

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH :  
AT HYDERABAD.

O.A.No.1451 of 1994.

Date of Order 31<sup>st</sup> October, 1997.

Between :

1. Smt. V.Kamala
2. Laxman Mansabdar
3. M.A. Shukoor
4. B. Danaiah
5. Smt. G. Papa
6. Miss C. Chandravathy
7. Smt. Hamsaveni
8. Smt. R. Sarojini
9. Smt. M. Susheela
10. Smt. R. Tulsimani
11. Sri M.B.Swamy
12. K.L.N.Reddy



All are working as Head Clerks in the office of the Regional Provident Fund Commissioner, Bhavishyanidhi, Barkathpura, Hyderabad-500029.

... Applicants

And.

1. The Central Provident Fund Commissioner, 9th Floor, Mayur Bhavan, Cannaught Circus, New Delhi.
  2. The Regional Provident Fund Commissioner, Andhra Pradesh Region, Bhavishyanidhi, Barkathpura, Hyderabad- 500029.
  3. K. Seshagiri Rao
  4. G. Radhakrishna Murthy
- Both are Head Clerks, O/o R.P.F.Commissioner, Guntur.

... Respondents

Counsel for the applicants - Mr. N. Rama Mohan Rao  
Counsel for the respondents 1 & 2- Mr. N.R. Reddy  
Counsel for the respondents 3 & 4- Mr. N.Venkatrama Reddy.

CORAM :

HONOURABLE MR. R. RANGARAJAN, MEMBER (ADMIN. )  
HONOURABLE MR. B.S. JAI PARAMESHWAR, MEMBER (JUDL.)

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of service in the promotional posts which would depend upon the actual date when they were promoted."

5. That the respondents relying upon the directions given in O.A.No.491 of 1986 and C.A.No.7274 of 1987 revised the seniority list of Head Clerks by office order dated 18.7.1988; that the same became final; that the inter se seniority dispute between the Head Clerks promoted against the Examination quota and the Head Clerks promoted against the Seniority quota came up for consideration before the Full Bench of this Tribunal in T.A.No.1147/88 in the case of Ashok Mehta and others vs. R.P.F.Commissioner and others, reported in (1993)24 ATC (FB) 493. In para-9 of the said judgment, the Full Bench has been pleased to observe as under :

" 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.

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.

4. The applicants submit that their promotions to the cadre of U.D.Cs and Head Clerks though on temporary and ad hoc basis were against the regular vacancies. They submit that prior to their promotions, they had put in the requisite years of qualifying service and had satisfied the necessary requirements to become eligible for promotion. The respondents prepared the seniority list of Head Clerks dated 27.11.1982 showing certain posts in the list as vacant to the extent of 25% of the posts which were earmarked for promotion by way of departmental competitive examination; that in the said seniority list the 4th post was shown as vacant; that then 7 Head Clerks had filed O.A.No.491 of 1986 assailing the method of preparing the seniority list by the respondents, particularly questioning the propriety of showing the 4th post as vacant; that the respondents had sought the assistance of this Tribunal while dealing with similar issue with regard to fixation of seniority of employees of the Provident Fund organisation in Mohinder Kumar and others vs. Regional Provident Fund Commissioner, Chandigarh and others' case (T.A.No.556 of 1986), allowed the said T.A. and quashed the seniority list directing the general principle of length of service to be treated as the determining factor for seniority; that the respondents against the judgment of the Chandigarh Bench had preferred Civil Appeal No.7274 of 1987 before the Apex Court. The Apex Court dismissed the said SLP with the following observations :

" 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

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- (b) and consequently direct the respondents to restore the final seniority list of Head Clerks communicated through circular dated 18.7.1988 of the 2nd respondent herein as valid and binding ., and
- (c) and further direct the respondents to act on the aforementioned final seniority list dated 18.7.1988 in the matters of further promotions.

