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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

O.A. No. 184/1996
T.A. No.

199

DATE OF DECISION 26-3-1997

Mahesh Tailor & Ors.

Petitioner

Mr. Manish Bhandari

Advocate for the Petitioner (s)

Versus

Union of India and Ors.

Respondent

Mr. N.K.Jain


Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. GOPAL KRISHNA, VICE CHAIRMAN

The Hon'ble Mr. O.P. SHARMA, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✓


(O.P. Sharma)
Administrative Member


(Gopal Krishna)
Vice Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,
JAIPUR

OA No. 184/1996

Date of order: 26-3-97.

1. Mahesh Tailor S/o Shri Phool Chand, U.D.C.,
2. Mayank Jain S/o Shri G.L.Jain, U.D.C.,
3. Roop Chand Raigar S/o Shri Lala Pamji, U.D.C.,
4. Tara Chand Jain S/o Shri Mohan Lal Jain, U.D.C.,
5. Mahesh Gupta S/o Shri Suraj Narain Gupta, U.D.C.,
6. Satish Kumar Pareek S/o Shri Padma Mohan Pareek, U.D.C.
7. Goga Ram S/o Shri Chhotu Ram, U.D.C.,
8. Ram Kalyan Sharma S/o Shri Radhey Shyam Sharma, U.D.C.,
9. Suresh Chandra Jindal S/o Shri Gyasi Ram Jindal, U.D.C.
10. Y.S.Panwar S/o Shri P.S.Panwar, U.D.C. and
11. Bundu Khan S/o Shri Allauddin Khan, U.D.C.

All working in the office of Regional Provident Fund
Commissioner, Jaipur.

.. Applicants

Versus

1. Union of India through Central Provident Fund
Commissioner, 25 Business Park, II-III Floor, Shivaji
Marg, Najafgarh Road, New Delhi.
2. Regional Provident Fund Commissioner, Nidhi Bhawan,
Near Jyoti Nagar, Jaipur.
3. Smt. Asha Bhambhani, presently working as U.D.C. in the
office of Regional Provident Fund Commissioner, Jaipur
4. Shri Anil Kumar Saxena S/o Shri H.N.Saxena, presently
working as U.D.C. in the office of Regional Provident
Fund Commissioner, Jaipur.
5. Shri Navneet Mittal, presently working as U.D.C. in the
office of Regional Provident Fund Commissioner, Jaipur.
6. Shri Naresh Singh Rana, presently working as U.D.C. in
the office of Regional Provident Fund Commissioner,
Jaipur.
7. Shri Man Singh, presently working as U.D.C. in the
office of Regional Provident Fund Commissioner, Jaipur.
8. Shri Chiranjee Lal Bairwa, presently working as U.D.C.
in the office of Regional Provident Fund Commissioner,
Jaipur.

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9. Shri Sunil Malhotra, presently working as U.D.C. in the office of Regional Provident Fund Commissioner, Jaipur.
10. Shri Narain Lal, presently working as U.D.C. in the office of Regional Provident Fund Commissioner, Jaipur.

... Respondents

Mr. Manish Bhandari, Counsel for the applicants

Mr. N.K.Jain, Counsel for the respondents Nos. 1 and 2

None present for private respondents

CORAM:

Hon'ble Gopal Krishna, Vice Chairman

Hon'ble O.P.Sharma, Administrative Member

ORDER

Per Hon'ble Mr. O.P.Sharma, Administrative Member

In this application under Section 19 of the Administrative Tribunals Act, 1985 S/Shri Mahesh Tailor, Mayank Jain, Eoop Chand Faigar, Tara Chand Jain, Mahesh Gupta, Satish Kumar Pareek, Goga Ram, Ram Vallyan Sharma, Suresh Chandra Jindal, Y.S.Panwar and Bundu Khan have prayed that the order dated 2.2.1996 (Ann.A1) by which the representations submitted individually by the applicants have been rejected and the seniority list dated 17.11.1994 (Ann.A2) may be quashed and the respondents may be directed not to interfere with the final seniority list issued earlier by the administration in 1990. A still further prayer is that the respondents may be directed to grant promotions to the applicants to posts higher than the U.D.C.as per the merit position in accordance with the final seniority list issued in 1990.

