

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 381/95

250
26-11-95
Date of Decision:

K.V.Shetty

.. Applicant

Shri R.R.Dalvi

.. Advocate for
Applicant

-versus-

Regional Provident Fund Commr. & Ors. Respondent(s)

Shri R.K.Shetty

.. Advocate for
Respondent(s)

CORAM:

The Hon'ble Shri D.S.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 Benches of the Tribunal ?
- (3) Library ✓

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

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.381/95

Dated this ²⁵24th day of November 1999.

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

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

K.V.Shetty,
Enforcement Officer,
O/O the Regional Provident
Fund Commissioner,
Maharashtra & Goa,
341, Bhavishyandhi Bhavan,
Bandra (E), Bombay-400 051.

...Applicant

By Advocate Shri R.R.Dalvi

V/S.

1. Regional Provident Fund
Commissioner, Maharashtra
& Goa, 341, Bhavishyanidhi
Bhavan, Bandra (E),
Bombay - 400 051.

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

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

...Respondents

4. Shri P.P.Naik, E.O.

5. Shri N.R.Kalyani, E.O.

6. Shri A.r.Kulkarni, E.O.

7. Shri V.K.Patil, E.O.

8. Shri R.V.Shinde, E.O.

9. Shri A.L.Jagwani
(Address same as at Sr.No.(1) above.

By Advocate Shri R.K.Shetty

..2/-

O R D E R

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

The applicant had earlier filed an OA.NO.656/91 against his supersession in promotion as Enforcement Officer on 19.9.1991 by his juniors according to the seniority list then existing. However, during the pendency of the OA., the seniority list of 1991 was revised and final seniority list was issued on 2.12.1993 in view of the order of this Bench as well as Full Bench. Since the applicant did file a representation against the revised seniority list, he was allowed to withdraw the OA. with a liberty to challenge the seniority list published in 1993, if so desire, according to law. The present OA. has now been filed on 6.3.1995 challenging the seniority list dated 2.12.1993 of the Section Supervisors alleging that the applicant has not been allowed seniority from the date of his promotion.

2. The applicant has stated his 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

(12)

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". The respondents thereafter prepared a revised seniority list in 1987 following the order of Chandigarh Bench and direction of the Hon'ble Supreme Court in the SLP. However, this seniority list was challenged in OA.NO.430/88 as large number of employees who were promoted based on the departmental competitive examination for the post of UDC, Head Clerk and Enforcement Officer had superseded those promoted under the seniority quota. This OA. was disposed of as per the 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 laid down by the Chandigarh Bench in its order dated 23.1.1987 and confirmed by the Hon'ble Supreme Court in the judgement dated 11.8.1987 in SLP 7274/87. A similar matter had also come up before the Full Bench at the Principal Bench in TA.NO.43/87 with 5 other connected OAs. Ashok Mehta & Ors. vs. Union of India. The Full Bench in its order dated 5.2.1993 laid down the norms for recasting the seniority list which also included that seniority should be based on the total length of

(d)

service to be reckoned from the actual date of promotion in accordance with the relevant rules. Following these directions, the respondents had issued a draft seniority list on 23.4.1993 of the Section Supervisors and based on the objections received, the final seniority list was issued on 2.12.1993 by which the applicant is aggrieved. The grievance of the applicant is that he had been promoted as Head Clerk on 15.4.1985 but the seniority had been allowed to him from 7.12.1988 only. While those who had passed the departmental competitive examination on 11.2.1986 subsequent to the promotion of the applicant have been allowed seniority from that date and placed above in the seniority list. Referring to the seniority list dated 2.12.1993, the applicant has made six employees as party respondents whom the applicant alleges wrong seniority has been allowed. These employees are at Sr.No.337 to 341 and 379 of the seniority list of 2.12.1993. The applicant's contention is that the impugned seniority list 2.12.1993 has not been prepared in compliance with the law laid down by the Full Bench in TA.NO.43/87 and the seniority list has been prepared following the rota-quota principle. The applicant has further added that those who have passed the departmental competitive examination have been allowed seniority from the date of passing examination while promotees based on seniority quota have been given seniority from a much later date. This is in violation of law laid down by Chandigarh Bench according to which both promotees by seniority and based on departmental competitive examination are to be treated as departmental promotees. It is also stated that the seniority has not been allowed from the date

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of promotion to the applicant as held by the Hon'ble Supreme Court in SLP 2724/87 by judgement dated 11.8.1987 and by the Full Bench in order dated 5.2.1993.

