

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No: 128 OF 1994.

Date of Decision: July 6, 1999.

Smt. L. M. Mahadik,

Applicant.

Shri R. R. Dalvi,

Advocate for  
Applicant.

Versus

Regional Provident Fund  
Commissioner & 4 Others,

Respondent(s)

Shri R. K. Shetty,

Advocate for  
Respondent(s)

CORAM:

Hon'ble Shri. Justice R. G. Vaidyanatha, Vice-Chairman.

Hon'ble Shri. D. S. Baweja, Member (A).

- (1) To be referred to the Reporter or not? *no*
- (2) Whether it needs to be circulated to *no*  
other Benches of the Tribunal?

  
(R. G. VAIDYANATHA)  
VICE-CHAIRMAN.

os\*

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 128 OF 1994.

Dated the 6<sup>th</sup> day of July, 1999.

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

HON'BLE SHRI D. S. BAWEJA, MEMBER (A).

Smt. L. M. Mahadik,  
Assistant Accounts Officer  
in the Office of the Regional  
Provident Fund Commissioner,  
Maharashtra & Goa, Bombay,  
34-1, Bhavishya Nidhi Bhavan,  
Bandra (East),  
Bombay - 400 051.

... Applicant

(By advocate Shri R.R. Dalvi)

VERSUS

1. Regional Provident Fund  
Commissioner,  
Maharashtra & Goa,  
341, Bhavishya Nidhi Bhavan,  
Bandra (East), Bombay-400 051.
  2. Central Provident Fund  
Commissioner, 9th Floor,  
Mayur Bhavan, Cannought Circus,  
New Delhi - 110 001.
  3. Secretary to the Government  
of India, Ministry of Labour,  
Mantralya,  
New Delhi - 110 001.
  4. D. K. Kadam,  
Assistant Accounts Officer.
  5. S. D. Gujarathi, E.O.
- (By Advocate Shri R. K. Shetty).

... Respondents.

OPEN COURT ORDER

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

This is an application filed under Section 19  
of the Administrative Tribunal Act. We have heard  
Shri R. R. Dalvi, the Learned Counsel for the applicant  
and Shri R. K. Shetty, the Learned Counsel for official

Ry

respondents. Though many private respondents have been added, they have not entered appearance either in person or through an advocate.

2. Few facts which are necessary for the disposal of this application are as follows :

The dispute in this case is about seniority between promotees on the basis of seniority and promotees on the basis of competitive examination. In the office of the Regional Provident Fund Commissioner, promotion to Upper Division Clerks is by two modes, one mode is 75% by promotion on the basis of seniority-cum-merit and the remaining 25% are to be filled up on the basis of limited departmental competitive examination. According to the applicant, the normal rules for deciding seniority in the cadre of Upper Division Clerk for the purpose of next promotion is on the basis of total length of service in the grade of U.D.C. The applicant was promoted as U.D.C. on adhoc basis on 19.09.1979 and on regular basis with effect from 20.05.1980. But in the seniority list the applicant's seniority is shown on the basis of promotion on regular basis, namely - with effect from 20.05.1980. But according to the applicant, in view of number of decisions of this Tribunal and by the Supreme Court, the applicant should get seniority from the date of her initial adhoc promotion, namely - 19.09.1979. This is the <sup>crux</sup>crust of the dispute in the present application.

The private respondents are promotees on the basis of 25% examination quota. The applicant is a promotee on the basis of seniority-cum-merit. According to the applicant, some of the examination quota promotees

who are promoted subsequent to her promotion have been shown as senior to her in the seniority list. Hence, the application is filed for a direction that the applicant should be kept above the private respondents in the seniority list on the basis of her first promotion and on the theory of continuous length of service in the promotional post.

3. The official respondents have stated that the applicant's first promotion was on adhoc basis and she cannot get seniority on the basis of her adhoc promotion. She gets seniority only from the date of her regular promotion and this has been correctly shown in the seniority list.

4. Therefore, the only question for consideration is, whether the applicant is entitled to claim seniority from the date of her initial adhoc promotion or from the date of her regular promotion?

5. The applicant has not produced her order of promotion on adhoc basis. It is not clear from the allegations in the application that her adhoc promotion was made by regular D.P.C., whether adhoc promotion was made on the basis of seniority and whether her adhoc promotion was within the seniority quota or whether it was in excess of seniority quota. Unless the applicant satisfies these conditions, the applicant cannot get seniority from the date of adhoc promotion.

The Learned Counsel for the applicant strongly placed reliance on the judgement dated 23.01.1987 in T.A. No. 556/86 of Chandigarh Bench of this Tribunal which is at page 39 of the paper book. This judgement says

that seniority will count on the basis of length of service. This has been confirmed and approved by the Supreme Court in S.L.P. No. 7274 of 1987 by order dated 11.08.1987, which is at page 51 of the paper book. The Supreme Court has also ruled that the appropriate rule for determining seniority of the officer is the "total length of service in the promotional post". The said decision of the Supreme Court came to be interpreted by the Full Bench of this Tribunal in T.A. No. 43/87 where by judgement dated 05.02.1993 the Full Bench has held that total length of service must necessarily mean service on regular promotion. It cannot include promotions on adhoc basis or stop-gap arrangement made due to administrative exigencies. A copy of the judgement of the Full Bench is exhibited as R-1 to the written statement of the official respondents.

