

(72)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

* * *

Date of Decision: 15.9.2000

1. OA 588/90

Gyan Ravi Gwani, UDC in the O/o Regional Provident Fund
Commissioner, Rajasthan, Jaipur.

... Applicant

v/s.

1. Union of India through Central Provident Fund
Commissioner, Mayur Bhawan, Cannought Place, New
Delhi.
2. Regional Provident Fund Commissioner, Nidhi Bhawan,
Jyoti Nagar, Jaipur.
3. Shri S.B.Nainawat, UDC
4. Shri Ashok Kumar Yadav, UDC
5. Shri Gyarsi Lal, UDC
6. Shri Mangi Lal, UDC

C/o Office of Regional Provident Fund
Commissioner, Rajasthan, Jaipur.

... Respondents

2. OA 664/94

Bhanwar Lal S Verma s/o Shri Ram Pal r/o 55/28, Rajat Path,
Mansarovar, Jaipur.

... Applicant

v/s.

1. Union of India through Central Provident Fund
Commissioner, Mayur Bhawan, Cannought Circus,
New Delhi.
2. Regional Provident Fund Commissioner, Nidhi Bhawan,
Jyoti Nagar, Jaipur.
3. Shri S.B.Nainawat, Enforcement Officer, O/o the
Enforcement Officer, Alwar.
4. Shri Ashok Kumar Yadav, Accounts Officer

5. Shri Gyan Lal, Head Clerk

Respondents No.4 & 5 through Regional
Provident Fund Commissioner, Nidhi Bhawan, Jyoti
Nagar, Jaipur.

... Respondents

CORAM:

HON'BLE MR.JUSTICE B.S.RAIKOTE, VICE CHAIRMAN

HON'BLE MR.M.P.HAWALLI, ADMINISTRATIVE MEMBER

For the Applicants	... Mr.Manish Bhandari
For Official Respondents	... Mr.Gaurav Jain, proxy counsel for Mr.N.K.Jain
For Private Respondents	... None

O R D E R

PER HON'BLE MR.JUSTICE B.S.RAIKOTE, VICE CHAIRMAN

These two applications involve common questions
of facts and law and hence ^{we} ~~they~~ propose to dispose of
both by this common order.

2. OA 588/90 is filed by one Gyan Ravi Ojwani
challenging the provisional seniority list of the UDC
dated 8.8.90 vide Annexure A/1 contending that he would
be senior to the private respondents since he passed the
typing test earlier than the private respondents. He
stated that he passed the typing test on 11.7.78, whereas
the private respondent No.3 namely S.D.Nainawat passed
the typing test on 25.1.84 and private respondent No.4
Ashok Kumar Yadav and private respondent No.5 Gyan Lal

they were
did not pass the typing test, and ~~and~~ exempted from passing
the typing test in the year 1990. Likewise private
respondent No.6 Munshi Lal also was exempted from passing
the typing test in the year 1990. In short it is his
case that since the applicant passed the typing test
earlier than the private respondents, he was entitled
to be confirmed earlier than the private respondents
and accordingly on the basis of the said confirmation
the applicant would be ~~senior~~ senior to the private
respondents on the post of LDC and ~~as such~~ ~~as such~~ the
provisional seniority list of the UDC impugned vide
Annexure A/1 dated 8.8.90 would be illegal. His case
is that since he was senior to the private respondents
on the post of LDC, showing him as junior to the
private respondents in the provisional seniority list
of UDC is illegal.

3. OA 664/94 is filed by Shantwar Lal Verma seeking
~~and~~ quashing of the seniority list of the LDCs with a
further declaration that he is senior to the private
respondents on the post of LDC. He also sought quashing
of the order dated 16.11.94 (Annexure A/1) contending

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that the applicant was entitled for confirmation on the of the IDC from the date he passed the typing test and on the basis of such confirmation, as on the date of passing of the typing test, he would be senior to the private respondents. The applicant also prayed for other consequential reliefs. The private respondents in this application are the same private respondents who are the private respondents in OA 588/90 and they are S/Shri S.B.Nainawat, Ashok Kumar Yadav and Gyarsi Lal Lal. private respondents No.3, 4 and 5 respectively, in this application. In this case also, the specific case of the applicant is that since he passed the typing test earlier than the private respondents, the applicant should be taken as confirmed earlier to the private respondents and on that basis he would be senior to the private respondents on the post of IDC. He stated that he passed the typing test on 30.11.78 and the private respondent No.3 passed the typing test on 25.1.84, whereas private respondents No.4 and 5 did not pass the typing test and they were exempted from passing the typing test in the year 1990. His case is that since he passed the typing test in the year 1978, much earlier to respondents No.3, 4 and 5 he should be taken as confirmed earlier to

the private respondents or his confirmation should necessarily date back to the date on which he passed the typing test in the year 1978. Thus, he became the senior, on the post of LDC, and if that is so, the seniority list pertaining to the LDCs is liable to be quashed. The applicant also prayed for quashing of Annexure A/1 dated 16.11.94 since his objections for considering him as senior to the private respondents on the post of LDC were rejected by the department. He also stated that the order Annexure A/1 is also illegal since ^{his} passing of the typing test and confirmation arising therefrom is not considered. Therefore, Annexure A/1 is liable to be set aside.

