

P. BHASKARAN AND ORS.

A

v.

UNION OF INDIA AND ORS.

NOVEMBER 23, 1995

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

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*Service Law—Seniority—Ad hoc promotion—Whether seniors refusing option of ad hoc promotion on transfer still retain seniority over their juniors who get promoted on exercising such option—Per Government policy, seniority of junior protected subject to rule of reservation and qualification—On facts, held juniors not entitled to seniority as the seniors were neither given the option, nor did they refuse.*

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Appellant were working as LDCs in the Western Zone of the Office of the Controller of Imports and Exports at Ahmedabad. There was a common seniority list for the whole zone. Though the Appellants were junior to the Respondents, they were given the option of ad hoc promotion on transfer in 1980 itself which they exercised, while such option was given to the respondents only in 1981 and hence they became senior to the Respondents. As per the Government policy set out in the circular issued by the respective Joint Chief Controller of Imports and Exports, from time to time, an LDC can be transferred from one place to another on ad hoc promotion on his exercising the option for such transfer-cum-promotion. If however, the number of vacancies is less than the number of persons exercising the option, then seniority will be the criteria for consideration. If the seniormost refuses, then juniors may be promoted and they will be given seniority over the seniors who refused the option.

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The Respondents who were senior to the Appellants in the LDC cadre and were also promoted in 1981 filed a Writ Petition challenging the seniority of the Appellant *inter alia*, on the ground that they were not given the option in 1980. The CAT, held that since the Appellants were promoted only on *ad hoc* basis it would not rob the Respondents of their seniority though they were promoted later since they were senior to the Appellants in the LDC cadre. The CAT directed the seniority list to be revised accordingly.

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On behalf of the appellants, it was pleaded before this Court that,

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A on account of the Government policy, though the Appellants were promoted on an *ad hoc* basis, it must be taken that the promotion was on regular basis and their seniority should be reckoned from the date of their actual promotion *vis-a-vis* the respondents.

B Dismissing the Appeal, this Court

C HELD : 1. When the Appellants were promoted in the year 1980, the Respondents were not informed of the right to exercise the option for transfer on promotion nor they refused to give option on that basis. Since they admittedly are seniors to the Appellants as LDCs in the absence of their refusal, they cannot be made to lose their seniority in the cadre as UDCs for no fault of theirs merely because the Appellants were promoted in 1980 overlooking the claims of the Respondents 5 & 6. Accordingly on facts, the direction issued by the Tribunal is illegal. [630-D-E]

D 2. It is seen that in case senior LDCs were not willing to go on transfer after promotion, though on *ad hoc* basis, and if the juniors had accepted and opted for transfer on promotion, the juniors would get seniority as UDCs over their seniors in the LDC cadre. The seniors who were obviously unwilling for transfer on promotion, were willing to forego seniority as LDCs and that thereby the juniors who opted for transfer on promotion, scale a march over the seniors in the cadre as promotee UDCs. E The aforesaid circular would give them the said right. The ratio is quite consistent with the circular issued by the Joint Controller of Imports and Exports. [629-C-D; G]

F *Joint Chief Controller of Imports and Exports, Madras and Anr. v. V.V. Ramanarao and Ors.*, W.A. No. 116/84 decided on December 24, 1987 by A.P. High Court, affirmed.

G 3. Due to administrative exigencies when the options were given to the senior UDCs for transfer on promotion though on *ad hoc* basis since they were not willing for such a transfer by promotion, the administrative exigencies do require that the posts need to be filled up from junior LDCs who had exercised their option for transfer by promotion as UDCs and get seniority in the cadre as UDCs though in the cadre as LDCs they were juniors. They get seniority from the date of their initial promotion though on an *ad hoc* basis. When they were regularly working as UDCs in existing H vacancies, obviously promotion would be given according to the rules

consistent with the rule of seniority-cum-fitness and following the rule of reservation. Promotion thereby given would be treated according to rules, though initially made on *ad hoc* basis. Thus juniors would scale a march over senior LDCs who were unwilling for transfer by promotion. [630-A-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11560 of 1995.

From the Judgment and Order dated 29.9.89 of the Central Administrative Tribunal, Ahmedabad in Misc. A. No. 986 of 1988.

B.K. Mehta, Jatin Jhaveri and H.J. Jhaveri for the Appellants.

N.N. Goswami, Ms. Sushma Suri and Hemant Sharma, for the Respondents.

The following Order of the Court was delivered :

Leave granted.

The Central Administrative Tribunal, Ahmedabad in its order dated September 29, 1989 in Misc. Application No. 986 of 1988 dismissed the application of the appellants to review its order made in T.A. No. 263/86 on August 14, 1987. Therein, the Tribunal had directed the seniority list of UDC to be drawn afresh in the light of the directions issued in that order, namely, no promotion should be made on the basis of options without resorting to the recruitment rules in terms of the quota laid down and the procedures for filling it up could be regarded as valid as long as it is not *ad hoc*. Such *ad hoc* promotions do not deprive the seniority of the respondents 5 and 6 in this appeal. The promotions given on *ad hoc* basis cannot give any right to seniority. The regular promotee cannot be deprived of seniority on the basis of the *ad hoc* promotions given to the LDCs. who were promoted on transfer but were juniors in the cadre of LDCs. To the said order, the appellants were not impleaded as parties.

