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CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH :
AT HYDERABAD.

O.A.No.338 of 1995.

Date of order :- 31st October, 1997.

Between :

1. K. Seshagiri Rao
2. G. Radhakrishna Murthy Applicants

And

1. The Regional Provident Fund Commissioner, A.P. Barkatpura, Hyderabad.
2. The Central P.F. Commissioner, 9th Floor, Mayur Bhavan, Cannaught Circus, New Delhi.
3. Smt. V. Kamala
4. Laxman Mansbdar
5. M.A. Shukoor
6. B. Danaiah
7. Smt. G. Papa
8. Miss C. Chandravathy
9. Smt. Hamsaveni
10. R. Rarojini
11. Smt. M. Susheela
12. Smt. R. Tulsimani
13. Sri M.B. Swamy
14. Sri K.L.N. Reddy

All are working as Head Clerks
in the office of the Regional
Provident Fund Commissioner,
Barkatpura, Hyderabad-27.

.... Respondents

Counsel for the applicants - Mr. N. Venkata Rama Reddy

Counsel for the respondents 1 & 2- Mr. R.N. Reddy

Counsel for the respondents 3 to 14- Mr. N. Rama Mohan Rao

CORAM :

THE HONOURABLE MR. R. RANGARAJAN, MEMBER (A)

THE HONOURABLE MR. B. S. JAI PARAMESHWAR, MEMBER (J)

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O R D E R.

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

1. Heard Mr. N. Venkatarama Reddy, learned counsel for the applicants, Mr. R.N. Reddy, learned counsel for the respondents 1 and 2 and Mr. N. Rama Mohan Rao, learned counsel for the respondents 3 to 14.
2. This is an application under Section 19 of the Administrative Tribunals Act. The application was filed on 27.1.1995.
3. There are two applicants in this O.A. They were initially appointed as Upper Division Clerks (for the short, 'UDCs') under the respondent No.2. They appeared for the departmental competitive examination and on their successful completion of the competitive examination, they were promoted as Head Clerks from 14.7.1983 and 28.3.1985 respectively. The applicants submit that the respondents 3 to 14 were promoted to the cadre of Head Clerks against the Seniority quota purely on temporary and ad hoc basis. The applicants and the respondents 3 to 14 are governed by the Employees' Provident Fund (Staff and Conditions of Service)Regulations, 1962 (for short, 'the Regulations 1962'). The applicants are the respondents 3&4 in OA.1451/94.

The post of Head Clerk under the respondent No.2's organisation is a promotional post and is made as under :

Head Clerks (Regional Offices)

75% Promotion of Upper Division Clerks and Stenographers(Junior) serving in the respective regions on the basis of seniority subject to the rejection of the unfit.

25% Promotion of employees serving in the Headquarters and Regional Offices on the basis of a competitive examination restricted to those who have rendered not less than 5 years' service as Lower Division Clerks including Stenotypists.

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Telephone or Telex Operators or three years' service as Upper Division Clerks including Stenographers(Junior) and who are not more than 40 years of age on the 1st day of January of the year in which the examination is held, failing which by direct recruitment.

The inter se seniority of the Head Clerks promoted against the Examination quota and against the Seniority quota is in dispute in this O.A.

4. In compliance with the directions issued by this Tribunal in O.A.No.491 of 1986 the respondents 1 and 2 prepared a draft seniority list and the same was finalised on 18.7.1988. The seniority list dated 18.7.1988 contained only the names of the In the said list, neither the applicants nor the names of the respondents 3 to 14 figured.

5. On 5.4.1991 a draft seniority list was prepared for inclusion of the Head Clerks from Serial Nos. 71 to 124. In the said seniority list which was finalised on 3.2.1992, the applicants submit that their names were shown at Serial nos. 114 and 122 respectively; that the names of the respondents 3 to 9 were shown at Sl.Nos. 102, to 104, 106, 107 and 110 respectively and that the names of the respondents 10 to 14 were not included in the said list.

6. The aforesaid seniority list was in operation when the respondents 1 and 2 issued a re-revised seniority list dated 9.6.1994 vide Proceedings No. OM/AP/Adm.II/Snty/HC/94/1376. The same came to be finalised on and from 29.11.1994. It is submitted that in the seniority list, the names of the applicants were shown at Sl.Nos.96 and 106 respectively, and the respondents 3 to 14 were shown at Sl.Nos.125,129,132, 134, 137, 139, 143 to 145, 150,161 and 163 respectively.

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7. Further the applicants herein appear to have been aggrieved by the interim order dated 13.12.1994 passed in OA No.1451 of 1994. Hence they filed this O.A. praying for the following reliefs :

- (a) To direct the Respondent-I & II to revise and restore the seniority of the applicants from the said purported finalised seniority list of Head Clerks circulated on 29.11.94 in accordance with the E.P.F. (Staff and Conditions of Service) Regulations, 1962 by taking into consideration the exact date of availability of vacancies in E.Q. either from 6.5.83 and 20.7.84 respectively, or from earlier dates of notional promotion of the applicants to the post of Head Clerks, depending upon the vacancies available in E.Q. from the date of passing of qualifying Departmental Examination as the case may be.
- (b) To direct the Respondent-I and II to effect the promotion of the Ist applicant to the post of EO/AAO from the due date of first available vacancy in E.Q. by reverting the junior who occupied the post in EQ from the said purported finalised seniority list of H.Cs dated 29.11.1994, having passed the Departmental Competitive Examination held in January, 1983 and entitled to promotion to the post of EO/AAO inasmuch as the six juniors to the Ist applicant from S.No.98 to 103 in the cadre of H.C. have already been promoted to the post of EO/AAO from the various dates, superseding the Ist applicant.
- (c) To direct the respondent -I and II to effect the promotion of the 2nd applicant to the post of EO/AAO, in the vacancy which falls to his turn available in E.Q. from the said purported S.L. dated 29.11.94 in accordance with the E.P.F. (Staff Conditions of Service) Regulations 1962.

