? ☒
2. Whether it needs to be circulated to other Benches of the Tribunal ?

  
( B. S. HEGDE )  
MEMBER (J).

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(10)

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. NO.: 829/91

Shri L. S. Gunjal

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Applicant

Versus

Regional Provident Fund  
Commissioner, Bombay.

...

Respondents.

CORAM :

1. Hon'ble Shri V. Ramakrishnan, Member (A).
2. Hon'ble Shri B. S. Hegde, Member (J).

APPEARANCES :

1. Shri R. R. Dalvi,  
Counsel for the Applicant.
2. Shri R. K. Shetty,  
Counsel for the Respondents.

JUDGEMENT

DATED : 28-7-94

X Per. Hon'ble Shri B. S. Hegde, Member (J) X.

1. The Applicant has filed his application under Section 21 of the Central Administrative Tribunal's Act 1985, challenging the appointment of Shri A. L. Jagwani as Enforcement Officer on the ground that the applicant is senior to Shri A. L. Jagwani in the cadre of Head Clerks/Machine Operators and there was nothing adverse against him on the date of the impugned order dated 09.03.1980 framing the Recruitment Rules for the post of Enforcement Officers/Assistant Accounts Officers and Superintendents. Accordingly, he prayed that he should be promoted retrospectively as Enforcement Officer and placed immediately above Shri A. L. Jagwani with all consequential benefits.

2. In support of his contention, he relied upon the Respondent's letter dated 29.04.1991 at page 13, which reads as follows :-

"Since he is let of by the appellant authority, Shri L. S. Gunjal is entitled to get promotion to the post of Head Clerk from the date of his immediate Junior got promotion. In his case, his seniority will be fixed after Shri R. K. Prabhu and before Shri M. R. Girkar, Head Clerks.

Accordingly, Shri L. S. Gunjal is promoted to the post of Head Clerk w.e.f. 30.03.1988 with all pay benefits."

The Department vide their letter dated 13.03.1991 pursuant to the Tribunal's Order dated 23.08.1990, Shri A. L. Jagwani has been promoted to the post of Machine Operator/Head Clerk w.e.f. 20.07.1988. Therefore, he submits that his promotion to the post of Head Clerk is earlier than Shri A. L. Jagwani and he should be placed above Shri A. L. Jagwani.

3. The above contention is denied by the Respondents who says that the seniority list has been re-casted in view of the decision of the Tribunal in O.A. No. 430 of 1988 (Shri D. K. Modhavi & 238 Others Versus Regional Provident Fund Commissioner & Others) dated 01.01.1992, wherein the Tribunal has referred to the Judgement of Chandigarh Bench where similarly placed persons approached Chandigarh Bench of the Tribunal and the Bench allowed their application making the following observations :-

" In view of the factual and legal position stated above, respondent no. 1 is directed to recast the seniority list of the UDCs treating all of them as "Promotees" under the general Principles of seniority in the department as applicable to the promotees (vide para 6 of

the notification dated 1.11.1962). While recasting the seniority list, all concerned parties should be afforded full opportunity to represent in the matter and there should be no violation of principles of natural justice and equity. The whole process should be completed within a period of six months."

4. Against this order, the Union Of India filed a Special Leave Petition in the Supreme Court, which has been dismissed by the Supreme Court with the following observations :-

"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."

In the light of the above, the entire Seniority list was placed in jeopardy with the result the respondents are obliged to prepare a fresh seniority list in accordance with the directions given by the Chandigarh Bench of the Tribunal which were upheld by the Supreme Court with an additional direction that the actual date when they were promoted has to be taken into consideration while preparing the seniority list.

5. Accordingly, the Tribunal has directed the respondents to prepare a fresh seniority list

in accordance with the directions given by the Chandigarh Bench of the Tribunal.

6. The Learned Counsel for the Respondents Shri R. K. Shetty, further draws our attention to the Full Bench decision in Shri Ashok Mehta & Others V/s. Regional Provident Fund Commissioner & Others, wherein the Tribunal after considering the various aspects of the matter had observed as follows :-

"(a) The Officers promoted on the basis of seniority subject to the rejection of unfit and those promoted on the result of the competitive examination shall be treated as promotees.

Persons promoted by both the modes of promotion shall be included in a common seniority list.

Their inter se seniority has to be determined on the basis of their total length of service which will be reckoned from the actual date of their promotion in accordance with the relevant recruitment rules.

Promotion by way of adhoc or stop-gap arrangement made due to administrative exigencies and not in accordance with rules cannot count for seniority.

Principle 'B' laid down by the Supreme Court in the DIRECT RECRUIT CLASS II ENGINEERING OFFICERS' ASSOCIATION AND OTHERS Vs. STATE OF MAHARASHTRA AND OTHERS will apply as explained by the Supreme Court in KESHAV CHANDRA JOSHI AND OTHERS ETC. Vs. UNION OF INDIA AND OTHERS only to cases where the initial appointment is made deliberately in

disregard of the rules and the incumbent allowed to continue in the post for long period of about 15 to 20 years without reversion till the date of regularisation of service in accordance with rules, there being power in the authority to relax the rules.

