

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

OPEN COURT / PRE DELIVERY JUDGMENT IN OA 732/94

Hon'ble Vice Chairman / Member (J) / Member (A)-
may kindly see the above Judgment for
approval / signature.

V.C. / Member (J) / Member (A) (K/S)

Hon'ble Vice Chairman

Hon'ble Member (J)

I agree *S. S. S.*

Hon'ble Member (A) (K/S)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 732/94

28-10-99

Date of Decision:

Smt. G.Y. Surve

.. Applicant

Shri R.R. Dalvi

.. Advocate for
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

Shri R.K. Shetty

.. Advocate for
Respondent(s)

CORAM:

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

The Hon'ble Shri S.L. Jain, Member (J)

(1) to be referred to the Reporter or not ?

(2) Whether it needs to be circulated to ~~other~~ other Benches of the Tribunal ?

(3) Library

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

dd 28/10/99

order/Judgement despatched
to Applicant/Respondent (s)
on 22/10/99

27/10/99

IV/166.8.2.4.36

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.732/94

Dated this the 28th day of October 1999.

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

Hon'ble Shri S.L.Jain, Member (J)

Smt.G.Y.Surve,
Head Clerk,
O/O the Regional Provident
Fund Commissioner,
Maharashtra & Goa,
Bombay.

...Applicant

By Advocate Shri R.R.Dalvi

V/S.

1. Regional Provident Fund
Commissioner,Maharashtra
& Goa, 341, Bhavishyanidhi
Bhavan, Bandra (E),Bombay.

2. Central Provident Fund
Commissioner, 9th Floor,
Mayur Bhavan,Cannought
Circus, New Delhi.

3. Secretary to the Govt.
of India, Ministry of
Labour, Mantralaya,
New Delhi. & Ors.

...Respondents

By Advocate Shri R.K.Shetty

O R D E R

{Per: Shri D.S.Baweja, Member (A)}

This application has been filed by the applicant challenging her seniority list as Upper Division Clerk (UDC) in the Office of Respondent No. 1, Regional Provident Fund Commissioner, Maharashtra & Goa, Mumbai.

2. The applicant has stated her case as follows :- The UDCs of Regional Provident Fund Commissioner, Chandigarh agitated the matter for legal remedy in a Writ Petition which after transfer came before the Chandigarh Bench of the Tribunal in TA.NO.556 of 1986. The applicants in this TA. sought direction to the respondents to fix up inter-se seniority between the promotees based on seniority cum fitness and promotees on the basis of departmental examination from the date of appointment as UDC and not on the basis of rotation rule which is applicable to direct recruits. This prayer was allowed as per order dated 23.1.1987 with the direction to recast seniority list treating all UDCs as promotees under the general principles of seniority as applicable to promotees. This order was challenged by the respondents before the Hon'ble Supreme Court through SLP No. 7274 of 1987. This SLP was dismissed as per the order dated 11.8.1987 upholding the order dated 23.1.1987 with the direction "we are of the view that the appropriate rule for determining the seniority of the officers is the total length of service in the promotion posts which would depend upon the actual date when they were promoted". Respondents prepared revised seniority list in 1987 following the order of Chandigarh Bench and direction of Hon'ble Supreme Court in the SLP. However, this seniority list was challenged before this Bench in OA.NO.430/88 by 239 LDCs working in the Office of Respondent No.1 alleging that seniority list was not in compliance with the order of the Chandigarh Bench. This OA. was disposed of as per order dated 1.1.1992 quashing the seniority list under challenge with a direction to prepare the seniority list fresh in accordance with the directions of the Chandigarh

Bench in order dated 23.1.1987 and confirmed by the Hon'ble Supreme Court in the judgement dated 11.8.1987 in the SLP 7274 of 1987. Thereafter, similar matter came up before the Full Bench at the Principal Bench in TA.43/87 with 5 other OAs. Ashok Mehta and others, Full Bench in its decision dated 5.2.1993 laid down the norms for ^{casting} releasing the seniority list which included that seniority shall be based on the total length of service to be reckoned from the actual date of promotion in accordance with the relevant rules. Following the order dated 23.1.1987 of Chandigarh Bench, judgement dated 11.8.1987 in SLP and order dated 5.2.1993 of the Full Bench as referred to above, the respondents issued a draft seniority list of UDCs on 23.4.1993. Objections were invited if any from the staff. The finalised seniority list was issued on 1.10.1993. The applicant has filed the present OA. on 2.5.1994 feeling aggrieved by these seniority lists stating that she has not been allowed seniority correctly based on the date of promotion i.e. 31.12.1972 against seniority quota but given from 17.8.1973 and as a result of the same, a large number of employees who are promoted based on the departmental competitive examination have gone alone her. She has contended that the respondents have not followed the directions in OA.430/1988 as per order dated 1.1.1992 rigidly. Further the principle of seniority laid down by the Hon'ble Supreme Court in SLP 7274/87 has not been correctly applied. Referring to the seniority list dated 23.4.1993, the applicant has indicated the S.Nos. of the UDCs who have been incorrectly shown senior to the

