

CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH :  
AT HYDERABAD.

O.A. NO. 1098 OF 1994.

DATE OF ORDER :- 31<sup>st</sup> October, 1997.



Between :

1. Smt. B. Sarojini
2. A. Ch. Bakki Reddy
3. C. Ramachandra Reddy
4. P. Vasundhara
5. M.A. Shakool
6. B. Danaiah
8. P. Muralidhar
9. Lakshman Mansabolar
10. Smt. V. Kamala
11. S. Galaiah
12. P. Ananda Krishna
13. B. Narasinga Rao
14. P. Prabhakar Reddy
15. M.F.A. Khan
16. P. Sambasiva Rao
17. Y. Sudharkar Reddy
18. S. Satyanarayana
19. M. Susheela
20. T. Aravinda Swamy
21. B. Dharma Reddy
22. V.M. Sastry
23. P. Hamsaveni
24. M.A. Waheed
25. V. Gnaneshwar
26. R. Andalamma
27. Smt. R. Jhansilakshmi Sarma
28. K.L.N. Reddy
29. Ch. Bosubabu
30. Smt. P. Rajkumari
31. Syd Azam
32. Mohammed Ali
33. V. Kanakalatha
34. G. Gangadhar
35. D. Ranganna
36. G. Arun Kumar
37. Smt. G. Jaya
38. B. Papaiah
39. J.V. Bhaskar Rao
40. G. Prabhakar Rao
41. Suryakant Chandan
42. B. Pentaiah
43. K. Sudhakar Reddy
44. M. Rama Murthy
45. M. Anjaneyulu
46. Balanarsimha
47. K. Sanjeevi
48. D. Pentaiah
49. B. Gopal Reddy
50. G. Prabhakar Rao
51. P. Satyanarayana Reddy
52. K. Govindu
53. Smt. G. Papa
54. P. Ram Mohan Rao
55. M. Srinivasulu
57. S. Sanjeeva Reddy
58. G. Dayakar
59. Smt. V. Saroja
60. S. Dushyanth Kumar
61. M.B. Swamy
62. G. Keshava Reddy
63. Karra Lakshminarayana
64. V.N. Chary
65. M.A. Baig
66. A. Mallaiah
67. D. Sanjeeva Reddy
68. Iqbal Ahmed
69. M.R. Padma Rao
70. S. Arun Kumar
71. Md. Rasool
72. A. Baskar
73. G. Lakshamma
74. Hussaini Begum
75. S. Laxman Rao
76. Syed Rafiuddin
77. R. Thulasimani
78. Sultana Mahapara
79. B. Ramesh Kumar
80. R. Venkata Rao
81. Nalini Thakur
82. N. Rajamani
83. Smt. A. Nirmala
84. G. Venkatesh
85. L. Changal Reddy
86. K. Ashok
87. Mohd. Siddiqui
88. E.D. Madhukaran
89. T. Devender Rao
90. N. Mallikarjuna Rao
91. M. Seshacharyulu
92. V.L. Narasimha Rao
93. C. Sudhakar Rao

.... Applicants

A n d

8. Some of the ad hoc promotees had filed O.A. Nos. 490 and 491 of 1986 before this Tribunal claiming seniority basing on seniority on the general principle of/length of service in the cadre. Both the O.As were decided on 13th October, 1987. At the time of deciding the O.As. the decision of the Chandigarh Bench of this Tribunal in T.A.No.556 of 1986 in Mahinder Kumar and others vs. R.P.F.Commissioner and others (reported in (1987)5 ATC 170) was relied upon. In the said decision, the Chandigarh Bench repelled the contention of the respondents of adopting the rota quota rule. The Chandigarh Bench observed that the rule of rota quota in regard to the fixation of seniority was applicable only when the posts were to be filled up by direct recruitment and by promotion and the said principle would not apply when the seniority is to be fixed inter se between the promotees promoted on the basis of seniority and the promotees promoted after a competitive examination. Thus the Chandigarh Bench directed the respondents to recast the seniority list in accordance with the general principle of seniority. The decision of the Chandigarh Bench was challenged before the Hon'ble Supreme Court of India in Civil Appeal No.7274 of 1987. In the said Civil Appeal, the Hon'ble 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."

