

**Central Administrative Tribunal
Madras Bench**

**OA/310/00547/2009, OA/310/00726/2009, OA/310/00670/2009 &
OA/310/00575/2009**

Dated the 24th day of January Two Thousand Twenty

P R E S E N T

**Hon'ble Mr. P.Madhavan, Member(J)
&
Hon'ble Mr.T.Jacob, Member(A)**

OA 547/2009

A.Annamalai,
S/o P.C.Angamuthu,
No.34, IInd Street,
Singara Thiru Nagar,
Sekkadu, Avadi,
Chennai 600 071. .. Applicant
By Advocate **M/s.Giridhar & Sai**

Vs.

1. The Union of India, rep. by
The General Manager,
ICF, Chennai-38.
2. The Chief Personnal Officer,
ICF, Chennai-38.
3. The Asst. Personal Officer(G),
ICF., Chennai-38.
4. S.Krishnan
P.F.No.597855
Mason, No.77/1-SSE/W/General.
5. P.Sulaiman,
P.F.No.599017,
Fitter/GNL,
No.77/1-SSE/W/Shell Division.
6. M.Hari,
P.F.No.576499,

- Carpenter,
No.77/B-SSE/W/General.
7. S.G.Elangovan,
P.F.No.613691,
Painter, No.77/C-SSE/W/SM.
8. N.Vasu,
P.F.No.611768,
Riveter, No.77/1-SSE/W/Shell Division.
9. M.Ambedkar,
P.F.No.656392
Riveter, No.77/1-SSE/W/Shell Division.
10. M.Raghu,
P.F.No.582768,
Mason, No.77/1-SSE/W/Shell Division.
11. B.Mathew,
P.F.No.618513,
Carpenter, No.77/B-SSE/W/General.
12. T.Venkatesan,
P.F.No.782381,
Fitter/GL, No.77/B-SSE/W/General.
13. L.Thulasiraman,
P.F.No.637271,
Mason, No.77/C-SSE/W/SM.
14. V.K.Ibrahim,
P.F.No.629247,
Riveter, No.77/2-SSE/W/Fin Division.
15. B.Jayabal,
P.F.No.785784,
Fitter/GI, No.77/1-SSE/W/Shell Division
16. V.Sekar,
P.F.No.625 094,
Painter, No.77/C-SSE/W/SM.
17. C.M.Anwar Sadath,
P.F.No.787544,
Fitter/GL, No.77/2-SSE/W/Fin Division.
18. V.Jagadeeswaran,
P.F.No.618521,
Painter, No.77/1-SSE/W/Shell Division.
19. A.S.Zameerbasha,
P.F.No.695295,
Fitter/GI, No.77/C-SSE/W/SM.
20. M.Shanmugam,
P.F.No.661773,

- Riveter,
No.77/1-SSE/W/Shell Division.
21. B.Ganesan,
P.F.No.687367,
Fitter/GI, No.77/2-SSE/W/Fin Division.
22. P.Murali,
P.F.No.673504,
Carpenter, No.77/1-SSE/W/Shell Division.
23. S.Radha Krishnan,
P.F.No.612242,
Painter, No.77/1-SSE/W/Shell Division.
24. T.Alikoya,
P.F.No.578371,
Riveter, No.77/1-SSE/W/Shell Division.
25. Aravidiakshar
P.F.No.578371,
Fitter/GI, No.77/1-SSE/W/General. .. Respondents
All working at ICF. Civil Engineering Department,
ICF, Chennai 600 038.

By Advocate **Mr.V.Radhakrishnan, Sr.Counsel** for **Mr.P.Srinivasan**

OA 726/2009

R.Baskaran,
S/o S.Ramu,
No.63, Thiruvalluvar Street,
Jagadambigai Nagar,
Padi, Chennai 600 050. .. Applicant
By Advocate **M/s.Giridhar & Sai**

Vs.