3. Based on the above submissions, the applicant has prayed for the following reliefs :- (a) The applicant who has been promoted on regular basis on 15.4.1985 be placed in seniority list above the private respondents No.4 to 9 who were regularised and promoted on 11.2.1986. Accordingly, direct respondents to promote the applicant as Enforcement Officer from 19.9.1991 when the private respondents junior to the applicant have been promoted with all consequential benefits with retrospective effect in the matter of pay and allowances, seniority etc. (b) to strike down the practice of making those promoted against examination quota as regular right from the date of promotion as the promotion of those as per seniority quota are made only after D.P.C. is held which has not been done at regular intervals and thereby those who are promoted on the basis of departmental competitive examination are being made senior.

4. The respondents have opposed the application through the written statement. The respondents referring to the same judgements and orders as relied upon by the applicant have submitted that the impugned seniority list has been prepared keeping in view the directions contained in order dated 1.1.1992 in OA.NO.430/88 and order of Full Bench in order dated 5.2.1993 in TA.43/87 (Ashok Mehta & Ors.). The respondents further add



that the applicant was promoted to the post of Head Clerk on 15.4.1985 only on adhoc basis and promoted on regular basis from 7.12.1988 against the vacancy belonging to promotion quota based on seniority. The applicant therefore has ^{been} allowed seniority accordingly. The respondents further add that the rota quota rule was followed in framing the seniority list in 1987 which has been set aside by its order dated 1.1.1992 in OA.430/88. While preparing the fresh seniority list as per directions contained in the order dated 1.1.1992 and order dated 5.2.1993 in Full Bench (Ashok Mehta & Ors.), the revised dates of promotion have been indicated in Col.8 of the impugned seniority list superseding the earlier dates of promotion shown in Col.7. The respondents contend that in view of these submissions, the impugned seniority list has been prepared as per the law laid down in the cited judgements/orders as the applicant has no merit in his claim for seeking seniority from the date of adhoc promotion. In view of this, the applicant is also not entitled for promotion as Enforcement Officer from 19.9.1991.

5. The applicant has filed a rejoinder reply controverting the submissions of the respondents and reiterating his grounds taken in the OA. The applicant has stated that he deserves to be treated as regularly promoted from 15.4.1985 as adhoc promotion cannot continue for a long period of more than 3 years. Further if the regular promotion follows the adhoc promotion, the previous service has to count for the purpose of seniority.

6. We have heard the arguments of Shri R.R.Dalvi, learned counsel for the applicant and Shri R.K.Shetty, learned counsel for the respondents. The private respondents have neither filed any written statement nor appeared in person or through an advocate.

7. The controversy raised through this OA. centres around the seniority of the promotees on the basis of seniority vis-a-vis the promotees through departmental competitive examination. As brought out by both the parties, this issue has been gone into by the order dated 23.1.1987 of Chandigarh Bench, judgement of the Hon'ble Supreme Court dated 11.8.1987 in SLP 7274/87 against the order of the Chandigarh Bench and order of Full Bench dated 5.2.1993 at Principal Bench in TA.43/87, in the case of Ashok Mehta & Ors. and order dated 1.1.1992 of this Bench in OA.430/88. The impugned seniority list has been challenged by the applicant citing the above referred judgements mainly on two grounds, namely, (a) rota quota rule has been again applied by the respondents in determining the seniority in respect of those promoted through competitive examination and accordingly they have been placed senior over those promotee based on seniority like the applicant. (b) Treating of the total length of service from the date of promotion for the purpose seniority has not been followed as per law laid down by the Hon'ble Supreme Court in its judgement dated 11.8.1987 and also by Full Bench in order dated 5.2.1993.