4. From the pleadings raised in both the cases, the common ground appears to be that the applicants being senior to the private respondents, they should not have been treated as junior on the post of LDC. In substance, the applicants in both the applications intend to challenge the final seniority list of LDCs dated 17.8.81 filed at Annexure A/5 in CA 664/94. Their further case is that as a consequence of setting aside the seniority

list of LDCs of the year 1981, their later seniority vis-a-vis private respondents should be worked out in the provisional seniority list of the UDCs. We note that in OA 588/90 the applicant did not challenge the seniority list of the LDCs dated 17.8.81, whereas in OA 664/94 the applicant prayed for quashing of the seniority list of the LDCs without referring to Annexure A/6 dated 17.8.81.

5. By filing reply the respondents have denied the case of the applicant in both the applications. The substance of the reply statement filed in both the cases by the respondents is that the applicants' relief in relation to the challenge of the seniority list of LDCs of the year 1981 is barred by time. They have also stated that passing of the typing test for the purpose of confirmation was not the requirement of any law and the applicants have not produced any rule in support of their allegation. The respondents have also stated that confirmation is not the criteria for determining the seniority. They have also stated that passing of typing test is not a pre-condition for promotion and for

regularisation on the higher post i.e. on the post of UDC. It is further stated by the respondents that on the basis of seniority list of the LDCs dated 17.8.81 the applicants in both the cases were junior to the private respondents and that seniority list the applicants have not challenged ^{in time} the respondents have also stated that the length of service ~~was~~ on the post was taken into consideration and as such there is no violation of any law declared by the Tribunal or even by the Supreme Court of India. In fact in earlier occasion the applicant Ehanwar Lal Varma filed OA 341/87, in which he challenged the provisional seniority list of UDCs as on 1.1.89 vide order dated 26.6.90 inviting objections. In that application also, the applicant did not challenge the seniority list of the LDCs of the year 1981. On the basis of the interse seniority of the applicant and the respondents on the post of UDC they were considered for promotion to the post of UDC earlier on ad hoc basis and ^{they} later ~~they~~ were regularised on the post of UDC on 5.4.83. On the basis of their relative seniority in the lower cadre and on the basis of their promotion to

the next higher post of UDC, the said provisional seniority
of UDC prepared.

list dated 8.8.90 has been prepared.

~~XXXXXXXXXXXXXXXXXXXXXXX~~The counsel.

In QA 664/94 has not challenged the provisional seniority

keeping in view the objections of the applicant and others

17.11.94. The respondents have also stated that keeping

the representation filed by the applicant in OA 664/94

no illegality or irregularity in the impugned provisional seniority

or dated 17.11.94 (impliedly challenged in OA 564/94)

contended that there is not merit in these applications

6. Heard the learned counsel for the parties. On

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both the applicants are ultimately settled by the final seniority list of the year dated 17.3.81 (Annexure A/6 in OA 664/94). In the said seniority list of the year 1981, the private respondents are shown at Sl.No.63, 64 and 67, whereas the applicant Bhanwar Lal Verma (OA 664/94) is shown at Sl.No.68 and the applicant in OA 588/90, Gyan Ravi Ojwani, is shown at Sl.No.70. As per this seniority list, the applicants definitely would be juniors to the private respondents as per the ranking assigned to them in the seniority list. Therefore,

the applications ~~XXXXXXXXXX~~ filed in the year 1990 and 1994 ~~XXXXXX~~ could be ~~dismissed~~ for challenging 1981 seniority of IDC cadre. ~~But~~ but the position of the year 1981 cannot be unsettled by accepting time barred applications. Therefore, so far as the final seniority list of the IDCs dated 17.3.81 (Annexure A/6 in OA 664/94) is concerned, both these applications are liable to be dismissed as barred by time.

