

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH
JAIPUR.

M.P.No.410/93

Dt. of order: 23.9.93

Ganesh Narain Chawala : Petitioner

Vs.

Union of India & Ors. : Respondents

Mr.A.N.Gupta : Counsel for petitioner

Mr.N.K.Jain : Counsel for respondents

O.A.No.421/90

Smt.Nirmala Sharma : Applicant

Vs.

Union of India & Ors. : Respondents

Mr.A.N.Gupta : Counsel for applicant

Mr.N.K.Jain : Counsel for respondents

O.A.No.15/91

Ganesh Narain Chawala : Applicant

Vs.

Union of India & Ors. : Respondents

Mr.A.N.Gupta : Counsel for applicant

Mr.N.K.Jain : Counsel for respondents

O.A.No.430/90

Satish Jain : Applicant

Vs.

Union of India & Ors. : Respondents

Mr.A.N.Gupta : Counsel for applicant

Mr.N.K.Jain : Counsel for respondents

CORAM:

Hon'ble Mr.Justice D.L.Mehta, Vice Chairman

Hon'ble Mr.O.P.Sharma, Member (Adm.).

PER HON'BLE MR.JUSTICE D.L.MEHTA, VICE CHAIRMAN.

On behalf of the Regional Provident Fund Commissioner, M.P.No.410/93 has been filed stating therein that in accordance with the decision of the Principal Bench in the case of Ashok Mehta Vs. P.P.F.C, directions have been given to revise the seniority list. It was further stated that the seniority list is being revised and the respondents will allow time to the

applicants to make representations. So the M.P. filed by the respondents may be dismissed in view of the facts mentioned in the M.P.

2. Satish Jain filed the O.A. and prayed that the orders dated 8.8.90, 5.7.90, 17.8.90 and 8.9.90 may be quashed. All these orders relate to the seniority lists and the revised seniority lists. He has also prayed that the respondents No.1 & 2 may be restrained not to finalise the seniority list of Head Clerks on the basis of Draft seniority list dated 5.7.90 and 17.8.90 which has already been finalised on 7.6.89. He has also prayed not to convene the DPC for the purpose of promotions on the post of Enforcement Officer/A.A.O. He has also prayed that no junior person should be promoted.

3. In the case of Smt. Nirmala Sharma, an amended O.A. has also been filed and prayer has been made not only about the seniority list but some additional prayers have been made and submitted that the draft seniority list of Head Clerks as on 1.1.1989 dated 17.8.90 and final seniority list dated 30.4.91 may be declared to be illegal and the ~~same~~ same may be quashed and set aside and ^{respondents} may be further directed to restore the position of the applicant in the cadre of Head Clerk which was obtaining in the seniority list dated 7.6.1989.

4. Similar points were raised in the case of Ganesh Narain Chawala. Therefore, all the 3 main O.A.s are decided by a common order with the M.P. filed by the respondents.

5. The learned counsel for the applicant has produced before us the decision of the Principal Bench dated 5.2.93 in the case of Ashok Mehta & Ors Vs. Regional Provident Fund Commissioner & Anr., T.A. No.43/87 and other ~~similar~~ cases. The Principal Bench in para 7

of the judgment has mentioned that initial ad hoc promotions were made and the incumbents continued in those posts until their services were regularised in accordance with the rules. It was also ~~sixx~~ brought to the notice of the Tribunal that no where it has been pleaded that the ad hoc promotions were made to substantive posts or vacancies. The Tribunal has held that the services rendered as ad hoc promotees before regularisation of their services in pursuance of selection by the regular DFC in accordance with the rules cannot count for seniority. Further directions were given which are as under:

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 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 stop-gap 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 THE DIRECT RECRUIT CLASS II ENGINEERING OFFICERS' ASSOCIATION AND OTHERS VS. STATE OF MAHARASHTRA AND OTHERS will apply as explained by the Supreme Court in Neshay Chandra Joshi & Others Etc. Vs. Union of India & Others, 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 ratio quote 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's case constitutes a binding precedent as held by the Full Bench of the Tribunal in R.D.Gupta's case even after the judgment of the Supreme Court in the Direct Recruit Class II Engineering Officers' Association's case.
- d) As the correct principles for determining seniority in the cadre of UDCs were clarified by the Supreme Court in the Mohinder Kumar's 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. The respondent Regional Provident Fund Commissioner should apply the judgment of the Principal Bench and revise the seniority according to the rules and as per the directions given by the Hon'ble Supreme Court. As far as the question of provisional seniority list is concerned, ~~not particularly after setting aside of the original seniority list which has not been set aside and revised.~~ the provisional seniority list dated 6.1.89, will have to be acted upon till the final seniority list is prepared. The respondents are directed to prepare the final seniority list within a period of 3 months from the receipt of a copy of this order. The questions of reversions and promotions if any should be based on the provisional seniority list which has not been set aside and which ~~should be~~ revised after setting aside of the final and interim provisional seniority list and the respondents should decide the matter according to the rules and should pass fresh order in every case. The reversion

order shall also be considered in the light of the orders of the Supreme Court as well as the directions given by the Principal Bench. Necessary action should be taken within a period of 3 months from the receipt of a copy of this order. The M.P. and the O.As are disposed of accordingly. Parties to bear their own costs.


(O.P.Sharma)
Member (A)


D.L. Mehta
Vice Chairman.