2. The facts of the case, as stated by the applicants, are that the applicants were initially appointed on the post of L.D.C. They were promoted to the post of U.D.C. vide orders Annexures A3 to A9. Promotions were granted to the applicants

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on the post of U.D.C. on the basis of the recommendations of the Departmental Promotion Committee (DPC) and these were made against substantive vacancies although the promotions were described in the orders as adhoc. In these circumstances the promotions were regular in nature from the very beginning. Posts of UDCs are filled up from two sources - one source is seniority-cum-fitness and the other is persons qualifying in the Departmental Examination. However, the governing principle for determination of seniority is as prescribed in rule 6 of the rules pertaining to the Organisation according to which inter se seniority between the appointees has to be reckoned keeping in view the length of service on the posts to which they have been promoted.

3. Further according to the applicants, after the Hon'ble Supreme Court gave a decision in the matter, the correct seniority list was published vide order dated 8.8.1990 (Ann.A10). Seniority, as assigned according to this seniority list, was fixed keeping in view the length of service on the higher promotional post irrespective of whether the promotion was on adhoc or regular basis, and also after ignoring the question whether a person had been promoted to the higher post on the basis of seniority-cum-fitness or on the basis of passing the Departmental Examination. Thereafter, the respondents had no jurisdiction to disturb the seniority list dated 8.8.1990. However, still the respondents published another provisional seniority list dated 27.1.1994 upsetting the earlier seniority of many persons mentioned in the said list including all the applicants. The applicants raised objections to the seniority assigned as per the said seniority list by filing representations Ann.All dated 10.2.1994. Ann.All is a representation made by one of the applicants and other applicants are stated to have made similar or identical representations. A final seniority list

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was published vide Ann.A2 dated 17.11.1994 maintaining the position in the provisional seniority list published on 27.1.1994. The representations of the applicants against the seniority assigned in this list dated 17.11.1994 were rejected vide Ann.A1 dated 2.2.1996. This rejection is in respect of applicant No.1 Shri Mahesh Tailor and similar communications are stated to have been sent to other applicants as well.

4. The applicants are aggrieved that the respondents have without any justification recast the seniority list by upsetting the seniority position assigned to the applicants earlier vide the list dated 8.8.1990 by erroneously interpreting the judgment of the Tribunal in Ganesh Narain Chawla case. They have failed to consider judgments of various Benches of the Tribunal including the judgments of the Full Bench of the Tribunal. They have ignored the provisions of rule 6 of appointment/recruitment rules by which seniority has to be assigned on the basis of length of service, regardless of the source from which appointment is made and they have erroneously applied rule 7 of the relevant rules. Further, according to the applicants, the respondents have erred in granting promotions on higher posts to candidates who have been promoted on the basis of the Departmental Examination by treating them as senior to those who were promoted on the basis of seniority-cum-fitness.

5. The official respondents in their reply have taken two preliminary objections to the maintainability of the OA. One is that since the OA is directed against the seniority list dated 17.11.1994 and it was filed on 20.3.1996, it is time barred. The other is that the cause of action has arisen to each applicant separately and, therefore, a joint application on behalf of all the applicants is not maintainable.