1. The Union of India, rep. by
The General Manager,
ICF, Chennai-38.
2. The Chief Personal Officer,
ICF, Chennai-38.
3. The Asst. Personal Officer(G),
ICF, Chennai-38.
4. S.Krishnan,
P.F.No.597855,
Mason, No.77/B-SSE/W/General.
5. P.Sulaiman,
P.F.No.599017,

- Fitter/GNL, No.77/1-SSE/W/Shell Division.
6. M.Hari,
P.F.No.576499,
Carpenter, No.77/B-SSE/W/General.
 7. S.G.Elangovan,
P.F.No.613691,
Painter, No.77/C-SSE/W/SM.
 8. N.Vasu,
P.F.No.611768,
Riveter, No.77/1-SSE/W/Shell Division.
 9. M.Ambedkar,
P.F.No.656392,
Riveter, No.77/1-SSE/W/Shell Division.
 10. M.Raghu,
P.F.No.582768,
Mason, No.77/1-SSE/W/Shell Division.
 11. B.Mathew,
P.F.No.618513,
Carpenter, No.77/B-SSE/W/General.
 12. T.Venkatesan,
P.F.No.782381,
Fitter/GL, 77/B-SSE/W/General.
 13. L.Thulasiraman,
P.F.No.637271,
Mason, No.77/C-SSE/W/SM.
 14. V.K.Ibrahim,
P.F.No.629247,
Riveter, No.77/2-SSE/W/Fin Division.
 15. B.Jayabal,
P.F.No.785784,
Fitter/GI, No.77/1-SSE/W/Shell Division.
 16. V.Sekar,
P.F.No.625 094,
Painter, No.77/C-SSE/W/SM.
 17. C.M.Anwar Sadath,
P.F.No.787544,
Fitter/GL, No.77/2-SSE/W/Fin Division.
 18. V.Jagadeeswaran,
P.F.No.618521,
Painter, No.77/1-SSE/W/Shell Division.
 19. A.S.Zameerbasha,
P.F.No.695295,
Fitter/GI, No.77/C-SSE/W/SM.

20. M. Shanmugam,
P.F.No.661773,
Riveter, No.77/1-SSE/W/Shell Division.
21. B. Ganesan,
P.F.No.687367,
Fitter/GI, No.77/2-SSE/W/Fin Division.
22. P. Murali,
P.F.No.673504,
Carpenter, No.77/1-SSE/W/Shell Division.
23. S. Radha Krishnan,
P.F.No.612242,
Painter, No.77/1-SSE/W/Shell Division.
24. T. Alikoya,
P.F.No.578371,
Riveter, No.77/1-SSE/W/Shell Division.
25. Aravidiakshar,
P.F.No.578371,
Fitter/GI, No.77/1-SSE/W/General. .. Respondents
All working at ICF. Civil Engineering Department,
ICF, Chennai 600 038.

By Advocate **Mr.V.Radhakrishnan, Sr.Counsel** for **Mr.P.Srinivasan (R1-3)**

OA 670 /2009

M.Manoharan,
S/o S.Muthiya Pillai,
ICF Quarters, ICF,
Chennai-38.

.. Applicant

By Advocate **M/s.Giridhar & Sai**

Vs.

1. The Union of India, rep. by
The General Manager,
ICF, Chennai-38.
2. The Chief Personal Officer,
ICF, Chennai-38.
3. The Asst. Personal Officer(G),
ICF, Chennai-38.
4. S.Krishnan,
P.F.No.597855,
Mason, No.77/B-SSE/W/General.
5. P.Sulaiman,
P.F.No.599017,

- Fitter/GNL, No.77/1-SSE/W/Shell Division.
6. M.Hari,
P.F.No.576499,
Carpenter, No.77/B-SSE/W/General.
 7. S.G.Elangovan,
P.F.No.613691,
Painter, No.77/C-SSE/W/SM.
 8. N.Vasu,
P.F.No.611768,
Riveter, No.77/1-SSE/W/Shell Division.
 9. M.Ambedkar,
P.F.No.656392,
Riveter, No.77/1-SSE/W/Shell Division.
 10. M.Raghu,
P.F.No.582768,
Mason, No.77/1-SSE/W/Shell Division.
 11. B.Mathew,
P.F.No.618513,
Carpenter, No.77/B-SSE/W/General.
 12. T.Venkatesan,
P.F.No.782381,
Fitter/GL, No.77/B-SSE/W/General.
 13. L.Thulasiraman,
P.F.No.637271,
Mason, No.77/C-SSE/W/SM.
 14. V.K.Ibrahim,
P.F.No.629247,
Riveter, No.77/2-SSE/W/Fin Division.
 15. B.Jayabal,
P.F.No.785784,
Fitter/GI, No.77/1-SSE/W/Shell Division.
 16. V.Sekar,
P.F.No.625094,
Painter, No.77/C-SSE/W/SM.
 17. C.M.Anwar Sadath,
P.F.No.787544,
Fitter/GL, No.77/2-SSE/W/Fin Division.
 18. V.Jagadeeswaran,
P.F.No.618521,
Painter, No.77/1-SSE/W/Shell Division.
 19. A.S.Zameerbasha,
P.F.No.695295,
Fitter/GI, No.77/C-SSE/W/SM.

