

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 180/00843/2014

Wednesday, this the 17th day of February, 2021.

CORAM:

HON'BLE Mr. P. MADHAVAN, JUDICIAL MEMBER

HON'BLE Mr. K.V. EAPEN, ADMINISTRATIVE MEMBER

1. G. Venugopalakrishnan Nair, 63 years,
S/o. A. Govindapillai (late),
Stenographer (Retired),
Garrison Engineer (NS),
Naval Base (P.O), Kochi.
Residing at : Chandravilas,
Keezhoor (P.O), Kottayam – 686 605.

2. P.V. Abraham, 54 years,
S/o. P.A Varghese,
Stenographer,
Commander Works Engineers (NW),
Naval Base (P.O), Kochi.
Residing at : Prasseril House,
Mulakkulam (P.O), Kottayam.

- Applicants

[By Advocate : Mr. R. Sreeraj]

Versus

1. Union of India represented by
the Secretary to Government of India,
Ministry of Defence,
New Delhi – 110 001.
2. The Engineer-in-Chief,
Military Engineer Services,
Integrated Head Quarters, Ministry of Defence (Army),
Defence Head Quarters (P.O),
New Delhi – 110 011.

3. The Chief Engineer,
HQSC, Military Engineer Services,
Pune – 411 001.

- Respondents

[By Advocate : Mr. Thomas Mathew Nellimoottil, Senior PCGC]

The application having been heard on 02.02.2021, the Tribunal on 17.02.2021 delivered the following:

ORDER

Per: Mr. P. Madhavan, Judicial Member

This is an O.A filed by the applicant seeking the following reliefs:-

“To direct the respondents to properly implement the directions in Annexure A-1 final order by granting the applicants promotion as Steno Grade II with effect from 1992 and 1990 respectively and further to fix their seniority among Steno Grade II on that basis and to consider them for further promotion and also to grant them consequential benefits like arrears of pay, benefits of re-fixation, revision of pension, etc.”

2. The applicant's case is that applicants are working as Stenographers under the respondents and they want to get Annexure A-1 order of the Principal Bench in O.A. No. 2706/1999 implemented in letter and spirit and grant promotion accordingly. The brief facts of the case are as follows:-

The Stenographers in the respondents' office were appointed in accordance with a common Recruitment Rules issued by Respondent No. 1 in 1975 for the post of UDC, Assistant, Superintendent and PA to the Brigadier. Respondent No. 2 had issued a circular asking option from the Stenographers to choose promotion either in the clerical line or in the PA line and stated that option once exercised cannot be revoked. The applicants in this case are PA optees Stenographers of the Military Engineering Services. The Stenographers had two avenues of promotion and one is in the PA cadre and the other is in the clerical cadre. Earlier the chances of promotion for the PA cadre were less compared to the clerical cadre. Hence, most of the Stenographers opted for clerical cadre with the clear understanding that option once exercised shall be final. When the recommendations of the 4th CPC were implemented, there had taken place a sudden increase in the Stenographic assistance required resulting in more avenues of promotion in the PA cadre. The applicants being original PA optees, thus became entitled for promotion to Stenographer Grade-II with effect from 1992, 1990 respectively. Even though the 4th CPC

recommendations were accepted by Government there occurred considerable delay in implementing the recommendations for Stenographic assistance. The applicants approached this Tribunal by filing O.A. No. 336/1996 and the Tribunal had directed the respondents to consider the representations. Some of the applicants, who are similarly situated moved the Bombay Bench of this Tribunal by filing O.A No. 1023/1993 and obtained an order for implementing the recommendations of CPC for Stenographic assistance. The Bench ordered that the 61 applicants in O.A. No. 1023/1993 shall get the benefit of upgraded scales in PA cadre. But problems began to arise when the clerical cadre optees wanted to come back to the previous cadre on finding more avenues of promotion. Initially, the Department opposed the return of clerical cadre optees but started allowing re-option on condition that such re-option will act prospectively only. According to the applicants, the respondents allowed clerical cadre optees, who gave re-option, to enjoy the benefits of their original seniority and depriving the applicants who are original clerical cadre optees of getting promotion as per the order. Further, the Principal Bench of this Tribunal in O.A. No. 2706/1999 had directed to extend the similar benefits as has been given to the applicants in O.A No. 1023/1993, provided they are seniors to any of the applicants before the Bombay Bench. But the respondents did not comply with the said order correctly and the present applicants had approached this Tribunal by filing O.A No. 691/2003 for re-fixing the seniority and granting promotion. But the said O.A was dismissed holding that the applicants are not seniors to any of the applicants in O.A. No. 1023/1993. The applicants took the matter to the Hon'ble High Court by filing W.P. © No. 6374/2007 and Hon'ble High Court has ordered fresh consideration of the claim of the applicants and granted liberty to the applicants to adjudicate the

matter again. But the respondents again maintained that there is no change in the comparative seniority position as claimed by the applicants. According to the applicants, this is mainly because the respondents permitted the clerical optees to come back with their original seniority. According to them, Annexure A-3 letter clearly admitted the same. So, according to the applicants, as per the order of the Hon'ble High Court, the respondents have not properly considered the seniority of the applicants and rejected their claim. So, they filed the present O.A.

