(117)

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH :
AT HYDERABAD.

O.A. Nos.986, 987 and 997 of 1995.

DATE OF ORDER :- 31st OCTOBER, 1997.

Between.

| | |
|---|---|
| Miss Vasanthi Sane | (OA 986/95) |
| Smt. K. Manjula | (OA 987/95) |
| K. Mahendar | (OA 997/95) |
| Shiv Raj | (OA 997/95) |
| Smt. A.Vijaya Kumari | (OA 997/95) |
| D. Sathi Reddy | (OA 997/95) |

... Applicants

And

In all the OAs.

1. The Central Provident Fund Commissioner, 9th Floor, Mayur Bhavan, Cannaught Circus, New Delhi.

2. The Regional Provident Fund Commissioner, A. P. Barkathpura, Hyderabad.

... Respondents

In all the OAs.

Counsel for the applicants - Mr. N. Venkatrama Reddy

Counsel for the respondents - Mr. R.N. Reddy

---

CORAM :

Honourable Mr. R. Rangarajan, Member (Admn.)
Honourable Mr.B.S.Jai Parameshwar, Member(Judl.)

O R D E R.

(Per Hon. Mr.B.S.Jai Parameshwar, Member(Judicial))

1. Heard Mr. N. Venkatrama Reddy, learned counsel for the applicants and Mr. R.N.Reddy, learned counsel for the respondents.

2. These are the applications filed under Section 19 of the Administrative Tribunals Act. These applications were filed on 28.7.1995.

These three applications are clubbed together since the grounds urged and the facts averred are the same and the seniority list dated 29.7.1994 is challenged in these O.As.

(118)

3. The applicant in O.A.No.986/95 was initially appointed as LDC effective from 3.6.1976. She appeared for the departmental competitive examination during the year 1979 and came out successful in the said examination. On the basis of the said examination, she was promoted as UDC against the Examination quota in the scale of pay of Rs.330-560/-. She was thus appointed as UDC from 17.12.1979. She was under probation for a period of two years. She was declared to have completed the probation effective from 29.11.1981.

4. The applicant in O.A.No.987/95 was initially appointed as LDC. She passed the departmental competitive examination held in April,1977 and she was promoted to the post of UDC in the scale of pay of Rs.330-560/- effective from 14.9.1979. Her promotion to the post of UDC was against the Examination quota. She was under probation for a period of two years and she was declared to have completed the probation effective from 1.4.1981. She is presently working as Head Clerk.

5. The four applicants in O.A.No.997/95 were initially appointed as L.D.Cs. in the respondent No.2 organisation. They appeared for the departmental competitive examination during July,1972 and were successful in the said examination. They were promoted as UDCs against the Examination quota with effect from 1.10.1973. They were under probation for a period of two years in the cadre of UDC. They successfully completed the probation. They claim to have worked in the cadre of UDC for a longer period. They submit that the seniority list of UDCs as on 1.11.1982 was finalised on 18.1.1983. It is submitted that their seniority was shown in the said list at Sl.Nos.42, 52, 53 and 55 respectively. It is submitted that the said seniority list consisted only 70 officials. They submit that their seniority was further revised as per circular dated 30.8.1979 (pages 83 & 84 ). In the revised seniority list, their seniority was shown at Sl.Nos. 53, 64, 67, and 68 respectively. The said seniority list was circulated on 30.8.1979.

(119)

6. The applicants in OAs 986 and 987 of 1995 submit that the seniority list of U.D.Cs as on 1.11.1982 was finalised on 18.1.1983 and they were in the said seniority list at Sl.Nos.78 and 62 respectively. The said seniority list was finalised on 18.1.1983. They submit that the respondents through their C.M.No.AP/Adm./Snty/88 dated 16.3.1988 brought them down in their position relying upon the directions of this Tribunal in OA No.490/86. It is submitted that the decision in OA No.490/86 was confirmed in C.Appeal No.7274/87 on 11.8.1987 by the Hon'ble Supreme Court of India. They further submit that their position in the seniority list dated 29.7.1994 was at Sl.Nos.186 and 142 respectively., and that they submitted representations dated 16.3.1988 and 3.6.1983 respectively. The applicant in OA No.986/95 further submits that she submitted another representation dated 15.10.1993 subsequent to the revision of her seniority in accordance with the circular dated 15.9.1993.