20. M. Shanmugam,
P.F.No.661773,
Riveter, No.77/1-SSE/W/Shell Division.
21. B. Ganesan,
P.F.No.687367,
Fitter/GI, No.77/2-SSE/W/Fin Division.
22. P. Murali,
P.F.No.673504,
Carpenter, No.77/1-SSE/W/Shell Division.
23. S. Radha Krishnan,
P.F.No.612242,
Painter, No.77/1-SSE/W/Shell Division.
24. T. Alikoya,
P.F.No.578371,
Riveter, No.77/1-SSE/W/Shell Division.
25. Aravidiakshar,
P.F.No.578371,
Fitter/GI, No.77/1-SSE/W/General. .. Respondents
All working at ICF. Civil Engineering Department,
ICF, Chennai 600 038.

By Advocate **Mr.V.Radhakrishnan, Sr.Counsel** for **Mr.P.Srinivasan**

OA 575/2009

M.J.Suvarnakumar,
S/o M.Sunder Rao,
No.216/2, North Colony,
ICF, Chennai 600 038.

.. Applicant

Vs.

1. The Union of India, rep. by
The General Manager,
ICF, Chennai-38.
2. The Chief Personal Officer,
ICF, Chennai-38.
3. The Asst. Personal Officer(G),
ICF, Chennai-38.
4. S. Krishnan,
P.F.No.597855,
Mason, No.77/B-SSE/W/General.
5. P. Sulaiman,
P.F.No.599017,
Fitter/GNI, No.77/1-SSE/W/Shell Division.

6. M.Hari,
P.F.No.576499,
Carpenter, No.77/B-SSE/W/General.
7. S.G.Elangovan,
P.F.No.613691,
Painter, No.77/C-SSE/W/SM.
8. N.Vasu,
P.F.No.611768,
Riveter, No.77/1-SSE/W/Shell Division.
9. M.Ambedkar,
P.F.No.656392,
Riveter, No.77/1-SSE/W/Shell Division.
10. M.Raghu,
P.F.No.582768,
Mason, No.77/1-SSE/W/Shell Division.
11. B.Mathew,
P.F.No.618513,
Carpenter, No.77/B-SSE/W/General.
12. T.Venkatesan,
P.F.No.782381,
Fitter/GL, No.77/B-SSE/W/General.
13. L.Thulasiraman,
P.F.No.637271,
Mason, No.77/C-SSE/W/SM.
14. V.K.Ibrahim,
P.F.No.629247,
Riveter, No.77/2-SSE/W/Fin Division.
15. B.Jayabal,
P.F.No.785784,
Fitter/GI, No.77/1-SSE/W/Shell Division.
16. V.Sekar,
P.F.No.625094,
Painter, No.77/C-SSE/W/SM.
17. C.M.Anwar Sedath,
P.F.No.787544,
Fitter/GL, No.77/2-SSE/W/Fin Division.
18. V.Jagadeswaran,
P.F.No.618521,
Painter, No.77/1-SSE/W/Shell Division.
19. A.S.Zameerbasha,
P.F.No.695295,
Fitter/GI, No.77/C-SSE/W/SM.
20. M.Shanmugam,

- P.F.No.661773,
Riveter, No.77/1-SSE/W/Shell Division.
21. B.Ganesan,
P.F.No.687367,
Fitter/GI, No.77/2-SSE/W/Fin Division.
22. P.Murali,
P.F.No.673504,
Carpenter, No.77/1-SSE/W/Shell Division.
23. S.Radha Krishnan,
P.F.No.612242,
Painter, No.77/1-SSE/W/Shell Division.
24. T.Alikoya,
P.F.No.578371,
Riveter, No.77/1-SSE/W/Shell Division.
25. Aravidiakshar,
P.F.No.578371,
Fitter/GI, No.77/1-SSE/W/General. .. Respondents
All working at ICF. Civil Engineering Department,
ICF, Chennai 600 038.