The facts in this case are that the appellants are LDCs. in the Western Zone of the office of the Controller of Imports & Exports comprising Rajkot, Ahmedabad, Bhopal, Bombay & Kandla. Common seniority list as LDCs. was being maintained for the entire Western Zone. The appellants were working as LDCs. in Ahmedabad. The respondents 5 & 6 were working as LDCs. in Rajkot. Admittedly, they were appointed as

- A LDCs in the year 1964 while the appellants were appointed in 1969. The Government issued a policy in which it was stated that the respective Joint Chief Controller of Imports and Exports in each Zone issued circulars from time to time wherein the relevant part reads that an LDC would be transferred on promotion from one place to another but such promotion would be on *ad hoc* basis. If more persons than the number of vacancies express willingness for the above promotion then the seniormost among them will be considered.
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- C In the event of the seniors not willing to go on promotion, the juniors who accept the promotion will be given seniority over their seniors who would not be willing. The initial transfer on promotion in normal course would be on *ad hoc* basis. If more than the required candidates opt for transfer on promotion, the senior most would be given promotion in the order of seniority UDC. so far there is no controversy. The area of controversy arises when option was given but seniors did not opt to transfer but juniors to them exercised their option and were promoted and transferred to other places. The question, therefore, is whether they acquire right to seniority from the date of promotion as UDCs. or would they have to await the promotion of seniors in the normal course?
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- E It is the case of the appellants that they had expressed their willingness to be transferred on promotion as UDCs from Ahmedabad to other places in Western Zone. Those offers were given to them in 1980 and their promotions came to be made accordingly. According to them their seniority should be counted from the date of promotion, i.e., in the year 1980. In 1981, respondents 5 & 6 who were working as LDCs at Rajkot were given option and they too exercised their option for transfer on promotion. Accordingly, they were promoted as UDCs and were transferred to Ahmedabad. It is their case that when they went to Ahmedabad and reported to duty, they came to know that the appellants had already been promoted as UDCs and were continuing as such on the above basis. Consequently, they filed a writ petition in the High Court which was transferred to the CAT, claiming seniority over the appellants.
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- H It is seen that the Tribunal had accepted the case of respondents 5 & 6 that since they are seniors to the appellants in the cadre as LDCs, the *ad hoc* promotion made to the appellants as UDC would not disentitle the respondents to claim their seniority in the cadre as UDCs though promoted

later to the appellants. That principle came to be accepted and suitable directions were given in the impugned judgment for preparation of the seniority list on the basis of the above principle.

Shri B.K. Mehta learned senior counsel for the appellants, contended that since the appellants had accepted transfer on promotion, though on *ad hoc* basis, in view of the aforesaid policy, their promotion must be treated to be on regular basis and that, therefore, their seniority should be counted from the date of transfer on promotion. Since respondents 5 & 6 were promoted in 1981, they cannot claim seniority over the appellants.

It is seen that in case senior LDCs were not willing to go on transfer after promotion, though on *ad hoc* basis, and if the juniors had accepted and opted for transfer on promotion, the juniors would get seniority as UDCs over their seniors in the LDC cadre. The seniors who were obviously unwilling for transfer on promotion, were willing to forego seniority as LDCs and that thereby the juniors who opted for transfer on promotion, scale a march over the seniors in the cadre as promotees UDCs. The aforesaid circular would give them the said right. This controversy was considered by a Division Bench of the Andhra Pradesh High Court in W.A. No. 116/84, *Joint Chief Controller of Imports & Exports, Madras & Anr. v. V.V. Ramanarao & Ors.*, by order dated December 24, 1987, where it was held thus :

"The effect of the unwillingness on the part of the senior LDCs to proceed on transfer promotion to Hyderabad as UDCs resulted in their losing their seniority in the category of LDCs in favour of the transferees."

After elaborate consideration, the Division Bench had held that the senior LDCs who were unwilling to go on *ad hoc* transfer as UDCs would be treated as having foregone their seniority in favour of all their juniors who opted to go on such transfer and thereby they become seniors to those LDCs who were unwilling for the transfer.

We find that the ratio is quite consistent with the circular issued by the Joint Chief Controller of Imports and Exports. Of course, as held by the Tribunal, it would be subject to rule of reservation and fulfillment of the qualifications required for the posts as UDC. The reason would be obvious that due to administrative exigencies when the options were given

- A to the senior UDCs for transfer on promotion though on *ad hoc* basis since they were not willing for such a transfer by promotion, the administrative exigencies do require that the posts need to be filled up from junior LDCs who had exercised their option for transfer by promotion as UDCs and get seniority in the cadre as UDCs though in the cadre as LDCs they were juniors. They get seniority from the date of their initial promotion though
- B on *ad hoc* basis. When they were regularly working as UDCs in existing vacancies, obviously promotion would be given according to rules consistent with rule of seniority-cum-fitness and following the rule of reservation. Promotion thereby given would be treated according to rules, though initially made on *ad hoc* basis. Thus the juniors would scale a march over
- C senior LDCs who were unwilling for transfer by promotion.

- In this case, respondents 5 & 6 had stated before the Tribunal and they have also reiterated in the counter sent through post to this that for the first time they were given option in 1981 for transfer on promotion and that they exercised the option. Consequently, they were promoted as UDCs and were transferred on promotion to Ahmedabad. Thus considered, when
- D the appellants were promoted in the year 1980, they were not informed of the right to exercise the option for transfer on promotion nor they refused to give option on that basis. Since they admittedly are seniors to the appellants as LDCs in the absence of their refusal, they cannot be made
- E to lose their seniority in the cadre as UDCs for no fault of theirs merely because the appellants were promoted in 1980 overlooking the claims of respondents 5 & 6. Accordingly, on facts, we do not think that the direction issued by the Tribunal is illegal.

- The appeal is accordingly dismissed and the Joint Controller of
- F Imports and Exports, Western Zone will determine the seniority by following the above principles, circulate the same to all the candidates and after considering their objections, if any, will finalised the seniority list according to rules and should take action according to law. No costs.

I.M.A.

Appeal dismissed.