(H)

8. On going through the impugned seniority list, we do not find that rota quota rule has been followed by the respondents in framing the seniority list. The placement in the list does not reflect that the quota in terms of percentages as fixed for promotion through seniority & fitness and departmental competitive examination had been followed. Therefore, the first contention of the applicant is without any substance. In view of this, the reliance placed by the applicant on order dated 22.6.1994 of Bangalore Bench in OA. in the case of C.R.Venkatesh vs. Central Provident Fund Commissioner (brought on record) is of no avail. The second contention of the applicant is that he should be treated as regularly promoted from the date of his adhoc promotion i.e. 15.4.1985 and not based on the notional date of promotion of 17.12.1988 indicated in the seniority list which has no basis as per rules. The respondents, on the other hand, have stated that he was promoted on adhoc basis and have brought a copy of the promotion order dated 12.4.1985 on record at Annexure-'R-1'. On going through this order, we note that the applicant was promoted on purely temporary and adhoc basis. In view of this, we are unable to appreciate as to how the applicant claims that he was regularly promoted. The respondents have submitted that the applicant was regularly promoted from 7.12.1988 based on the availability of vacancy against the quota for promotion on seniority basis. The applicant has submitted that the respondents have violated the law laid down by the Hon'ble Supreme Court in SLP 7274/87 and as interpreted by the

Full Bench under the order dated 5.2.1993. We are unable to accept this stand of the applicant. In fact, the Hon'ble Supreme Court as well as the Full Bench in order dated 5.2.1993 has held that the seniority has to count from the date of regular promotion and not from the date of adhoc promotion. Since the applicant got a regular promotion from 17.12.1988, he is not entitled for the seniority from the date of adhoc promotion. The applicant has also ^{not} put forward a case that the vacancies were available for the quota of promotion by seniority and the applicant was due for regular promotion but was promoted on adhoc basis. In view of this, the applicant cannot have any case against the private respondents No. 4 to 9 who have been allowed seniority from the date of passing of competitive examination against the quota meant for this category. In the light of these observations, we are unable to find any merit in the claim of the applicant that the impugned seniority list has not been prepared in line with the directions given in the order dated 1.1.1992.

9. 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 for 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.

10. The respondents have relied upon the following orders:-

- (i) OA.NO.829/91, L.S.Gunjai vs. Regional Provident Fund Commissioner, Bombay decided on 28.7.1994.
- (ii) OA.75/94 - order dated 22.6.99 in the case of S.D.Jagtap vs. Regional Provident Fund Commissioner.
- (iii) 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 all these OAs. 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 & Ors. We endorse the view held in these OAs.

11. The applicant has placed reliance on the judgement of the Hon'ble Supreme Court in the case of Central Provident Fund Commissioner vs. N.Ravindran (1996) 32 ATC 167. The SLP decided in this judgement was against the order of the Ernakulam Bench in the case of N.Ravindran vs. Central Provident Fund Commissioner, New Delhi & Anr., 1992 (22) ATC 88. This judgement has been reviewed in the earlier order dated 6.7.1999

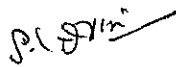


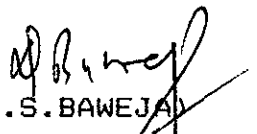
in OA.128/94 and we respectfully endorse the view held by this Bench. This judgement cannot come to the rescue of the applicant as the Hon'ble Supreme Court has confirmed the order of the Eranakulam Bench stating that adhoc promotion unless it is made as per seniority and within the quota as per rules will not count for seniority.

12. The same issue as raised in the present OA. with almost the same pleadings and citing the same judgements/orders has been gone into recently by this Bench in the case of OA.NO.732/94 by order dated 28.10.1999. In this order, we have not allowed the OA. holding a view after considering the various cited judgements/orders by the applicant and the respondents that the applicant is not entitled for seniority from the date of adhoc promotion. What is held in this order will apply equally to the present OA. also as deliberated above.

13. As regards to the relief of holding the Departmental Promotion Committee (DPC) meetings regularly for promotion on seniority basis, we find that this relief is very vague. The applicant can seek such a relief if he is aggrieved by an order. If DPC meetings are required to be held regularly as per the rules, then no direction can be issued in a judicial review to remand the Department to follow the rules. If these rules are not followed and an employee is aggrieved by the same, then a cause of action arises to seek legal remedy. The applicant has not brought out any specific details. In view of these observations, we do not find any merit in this relief.

14. In the result of the above, the OA. is devoid of merit and is accordingly dismissed with no order as to costs.


(S.L.JAIN)
MEMBER (J)


(D.S.BAWEJA)
MEMBER (A)

mrj.