9. This Bench while deciding O.As.490 and 491 of 1986 followed the decision of the Chandigarh Bench confirmed by the Hon'ble Supreme Court of India and directed the respondents to prepare the seniority list properly, by

*Th*

L.D.Cs. on the basis of the result of the competitive examination restricted to the L.D.Cs. of the Region under the Examination quota. That means, the source for promotion to the U.D.Cs. is as under :

Examination quota and Seniority quota.

4. The applicants herein were initially promoted as U.D.Cs. on ad hoc basis against the Examination quota, since the respondents could not fill up the posts of U.D.Cs by holding the competitive examination. The ad hoc promotions of the applicants were continued for a longer time. However, they were subsequently regularised under the Seniority quota as available to them even though they were promoted against the Examination quota.

5. The point which arises for our consideration in this O.A. is, whether the applicants can claim seniority in the Seniority quota even though they were promoted on ad hoc basis against the posts ear-marked for the Examination quota from the date of ad hoc promotion on the principle of length of service in the cadre or from the date when the post was actually available in the Seniority quota.

6. It may be stated that the applicants had completed three years of service in the cadre of L.D.C. to become eligible for promotion and they were promoted against the Examination quota.

7. On 18.1.1983 a draft seniority list was prepared by the respondents. The same was not finalised. It is otherwise stated that the position in the alternative post was shown as vacant and the vacant posts were shown to have been ear-marked for the candidates who became eligible after passing the qualifying examination.

R

Principle 'B' laid down by the Supreme Court in Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra will apply as explained by the Supreme Court in Keshav Chandra Joshi v. Union of India only to cases where the initial appointment is made deliberately in disregard of the rules and the incumbent allowed to continue in the post for long periods of about 15 to 20 years without reversion till the date of regularisation of service in accordance with rules, there being power in the authority to relax the rules.

(b) The rota quota principle of seniority is not applicable for determining the seniority to the cadre of UDCs in these cases.

(c) The order of the Supreme Court in Mohinder Kumar case constitutes a binding precedent as held by the Full Bench of the Tribunal in R.D. Gupta case even after the judgment of the Supreme Court in the Direct Recruit Class II Engineering Officers' Association case.

(d) As the correct principles for determining seniority in the cadre of UDCs were clarified by the Supreme Court in Mohinder Kumar case on 11.8.1987, and as cases in regard to seniority in the cadre of UDCs have been pending since long, it would not be just and proper to decline relief in regard to recasting of the seniority list on the ground that it would have far reaching and unsettling effect in managing the cadres of not only of the UDCs but also the posts in the higher grades."

The said Full Bench case has been reported in (1993) 24 ATC(FB) 493.

10. Having regard to the pronouncement of the Full Bench decision of this Tribunal, the respondent No.1 felt necessity to revise the seniority list and finalise it in 1988. Thus the respondent No.2 issued the circular bearing No. AP Adm-II/Seniority/UDC/93 dated 15.9.1993 elaborating the circumstances under which the seniority list of U.D.Cs as on 31.12.1992 was required to be modified.

11. Certain officials of the organisation challenged the circular dated 15.9.1993 in O.A. Nos. 1549 and 1373 of 1993 before this Tribunal. On 24.2.1994 this Tribunal decided both the O.A.s with the following observations :

*Or*

observing that the general principle of seniority i.e. length of service be taken into consideration while preparing the seniority list of U.D.Cs.

On the basis of the directions given in O.A. Nos. 490 and 491 of 1986, the respondent No.2 revised the seniority list of U.D.Cs. on 29.7.1988. There were 272 names in the said seniority list. The respondents did not challenge the decision of this Tribunal in O.A.Nos. 490 and 491 of 1986. The respondents finalised the seniority list of U.D.Cs. later. // In the meanwhile, the inter se dispute seniority/between the promotees against the Seniority quota and the promotees against the Examination quota came up for consideration before the Full Bench of this Tribunal (Delhi), in O.A.No.1147 of 1988 and T.A.No.43 of 1987. The Full Bench took into consideration the decision of the Chandigarh Bench, the decision of the Hon'ble Supreme Court in C.A. Appeal No.7274/87 and the decision of this Tribunal in O.A.Nos. 490 and 491 of 1986. The Full Bench of this Tribunal answered the question and directed preparation of the seniority list in the following words :- (para-9)

" 9. In the light of our above discussion, we answer the questions referred to us in the context of the facts of these cases as follows:

(a) The officers promoted on the basis of seniority subject to the rejection of unfit and those promoted on the result of the competitive examination shall be treated as promotees.

Persons promoted by both the modes of promotion shall be included in a common seniority list.