By Advocate **Mr.V.Radhakrishnan, Sr.Counsel** for **Mr.P.Srinivasan (R1-3)**

ORDER

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

The above OAs are filed seeking the following relief:-

OA 547/2009:

“....to set aside the impugned order dated 2.12.2008 passed by the respondent No.3 in proceeding No.PB/SI/CE/Artisan/Decasualization and consequently direct the respondents 1 to 3 to apply annual Cadre review in the year 1993 and 2003 and accordingly give promotion to the applicant as Grade II in the year 1993 and skilled Gr.I in the year 2003 with all benefits and also fix correct seniority by placing the applicant above respondent No.4 in the seniority list 7.2.2007 and thus render justice.”

OA 726/2009:

“...to set aside the impugned order dated 02.12.2008 passed by the respondent No.3 in proceeding No.PB/S1/CE/Artisan/Decasualization and consequently direct the respondents 1 to 3 to apply annual Cadre review in the year 1993 and 2003 and accordingly give promotion to the applicant as Grade II in the year 1993 and skilled Gr.I in the year 2003 with all benefits and also fix correct seniority by placing the applicant above respondent No.4 in the seniority list 7.2.2007 and thus render justice.”

OA 670:/2009:

“...to set aside the impugned order dated 02.12.2008 passed by the respondent No.3 in proceeding No.PB/S1/CE/Artisan/Decasualization and consequently direct the respondents 1 to 3 to apply annual Cadre review in the year 1993 and 2003 and accordingly give promotion to the applicant as Grade II in the year 1993 and skilled Gr.I in the year 2003 with all benefits and also fix correct seniority by placing the applicant above respondent No.4 in the seniority list 7.2.2007 and thus render justice.”

OA 575/2009:

“...to set aside the impugned order dated 2.12.2008 passed by the respondent No.3 in proceeding No.PB/S1/CE/Artisan/Decasualization and consequently direct the respondents 1 to 3 to apply annual Cadre review in the year 1993 and 2003 and accordingly give promotion to the applicant as Grade II in the year 1993 and skilled Gr.I in the year 2003 with all benefits and also fix correct seniority by placing the applicant above respondent No.4 in the seniority list 7.2.2007 and thus render justice.”

As the issue involved in all these applications is identical and the relief sought for also is similar, these applications have been heard together and are being disposed off by this common order.

2. The applicant in OA 547/2009 was a Khalasi working under respondents prior to 25.8.89. Thereafter the respondents introduced a de-casualization programme and created 20 posts for absorbing casual labourers working in the Civil Engineering Department. The applicant applied for the same and he was selected and posted as Skilled Gr.III in scale Rs.950-1500 as per order dt. 10.3.89. It is mentioned in the said order that all further promotions will be only in Civil Engineering Department. So his seniority has to be counted with effect from the joining date i.e 25.8.89. The respondents, as per procedure order No.5/2003, treated the 20 posts as general posts. The employees working in ex-cadre posts in Civil Engineering Department who came after the applicant's appointment were assigned seniority over and above the applicant, taking into account their seniority in parent department.

3. According to the applicant, Procedure Order No.05/03 is illegal and same cannot be put against the applicant to deny his seniority and promotion. The conditions in the letter of appointment cannot be varied to the disadvantage of the applicant. The respondents 4 to 25 were appointed later and they cannot be given seniority above the applicant. The applicant should be given a place above R4 in the seniority list dt. 07.2.07. The respondents had not conducted cadre restructuring in 1993 and 2003. If that was done, the applicant could have got the post of Technician Gr.II in 1993 and Technician Gr.I in 2003. The applicant has given representation dt. 23.2.07 regarding this, but R3 rejected the claim on 21.12.08. Hence he has filed OA 547/2009 seeking the aforesaid relief.

