CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH

Dated the Thursday, 1st day of April Two Thousand And Twenty One

PRESENT:
THE HON'BLE SHRI S.N. TERDAL, MEMBER(J)
THE HON'BLE SHRI C.V. SANKAR, MEMBER(A)

O.A.310/00730/2018

R. Parvathy,
W/o. Rajagopal,
Aged 68 years,
D1, V Block, 13A/36
Shanthi Colony, GA Road,
Old Washermanpet,
Chennai- 600 021. .....Applicant

(By Advocate: Ms. Y. Kavitha for M/s. Giridhar & Sai)

Vs

1. Union of India Rep. by
The Secretary,
Department of Company Affairs,
"Sastry Bhavan",
Dr. Rajendra Prasad Road,
New Delhi-110 001;

2. The Regional Director,
Department of Company Affairs,
Southern Region,
"Sastry Bhavan",
Block I, Vth Floor,
26 Haddows Road,
Chennai- 600 006;

3. Joint Director,
Department of Company Affairs,
Southern Region
"Sastry Bhavan",
Block I, Vth Floor,
26 Haddows Road,
Chennai- 600 006. ...Respondents

(By Advocate: Mr. M.T. Arunan)

CAV On :25.03.2021

O R D E R

(Pronounced by Hon'ble Mr. C.V. Sankar, Member(A))

The relief prayed for in this OA is as follows:-

> "(i) to call for records of vide Order F. No. 1(48)/2017 dated 27.03.2018 passed by the Joint Director, Ministry of Corporate Affairs, Office of the Regional Director, Southern Region and quash the same;
>
> (ii) to direct the respondents to absorb the applicant as regular Lower Division Clerk in the office of the Regional Director, Dept. of Company Affairs, Southern Region, w.e.f. the date of her appointment as Estate Clerk (i.e. 15.10.1982) with all consequential benefits, including re-fixation of her pay and pension and payment of arrears flowing therefrom;
>
> (iii) to award costs and pass such further and other orders as may be deemed and proper and thus render justice."

2. The brief facts of the case of the applicant are as follows:-

The applicant entered service as Estate Clerk vide order of appointment dated 12.10.1982 issued by the Official Liquidator, High Court, Madras. Upon the recommendation of a selection committee constituted for the absorption of Company Paid Staff

in the various offices of the Southern Region, offer of appointment for the post of Lower Division Clerk having pay scale of Rs. 3050-75-3950-80-4590 was issued to her. Thereafter, she received an order of appointment dated 20.05.2003 and absorbed in the post of Lower Division Clerk in the office of the Official Liquidator. She was promoted to the post of Upper Division Clerk in the pay band of Rs. 5200-20200+ GP of Rs.2400/- and posted in the office of Regional Director, Chennai. The applicant superannuated from service on 31.01.2010. It is stated that by order dated 27.08.1993 in OP No. 9732/1990, the Hon'ble High Court of Kerala directed the Dept. of Company Affairs to absorb one Tmt. P.P. Bridget and other petitioners therein as regular Lower Division Clerks in the office of Official Liquidator w.e.f the respective date of appointment as Estate Clerks and to grant them the benefit of pay fixation and arrears. Several cases were filed in various High Courts, including Calcutta High Court which were also allowed. SLPs were filed against the judgments of the Kerala High Court and other High Courts, where leave was granted and numbered as CA No. 5677 of 1994 and CA No. 5642 of 1994. A Writ Petition (Civil) No. 473 of 1988 was filed by the Company Paid Staff in

the office of the Court Liquidator, High Court of Delhi seeking identical reliefs. On 27.08.1999, the Supreme Court disposed of the Appeals and Writ Petition. Hence on 19.10.2001, Tmt. P.P. Bridget and other employees submitted representations requesting that they be absorbed in service w.e.f. the date of their appointment as Estate Clerks as per the order of the HC in W.P.(C) No. 473/1988 and OP No. 9732/1990 which stood confirmed due to failure to frame a scheme within 6 months as directed by the Apex Court in its judgment dated 27.08.1999. However, the Regional Director issued a reply forwarding OM dated 21.02.2002 contending that the department had complied with the judgment of the Supreme Court dated 27.08.1999. Hence Tmt. P.P. Bridget and other employees filed OA No. 249/2002 challenging the OM dated 21.02.2002 and by order dated 31.3.2004, the Hon'ble Central Administrative Tribunal, Ernakulam allowed the same and directed the respondents to absorb the applicants therein as regular Lower Division Clerks in the office of the Regional Director, Dept. of Company Affairs, Southern Region w.e.f. the respective dates of appointments as Estate Clerks and to grant them the benefits of pay fixation and all admissible allowances and also to pay them the arrears being