Their inter se seniority has to be determined on the basis of their total length of service which will be reckoned from the actual date of their promotion in accordance with the relevant recruitment rules.

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

Or

This Tribunal by its interim order dated 3.9.1994 directed that once the judgment in O.A.No.490/86 had become final and when the seniority list prepared on the basis of the said judgment was published on 29.7.1988, we feel *prima facie* that the same should not be revised on the basis of the later judgment of the Full Bench. So in those circumstances, an interim order was passed to the effect that in case the respondents felt that it was necessary to have the promotions to the post of Head Clerk, ad hoc promotions can be made on the basis of the seniority list published on 29.7.88. The same would be subject to the result of this O.A.

13. The main grounds of attack are as under:

(a) No notices were issued; (b) the respondents violated the circular instructions of the Chief Provident Fund Commissioner issued on 16.11.1989; (c) the revision of seniority was in contravention of the stand taken by the respondents in OA Nos. 867 and 893 of 1988; and (d) the earlier finalised seniority list was in operation and that position in OAs 490 and 491 of 1986 became final. When that was so, the respondents were not justified in revising the seniority list merely relying upon the Full Bench decision of this Tribunal dated 5.2.1993.

14. The respondents have filed their counter justifying the revision of seniority as per the impugned proceedings dated 27.9.1994 (Annexure-2). It is their main case that the petitioners were initially promoted as U.D.Cs. against the Examination quota; that their promotion was on ad hoc and temporary basis; that they have to ascertain the availability of posts against the Seniority quota and Examination quota every year and fix them accordingly, that earlier this aspect was not considered in view of the adoption of the general principle of seniority i.e. length of service; that many persons who were appointed against the Examination quota were not eligible to be considered against the seniority quota because of non-availability of posts in that particular quota; that in view of the decision of the Full Bench, the promotions must be in accordance with the rules and therefore, that necessitated them to revise the seniority list. Their

" 6. The respondents have to give time till 15.3.1994 calling for objections from the affected parties who have not yet filed objections and after that, the respondents have to consider the objections already filed and to be filed, if any, in accordance with the law before finalising the re-revised seniority list so as to be in conformity with the directions given by this Bench in O.A.No.490/86. It is needless to say that if it is necessary to re-revise the revised seniority list, which was circulated as per letter dated 29.7.88 and if promotions to the posts of Head Clerks have to be given before sub re-revision the revised seniority list circulated as per letter dated 29.7.88 has to be followed and the same will be subject to re-revision of the seniority."

Thereafter the respondent No.2 gave opportunity to all the employees in the organisation to submit objections to the circular dated 15.9.1993. After considering the objections and also the representations against the circular dated 15.9.1993, the respondent No.2 by its proceedings No.AP/Adm-II/Snty/UDC/93/94 dated 27.9.94 finalised the seniority list.

12. Aggrieved by the said finalisation of the seniority list, the applicants have filed this O.A. for the following reliefs :

- (a) To call for the records relating to and connected with the Circular No.AP/Adm-II/Snty/UDC/93/94 dated 27.9.1994 of the 2nd respondent and quash or set aside the same, holding the same as arbitrary, illegal and unsustainable;
- (b) and consequently direct the respondents to restore the final seniority list of Upper Division Clerks communicated through circular dated 29.7.1988 of the 2nd respondent herein as valid and binding one;
- (c) and further direct the respondents to act on the aforementioned final seniority list dated 29.7.1988 in the matter of further promotions and to revise the subsequent promotions made based upon the final seniority list dated 29.7.1988.

*N*

Mehta and others' case, the respondents attempted to revise the seniority list. Thus they have revised the seniority list on 27.9.1994 in accordance with the circular instructions issued on 15.9.1993. Admittedly, the directions contained in O.As 490 and 491 of 1986 had become final. In fact, the said directions were given following the decision of the Apex Court in Civil Appeal No.7274 of 1987. In this view of the matter, the respondents, if they felt necessary to follow the Full Bench decision of this Tribunal dated 5.2.1993, could have done so while including the officials in the seniority list on and from 5.2.1993. The procedure adopted by the respondents in revising the seniority list which was in force for nearly 10 years leads to an anomalous situation. No official could be certain about the seniority position if the respondents were to apply any future decision of the judicial forum. We have no objection if the said decision of the judicial forum could only be adopted prospectively. As against this, the learned counsel for the respondents attempted to reply upon the observations made by the Full Bench in para-9(d) of the judgement. No doubt, that observation can only be made applicable only to the parties before the Full Bench. Admittedly, the applicants herein were not parties before the Full Bench. The decision of the Full Bench can only be regarded as judgement in personam and not the judgement in rem. Therefore, we humbly feel that the observations made by the Full Bench in para 9(d) are applicable only to the parties before the Full Bench. The respondents could not have attempted to make the same applicable to the other officials who were not parties to the said order.