7. However, the contention of the applicants is that the applicants in both these applications have passed the typing test earlier to the private respondents, therefore, the applicants should be confirmed first than

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the private respondents on the post of LDC and if the date of confirmation is taken into account, the applicants would be senior to the private respondents. Their further contention is that the applicant in OA 664/94 was appointed as LDC on 14.3.77, whereas the private respondents Shri S.B.Nainawat was appointed on 23.3.77 and Shri Ashok Kumar Yadav was appointed on 15.3.77 and they would be junior to the applicant in OA 664/94. As against this argument, the contention of the learned counsel for the respondents ~~xxxxxx~~ was that these dates are only the dates of their joining to the post in a question, whereas the applicant and private respondents were appointed on the basis of a selection and the ranking of the relative merit was the basis in assigning the seniority in the final seniority list of the LDCs dated 17.8.81. Therefore, only ^{on} ~~the~~ basis of the dates of actual joining, the applicant cannot claim seniority ^{time.} when all of them joined in the permitted over the private respondents. In other words, according to the panel position, the private respondents ~~xxxxxxx~~ were senior to the applicant, and the same is reflected in the seniority list of the LDCs dated 17.8.81, and as such there is no illegality in showing ~~gh~~ the applicant

junior to the private respondents. The learned counsel for the respondents contended that keeping in view the rule position only Annexure A/1 was issued to the applicant in OA 664/94. The respondents have also stated that on a similar representation ~~xxxxxxxx~~ made by the applicant in OA 538/99 ^{a similar} ~~xxxxxxxx~~ endorsement was also given to him vide Annexure A/2 in that application. The learned counsel for the respondents invited our attention to the contents of Annexure A/1 and Annexure A/2 respectively. He ^{notice} ~~xxxxxxxx~~ Annexure A/1 gives detail reasons and we think it appropriate to consider the validity of Annexure A/1 and our reasonings ultimately in upholding Annexure A/1 would also be the same for upholding Annexure A/2.

8. It is stated in Annexure A/1 that the applicant and Shri Nainawat were appointed on the post of IDC by a common order dated 14.4.77 vide Annexure A/2 in OA 664/94. In Annexure A/2, name of the applicant Bhawar Lal Verma is ~~shown~~ shown at Sl.No.8, whereas the name of private respondent Shri Nainawat is shown at Sl.No.3 and thus on the basis of such initial appointment respondent No.3 was senior to the applicant and the

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applicant was Junior to Shri Nainawat. Annexure A/1 also states that promotion to the post of UDC has been given to respondent No.3 and the applicant from a common date on the basis of a common order. It is further ~~xxxxxxxxxxxxxxxx~~ ~~xxxxxxxx~~ stated that passing of the typing test is essential only for the purpose of confirmation and grade increment and so far as the question of promotion and seniority is concerned, the same is being done on the basis of length of service in the cadre of LDC in conformity with the judgement of the Hon'ble Supreme Court in SLP No.7274/81. They have also stated that the opinion of the General Provident Fund Commissioner dated 27.1.88 ~~xx~~ to the effect that the applicant was confirmed earlier to Shri Nainawat on ~~xx~~ the post of LDC, therefore, the applicant would be senior to Shri Nainawat on the post of LDC would not ^{rule} reflect the correct ~~xxxxxx~~ position and accordingly the representation filed by the applicant was dismissed by order dt at Annexure A/1. In fact ^{what} ~~we have~~ ^{noted} ~~xxxxxx~~ above, the same is reiterated in the reply filed by the respondents. Therefore, a short point for our

consideration would be what would be the effect of passing of the typing test for the purpose of fixing the seniority in the post of UDC. As far as the department is concerned, they have clarified that passing of the typing test ~~xxxx~~ would be relevant and essential only for the purpose of confirmation and grade increment and it has nothing to do with the fixing of seniority for the purpose of promotion to the post of UDC. The learned counsel for the applicant also has not brought to our notice any rule which ^{makes} ~~xxxxxxx~~ as a pre condition for assigning seniority. passing of the typing test / Even the respondents also have not brought to our notice any rule which provides that ~~the~~ passing of the typing test would be relevant for the purpose of confirmation and grade increment. However, the learned counsel for the applicant relied upon Regulation No.5 of the Recruitment Rules for the post of UDC. We think it appropriate to extract the same as under :-

"5. Direct Recruits : Notwithstanding the provisions of para 1 above, the relative seniority of all direct recruits shall be determined by the order of merit in which they are selected for such appointment, on the recommendations of the Union Public

Service Commission or other selecting authority, persons appointed as a result of an earlier selection being senior to those appointed as a result of subsequent selections.

Provided that where persons recruited initially on a temporary basis are confirmed subsequently in an order different from the order of merit indicated at the time of their appointment, seniority shall follow the order of confirmation and not the original order of merit."