8. On 30.11.1994 this Tribunal passed an interim order not to promote from the cadre of Head Clerks to the post of Enforcement Officer in the A.P. Region until further orders. The said interim order came to ~~be modified by order dated 13.12.1994~~ 13.12.1994 the following clarification was issued by this Tribunal :

" If the respondents feel that it is necessary to have promotions to the posts of Enforcement Officers/ Asst.Accounts Officers, ad hoc promotions can be made on the basis of the seniority list of Head Clerks published on 18.7.88 so far as the A.P. region is concerned. But the adhoc promotions as referred to are going to be given, they will be subject to the following :

- (i) If this O.A. is going to be dismissed and then promotions to the posts of Enforcement Officers/Asst.Accounts Officers have to be made on the impugned seniority list dt.9.11.94 of the Head Clerks of A.P. region, then their regular promotions have to be given notionally from the respective dates of adhoc promotees., and
- (ii) When it will be necessary to reverse the adhoc promotees in case this OA is going to be dismissed, then the period of service in the category of Enforcement Officer/ Asst. Accounts Officer as adhoc promotees will not count as service in the category of Enforcement Officer/Asst.Accounts Officer for fixing their pay on regular promotion as Enforcement Officer/Asst.Accounts Officer, and that period of service counts in the category of Head Clerk for the purpose of increments."

9. The applicants have challenged the seniority list redrawn on 9.6.1994 and finalised on 9.11.1994 on the following grounds :

- (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."

6. Relying upon the Full Bench decision of this Tribunal, the respondents sought to revise the seniority list of Head Clerks dated 27.11.1982 through its circular dated 15.9.1993; that certain officials had filed O.A.Nos. 1549/93 and 1373/93 challenging the said circular before this Tribunal. that on 24.2.1994 this Tribunal held the circular dated 15.9.1993 as provisional and directed the respondents to give opportunity to their employees to submit their representations and finalise the seniority list; that accordingly the respondents re-drawn the seniority list of Head Clerks on 9.6.1994 and that the same was finalised on 29.11.1994. The representations of the applicants were considered by the respondents vide their letter dated 9.11.1994 (Annexure-7).

7. The applicants have filed this O.A. praying for the following reliefs :

- (a) To call for the records relating to and connected with the Circular No.A.P./Adm-II/Snty/HC/94/758 dated 9.6.1994 as well as Memo No.A.P./Admn.-II/Snty/HC/94 dated 9.11.1994 of the 2nd respondent herein and quash or set aside the same, holding the same as arbitrary, illegal and unsustainable.

as Head Clerks on 14.7.1983 and 28.3.1985 on regular basis and their probations were declared on 18.6.1990; that the respondents 3 and 4 were promoted on ad hoc basis during 1986, 1988, 1989 and 1990 and that the seniority list dated 18.7.1988 was published in accordance with the directions given by this Tribunal in O.A.No.491 of 1986; that the seniority list was closed at Sl.No.70; that this decision applies to fixation of seniority of the officials falling in Seniority quota and not in Examination quota; that while fixing the seniority of the applicants, Rules and Regulations, 1962 were violated; that the Full Bench of this Tribunal considered the effect of the directions given in OA No.491/86; that the Full Bench observed that promotions to the posts of Head Clerks must be in accordance with the Recruitment Rules to claim seniority; that the promotions of both the categories of Seniority quota and Examination quota are to be made in the prescribed proportion; that a candidate from one quota cannot therefore be considered or promoted in the other quota as it would be against the recruitment rules and regulations; that in the event of non-availability of Examination quota candidates, certain officials were promoted on ad hoc basis due to administrative reasons and exigencies; that the applicants were thus promoted against the Examination quota on ad hoc basis and that such promotion cannot be said to be a promotion in accordance with the Regulations, 1962; that therefore, the applicants cannot contend that their seniority is required to be counted from the date of their ad hoc promotion; that the essential criteria before the Tribunal for promotion is whether promotion of the applicants was in accordance with the Regulations, 1962; that the earlier seniority list dated