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6. With regard to the merits of the case, the respondents have stated that promotions to the applicants on the post of UDC as per orders Ann.A3 onwards were given purely on adhoc basis as a officiating arrangement. The inter se seniority of an official in the Organisation in the cadre of UDC is fixed on the basis of quotas available for officials coming after qualifying in the examination (and those to be appointed on the basis of seniority-cum-fitness) in the ratio of 50% each. Further, according to the respondents, the controversy about seniority in the Organisation has been finally settled by the Hon'ble Supreme Court in the case of Regional Provident Fund Commissioner Vs. Mohinder Kumar and Ors. in SLP (Civil) No. 7274/87 by the judgment dated 11.8.1987 (Ann.R1). The final seniority list issued on 8.8.1990 was as per the judgment of the Hon'ble Supreme Court in Mohinder Kumar's case. However, the said seniority list dated 8.8.1990 was challenged by some officials such as Ganesh Narain Chawla and certain others before the Jaipur Bench of the Tribunal and their OAs Nos. 15/91, 421/90 and 430/90 were disposed of by this Bench of the Tribunal vide order dated 23.9.1993 (Ann.R2). The seniority list Ann.A2 which has been impugned by the applicants was revised in accordance with the directions of the Tribunal issued on 23.9.1993. The respondents have merely complied with the directions of the Tribunal and of the Hon'ble Supreme Court in the case of Mohinder Kumar referred to above. There were also judgments by various Benches of the Tribunal and these were also taken into consideration while drawing up the seniority list dated 17.11.1994. The applicants have not been able to show how the action of the respondents is contrary to the judgment of the Hon'ble Supreme Court in the above mentioned case. Therefore, according to the respondents, the applicants are not entitled

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to any relief.

7. The learned counsel for the applicant stated during his oral arguments that although the respondents claim to have followed the judgment of the Jaipur Bench of the Tribunal in the case of Ganesh Narain Chawla and Ors. Vs. Union of India and Ors. delivered on 23.9.1993 (Ann.E2) while drawing up the impugned revised seniority list, they have, in fact, wrongly applied the said judgment. According to him, the earlier seniority list drawn up in 1990 which correctly showed the seniority position of the applicants, was drawn up on the basis of the judgment of the Chandigarh Bench of the Tribunal in Mohinder Kumar case as affirmed by the Hon'ble Supreme Court as per the judgment at Ann.E1. Whatever may be the interpretation of the Department with regard to the judgment of the Jaipur Bench of the Tribunal in the case of Ganesh Narain Chawla and Ors., it cannot be interpreted to mean that it has given a direction for revision of the seniority list dis-regarding the judgment in Mohinder Kumar's case as affirmed by the Hon'ble Supreme Court. He read out extensively from the judgment of the Principal Bench in the case of Ashok Mehta and Ors. Vs. Regional Provident Fund Commissioner and Anr. delivered in TA No. 43/87 on 5.2.1993, on which reliance had been placed by the Jaipur Bench of the Tribunal while delivering its judgment dated 23.9.1993 (Ann.E2) in Ganesh Narain Chawla case and stated that even if the ratio of the former judgment was applied to the facts in the cases of the applicants, there would be no ground for disturbing the seniority of the applicants as determined in 1990 vide Ann.A10 dated 8.8.1990. He further stated that since the adhoc promotions of the applicants on the post of UDC were made against substantive vacancies after holding a DPC which had approved the candidature of the applicants, the

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adhoc service rendered by the applicants in the post of UDC had to be counted for the purpose of reckoning their seniority even in view of the judgment of the Hon'ble Supreme Court in the case of Direct Recruit Class-II Engineering Officers' Association case, 1990 SCC (L&S) 399. Further according to him, in all other regions of the country a particular policy has been adopted while fixing seniority positions of the persons promoted to the post of UDC but a departure from this policy had been made only in Rajasthan region due to which the applicants were aggrieved. In the interest of adoption of a uniform policy in the whole country, because the office of the Central Provident Fund Commissioner is an all India organisation, same policy had to be adopted in the Rajasthan region, which has been adopted in the rest of the country. He concluded by stating that in any case principles of natural justice has been violated by the respondents by unilaterally altering the seniority of the applicants as fixed by Ann.A10 dated 8.8.1990, without giving any opportunity of being heard to the applicants. As regards the objections of the respondents to the maintainability of the OA on the ground of limitation, he stated that the applicants had made representations against the action of the respondents which had been rejected by order dated 2.2.1996 and, therefore, filing of the OA on 20.3.1996 was within the limitation period. As regards the respondents' objection that a joint application could not be filed by the applicants because they did not have the same cause of action, he stated that the applicants' application for filing a joint application has already been allowed by the Tribunal vide order dated 21.5.1996, therefore, this objection is no longer tenable.

