

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