2

main contention is that certain applicants who were promoted on ad hoc basis against the Examination quota were not eligible even though they were qualified to be promoted to the post of UDCs for want of vacancies in the respective seniority quota. Thus they contended that earlier ad hoc promotions of the applicants as UDCs against the Examination quota were not according to the rules and that therefore, the applicants cannot claim seniority in view of the two modes of promotion as has been incorporated in the Regulations, the promotion must be specifically either against the Examination quota or against the seniority quota and that must depend on the availability of posts in the particular year. Thus the respondents attempted to justify the revision made through the circular dated 15.9.1993.

15. The learned counsel for the applicants submitted that there was no justification for the respondents to revise the seniority of the UDCs when they had prepared the same adhering to the directions contained in OA Nos. 490 and 491 of 1986 and that the said decision had become final. It is submitted that the respondent No.2 by revising the seniority list attempted to unsettle the settled things.

16. The point for our consideration is whether the respondents were justified in revising the seniority list in accordance with the view expressed by the Full Bench of this Tribunal in A.Mehta and others' case. In fact, as already observed, para-6 of the Regulations, 1962 is applicable. That has been held so in the case of Mohinder Kumar's case reported in (1987) 5 ATC 170.

17. The seniority position of the applicants was finalised on 18.1.1983 (as on 1.11.1982). This seniority list was in operation till 5.2.1993. It is only on the basis of the Full Bench decision of this Tribunal in Ashok

R

...

18. The learned counsel for the respondents failed to take shelter in justification of the revision of the seniority under the observations made by this Tribunal in O.AS 1549 and 1373 of 1993. In our humble opinion, the said observations did not come to the aid of the respondents.

19. The applicants have produced the copy of the order passed in O.AS 1549 and 1373 of 1993. In fact, in the said O.AS it was specifically directed to revise the seniority list subject to the directions contained in OAS 490 and 491 of 1986. When that was so, the respondents under the guise of implementing the Full Bench decision dated 5.2.1993 in respect of the present applicants who were not parties to the Full Bench decision were not justified to unsettle the seniority of the applicants which was finalised about 10 years ago. Therefore, in our humble opinion, the action of the respondents in revising the seniority list of the applicants was not just and proper.

20. The respondents are at liberty to follow the decision of the Full Bench dated 5.2.1993 on and from that date for inclusion of UDCs/Head Clerks subsequently.

21. Hence, we give the following directions :

(a) The seniority lists issued with circular Nos. AP/Adm/Seniority/UDC/93/94, dated 29.7.1994 is hereby set aside; and

(b) The respondents shall restore the seniority of the applicants as on 1.11.1982 finalised and communicated through their circular dated 18.1.1983.

JR

.. 2 ..

ORDER

As per Hon'ble Shri R.Rangarajan, Member (Admn.)

Mr. Shiva for Mr. N. Rama Mohan Rao, learned counsel for the applicant and Mr. R. N. Reddy, learned standing counsel for the respondents.

2. The date 18.1.1983 in para-17 has to be read as 29.7.1988. Similarly in para-21(b) the date 18.1.1983 should also be read as 29.7.1988.

3. The error is a typographical mistake and hence the correction has to be made. Registry to make all corrections.  
and advise all concerned.

4. The MA is disposed of.

प्रादानित दस्ति  
CEX-19853 TO BE TRUE COPY

कानूनी विवरण द्वारा रजिस्ट्रेशन (न्यायिक)  
Central Office / न्यायिक रजिस्ट्रेशन  
कानूनी विवरण द्वारा रजिस्ट्रेशन  
Central Administrative Tribunal  
(न्यायिक विवरण)

केस संख्या MA 222/98. in  
CASE NUMBER. OA... (O.98/94.)  
निर्णय का दारीय  
Date of Judgement 29-3-98.  
इति विवाद दिया गया है।  
Copy Made on 29.3.98  
अन्याय विभाग (वायिक) उप निवायिक (वायिक)  
Section Officer (J)/Dy. Registrar (J)