8. The learned counsel for the respondents stated that

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once the Jaipur Bench of the Tribunal had delivered its judgment in Ganesh Narain Chawla case on 23.9.1993 (Ann.F2), the respondents were bound to comply with it and, therefore, they ^{had} ~~have~~ to draw up a fresh seniority list in supersession of the seniority list circulated earlier vide Ann.A10. The seniority list drawn up now is strictly in conformity with the directions of the Tribunal given in Ganesh Narain Chawla case. Further, according to him, the issue dealt with in the judgment of the Tribunal in Mohinder Kumar's case which had been affirmed by the Hon'ble Supreme Court, was quite different. In that case the question was whether persons appointed on the basis of seniority-cum-fitness and those appointed on the basis of Departmental Examination both were to be treated as promotees or whether the persons falling in latter category had to be treated as direct recruits. Therefore, the issue in this case cannot be resolved on the basis of the judgment in Mohinder Kumar's case. He added that the applicants in the present OA are persons appointed on the basis of seniority-cum-fitness. In the cases of those of the applicants who had been initially appointed on adhoc basis against vacancies meant for persons coming in on the basis of Departmental Examination the adhoc service rendered by them had been excluded for the purpose of considering their seniority. He also referred to the judgment of certain other Benches of the Tribunal on the subject and stated that the action taken by the respondents in revising the seniority of the applicants was in accordance with the decisions of the various Benches of the Tribunal and in accordance with law. With regard to the averment of the respondents that the application was barred by limitation, he stated that while the impugned seniority list is dated 17.11.1994, the applicants had filed representation against it sometime in

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January, 1996 and, therefore, the rejection of their representations in February, 1996, could not furnish a ground to them for claiming that the application was filed within the limitation period.

9. We have heard the learned counsel for the parties and have perused the material on record as also the various judgments of different Benches of the Tribunal and of the Hon'ble Supreme Court to which references were made during the arguments. None has appeared on behalf of the private respondents at Sl.Nos. 3 to 10 who have been impleaded by the applicants in their respective capacity being senior-most of the officials who may be affected by the decision of the Tribunal. No reply has either been filed on behalf of respondents Nos. 3 to 10

10. We may first deal with the preliminary objections raised by the respondents regarding maintainability of the OA. As regards the filing of a joint application by the applicants, their prayer in this behalf has already been allowed vide order dated 21.5.1996. As regards the respondents' plea that the application is barred by limitation, it is seen that the OA was filed on 20.3.1996. The seniority list which has been impugned is dated 17.11.1994. The applicants claim to have made representations against the said seniority list which were disposed of by communications dated 2.2.1996 (Ann.A1). The applicants seek to reckon limitation from the date on which their representations were disposed of. It appears that the representations were themselves made on 15.1.1996. However, considering the circumstances of the case and after hearing the learned counsel for the parties, we condon the delay, if any, in filing the OA in the interests of justice.

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11. Before considering the ratio of the judgments relied by the parties, it is necessary to set-out the undisputed position in this case. The applicants are all those who were promoted to the post of UDC on the basis of their seniority-cum-fitness and not on the basis of their passing the Departmental Examination. The applicants were initially promoted as UDCs on adhoc basis vide orders Annexures A3 to A9. In the orders of promotion it has been stated, inter alia, that their promotion being adhoc and on a purely temporary basis, will not confer any right on them to claim seniority in promotion to the post of UDC on a long term basis. However, before they were promoted as UDCs on adhoc basis, a DPC was held to consider their fitness for promotion and they were appointed against substantive vacancies. Initially by the seniority list finalised on 8.8.1990 (Ann.A10) their adhoc service was counted for the purpose of considering their seniority on the post of UDC. As stated by the learned counsel for the respondents during the arguments, some of the applicants were initially appointed on adhoc basis against the vacancies which were meant for candidates coming in through the Departmental Examination. That part of the adhoc service of the applicants which had been rendered against vacancies meant for Departmental Examination candidates has now been excluded for the purpose of determining the seniority of the applicants. This position also remained uncontradicted by the learned counsel for the applicants during the arguments and, therefore, this can also be taken as undisputed position in the present case.