applicant. Applicant has made them party respondent. However, subsequently through the amendment application respondents No. 4-32 and 68-70 have been deleted.

3. Respondents have opposed the application by filing written statement. Respondents referring to the same judgements/orders relied upon by the applicant have submitted that the impugned draft seniority list dated 23.4.1993 and the final seniority list dated 1.10.1993 have been prepared keeping in view the directions in the order dated 1.1.1992 in OA.430/1988 of this Bench. As per this order, the dates of promotion as UDC in Column 6 of the seniority lists dated 23.4.1993 and 1.10.1993 have been set aside and the said dates have been replaced by the dates in Column 7 in compliance with the order dated 1.1.1992. In view of this, the dates of promotion as UDC and Head Clerk in paras 5 (1) ii & iii in the OA. are not tenable and no relief can be claimed based on the same. It is further stated that seniority lists dated 23.4.1993 and 1.10.1994 have been prepared keeping in view the law laid down by the Chandigarh Bench in its order dated 23.1.1987 and confirmed by the Hon'ble Supreme Court in SLP 7274 of 1987 and Full Bench order of the Principal Bench dated 5.2.1993 in TA. 43/87. While preparing the revised seniority list due care has been taken on the ratio of vacancies between the examination quota and seniority quota in accordance with the provisions of the recruitment rules. Respondents further submit that since the seniority lists under challenge have been prepared in compliance with the judgements/orders under

reference, the applicant has no cause of grievance and the present OA. deserves to be dismissed.

4. The applicant has controverted the averments in the written statement through the rejoinder reply. The applicant has reiterated that she was promoted as UDC from 31.12.1972 but granted notional seniority from 17.8.1973 and shown junior to those promoted later on 1.3.1973 as they had passed the departmental competitive examination for promotion. This was done for operation of rota-quota rule which has been held invalid in the order of the Full Bench in TA.43/87 by the order dated 5.2.1993. Further, since the total length of service in the promotional post depending upon the actual date is criterian for determining seniority, there is no provision for notional date of promotion and therefore the action of the respondents is in violation of cited judgements/orders particularly the law laid down by the Hon'ble Supreme Court in SLP 7274/1987.

5. We have heard the arguments of Shri R.R.Dalvi and Shri R.K.Shetty learned counsel for the applicant and respondents respectively.

6. From the averments made by the applicant and the reliefs prayed for, it is noted that the controversy raised in the present OA. centres around the seniority of the promotees by seniority and promotees through the departmental competitive examination which has ^{been} gone into in the following judgements/orders relied upon by the applicant :-

(a) Chandigarh Bench in TA.556/1986 order dated 23.1.87 in case of Mohinder Kumar and others vs. Union of India.

(b) Judgement of the Hon'ble Supreme Court dated 11.8.87 in SLP 7274/1987 against the order at (a) above.

(c) Full Bench order dated 5.2.93 of Principal Bench in TA.43/87 in the case of Ashok Mehta & others vs. Union of India order dated 1.1.92 in OA. 430/88 of this Bench.

7. Based on the above detailed judgements, the applicant has challenged the impugned seniority list dated 23.4.93 and 1.10.93 stating that the same are not in accordance with the law laid down in the cited judgements mainly on two counts namely (a) rota-quota rule has been applied in determining seniority whereby those promoted through competitive examination have been shown senior to those promoted by seniority like the applicant. (b) criterian of total length of service from the date of promotion for seniority as laid down by the Hon'ble Supreme Court in SLP 7274 and by Full Bench in TA.43/87 has not been followed. The respondents on the other hand have contested the submissions of the applicant and maintain that the impugned seniority lists have been framed as per the directions in OA.430/88 which are based on

the judgement⁵ at (a), (b), (c) above and the applicant has been allowed seniority correctly from the date of regular promotion based on the ratio of vacancies for the two groups.