4. In view of the fact that all the applicants have filed OAs for similar relief and the facts are also similar, for the sake of convenience the OA 547/2009 is taken as leading case.

5. The respondents 1 to 3 had filed common reply. Respondents admit the decasualization programme implemented. 14 employees including the applicants in these OAs were selected and appointed as skilled Gr.III with the following conditions:-

“He will have to remain in Civil Engineering Department on promotion to the above said posts, which was exclusively sanctioned for the department under Decasualization programme by the Railway Board.

He will seek further avenues of promotion in the Civil Engineering Department only.

He will be governed by the rules and regulations issued by the administration from time to time in regard to his seniority, avenues of promotion, etc in the Civil Engineering Department.”

The applicant was promoted as skilled Gr.II as per order No.PB/S1/600/2177 dt. 01.11.1993.

6. According to the respondents, only Rivetter post was cadre post in the Civil Engineering Department. All other posts were ex-cadre posts. These ex-cadre posts were filled by calling volunteers from various trades (Painter, Carpenter, Fitter, Mason etc.). But nobody came forward to fill up these ex-cadre posts as there was no monetary advantage. So, it was decided to make these ex-cadre posts as cadre post in Civil Engineering Department. For this purpose meetings of the Staff Council was called for discussion for deciding the modalities to be followed on 27.11.02 and on 11.2.03. It was decided to caderise these ex-cadre posts and a procedure was evolved and the Procedure order No.05/03 dt. 29.5.03 was issued. The 20 general posts created were also made cadre posts accordingly. The seniority of the applicant was fixed on the basis of the principle evolved in the meeting with Staff Council and as per Procedure Order dt. 05/2003 dt. 29.5.03. The respondents had notified 76 vacancies in categories of Senior Technician, Technician Gr.1, Technician Gr.2 and Technician Gr.3 and Revetter were thrown open to employees in workshop wing as per Circular No.PB/S1A/2/CE/Artisan dt. 09.1.04. Applications were received from volunteers of different categories and options were also obtained. Eligible candidates in Technician Gr.1, Technician Gr.2 and Technician Gr.3 were prepared and circulated. Employees who were holding higher cadre status were given higher grades and employees holding lower cadre were allotted lower cadre status based on

their original cadre status. The applicant opted for Technician Gr.2 in scale Rs.4000-6000 based on his cadre status in Technician Gr.3. He was tested and given Gr.2 as per order dt. 18.2.05. When again vacancies were filled up, applicant was given promotion to post of Technician Gr.1 on 08.6.05.

7. All the posts including general posts were of ex-cadre in nature in Civil Engineering except the (Rivettters). There was a ban in force for Annual Review for artisan posts as per order No.E(P&A)I-87/PS-5/WS-9 dt. 25.3.1988. It was specifically mentioned in the letter of appointment that he will be governed by rules and regulations issued by the administration from time to time vide Annexure R3 regarding seniority avenues of promotion etc. in Civil Engineering Department. Respondents 4 to 22 were Technician Gr.2 when they applied for the post of Technician Gr.1. Applicants were Technician Gr.3 and they were considered for post of Technician Gr.2. The procedure of seniority and promotion was formulated during caderisation in Civil Engineering Department and it was not a unilateral decision. The decision was taken after discussion in the Staff Council. Respondents 2 to 22 are grade-wise seniors and hence applicant cannot be placed above respondent 4. So, there is nothing illegal in the seniority assigned to the applicant. Seniority lists were published on 23.3.05, 07.2.07 and 07.2.08 after caderisation, but applicants did not raise any objection.

8. None of the employees' seniority was superseded. After caderisation, employees are permitted to move out of Civil Engineering Department by following qualified employees quota and 7 employees who came in decasualization scheme

were given opportunity to move to Mechanical Department.