12. The respondents claim that the seniority position of the applicants has been revised in view of the directions of

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of the Tribunal contained in the order dated 23.9.1993 (Ann.P2) passed in OA Nos. 15/91 ^{etc.} Ganesh Narain Chawla and Ors. Vs. Union of India and Ors. The operative portion of the judgment, as in para 6 thereof, reads as under:

"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, it has not been set aside and revised. Consequently the provisional seniority list dated 6.4.89 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."

In this judgment the Tribunal also relied upon the judgment of the Principal Bench of the Tribunal delivered on 5.2.1993 in the case of Ashok Mehta and Ors. Vs. Regional Provident Fund Commissioner and Anr., TA No. 43/87 and other similar cases. The Tribunal had observed as under in para 5 of the judgment dated 23.9.1993 before giving direction as in para

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"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., TA 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 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 DPC 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 Keshav 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

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regularisation of service in accordance with rules, there being power in the authority to relax the rules.

- 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's case constitutes a binding precedent as held by the Full Bench of the Tribunal in F.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 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."

13. Now we have to consider the question of applicability of the judgment of this Bench of the Tribunal in Ganesh Narain Chawla case, the judgment of the Chandigarh Bench of the Tribunal in Mohinder Kumar case as affirmed by the Hon'ble Supreme Court and the judgment of the Principal Bench of the Tribunal in Ashok Mehta case. As regards the judgment in Ganesh Narain Chawla case delivered by this Bench of the Tribunal (Ann.A2), we are of the view that it does not give any categorical direction as to the exact manner in which the seniority list prepared earlier in 1990 in the case of UDCs should be revised. It is a separate matter that the prayer in the OAs disposed of vide Ann.E2 ~~were~~ regarding the seniority of Head Clerks. Even if, however, it is assumed that the effect of the judgment in Ganesh Narain Chawla case would be to modify the seniority of the UDCs also, we find that the directions given by the Tribunal were more or less of a general nature, to the effect that the judgment of the Principal Bench in Ashok Mehta case and of the Hon'ble Supreme Court presumably in Mohinder Kumar case should be considered for determining the

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seniority and the relevant rules should also be taken into consideration. Therefore, it is not clear how the respondents can straightway claim that they have revised the seniority list issued earlier in 1990 by applying the judgment of this Bench of the Tribunal in Ganesh Narain Chawla case. We will, therefore, have to go back to the judgment of the Chandigarh Bench of the Tribunal in Mohinder Kumar case, the judgment of the Hon'ble Supreme Court in the said case and the judgment of the Principal Bench in Ashok Mehta case.

14. As regards the judgment of the Chandigarh Bench of the Tribunal in Mohinder Kumar case, the issue before the Tribunal was whether the UDCs appointed on the basis of seniority-cum-fitness and those appointed on the basis of Departmental Examination formed separate categories, of promotees and direct recruits respectively. The Tribunal held that all the UDCs have to be treated as promotees and their seniority has to be recast under the general principles of seniority in the Department as applicable to promotees. Against this judgment, the Regional Provident Fund Commissioner went in an SLP before the Hon'ble Supreme Court who in their judgment dated 11.8.1987 observed as under:

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

It appears that it was on the basis of the judgment in Mohinder Kumar case as affirmed by the Hon'ble Supreme court by the above observations that the respondents in the first instance determined the seniority of the UDCs while issuing the seniority list of 1990. While issuing the said seniority list the total length of service including that rendered on adhoc basis was taken into consideration. Mohinder Kumar's judgment does not separately talk about the treatment to be given to adhoc service rendered by an employee. It only says