6. The Learned Counsel for the applicant invited our attention to the judgement of the Supreme Court in the case of Central Provident Fund Commissioner & Another V/s. No. Ravindran & Others/ reported in 1996(32)ATC 167. The detail facts are not available in the reported judgement of the Supreme Court. The Supreme Court was considering an appeal from the judgement of the Ernakulam Bench of the Tribunal reported in 1992(22)ATC 88 in the case of N. Ravindran V/s. Central Provident Fund Commissioner, where it is clearly held that adhoc promotion or stop-gap arrangement will not count for seniority. They have taken pains to give number of illustrations to explain the position. It is also stated that if the promotions either by seniority quota or examination quota exceeds



their quota, then those persons shall not get seniority from the date of adhoc promotion till their promotion comes within the particular quota. If the adhoc promotion is contrary to rules, then the adhoc service will not count for seniority.

The above decision of the Ernakulam Bench in Ravindran's case came to be confirmed by the Supreme Court in the decision mentioned above. The Supreme Court has again reiterated that the total length of service in the promotional post should determine the seniority and the Supreme Court rejected the argument of the appellant that the decision of the Ernakulam Bench is contrary to earlier decisions of the Supreme Court. In the end of the judgement, the Supreme Court has clearly observed as follows :-

"On the whole, therefore, we think that the view taken by the Tribunal is just and fair and does not call for interference at our ends."

We have already referred to the facts of Ravindran's case where the Ernakulam Bench has clearly ruled that adhoc promotion unless it is made as per seniority, as per rules and within the quota, it will not count for seniority. This decision of the Ernakulam Bench has been approved by the Supreme Court.

7. As already stated, in the present case the applicant has not placed before us her adhoc promotion order. She has not placed material to show that her promotion was on the basis of her seniority in the L.D.C. cadre. She has not placed any material to show that her promotion was cleared by the D.P.C. as per rules. Further, she has not pleaded nor proved that her promotion was within the seniority quota. In the absence of these

materials, applicant's adhoc promotion cannot count for seniority. She will get seniority only from the date of her regular promotion as mentioned by the Ernakulam Bench in Ravindran's case and approved by the Supreme Court in Ravindran's case mentioned above.

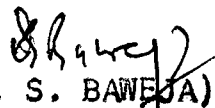
8. In addition to this, the respondents' counsel has brought to our notice that just last week a Division Bench of this Tribunal presided over by the Hon'ble Chairman in O.A. No. 75/94 in the case of S. D. Jagtap V/s. Regional Provident Fund Commissioner & Others by order dated 22.06.1999 held that in any case adhoc service will not count for the purpose of seniority. <sup>96</sup> There is an identical case like the case of the applicant and from the same department and regarding the same adhoc promotion like Head Clerk in the first instance and later regular promotion as Head Clerk in the office of the Provident Fund Commissioner. Following the Full Bench decision, the said Bench observed that promotion by way of adhoc or stop-gap arrangement made due to administrative exigencies will not count for seniority. In particular, the observations of the Bench in para 4 are material, which are as follows :-


"In the present case, there is no contention that the adhoc promotion was through a DPC selection for regular promotion and against a substantive vacancy. In other words, the initial adhoc promotion of the applicant was not as per recruitment rules. In view of this position, the applicant obviously cannot have the benefit of his adhoc service in view of the judgement of the Full Bench of this Tribunal in Ashok Mehta & Ors. V/s. Regional Provident Fund Commissioner (Supra)."

  
...7

The above observations clearly show that unless the applicant pleads and proves that her promotion was as per seniority, within the seniority quota and by a regular D.P.C. and as per rules, she will not get the benefit of adhoc promotion for the purpose of seniority. It is not disputed that applicant has been given seniority from the date of her regular promotion but her grievance is that she should have been given seniority from the date of her adhoc promotion. There is <sup>a</sup>the difference of nearly about eight months between her adhoc promotion on 19.09.1979 and regular promotion on 20.05.1980. In the circumstances of the case we are constrained to hold that applicant cannot get seniority for the post of Head Clerk from 19.09.1979 and she has been rightly given seniority from the date of her regular promotion, namely - 20.05.1980. If once it is so held, then there is no dispute that the private respondents are senior to her. Hence, the applicant cannot be granted any relief in the present O.A.

9. In the result, the application fails and it is hereby dismissed. However, in the facts and circumstances of the case, there will be no order as to costs.

  
(D. S. BAWEJA)  
MEMBER(A).

  
(R. G. VAIDYANATHA) 6/7/99  
VICE-CHAIRMAN.



EXH. R-2

Contempt Petition No.164/92  
in  
Original Application No.430/88.

Shri S.L.Desai & 54 Ors.

.... Applicants.

V/s.

M.Gurusamy,  
Regional Provident Fund  
Commissioner, Bombay.

..... Respondent.

Appearances:-

Applicants by Shri J.J.Limaye,  
Respondent by Shri R.K.Shetty.

Tribunal's Order :-

Dt. 10.12.1993.



We have heard the learned counsel for the parties and the contention of the learned counsel for the Respondents is that the seniority lists which were directed to be prepared by the Respondents are in consonance with the guidelines given in the Judgment of the Full Bench of this Tribunal in Shri Ashok Mehta V/s. Regional Provident Fund Commissioner decided on 5.2.1993. The learned counsel for the applicant relies on the decision of the Supreme Court in S.C.Jain V/s. UOI & Ors (A.T.R. 1986(2) CAT 346). But the learned counsel concedes that that Judgment is not in respect of the same service regarding which the Full Bench has pronounced its judgment. The Full Bench decision takes note of the decision of this Tribunal in O.A. No.430/88 delivered on 1.1.1992 and the earlier decision of the Chandigarh Bench on which reliance was placed. Since only limited question before us is about the implementation about the decision of this Court as approved by the Full Bench it will not be open to us to go into other questions. Those questions cannot be raised by way of Contempt Petition. The C.P. is dismissed.

Date .. 21/12/93

Section Officer 21/12/93

M.K.KOLHATKAR Central Admn. Tribunal, (M.S.DESHPANDE)  
MEMBER(A) Bombay Bench. VICE-CHAIRMAN.