9. These OAs were earlier disposed off by this Bench as per order dt. 28.2.11 dismissing these OAs. The applicants preferred W.P.s 24439 to 24442 of 2011 before the Hon'ble Madras High Court and the Hon'ble Madras High Court set aside the order and remitted back the case holding that “The order passed by the learned Tribunal does not reflect that the issue had been agitated and considered and rendered a finding. Therefore, in fitness of things, we are of the view that the Tribunal has to appreciate and address all the issues referred in the original applications afresh and pass orders therein.”

10. The OAs were again restored and both sides were given opportunity to hear their contentions. We had gone through the pleadings and various annexures produced by both sides.

11. The main contention raised by the counsel for the applicants is that the applicants were appointed to the post of skilled Gr.III on creating 20 posts under de-casualisation scheme and they were appointed as such on 25.8.1989. As per the order of appointment, they have no other avenues for promotion except Civil Engineering Department and hence they are entitled to seniority also from the date of their appointment. The application of the procedure prescribed in Order No.05/2003 is illegal and against the conditions given in the letter of appointment.

12. The counsel for the respondents would content that even as per appointment order (Annexure R3) clause(c), the employee appointed will be governed by the rules and regulations issued by the administrative department from time to time in regard

to their seniority, avenue of promotion etc in Civil Engineering Department. According to them, all posts except Revetters have no cadre status and they were in the nature of ex-cadre posts. At first, the 20 posts were treated as general posts. Out of 20 posts, they could fill up only 14 from the volunteers to the post of skilled Gr.III. It was found difficult to get employees to the posts and the department decided to caderise all the posts. After conducting discussions with Staff Council, a procedure was evolved for fixing seniority etc. to those who come to the cadre. The said procedure is produced as Annexure A5 dt. 29.5.03. The vacancies were thrown open to all the trades. It is on the basis of the above order (Annexure A5) the seniority was fixed. Prior to Annexure A5, there was no procedure for fixing seniority and hence seniority was not fixed. Respondents 4 to 25 were selected from Technician Gr.2 and they were given higher status and they were appointed as Technical Gr.I. The applicant herein was from Technician Gr.3 and he was promoted to Gr.2. So, according to the respondents, the seniority was fixed without giving rise to any superseding.

13. We had considered all aspects. We find that de-casualisation was introduced for absorbing casual labourers and 20 posts were created for appointing the volunteers applying for it. According to the respondents, except Revetters, all other posts were having ex-cadre nature and this has led to shortage of employees volunteering to come to such posts. Hence, they decided to caderise these ex-cadre posts including the general posts (20 posts newly created) and a procedure was evolved after discussing with Staff Councils and it is Procedure Order 05/2003. The

fixation of seniority on the basis of grades from which volunteers were taken and seniority was fixed. If we go through Annexure R3 appointment order of the applicant, it can be seen that the employees appointed (to the 20 posts created) will be governed by the rules and regulation issued by the administration. The applicant did not mention this aspect in the OA and only mentioned that their further avenue of promotion will be in Civil Engineering Department. The 2 other conditions in Annexure R3 is not mentioned. The respondents had catered all these posts and issued the regulations for fixing seniority among various grades of persons taking into consideration of their grades which they held prior to coming into the cadre. The method adopted is not arbitrary and it has not discriminated any of the applicants. They were also given promotion to next grade and respondents had protected their emoluments. Prior to Procedure No.05/2003 there was no other regulation applicable for fixing the seniority of these skilled workers coming from various grades. The Procedure Order 05/2003 was not a unilateral one and it was formulated after discussion in the Staff Council. The applicants had also accepted the promotions given on the basis of the Procedure Order 05/2003. The employees in the cadre were also given opportunity to move to other departments. We are of the opinion that the conditions of appointment was not changed against the applicants. The respondents had also given reasonable explanations for not conducting cadre re-structuring in 1993 and 2003. So, we are of the opinion that the respondents had fixed the seniority as per rules and regulations formed after discussions with Staff Council and there is no arbitrariness or illegality committed by respondents in adopting Procedure Order

5/2003 dt. 29.5.03 and it was implemented in a rational manner.

14. **We find that OAs lack merits and are dismissed accordingly.** No costs.

(T.Jacob)
Member(A)

(P.Madhavan)
Member(J)

24.01.2020

/G/