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that the seniority of the UDCs should be determined by treating both categories of appointees as promotees and in accordance with the general principles of seniority applicable to promotees. It is the Hon'ble Supreme Court which observed, while deciding not to interfere with the aforesaid judgment of the Chandigarh Bench, that the total length of service in the promotional post should be taken into consideration while determining the seniority. In our view, this also does not mean that the Hon'ble Supreme court gave any specific direction regarding any particular treatment to be given to the adhoc service rendered by an employee before his appointment on regular basis, for the purpose of determination of his seniority. The expression total length of service seems to have been used by the Hon'ble Supreme Court in the context of the observations of the Chandigarh Bench of the Tribunal that the seniority should be determined on the basis of the general principles applicable for determination of seniority of promotees. However, as already stated above, after receipt of the judgment in Mohinder Kumar case and the Hon'ble Supreme Court's decision not to interfere with it, the respondents drew up the seniority list of UDCs by taking into account their total length of service including service rendered on adhoc basis. However, these observations of the Hon'ble Supreme Court do not go against the interpretation given to these by the official respondents while determining the seniority of the applicants by taking total length of service including adhoc service rendered by them for the purpose of determining their seniority.

15. We now go back to the judgment of the Principal Bench in Ashok Mehta case on which also reliance has been placed by the Jaipur Bench of the Tribunal in Ganesh Narain Chawla

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case. The judgment in Ashok Mehta case is a Full Bench judgment. In this judgment of the Full Bench a reference was also made to an earlier Full Bench judgment in the case of R.D.Gupta and Ors. Vs. Union of India and Ors. in OA No. 1147/88. There were 4 questions referred to the Full Bench for decision in Ashok Mehta case but none of these was specifically whether adhoc service rendered by an employee before regularisation is to be counted for the purpose of seniority. However, after referring to the earlier judgment of the Full Bench in R.D.Gupta case, the Full Bench in Ashok Mehta case has also made observations regarding the treatment to be given to adhoc service for the purpose of determination of seniority. The following were the observations of the Full Bench in this regard:-

"6. The Supreme Court in Mohinder Kumar's case has observed that the appropriate rule for determining the seniority of the officers is the total length of service in the promotional posts which would depend upon the actual date when they were promoted. The second answer given by the Full Bench of the Tribunal in Gupta's case explaining how this observation of the Supreme Court should be understood on the total length of service in the promotional post and that the total length of service should be determined taking into account the actual date of promotion. What this in the context means has been explained by the Full Bench in Gupta's case. It is made clear that if an employee is promoted after the DFC has found him fit for promotion, that period should count for seniority even if the promotion has been described as ad-hoc or temporary or officiating. It is further clarified that the period during which the employee had been promoted on an ad-hoc basis by way of stop-gap arrangement de hors the recruitment rules, will have to be ignored. The clarification given by the Full Bench in Gupta's case is clearly consistent with the law laid down by the Supreme Court in JUDGMENT TODAY (2) S.C. 264 between THE DIRECT RECRUIT CLASS II ENGINEERING OFFICERS' ASSOCIATION AND OTHERS VS. STATE OF

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MAHAFASTRA AND OTHERS. It has been laid down that where an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment irrespective of the date of his confirmation. It is further laid down that adhoc promotion made as a stop-gap arrangement cannot count for seniority. The principle 'B' laid down by the Supreme Court says that if the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted. Relying on this statement, it was urged before us that such of those who were appointed on ad-hoc basis and later on regularised after selection by the D.P.C. are entitled to count the adhoc service for seniority. It was also urged that even the adhoc promotions were made in pursuance of the selection made by the D.P.C. It was, however, shown by the counsel for the Department with reference to D.P.C. proceedings that the selection process adopted for making adhoc appointments was not the same as the selection process for regular promotion. The D.P.C. selection was for adhoc promotions and not for regular promotions. That is the reason it was pointed out that even those appointed on adhoc basis in pursuance of an adhoc procedure of selection adopted by the D.P.C. were again subjected to consideration of the D.P.C. when regular promotions were required to be made. The quality and nature of selection process of the two was not on par. Hence, it would not be right in these cases to treat the date of adhoc promotion as the date of promotion in accordance with the Rules. It, was, however, contended that this does not make any difference so far as the application of principle 'B' is concerned which says that when promotion is not made according to rules and the employee is continue in service until regularisation in accordance with Rules, the entire service shall count for seniority. The true scope and ambit of principle 'B' has been explained in a later decision of the Supreme Court in the case reported in AIR 1991 SC 284 between