The applicants felt aggrieved by the revision of their position in the finalised seniority list dated 29.7.1994. Hence they have filed the aforesaid O.As. for the following reliefs :-

(a) To call for the records relating to and connected with the Circular No.AP/Adm/Seniority/UDC/93/94, dated 29.7.1994 of the IInd Respondent and quash or set aside holding that the same is not consistent and contrary to E.P.F.(Staff and Conditions of Service)Regulations 1962 and in violation of fundamental rights of the applicants under Article 14 of the Constitution.

(b) To direct the respondent No.II to restore the original seniority of the applicants as on 1.11.1982 which stood finalised on 18.1.1983 through Circular No.AP/UDC/Seniority/82 dated 18.1.1983.

(c) To direct the Respondent No.II to review and restore the seniority of the applicants from 1.11.1982 onwards in accordance with the E.P.F.(Staff and Conditions of Service)

Regulations,1962 by quashing the seniority list published on 29.7.1994 and to treat the seniority list published on 16.3.1988/ 29.7.1988 as infructuous and inoperative, as it is repugnant to the EPF Staff Regulations 1962 and to effect promotions to the post of HC/EO/AAO to which the applicants become eligible and entitled to, from the due date by reverting their juniors who were promoted and continued in the vacancies of Head Clerk/EO/AAO meant for the applicants in accordance with the EPF Regulations,1962.

6. Their main contentions to challenge the impugned seniority list dated 29.7.1994 are that they are governed by the Employees' Provident Fund (Staff and Conditions of Service) Regulations,1962 (in short, 'the Regulations,1962'); that as per the IIIrd Schedule of the Regulations, promotions to the cadre of UDCs are made by 50% promotion of Lower Division Clerks including Steno-Typists, Telephone or Telex Operators in Regional Office on a regional basis on the basis of seniority subject to the rejection of the unfit; and 50% promotion of the Lower Division Clerks including Steno-Typists, Telephone or Telex Operators in the Regional Office on the result of a competitive examination restricted to existing Lower Division Clerks including Steno-Typists, Telephone or Telex Operators of the region; that they were promoted to the cadre of UDCs. on the basis of the departmental competitive examination; that in the earlier seniority list finalised on 18.1.1983 they were at serial Nos. 62 and 78,42,52,53 and 55 respectively; that the respondents without any reason or explanation revised the seniority list of UDCs on 15.9.1993; that the seniority list was finalised on 29.7.1994; that the respondents had, previous to the aforesaid seniority list, revised the seniority list dated 29.7.1988 that as per the the circular dated 15.9.1993; ~~that~~ the respondents have not disclosed any convincing reasons for revision of the seniority list as well as their placements in the seniority list dated 29.7.1994; that in the first instance, the respondents had stated that the seniority of officials from Sl.Nos.1 to 70 in the finalised seniority list dated 18.1.1983 would not be interfered with and that

the subsequent seniority list from sl.No.71 onwards would be revised., but despite the said fact, one of the applicants was shown at serial no.62 (Applicant in O.A. 987/95) and brought both of them down; that the respondents while submitting the reply to the representations stated that they had revised the seniority list in accordance with the decision of the Hon'ble Supreme Court; that there was no justification for the respondents to revise the seniority list and that the impugned seniority list is not bona fide.

7. The respondents have not filed any counter in these O.As. However, the learned counsel for the respondents submitted that the counter submitted by the respondents 1 and 2 in O.A.No.1098 of 1994 and in OA.1451/94 be taken as the counter in these O.As.

8. The respondents have filed their counter in OA No.1098 of 1994 justifying the revision of seniority as per the impugned proceedings dated 27.9.1994. It is their main case that the applicants 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 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 and 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.

9. 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 O.A.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.

10. 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 Ashok Mehta and others' case (reported in (1993) 24 ATC (FB) 493 ). In fact, as already observed in the other similar cases, para-6 of the Regulations, 1962 is applicable.

11. 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

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 rely 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.

12. 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.

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 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.

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. 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.

..9