- (b) The rota quota principle of seniority is not applicable for determining the seniority to the cadre of UDCs in these cases."

Therefore, he submits that pursuant to the directions of the Tribunal, the Respondents had prepared a comprehensive revised draft seniority list of Section Supervisors calling for objections if any, from the concerned officials. In that list, the applicant has been shown at Sl. No. 415 whereas Shri A. L. Jagwani has been shown at Sl. No. 379. The Learned Counsel for the applicant draws our attention that even in this list also, the date of promotion of the applicant has been shown earlier than Shri A. L. Jagwani. However, on perusal of the list, we find that Shri A. L. Jagwani has been promoted on regular basis. The date shown in the Seniority List against Shri A. L. Jagwani is 20.07.1988 which is the actual and also the notional date of promotion, whereas the applicant's notional date of promotion is 12.07.1988 which is subsequent to Shri A. L. Jagwani. Accordingly, the applicant is shown as junior to Shri A. L. Jagwani. In this connection, the Learned Counsel for the Respondents rely upon the reply wherein they have stated that subsequent to the issue of letter dated 29.04.1991, the Tribunal had delivered a Judgement vide dated 01.01.1992, which changed the chain of events. By virtue of the judgement, the Seniority List prepared earlier, has been set aside and

directed the Respondents to prepare a fresh seniority list in accordance to the directions given by this Hon'ble Tribunal in O.A. No. T-556 of 1986 dated 23.01.1987. Therefore, keeping in view of the observations of the Chandigarh Bench as well as Full Bench decision referred to above, they are left with no other alternative, but to recast the seniority list. In view of the above, the letter issued by the Respondents vide dated 29.04.1991 become infructuous and no more survives. In this connection, the respondents submits that the name of the Applicant in this seniority list of Head Clerks (Section Supervisors) Machine Operators appears at Sr. No. 415 at Page No. 11. At this stage, the Respondents explain that Shri A. L. Jagwani although appointed as Lower Division Clerk on 04.08.1976 and promoted as Upper Division Clerk on 27.09.1979 opted for the post of Machine Operator which is a technical post having the scale of pay of Rs. 1400-40-1800-EB-50-2300 (Revised Scale) which is equivalent to the post of Head Clerk. Shri A. L. Jagwani was appointed to the post of Machine Operator with effect from 20.07.1988 on regular basis. The applicant though appointed as Lower Division Clerk and consequently got promotion as Upper Division Clerk and subsequently as Head Clerk on adhoc basis with effect from 30.03.1988 on the basis of normal seniority. Shri A. L. Jagwani was appointed as Machine Operator on regular basis with effect from 20.07.1988 in the scale of pay of Rs. 1400-40-1800-EB-50-2300 whereas the applicant was promoted on regular basis to the post of Head Clerk with effect from 12.07.1989 in the scale of pay of Rs. 1400-40-1800-EB-50-2300

which is equivalent to the post of Machine Operator, on the basis of the revision of seniority list as per directions of this Hon'ble Tribunal and Hon'ble Principle Bench, Central Administrative Tribunal, New-Delhi. Hence, Shri A. L. Jagwani ranks senior to the applicant having regard to the regular appointment in accordance with Statutory Recruitment Rules.

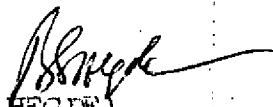
7. In the light of the above, they submit that the O.A. do not survive, as they have already implemented the directions of the Tribunal and the same be dismissed.

8. In the light of the above, we have heard the rival contentions of the parties and perused the records. It is not the stand of the respondents that he is challenging the seniority list issued by the Respondents dated 02.12.1993. In that list, admittedly, he is shown as junior to Shri A.L. Jagwani and he has been promoted to the post of Head Clerk on adhoc basis w.e.f. 30.03.1988 and his notional date of promotion is admittedly 12.07.1989 whereas Shri A. L. Jagwani has been promoted on regular basis from 20.07.1988, which is earlier than the date of promotion of the Applicant. The Respondents have given a detailed reply regarding the reasons for recasting the seniority list prepared and circulated earlier. In this seniority list also, they called for the comments of various concerned officials. Therefore, it is open to the Applicant to make representation to the competent authority regarding place of seniority. Nowhere it is stated that he has made any representation to change the seniority. However, merely harping upon the letter issued by the Respondents dated 29.04.1991



does not any way help the applicant, as it has become infructuous in the light of the changed circumstances.

9. Therefore, we are of the view, that *in the* conspectus of the facts and circumstances of the case, there is no merit in the O.A. and the same is dismissed. No order as to cost.

  
(B. S. HEGDE)

MEMBER (J).

  
(V. RAMAKRISHNAN)

MEMBER (A).

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BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

R.P. NO. 108/94 IN D.A. NO. 829/1991

(18)

Shri L.S. Gunjal,  
Head Clerk,  
O/o the Regional Provident  
Fund Commissioner,  
Maharashtra & Goa, Bombay.

... Petitioner

Versus

Regional Provident  
Fund Commissioner,  
Maharashtra & Goa,  
Bombay & Others.

