

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 75/94

Date of Decision:

Mr. S. D. Jagtap

Applicant.

Shri P. R. Dalvi

Advocate for
Applicant.

Versus

Regional Provident Fund Commissioner and Ors.

Respondent(s)

Shri R. K. Shetty

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice K. M. Agarwal, Chairman.

Hon'ble Shri. R. K. Ahooja, Member(A).

(1) To be referred to the Reporter or not? *Yes*

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

abp.

02
(R. K. AHOOJA)
MEMBER(A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GULESTAN BLDG. NO. 6, 4TH FLR, PRESCOT RD, FORT.,
MUMBAI - 400 001.

ORIGINAL APPLICATION NO: 75/94.

DATED THIS 22/6 DAY OF JUNE, 1999.

CORAM: Hon'ble Shri Justice K.M. Agarwal, Chairman.

Hon'ble Shri R.K. Ahooja, Member(A).

Mr. S.D. Jagtap,
employed as Headclerk in
the office of the Regional Provident
Fund Commissioner,
Maharashtra & Goa, Bombay.

... Applicant.

By Advocate Shri P.R. Dalvi.

v/s.

1. Regional Provident Fund
Commissioner, Maharashtra & Goa,
341, Bhavishya Nidhi Bhavan,
Bandra(E), 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,
Mantralaya, New Delhi-110 001.

4. Shri A.G. Pradhan.
5. Shri G.D. Kelkar.
6. Shri A.G. Joshi.
7. Shri G.D. Tarse.
8. Shri A.M. Khan.

(O/O. Regional Provident Fund
Commissioner, Maharashtra &
Goa, Bhavishya Nidhi Bhavan,
Bombay - 400 051).

... Respondents.

By Advocate Shri R.K. Shetty.

I O R D E R I

[Per Shri R.K. Ahooja, Member (A)]

1. The applicant is aggrieved by the circular issued
by Regional Provident Fund Commissioner dated 2/12/93 circulating
there-with a revised seniority list of section supervisors as
on 1/10/93.

2. The case of the applicant is that the promotions to
the post of Head Clerk under the Provident Fund Commissioner
are made on the basis of 75% through seniority and 25% by

d

promotion through limited departmental examination. Earlier the inter se seniority of two categories was governed on rota quota system. When the seniority of the Upper Division Clerk and Head clerk was circulated in 1986-87 as a draft seniority list, the promotees who came through the limited departmental exam were shown senior to those who were promoted on the basis of length of service. When representations of the later category were not considered, they approached the Chandigarh Bench of this Tribunal. The Tribunal in the case of Mohinder Kumar and Ors. v/s. Regional Provident Fund Commissioner, Punjab held that the promotees who came through the departmental examination could not be classified as direct recruits and both the categories formed one class; accordingly the Tribunal directed that the seniority list of the Upper Division Clerk should be recast treating both as promotees under the general principles of seniority i.e. on the basis of relevant length of service. In view of above, those who came on basis of length of service became senior to those who came through the departmental qualifying examination. An SLP filed in Supreme Court was also dismissed by order dated 11/8/87 when the Supreme Court Observed as follows:-

"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."

Further, the Supreme Court affirmed in this judgement in Central Provident Fund Commissioner And Anr. v/s. N. Ravindran & Ors reported at [(1996) 32 ATC 167] The Supreme Court observed as follows:-

promotion through higher education examination. Finally
the teacher as secretary of the cathedral was given on
July 20th a system. Upon the secretary of the Upper Division
Clerk the Head Clerk was circumfered in 1986-87 as a grade
assistant till, the promotion who came from the limiting
graduation each year shown senior to those who were
promoted on the basis of length of service. From 1986-87
of the teacher cathedral were not considering, thus bypassing
the Cathedral Bepch of this University. The University in
the case of younger, that is only Mr. A. A. Regional Provost
using Comptroller, Bepch, being that the Provost who was
primarily the department examination could not be classified
as direct income and only the cathedral took one class;
accordingly the departmental director that this authority the
of the Upper Division Clerk should be released from the post
as promotion under the general principles of neutrality
as the post of service to the public of service. In view
of spouse, spouse who came on basis of length of service
became senior to those who came from the departmental
duration examination. In this will to Supreme Court
was also submitted by order dating 11/8/87 upon the "Matters
Court opinion is as follows:-

"I see no reason of objection to this proposal
Please be informed. On this basis to the
this position was this check is correct
proposal by one to the benefit of the
University examination. This
will not compromise by returning to draw less
to the of the item that the departmental
for determining the secretary of this office to
the post of service in the
promotion post which many depend upon the
safely and the post the promotion".

Further, "this is a matter of the Comptroller in the
lodge to the Comptroller, Provincial Income Comptroller who
A. A. Secretary is the holder of I (1986) 35 for I

and the same course Court operating as follows:-

"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 post which would depend upon the actual date when they were promoted."

The applicant now submits that his name has not been included in the Impugned Seniority List in accordance with the aforesaid decision.

3. We have heard the counsel. The applicant claims that he was promoted as Head clerk/Section Supervisor with effect from 13/10/89. On the other hand persons who were promoted to the post of Head clerk/Section Officer after this date are shown senior to him. We find that though the applicant was promoted on 13/10/89, this was only on adhoc basis and his regular promotion came later on 28/8/92. It was held by the Full Bench of this Tribunal in TA/ 43/87 Ashok Mehta & Ors v/s. Regional Provident Fund Commissioner and Ors. that

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

It has been contended before us that in view of the Supreme Court's judgement in SLP and in the case of Central Provident Fund Commissioner and Ors. v/s. N.Ravindran and Ors. (supra) there was no need for any further interpretation by the Full Bench. We do not agree with this because the question being whether adhoc service can be counted, ~~xxxxxx~~ it had to be determined as to under what circumstances adhoc service can count towards length of service for purpose of seniority.

4. 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 ~~xxx~~ 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

Dr

service in view of the judgement of the Full Bench of this Tribunal in Ashok Mehta & Ors. v/s. Regional Provident Fund Commissioner(Supra).

The contention of the applicant that while the directions of the Full Bench related only to the Delhi and Kerala Region is not relevant. It is the principles laid down by the Full Bench which is material in regard to fixation of the final seniority list. It cannot be that one principle will apply to Upper Division Clerks of Delhi and Kerala Region and another to the Upper Division Clerks of Bombay Region.

6. In the result, the OA is dismissed with no merits and without any order as to costs.

R.K. Ahuja
(R. K. AHOOJA)
MEMBER(A)

abp.

KM
(K. M. AGARWAL)
CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,

BOMBAY BENCH.

Ex. 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

G. Jain

Section Officer 21/12/93

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