7. Their main contention is that the revision of

seniority list on 9.6.1994 was not warranted; that the respondents had not prepared the seniority list taking into consideration the Seniority quota as well as the Examination quota; that the general principle of seniority namely, length of service was adopted; that there was no need for the respondents to revise the list in view of the decision of the Full Bench of this Tribunal (Delhi) dated 5.2.1993 in O.A No.1147/88 and T.A.48/88; that they are aggrieved by the revision of the seniority list which was finalised on 29.11.1994 and also by the interim order dated 13.12.1994 passed in O.A. No.1451 of 1994.

8. The respondents have not filed any counter in this O.A. However, the learned counsels for the respondents have submitted their arguments. The learned Standing counsel for the respondents 1 and 2 justified the revision of the seniority list of Head Clerks in view of the decision of the Full Bench in *Ashok Mehta vs. R.P.P. Commissioner's case*, reported in (1993) 24 ATC (FB) 493.

Further the learned counsel for the respondents 1 and 2 submitted that there were inherent mistakes in the seniority list dated 18.7.1988; that while preparing the same, general principle of seniority, namely, length of service was adopted; that in view of the decision of the Full Bench, any person promoted to the post of Head Clerk against Seniority quota or against Examination quota on ad hoc or temporary basis cannot have any claim for seniority; that their promotion was not in accordance with the rules; that those persons who had been promoted to the post of Head Clerk on ad hoc basis or temporary basis could not claim seniority over the regular candidates appointed against Examination quota; that the decision of the Full Bench further

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clarified in para-8(5) that the revision was absolutely essential and that the action taken by it in revising the seniority list was justified.

9. The learned counsel for the respondents 3 to 14 contended that there was absolutely no need to revise the seniority list dated 18.7.1988, that the respondents could have adopted the principle laid down by the Full Bench subsequent to 5.2.1993; that by adopting the Full Bench decision to the cases already settled; that on account of it, the respondents 3 to 14 were deprived of their legitimate claim for seniority though promoted on ad hoc basis; that their seniority in the seniority list dated 18.7.1988 was properly fixed taking into consideration their length of service in the cadre and that the O.A. be dismissed. These respondents are the applicants in O.A.No.451 of 1994.

10. The point for our consideration is, whether the respondents 1 and 2 were justified in revising the seniority list dated 18.7.1988 or 3.2.1992 following the Full Bench decision in the case of A.Mehta vs. R.P.F. Commissioner (supra).

11. The seniority position of the applicants was finalised on 3.2.1992 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 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.

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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 seniority list which was in force for nearly 7 years leads to an anomalous situation. No official could be certain about the seniority position 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.

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13. The applicants have produced the copy of the order passed in OAs 1549 and 1373 of 1993. In fact, in the said OAs 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 7 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 DUCs/Head Clerks subsequently.

15. The applicants feel aggrieved regarding the year of allocation etc. They claim to have been promoted to the post of Head Clerk on the basis of the competitive examination held in 1983 and 1984. However, their seniority position was considered by the respondents while finalising the seniority list published on 3.2.1992. While considering O.A.No.1451 of 1994 filed by the respondents 3 to 4 herein, we have restored their position in the seniority list dated 18.7.1988. The claim of the applicants is belated. They did not protest for nearly 3 years. As per the seniority list dated 3.2.1992 the respondents 3 to 9 are shown seniors to the applicants. We find no reasons to direct the respondents to revise the seniority list finalised on 3.2.1992. As the law stood then, the general principle of seniority that is, the length of service was the

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(16)

determining factor. It does not lie their mouths, now, to contend that seniority list as per year wise panel to be prepared.

16. There are no merits in the OA.

17. The OA is, therefore, dismissed. No order as to costs.


(B.S. JAI PARAMESHWAR)

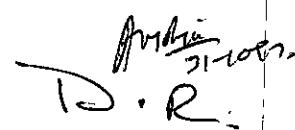
Member (Judl.)


(R. RANGARAJAN)

Member (Admn.)

Dated: 31 ^{Oct} October, 1997


DJ/SD


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19/10/97
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TYPED BY
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CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD

THE HON'BLE SHRI R.RANGARAJAN : M(A)

AND

THE HON'BLE SHRI B.S.JAI PARAMESHWAR :
M (J)

Dated: 31-10-97

ORDER/JUDGMENT

M.A/R.A/C.A.NO.

in
O.A.NO. 338 /95

Admitted and Interim Directions
Issued.

Allowed

Disposed of with Directions

Dismissed

Dismissed as withdrawn

Dismissed for Default

Ordered/Rejected

No order as to costs.

YLR

II Court

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

DESPATCH

- 6 NOV 1997

हैदराबाद व्यायामी
HYDERABAD BENCH