3. Respondents entered appearance through Mr. Thomas Mathew Nellimoottil, learned Senior PCGC and filed reply statement denying the allegations made in the O.A. According to the respondents, the present O.A is the 3rd round of litigation initiated by the applicants. The present applicants had earlier filed O.A No. 691/2003 before this Tribunal and the same was dismissed. The respondents in this case had prepared seniority list in accordance with the various directions issued from time to time by the Tribunal. The present applicants in this case are applicant Nos. 3 and 9 in O.A No. 2706/1999 of the Principal Bench. The Principal Bench had disposed of the said O.A stating that “in case applicant Nos. 3,4,9 and 10 therein, who belong to the Stenographer cadre from their initial appointment shall be granted similar monetary benefits in the upgraded post of Stenographer in case, any one of them is senior to any of the applicants in O.A No. 1023/1993. This Tribunal, while disposing of O.A No. 691/2003 had found that the respondents had clearly established to the satisfaction of the Tribunal that the applicants therein i.e., the present applicants are not senior to any of the applicants in O.A. No. 1023/1993 disposed of by the Bombay Bench of this Tribunal. The said O.A was dismissed.

4. The first applicant had joined as Stenographer Grade-III on 08.10.1987. on promotion from LD Clerk. The 2nd applicant was appointed on Direct Recruitment as Stenographer Grade-III with effect from 21.07.1985. The seniority of the applicants for the next promotion is to be counted from the date of joining in the post of Stenographer Grade-III. Thus, the seniority list of 61 applicants in O.A No. 1023/1993 is produced by the respondents as Annexure R-1. They have conducted a verification of comparative seniority between the applicant of O.A. No. 691/2003 and that of with O.A. No. 1023/1993 and it is produced as Annexure R-2. According to them, if we compare the seniority in Annexure R-1 and R-2, it can be seen that the present applicants have been promoted before the applicants of O.A No. 1023/1993 in the order of seniority. The statement of the applicant is that the benefits given to applicants in O.A No. 1023/1993 are not based on actual facts. As per the Engineer-in-Chiefs Branch's letter dated 09.05.2003, *'the optees will be placed in the seniority list of the Stenographer, vis-as-vis, others on the basis of their date of their joining in service initially'*. The said letter is produced as Annexure R-4. It was also clarified by the Engineer-in-Chiefs Branch office that the individuals who opted for PA cadre will be enblock senior to persons who had opted out for Clerks cadre as per Government orders. The clerical optees, who were re-inducted as Stenographers are governed by the same criteria and they were placed junior in the same DPC below original Stenographer optees. The first applicant in the present O.A was included in the promotion panel for December, 2009 and no clerical optee who was re-inducted into steno grade was placed above the first applicant. The promotion cum posting of Stenographer Grade III to Grade II for the year 2008-09 dated 02.01.2010 is produced as Annexure R-7. An All India Seniority List of Stenographer

Grade II for the year 2010-11 was issued by the Engineer-in-Chief Branch on the basis of various orders in O.A 1023/1993 and 1599/2003. The applicants had raised the above contentions in the earlier O.A No. 691/2003 and it was again raised before the Hon'ble High Court in WP(C) No. 6974/2007.

5. Heard Mr. R. Sreeraj, learned counsel appearing for the applicants and Mr. Thomas Mathew Nellimoottil, learned Senior PCGC for the respondents.

6. We have gone through the various judgments of this Tribunal, pleadings and decisions of the Hon'ble High Court in WP(C) No. 6374/2007 dated 10.01.2012. On a perusal of the direction of the Hon'ble High Court in WP(C) No. 6374/2007, it seems that the petitioners had submitted before Hon'ble High Court that they are placed at Sl. Nos. 127 and 106 and the applicants in O.A. No. 1023/1993 were at Sl. Nos. 106, 107, 110, 113, 127, 128, 131 and 133 in the seniority list. Considering the above submission, the Hon'ble High Court has directed the respondents to re-work the claim of the applicants in the light of the comparative seniority and pass appropriate orders. Accordingly, the respondents reported that they had conducted a study of comparative seniority of applicants in O.A No. 691/2003 and O.A No. 1023/1993 of the Mumbai Bench of this Tribunal. They had also conducted a comparative study of the seniority position of 61 persons, who had filed O.A No. 1023/1993. The respondents in this case had also produced a comparative seniority of the applicants in O.A No. 691/2003 and in O.A No. 1023/1993 and it is shown as follows:-

“8. The re-worked comparative seniority of the petitioners remain unchanged even after considering the first part of the judgment i.e., comparative seniority between the applicants in O.A. No. 691/03 and those in O.A No. 1023/93. The seniority is as under:-