From the reading of the above rule it is clear that this rule would not apply to the facts of this case and it is intended only to determine seniority of the direct recruits on the basis of the recommendations of the UPSC or other selecting authority. The proviso relied upon by the applicant is only related to certain persons recruited initially on temporary basis and if they are confirmed subsequently in an order different from the order of merit indicated ^{vile} ~~in the~~ appointment order, seniority shall follow the order of confirmation and ~~in the~~ not the original order of merit. ^{Even otherwise as} ~~we have already stated above~~ that the final seniority list of the IDCs dated 17.8.81 has become final and the same cannot be reviewed and reconsidered on the basis of this rule now quoted. ^{Moreover} ~~this~~ rule does not speak of passing of any typing test for the ~~next~~ purpose of either confirmation or for the purpose

of

of seniority. ~~From~~ From this it is further follows that typing test is not a relevant factor for ~~the~~ purpose of seniority and for further promotion to the post of UDC.

9. So far as the post of UDC is concerned, ~~xxxxxxx~~ provide that ~~the~~ the said rules 50% by direct recruitment and 50% by promotion and so far as the 50% meant for promotional quota is concerned, item-8 of the said regulations reads as under :-

"Promotion of Lower Division Clerks including Stenotypists, Telephone or Telex Operators in Regional Office on a regional basis on the basis of seniority subject to the rejection of the unfit."

From the reading of the above ruling it is clear that for the purpose of promotion of the 50% quota meant for the promotees, it would be on the basis of seniority subject to the rejection of the unfit. Passing of the typing test is not ^{as} made ~~one~~ of the criteria. The sole ~~and~~ criteria is either seniority or rejection on the basis of the unfit. Therefore, the argument of the learned counsel for applicant in both the cases that since the applicants passed the typing test they ~~shall~~ should be ~~y~~ treated as confirmed earlier to the private respondents

~~xxxxx~~ who passed later or in whose case passing of
later,
the typing test was exempted/has no legs to stand, as
long as the seniority list of LDCs of the year 1981 is
concerned, the same has become final. We do not see
any reason to appreciate the contention of the applicant
xxx to upset 1981 seniority list of the LDCs. The fact
also remains that the applicant in OA/564/94 ~~xxxxx~~ also filed
earlier OA (OA 341/87) and in that OA also was ^{found} ~~xxxxx~~ from
the records that the final seniority list of 1981 was
not challenged and what was challenged was only the
provisional seniority list of the UDCs. Moreover, the
consistant law of the Hon'ble Supreme Court is that a
settled position should not be unsettled after a lapse
of considerable time. The seniority list of the year
1981 has held the field for almost ~~more~~ two decades and
the applicant applications are perse barred by time.
Therefore, the prayer of the applicants that the seniority
list of the year 1981 should be quashed is liable to
be rejected. It is not in ~~xx~~ dispute that the applicants
and the private respondents were earlier promoted by
the common order as UDC and they were regularised by

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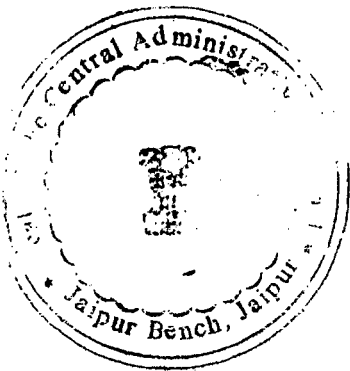
the common order as UDC vide order dated 5.4.83. Even in the regularisation order dated 5.4.83 we find that the applicants are junior to the private respondents. Even this order dated 5.4.83 the applicants have not challenged. As contended by the respondents, the applicants' seniority in the UDC is fixed on the basis of their relative ranking in the seniority list of LDCs of the year 1981 and they are regularised in the UDC vide order dated 5.4.83 and accordingly there ~~XXXXXXXXXXXXXXXXXXXX~~ is fixed in the provisional seniority list of UDC. position. In the circumstances, we do not find any merits in the applications. However, the learned counsel for the applicant relied upon 1990 (1) ATC 212 and 1999 (8) SCC (L&S) 1460 contending that the applicants' services on ad hoc basis should have been considered for the purpose of fixing seniority on the post of LDC in the seniority list of the year 1981. ^{has no foundation and it} would merit only rejection, because that seniority list of the LDC of the year 1981 has become final, as we have already discussed above.

10. ^{above:} For the reasons, we do not find any merit in

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both the applications. Accordingly, we pass the order as under :-



OA No.588/00 and OA No.664/04 are hereby dismissed but in the circumstances without costs.

Sd/-
(N.P.NAWANI)
MEMBER (A)

Sd/-
(B.S. RAIKOTI)
VICE CHAIRMAN

TRUE COPY ATTESTED

[Signature]
Deputy Officer (Judicial)
Administrative Tribunal
Jaipur Bench, JAIPUR

copy has been served
received in OA 588/00 by Ran Gwani

[Signature]