8. Keeping the above facts in focus, we have examined the issue involved in this OA. On going through the seniority lists at Annexure-'A', we do not find that the rota quota rule has been followed in framing the seniority lists in respect of quota in percentages fixed for promotion by seniority and promotion through departmental competitive examination. Therefore the first contention is without any basis. Therefore the reliance placed on the order dated 22.6.94 of Bangalore Bench in OA. in the case of C.R.Venkatesh vs. Central Provident Fund Commissioner does not come to the aid of the applicant. The second contention with regard to date of promotion and length of the service for determining the seniority is the core of the issue. The applicant's case is that her seniority requires to be determined from the date of promotion, i.e. 31.12.1972 and not from the notional date of promotion of 17.8.1973 which is not covered by any rules. The respondents have submitted that the notional date of promotion as indicated in column 7 of the seniority list dated 23.4.1993 is the date of regular promotion which is the actual date of regular promotion based on ratio of vacancies available for the two modes of promotion. Therefore, the question for determination is whether the promotion of the applicant on 31.12.1972 was regular or adhoc. The applicant during the arguments produced the copy of the order No. MH/PF/EST/1383 dated

30.12.1972 which clearly lays down that the promotion of the applicant as UDC from 31.12.1972 was purely temporary and on adhoc basis. The applicant claims that this date of promotion is to be treated as regular as those promoted based on the departmental examination have been given promotion from the date of passing of examination and has thus been placed senior to the applicant. We are unable to accept this stand of the applicant. As laid down by the Hon'ble Supreme Court in SLP 7274/1987 and interpreted by the Full Bench in order dated 5.2.1993 in TA.43/87, the seniority is to be determined based on the length of service from the date of regular promotion and not from the date of adhoc promotion. The applicant got regular promotion from 17.8.1973 based on the vacancies available for ~~the~~ promotion on seniority basis. The applicant has not demonstrated that the vacancies were available when the applicant was promoted on adhoc basis by seniority and the adhoc promotion was treated as regular by a subsequent order. Further, the applicant's contention that the Full Bench judgement in TA. 43/87 is applicable to Delhi & Kerala is not tenable as the law laid down will apply to all similarly placed. In the light of these observations, we are unable to appreciate the contention of the applicant that the impugned seniority lists are not prepared in compliance with the directions in the order dated 1.1.1992 in OA. 430/88.

9. The counsel for the respondents brought to our notice two recent orders of this Bench as under pointing out that the present issue has been examined in these orders :-

(i) OA.75/94 - order dated 22.6.99 in the case of
S.D.Jagtap vs. Regional Provident Fund Commissioner.

(ii) OA.128/94 order dated 6.7.1999 in the case of
L.M.Mahadik vs. Regional Provident Fund Commissioner.

We have carefully gone through these orders and note that the controversy raised in the present OA. is the same as in these OAs. In both these OAs. also the claim is for seniority from the date of adhoc promotion and the same has been rejected holding that the seniority is to count from the date of regular promotion in view of the order of the Full Bench in the case of Ashok Mehta & others. In the OA. 128/94, the decision in OA.75/94 has been relied upon. In view of our deliberations above, we are in respectful agreement with what is held in the above two cited orders of this Bench.

10. The applicant has relied upon the order of Principal Bench in case of S.C.Jain vs. Union of India, 1986 ATC 36 to support his pleading that the period of adhoc promotion followed by regular appointment would count seniority in the grade. In view of the order of the Full Bench in TA.43/87 in the case of Ashok Mehta and others, based on the law laid down by the Hon'ble Supreme Court in SLP 7274/87, what is held in the case of S.c.Jain does hold good and therefore this order does not come to the aid of the applicant.

11. Reliance has been also placed by the applicant on the judgement of the Hon'ble Supreme Court in the case of Central Provident Fund Commissioner vs. N.Ravindran (1996) 32 ATC 167. This judgement has been reviewed in the order dated 6.7.1999 in OA.128/94 and we respectfully endorse the same and hold that the same does help the case of the applicant as in this judgement, Hon'ble Supreme Court has confirmed the order of the Eranakulam Bench that adhoc promotion unless it is made as per seniority and within the quota as per rules, it will not count for seniority. This judgement therefore advance the case of the applicant.

12. In the result of above, we are unable to find any merit in the OA. and the same is dismissed accordingly with no order as to costs.

S.L.JAIN
(S.L.JAIN)

MEMBER (J)

D.S.BAWEJA
(D.S.BAWEJA)

MEMBER (A)

mrj.