Seniority list Ser. No.	MES No. and Name	Date of Appointment as Steno Gde-III	Date of promotion to Steno Gde-II
106	2322970 P.V. Abraham	25 Jul 1985	02 Jun 2003
107	188679 Smt. Jayagowri Chowdhary	01 Jun 1986	02 Jun 2003
110	175192 Gulab Shaikh Mustaque	28 Jun 1986	02 Jun 2003
113	113363 David B Miranda	28 Jun 1986	02 Jun 2003
127	A14307778 GVGK Nair	08 Oct 1987	21 Dec 2009
128	122782 PP Samuel	08 Oct 1987	-
130	175364 Smt. Girija Sant	08 Oct 1987	21 Dec 2009
131	175278 Joshi Vinod M	08 Oct 1987	21 Dec 2009
133	113487 Smt Najmabi Gafoor	30 Oct 1987	05 Mar 2011”

7. They had also produced a comparative seniority list of 61 applicants in O.A No. 1023/1993 as Annexure R-1(c). If we go through the same, it can be seen that none of the applicants in O.A No. 1023/1993, who are juniors to the applicants in O.A No. 691/2003 were given seniority above the applicants. The same can be seen in the All India Seniority List for the year 2010-11 of the Stenographer Grade II, produced as Annexure R-1(d).

8. The clerical optee re-inducted Stenos are governed by the same criteria and they are placed junior in the same DPC year-wise seniority below the original Steno optees. From the above, it can be seen that there is no merit in the contention raised by the applicants in this case. They are given proper seniority after working out comparative seniority of the applicants in O.A No. 691/2003 and O.A No. 1023/1993 and there is no merit in the contentions raised by the applicants in this case. There is no merit in the contention that by Annexure A-3, the respondents had admitted that the re-optees were given seniority over the applicants. It is only a letter seeking clarification and it cannot be considered as an admission as stated by the applicants in this case.

Respondents have clearly worked out the comparative seniority list and they have clearly shown that no injustice was done to the applicants in this case. So, we find that there is no merit in this case and the O.A is liable to be dismissed. Accordingly, we dismiss the O.A without costs.

(Dated, 17th February, 2021)

(K.V. EAPEN)
ADMINISTRATIVE MEMBER

(P. MADHAVAN)
JUDICIAL MEMBER

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Applicant's Annexures

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| Annexure A-1 | - | True copy of the final order in O.A No. 2706/1999 on the file of the Principal Bench of this Hon'ble Tribunal. |
| Annexure A-2 | - | True copy of the final order in O.A No. 691/2003 on the file of this Hon'ble Tribunal. |
| Annexure A-3 | - | True copy of the letter No. 109011/CEKZ/G VENOGOPALAKRISHNAN/126/LC dated 21.07.2006. |
| Annexure A-4 | - | True copy of the judgment dated 16.01.2012 in WP(C) No. 6374/2007 on the file of the Hon'ble High Court of Kerala. |
| Annexure A-5 | - | True copy of the relevant portions of the interpolated seniority list of Steno Grade III opted for PA cadre and applicants in O.A No. 39/92, 339/92, 461/94, 840/92, 479/92, 123/93 and 1023/93 issued by the 3 rd respondent. |
| Annexure A-6 | - | True copy of the compliance report filed by in IA No. 3059/2013 in WP(C) 6374/2007 on the file of the Hon'ble High Court of Kerala. |
| Annexure A-7 | - | True copy of the reply affidavit filed by the respondents in CCC 266/2013. |

Annexures of Respondents

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| Annexure R-1 | - | A true copy of seniority list of 61 applicants in O.A No. 1023/93 |
| Annexure R-2 | - | A true copy of the comparative seniority between the applicant in O.A No. 691/2003 and those in O.A No. 1023/93. |
| Annexure R-3 | - | A true copy of letter No. 79812/Steno/E1C(1) dated 08.01.2001. |
| Annexure R-4 | - | A true copy of letter No. B/20099/Steno/WSU/EIC(1) dated 09.05.2003. |
| Annexure R-5 | - | A true copy of letter No. 13/41271/PA/E1DPC (SUB) dated 18.05.2004. |
| Annexure R-6 | - | A true copy of letter No. 41271/PA/E1 DPCII dated 30.06.2006. |
| Annexure R-7 | - | A true copy of Promotion cum posting. |

- Annexure R-8 - A true copy of the Order dated 25.10.2013 of the Hon'ble High Court in CC(C) No. 266/2013.
- Annexure R-9 - Particulars of 61 petitioners in O.A No. 1023/1993 and CP 6/96 filed before CAT, Mumbai Bench along with their date of re-option for revision.
- Annexure MA-1 - A true copy of the letter No. 109011/CEKZ/GVN/92/LC dated 24.10.2019
- Annexure MA-2 - A true copy of letter No. 109011/CEKZ/GVN/103/LC dated 15.11.2019