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KESHAV CHANDRA JOSHI AND OTHERS ETC. AND UNION OF INDIA AND OTHERS. The doubts in regard to the field of operation of principles 'A' and 'B' have been cleared by the Supreme Court. Paragraph 25 of the judgment which deals with the aspect may be extracted as follows:

(Not reproduced, not being directly relevant)

In view of this elucidation it is clear that principle 'B' would be applicable to cases where the initial appointment to substantive post or vacancy is made deliberately in disregard of the rules and the incumbent allowed to continue in the post for long periods like 15 to 20 years without reversion till the date of regularisation of service in accordance with rules, there being power in the Government to relax the rules. In such a situation, service before regularisation has to be counted towards seniority. If the rules empowered the Government to relax the rules or appointment, an inference of implied relaxation can be drawn. It is only in presence of such facts and features that the period of service from the date of initial appointment made by not following the rules can count for seniority if the incumbent has continued in the post uninterruptedly till the regularisation of his service in accordance with the rules. Principle 'B' comes into operation when except (sic) circumstances mentioned above exist. Otherwise it is the normal in (sic) principle 'A' which applied to cases of appointment made de hors the rules and in such cases, the service rendered though continuous till the date of regularisation in accordance with rules will not count for seniority. It is, therefore, wrong to apply mechanically principle 'B' to every case of appointment made de hors the rules where the appointee continues in service until regularisation as per rules.

7. In the present set of cases, initial adhoc promotions were made and the incumbents continued in those posts until their services were regularised

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in accordance with the rules. They have not pleaded that their adhoc promotions were made to substantive posts or vacancies deliberately in disregard of the rules. Nor is it their case that the incumbents continued on the posts for long period of about 15 to 20 years. The orders of adhoc promotion clearly indicate that they were made in the exigencies of service stating that the adhoc promotion does not confer any rights for regular promotion. Hence, service rendered as adhoc promotees before regularisation of their services in pursuance of selection by regular D.P.C. in accordance with the rules cannot count for seniority."

While concluding, the Full Bench made the following observations contained in para 3(a) which are directly relevant for the purpose of the present case:-

"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 adhoc 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 will apply as explained by the Supreme Court in KESHAV CHANDRA JOSHI AND OTHERS ETC. Vs. UNION OF INDIA AND 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."

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15. Now we may consider the effect of the above decisions and the observations of the Full Bench in Ashok Mehta case on the facts in the present case. We may clarify here, at this stage, that we are not called upon to decide the general question of treatment of adhoc service followed by regularisation for the purpose of seniority. We have to decide this question in the context of and in the light of the facts of the case before us. In so far as the present case is concerned, the undisputed facts have already been mentioned in para 11 above. The appointments of the applicants on adhoc basis were after holding the DPC and were against substantive vacancies. The respondents have not taken the stand in their reply to the present OA that the appointment of the applicants, on adhoc basis, was de hors the rules. The Principal Bench in Ashok Mehta case has observed, after referring to the earlier Full bench judgment in R.D.Gupta case, that if an employee is promoted after the DPC found him fit for promotion, that period should be counted for seniority even if the promotion has been described as adhoc or temporary or officiating. Now in this case a DPC was held before the applicants were promoted to the posts of UDCs, even on adhoc basis. It is a different matter that another DPC was held before they were considered for regularisation. It is not the case of the respondents in the present OA that the first DPC was qualitatively inferior to that held subsequently or that rules were not applied while considering the applicants for promotion when the first DPC was held. Thus, in our view when the appointment of the applicants, even on adhoc basis, was after holding of the DPC and was not de hors the rules and was against substantive vacancies, the observations of the Full Bench in R.D.Gupta case would apply to the facts of the present case. As regards the conclusions