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- (a) The revision of seniority list was not bona fide.
- (b) The revision was not at all called for.
- (c) The respondents never followed the directions contained in the Full Bench decision of the Hon'ble Tribunal subsequent to 5.2.1993 and could not have ventured to revise the seniority list which was in force from 27.11.1982, namely, for a decade and more;
- (d) The principle enunciated by the Full Bench cannot, *ifso facto*, become applicable to those cases that were already decided.
- (e) The judgment in OA Nos.490 and 491 of 1986 had become final and was binding on the respondents.
- (f) That no Head Clerk of the A.P. Region was a party Full Bench decision.; that the respondents could have applied the decision in the matter of preparation and finalisation of the seniority list in so far as the Head Clerks whose names had to be arranged in the seniority list subsequent to one published on 18.7.1988;
- (g) That the principles set out in OA No.1147/88 cannot have any application on the seniority list dated 18.7.1988.
- (h) That the respondents had not applied their mind in revising the seniority list.
- (i) That the present seniority list has affected the seniority of the applicants and those who were promoted to the post of Head Clerks against the Seniority quota.
- (j) That either under the Examination quota or under the Seniority quota, the employee was only getting promoted; and that therefore, the question of treating them differently in the matter of fixation of seniority did not arise.

10. The respondents 1 and 2 have filed their counter stating that the applicants passed the merit examination during January, 1983 and May, 1994 and they were promoted

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which was in force for nearly 6 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 can only be adopted prospectively. As against this, the learned counsel for the respondents attempted to rely upon the observations made by the Full Bench in para-9(d) of the judgment. 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 judgment in personam and <sup>not the</sup> judgment 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 and whose seniority position had become final.

12. The learned counsel for the respondents attempted 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 do not come to the aid of the respondents.

13. The applicants have produced the copy of the order passed in OAs 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

18.7.1988 contained certain mistakes and that the said seniority list was prepared in contravention of the Regulations, 1962 and that therefore, they took the decision to revise the seniority list dated 18.7.1988 and accordingly circular dated 9.6.1994 was issued and objections were called for, considered and the seniority list was finalised on 9.11.1994; that the revision was effected in accordance with the guidelines prescribed by the respondent No.1 after following the decision in the Full Bench case dated 5.2.1993; that it is not correct to state that the revision was effected contrary to the stand taken by them in O.A. Nos.867 and 899 of 1988; that there are no grounds to interfere with the impugned seniority list dated 9.11.1994 and therefore, the O.A. be dismissed.

11. The seniority position of the applicants was finalised in accordance with the directions made by this Tribunal in O.A. Nos.490 and 491 of 1986. 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 Mehta and others' case, the respondents attempted to revise the seniority list. Thus they have revised the seniority list on 9.11.94 in accordance with the circular instructions issued on 9.6.94. 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

seniority of the applicants which was finalised about 18.7.88 6 years back. Therefore, in our humble opinion, the action of the respondents in revising the seniority list of the applicants was not just and proper.

14. 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.

15. In that view of the matter, we feel that the revision of the seniority of the applicants was not justified.

16. Hence, we give the following directions :

- (a) The seniority lists issued with circular Nos. A.P./Adm-II/Snty/HC/94/758 dated 9.6.1994 as well as Memo No.A.P./Admn-II/Snty/HC/94 dated 9.11.1994 in so far as it relates to the revision of the seniority position of the applicants are hereby set aside; and
- (b) The respondents shall restore the seniority of the applicants communicated through their circular dated 18.7.1988.

With the above directions, the C.A. is disposed of. No order as to costs.

प्रमाणित प्रति  
CERTIFIED TO BE TRUE COPY

मानदल अधिकारी  
COURT OFFICER  
केन्द्रीय प्रशासनिक अधिकरण  
Central Administrative Tribunal  
हैदराबाद न्यायपीठ  
HYDERABAD BENCH