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C.A.No. 1381-1382 OF 1998
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ITEM NO. 115 COURT NO. 3 SECTION IX

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NOS.1381-1382/1998

Union of India & Ors. .. Appellant (s)

Vs.

Zaheeb Ahmed & Ors. .. Respondent(s)

DATE : 19.3.2002 : This/These matter (s) was/were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S. RAJENDRA BABU
HON'BLE MR. JUSTICE P VENKATARAMA REDDI

For Appellant (s) : Mr. T.L.V. Iyer, Sr. Adv.
Ms. Shashi Kiran, Adv.
Mr. Anil Katiyar, Adv.
Mr. D.S. Mahra, Adv.

For Respondent (s) : 0 Mr. N.K. Sahoo, Adv.
Ms. Sunita Sharma, Adv.

UPON hearing counsel the Court made the following

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Mr. T.L.V. Iyer, learned senior Advocate argued from 3.00 a.m. to 3.15 p.m.

The appeals are dismissed in terms of the signed order.

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Charanjit

[Om Prakash]
Court Master

[Signed order is placed on the file]

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 1381-1382/1998@@
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U O I & Ors. ..0 Appellants

Vs.

Zaheeb Ahmed & Ors. .. Respondents

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An Original Application was filed before the Tribunal by the respondents seeking a direction to the appellants to regularise them w.e.f. the date they were initially appointed to the post of Junior Field Officer (JFO) and to count their entire period of service as JFO in the seniority list/combined eligibility list of Superintendents, JPOs, JFOs, Estimators and Dock Inspectors for the purpose of consideration for promotion to the post of Assistant Director and to prepare a combined seniority list based on the date of continuous officiation in that position.

The Bombay Bench of the Central Administrative Tribunal examined this matter and on the basis of a decision of this Court in A.K. Verma Vs. UOI - C.A. No. 4237/1988 (decided on 16.8.1989) took the view that it is for the Department to find out from what date substantive vacancies occurred in the cadre of JFO upon
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promotion of certain officers as Assistant Director Gr.II retrospectively and to consider whether the vacancy so occurring could be made available for giving to the applicants retrospective regularisation based on the date of occurring of the vacancy and gave appropriate relief on that basis.

A Review Petition was filed before the Tribunal by the applicants drawing its attention to the order in O.A. No. 47/1988 disposed of on 21.5.1993 by another Bench. The Tribunal found that there was no contradiction between the two decisions and, therefore, did not review the order made by it. These appeals are directed both against the order made in O.A. 791/1991 and the Review Petition filed thereafter.

The contention advanced on behalf of the appellants is with reference to the following findings of the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. 47/1988 :

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"...The promotions made on ad hoc basis to meet administrative exigencies and not in accordance with the relevant

recruitment rules cannot form the basis for determination of seniority or regularisation with retrospective effect. The respondents have given benefit of

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retrospective regularisation to only those ad hoc promotees. In the case of the applicants, they happen to be promoted on an ad hoc basis, even when they were not considered by the DPC for promotion. In view of this, the respondents have rightly regularised the promotion of the applicants from a date on which the DPC met and found them fit for promotion."

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It is submitted that when the Tribunal has already taken this view, it was not permissible for the Tribunal to have taken a different view of giving the benefit of retrospective promotion to the applicants before it who had already been promoted. The Tribunal considered the fact that though vacancies had occurred in the cadre of JFOs, the DPC had not been convened at appropriate time and regular promotions had not given effect to. It is in that background, the Tribunal directed the authorities to examine the question whether the vacancies occurring on the date prior to the ad hoc promotions could be made available for giving the applicants the benefit of retrospective date of regularisation or not. The principle stated in OA 47/1988 is in conformity with the decision of this Court in Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra & Ors.- 1990 (2) SCC 715 wherein it is stated that there cannot be

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consideration of the period of service put in on ad hoc basis for the purpose of seniority. There can be no cavil on this proposition at all, but, what is stated by the Tribunal is that it is entirely for the Department to find out from what date substantive vacancies occurred in the cadre of JFO upon promotion of certain officers as Assistant Director Gr.II retrospectively and to consider whether the vacancy so occurring could be made available for giving to the applicants retrospective regularisation based on the date of occurring of the vacancy because of retrospective operation given to the order. This view has been taken in the light of the decision of this Court in A.K. Verma's case. Therefore, we do not think there is any good reason to interfere with the order made by the Tribunal either on the original side or on the Review side. The appeals are dismissed accordingly.

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[P.VENKATARAMA REDDI]@@
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New Delhi,@@
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March 19, 2002 @@
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