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of the Full Bench in Ashok Mehta case, as reproduced in para 8(a) thereof, the observations that promotion by way of adhoc or stop-gap arrangement made due to administrative exigencies and not in accordance with rules would not count for seniority, would not be applicable in the facts of the present case, in view of the position that the appointments of the applicants were after holding of the DFC and against substantive vacancies. There is nothing in the judgment in Ashok Mehta case which militates against the claim of the applicants that the adhoc services rendered by them prior to their regularisation should be considered for reckoning their seniority in the post of UDCs. Therefore, in our view, there was no justification for the respondents to revise the seniority of the applicants in the light of the judgment of this Bench of the Tribunal in Ganesh Harain Chawla case, wherein, in any case, no specific directions were given as to how exactly seniority of the applicants was to be revised. Although there were indeed directions therein that the seniority must be revised, there was also a direction to the respondents to follow the relevant judgments on the subject and to apply rules while doing so. After the directions were given by the Tribunal for revising the seniority list, it was for the respondents to apply the principles of determination of seniority correctly in the light of various judgments of the Tribunal, the Hon'ble Supreme Court and the rules. We hold that in the facts and circumstances of the present case, exclusion of adhoc service rendered by the applicants prior to their regularisation on the post of UDC is not justified. This is notwithstanding the fact that in the order of appointment of the applicants their initial appointment has been described as adhoc and it has further been stated that this ^W could not confer any right on them to claim seniority in

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the post of UDC. We are making this observation for the reason that the correct legal principles have to be applied while determining the seniority and the true nature of the adhoc service rendered has to be considered while applying such principles. We, accordingly, direct the respondents to once again revise the seniority list Ann.A2 after counting the adhoc service rendered by the applicants in the post of UDC.

16. A question was raised during the arguments that some applicants had been appointed on adhoc basis against the vacancies meant for Departmental Examination quota and, therefore, the period of service which was rendered by them against the vacancies meant for Departmental Examination candidates and before their adjustment against vacancies meant for applicants themselves who were to be appointed on the basis of seniority-cum-fitness, had to be excluded for the purpose of reckoning their seniority. However, it has already been held in Mohinder Kumar case that persons coming from both the streams i.e. those appointed on the basis of seniority-cum-fitness and those coming through Departmental Examination have to be counted as promotees. Therefore, in this context, the judgment of the Hon'ble Supreme Court that total length of service has to be considered for the purpose of determining seniority, ^{assumes relevance.} Also in Ashok Mehta case the Full Bench has held that rota quota principle will not apply while determining seniority in these cases. ~~assumes significance.~~ Accordingly, the total service rendered by the applicants including that on adhoc basis has to be taken into consideration for the purpose of determination of their seniority.

17. It is unfortunate that the seniority as determined in 1990 was again unsettled in 1994 and it would again be

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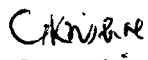
unsettled in view of our directions now. But this unfortunate situation would have been avoided if the respondents had carefully considered the whole matter after receipt of the judgment of this Bench of the Tribunal in Ganesh Narain Chawla case.

18. A point was also raised by the learned counsel for the applicants that one particular policy has been followed for the whole of India in determining seniority of UDCs whereas a separate policy has been followed in Rajasthan region of the office of the Central Provident Fund Commissioner. We are not in a position to comment on this aspect. We would, however, observe that it is in the interest of administration that a uniform policy regarding determination of seniority should be followed all over India when the office of Central Provident Commissioner is an all India organisation.

19. It is not necessary for us to deal with the other points raised by the applicants and the respondents in their respective averments and arguments.

20. In the result, the OA is allowed. The seniority list Annexure-A2 and order at Annexure-A1 are set aside. The respondents are directed to prepare a revised seniority list within a period of four months from the date of receipt of a copy of this order. No order as to costs.


(O.P.Sharma)
Administrative Member


(Gopal Krishna)
Vice Chairman