... Respondents

CORAM :

Hon'ble Shri V. Ramakrishnan, Member (A)  
Hon'ble Shri B.S. Hegde, Member (J)

Tribunal's Order by Circulation

Per. Shri B.S. Hegde, Member (J) 0

1. This Review Petition is filed seeking review of the judgement dated 28.07.1994 in D.A. No. 829/91.
2. We have seen the review application and we are satisfied that the application can be disposed of by circulation. Hence, we proceed to do so.
3. The main contention of the applicant in the original application is that one Shri A.L. Jagwani, who has been promoted as Enforcement Officer, who was junior in the cadre of Head Clerk/ Machine Operator,

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accordingly, he should be promoted retrospectively as Enforcement Officer and placed immediately above Shri A.L. Jagwani. The applicant himself concedes in the Review Petition that his claim for Enforcement Officer over Shri A.L. Jagwani has been rejected on the sole ground that as on 30.03.1988, the Petitioner was promoted on adhoc basis. In this Review Petition, he mainly relies upon the observations made by the Additional Solicitor General of India to the effect that on the facts mentioned in the judgement, it is the actual length of service from the date of ad hoc promotion has to be taken. The opinion rendered by the Additional Solicitor General is advisory. Nevertheless, Court's findings could prevail against the opinion rendered by the respective authorities. As a matter of fact, Shri A.L. Jagwani has been promoted to the post of Machine Operator pursuant to Tribunal's Order dated 23.08.1990 with effect from 20.07.1988, whereas the applicant was promoted to the post of Head Clerk on ad hoc basis with effect from 30.03.1988. It is within the knowledge of the party that the entire seniority has been re-casted in view of the decision of the Tribunal of Chandigarh Bench in O.A. No. 430 of 1988 Shri D.K. Modhavi & 238 Others vs. Regional Provident Fund Commissioner & Others, wherein the Tribunal has held that in view of the factual and legal position stated above, the Respondent No.1 is directed to re-cast the seniority list of the UDCs treating all of them as "Promotees". Against this order, the Respondents filed a Special Leave Petition in the Supreme Court, which has been dismissed by the Supreme Court with the observations that "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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4. Accordingly, the respondents were compelled to prepare a fresh seniority list in accordance with the directions given by the Chandigarh Bench of the Tribunal, keeping in view of the Full Bench Decision of the Tribunal in Ashok Mehta & Others vs. Regional Provident Fund Commissioner & Others. The Full Bench inter alia observed:

" Their inter se seniority has to be determined on the basis of their total length of service which will be reckoned from the actual date of their promotion in accordance with the relevant recruitment rules." (emphasis supplied)


Accordingly, the respondents prepared a comprehensive revised draft seniority list of Section Supervisors calling for objections if any, from the concerned officials. In that list, the applicant has been shown at Sl. No. 415 whereas Shri A.L. Jagwani has been shown at Sl. No. 379. It is stated in the judgement that on perusal of the list, we find that Shri A.L. Jagwani has been promoted on regular basis and the date shown in the Seniority List against Shri A.L. Jagwani is 20.07.1988, which is the actual and also the notional date of promotion, whereas the applicant's notional date of promotion is 12.07.1989, which is subsequent to Shri A.L. Jagwani. Accordingly, he is shown as Junior to Shri A.L. Jagwani. Besides that, the applicant was promoted on regular basis to the post of Head Clerk with effect from 12.07.1989 whereas Shri A.L. Jagwani was appointed as Machine Operator with effect from 20.07.1988. After preparing a fresh seniority list, the respondents called for comments of various concerned officials. Nevertheless, the applicant has not made any representation to the competent authority regarding place of seniority after this <sup>draft</sup> seniority list was published. He merely relies upon the letter issued by the Respondents dated 29.04.91, which in view of the changed circumstances, do not survive. In the Review Petition, the applicant has cited the decision of the Supreme Court in G.S. Lamba vs. Union of India 1985 SCC (L&S) 491 SC which in our view, the principle laid down do not have a relevance to the facts of this case.

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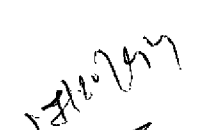
5. Under Order 47 Rule 1 C.P.C., a decision/ judgement/ order can be reviewed only if an error apparent on the face of the record, new material or evidence is discovered which was not within the knowledge of the parties or could not be produced by that party at the time the judgement was made, despite due diligence; or for any sufficient reason construed to mean analogous reason.

6. A perusal of the review application revealed that none of the reasons warrant any review.

7. It is well settled that the scope of the Review Application is very limited and a Review Application is maintainable only if there is an error apparent on the face of the record or some new evidence has come to notice etc. Review Application cannot be utilised for re-arguing the case traversing the same ground. In the light of the above, we do not find any new facts brought to our notice. In view of the facts and circumstances of the case, we do not see any merit in the Review Application and the same is rejected in circulation.

  
( B.S. HEGDE )  
MEMBER (J)

  
( V. RAMAKRISHNAN )  
MEMBER (A)

  
order/Judgement despatched  
to 'opical' respondent (s)  
on 7/11/94

  
16/11/94