

(3)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. No. 143/92

198

T.A. No. 2

DATE OF DECISION 31.3.1992RR Chitre & S L Gurjar PetitionerMr. R R Dalvi

Advocate for the Petitioner(s)

Versus

Union of India & Ors. RespondentMr. R K Shetty

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice U C Srivastava, Vice Chairman

The Hon'ble Mr. M Y Priolkar, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal? ✓

MGIPRRND-12 CAT/86-3-12-86-15,000

V.C.

(4)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, "GULESTAN" BUILDING NO.6
PREScot ROAD; BOMBAY-400001

OA No. 143/92

R R Chitre
Machine Operator
Office of Regional P F Commissioner
Maharashtra & Goa
341 Bhavishya Nidhi Bhavan
Bandra (E); Bombay 51

2. S L Gurjar
Machine Operator
Office of Regional P F Commissioner
Maharashtra & Goa
341 Bhavishya Nidhi Bhavan
Bandra (E); Bombay 51

..Applicant

v/s.

1. M Guruswamy
Regional P F Commissioner;
Maharashtra & Goa
341 Bhavishya Nidhi Bhavan
Bandra (E); Bombay 51

2. B M Som
Central P F Commissioner
9th floor; Mayur Bhavan;
Cannought Circus; O
New Delhi 1

3. V P Sawney
Secretary to the Govt. of India
Min. of Labour; Mantralaya;
New Delhi 1

4. Mr. Mohan Anchan
C/o. Respondent no.1

5. Mr. K A Stanslaves
C/o. Respondent no.1

..Respondents

CORAM: Hon. Shri Justice U C Srivastava, V.C.
Hon. Shri M Y Priolkar, Member (A)

APPEARANCE:

Mr. R R Dalvi
Advocate
for the applicants

Mr. R K Shetty
Counsel
for the respondents

ORAL JUDGMENT:

(Per: U C Srivastava, Vice Chairman)

DATED: 31.3.1992

Miscellaneous Petition No. 99/92 is an
application for joint petition and the same is allowed.

The applicants who were machine operators in the office of Regional Provident Fund Commissioner, Maharashtra and Goa approached this Tribunal praying that they may be retrospectively promoted as machine operators with effect from April 1982 instead of from 25.10.1982 and 21.9.1984 respectively as has been actually done with all consequential benefits and on the basis of promotions as machine operators in April 1982 they may be further promoted as enforcement officers with effect from April 1985 after completion of the requisite period of 3 years in the posts of machine operators with all consequential benefits.

The grievance of the applicants is that they are not treated at par with the head clerks for the purpose of common seniority with Head Clerks and next promotion as Enforcement Officers in view of Ministry of Labour notification dated 25.8.1976 under which the posts of Machine Operator have been equated with that of Head Clerks, to provide promotional avenues to the incumbents of the machine operator's posts. The applicants have based their claim on the judgment of the Tribunal in OA 720 of 1988 given at the instance of the applicant. The applicant had earlier approached the Tribunal by filing OA No.720/88 which was decided on 7.8.1990 of which one of us was a member viz., Hon. Shri M Y Priolkar, Member (A), and the following observations were made:

"...

from the perusal of relevant part of the amended Employees Provident Fund (Staff and Conditions of Service) Regulations, 1962, at p. 24 of the paper book, it would be seen that the requirements of experience and other qualifications etc., both in the case of Machine Operators and Head

Clerks, are also the same. We are, therefore, of the view that there is no justification for denying the applicants, their right to be considered for promotion to the next post of Enforcement Officer, at par with the Head Clerks, out of the common seniority."

It was further observed that the applicants be given benefit under provision of FR 22-C from the date any of their juniors promoted as Head Clerk, had been given such benefits, and on the same conditions, as applicable to Head Clerks. As regards the special pay of Rs.150/- claimed by the applicants as one of the reliefs, the same is not found to be tenable, being merely at the proposal stage, and was accordingly rejected.

On behalf of the applicant it was contended notwithstanding the said direction given by this Tribunal the same is said to be not being observed. The applicants passed the competitive test for machine operators in April 1982, one of them was promoted as machine operator on 25.10.1982 and another on 21.9.1984, although vacancies existed for them in April 1982 itself, as per their allegation and there was a deliberate attempt on the part of the respondents to thwart their promotion and ⁱⁿ Common ~~contempt~~ seniority list the applicant's position was not correctly shown. According to the applicants reckoning the dates of promotion as Machine Operators in April 1982 both the applicants are eligible for further promotion as Enforcement Officers in April 1985 itself whereas they have been promoted in December 1990. Though the Head Clerks who were appointed against examination quota got further promotion as enforcement officers on 16.6.86; 16.7.86 and 23.1.87, whereas the applicants have been promoted as enforcement officer in December 1990 which is a case of discrimination.

Respondents in their written statement have pleaded that the case of the applicant is based on the very ground of seniority and the finalisation of the seniority list would take at least six months since it is to be recast from the year 1962. In this connection they have made a reference passed by this Tribunal in the case of D.K. MADHAVI & ORS. V. UNION OF INDIA & ORS. IN O.A. NO. 430/1988 on 1.12.1989. In the said judgment we have taken into consideration the fact that there was a seniority list in the year 1962 and thereafter the entire seniority list was placed in jeopardy with the result the respondents have prepared a fresh seniority list in accordance with the direction given by the Chandigarh Bench of the Tribunal which was upheld by the Supreme Court with an additional direction that the actual date of the promotion has to be taken into consideration while preparing this seniority list. We have taken into consideration the judgment passed by the Chandigarh Bench in a similar case against which the SLP was dismissed by the Hon. Supreme Court. We accordingly had directed the respondents to prepare a fresh seniority list in accordance with the directions given by the Chandigarh Bench within the time prescribed. So far as the preparation of the seniority list is concerned situation is not said to be the same thing as has been claimed by the applicants. According to the applicants the vacancies are available and they were entitled to be promoted with effect from the date the others were promoted, but notwithstanding the fact that the vacancies were available and while the others who were working as Head Clerks were promoted in the year 1986 the applicants without any rhyme or reason were promoted in the year 1990.

When a directions is given to the respondents it was a matter which was to be considered by the Respondents and in case their contention was correct obviously they could have been given if not promotion atleast notional promotion with effect from the date when others were promoted. But the respondents have not cared to consider such plea. Even if notional promotion is granted to them from a particular date that does not mean that the seniority list will be affected in any way, and at the most some one may because go above or may go down. But merely a direction is given to recast the seniority list the question of promotion which the applicants are claiming with retrospective effect cannot be closed for all such purposes.

Accordingly the respondents are directed that they may consider the claim of promotion of the applicants as per direction given Tribunal in OA No. 720/88 within a period of three months from to-day. Even if the promotion is given to the applicant notionally with effect from a particular date and certain consequential benefit is given the same shall not affect the seniority and the position of the applicants in the seniority list which would be prepared in accordance with the directions given in our judgment dated 1.1.1992 in OA 430/1988.

With the above directions the application is disposed of with no order as to costs.


(M Y PRIOLKAR)
MEMBER (A)


(U C SRIVASTAVA)
VICE CHAIRMAN