limited for the period from the date of filing the OP No. 9732/1990. WP No. 22810/2004 filed by the respondents challenging the order in OA No. 249/2002 was dismissed in 28.02.2008. CA NO. 5564, 5565/2010 filed by the respondents challenging the order in WP No. 22810/2004 was also dismissed by the Supreme Court on 16.5.2017. The respondents filed Review Petition (C) No. 451/2018 in CA No. 5564/2010 but the same was dismissed on 21.2.2018. Eventually, an order dated 08.03.2018 was issued implementing the judgment in OA 249/2002 dated 31.03.2004 and CA No. 5564, 5565/2010 dated 16.5.2017 by granting the absorption of Estate Clerks (Company Paid Staff) as Lower Division Clerks w.e.f. their respective dates of appointment as Estate Clerks as mentioned against their names. The applicant along with other employees (who are senior to many of those granted the benefit indicated as above) submitted representation dated 17.3.2018 seeking absorption as Lower Division Clerks, w.e.f. their respective dates of appointment as Estate Clerks. But by an order dated 27.3.2018 of the 3rd respondent, the applicant's representation was rejected on the ground that she is not eligible for any relief as requested since she is not a party in the OA No. 249/2002.

Challenging the said order, she has filed the instant O.A. seeking the aforesaid relief.

3. The issue of absorption of Estate Clerks in the respondents' organization was the subject matter of O.P. 9732 of 1990 filed before the Hon'ble High Court Kerala at Ernakulam. The operative portion of the judgment in the said O.P. on 27.08.1993 is as follows:-

> *"For the reasons aforesaid, we allow the original petition and direct the respondents to absorb petitioners as regular Lower Division Clerks in the office of the second respondent with effect from their respective dates of appointments as Estate Clerks. Respondents are further directed to grant them the benefits of pay fixation and all admissible allowances to the petitioners. The arrears of salary and other allowances due to petitioners on such regularization shall be computed and paid without delay. The said arrears are to be reckoned from the date of the original petition."*

This was taken up on challenge before the Hon'ble Supreme Court in Civil Appeal No. 5677 of 1994 and vide judgment dated 27.8.1999, the Apex Court upheld the judgment of the Hon'ble

High Court of Kerala and viewed that to balance the equities and give sometime to the Government to absorb the petitioners, the Government was granted six months time to frame a scheme and absorb the petitioners. The Hon'ble Apex Court further directed that in case the respondents did not frame a scheme as ordered by it, the judgment of the Hon'ble High Court of Kerala would come into operation. Subsequently, the framing of such a scheme was not uniformly applied to all the petitioners in the O.P. before the Hon'ble High Court of Kerala and, therefore, some of the petitioners therein filed O.A. 249/2002 before the Ernakulum Bench of CAT which after a detailed discussion on the various issues and the judgment of the Hon'ble Supreme Court, came to the conclusion that the direction of the Hon'ble Supreme Court was not merely to frame a scheme and to prepare a panel, but a positive direction to "absorb the Company Paid Staff working both under the Court Liquidator, Calcutta High Court and Official Liquidators in other High Courts by framing a scheme modelled on the 1978 scheme within six months." The Ernakulum Bench, therefore, concluded that since the respondents had not absorbed all the applicants but had only prepared a list, the Hon'ble Supreme Court's directions had not

been complied with by the respondents. In the final order, the Ernakulum Bench of the Tribunal ordered as under:-

> *"In the result in the conspectus of the facts and circumstances, declaring that Annexures A2 and A3 do not amount implementation of the directions contained in para 25 of the judgment of the Hon'ble Supreme Court in the decision reported in 1999(8) SCC 560 (CA 5677 of 1994) we direct the respondents to absorb the applicants as regular Lower Division Clerks in the office of the third respondent herein, with effect from their respective dates of appointments as Estate Clerks, and to grant them the benefits of pay fixation and all admissible allowances and also to pay them the arrears of pay and allowances on such regularization, the arrears of pay and allowances on such regularization, the arrears being limited for the period from the date of filing of the OP No. 9732 of 1990. The above directions shall be complied with in full within a period of four months from the date of receipt of copy of this order.*

The matter was taken up to the Hon'ble High Court of Kerala at Ernakulam and in their order dated 28.2.20018 in W.P. (C) No. 22810 of 2004(S) the Hon'ble High Court dismissed the Writ

Petition. This was again challenged before the Hon'ble Supreme Court and reached finality by the order of the Hon'ble Apex Court on 16th May, 2017 in which the Civil Appeal No(s) 5565 of 2010 were dismissed. The Apex Court also ordered that the "Civil Appeals are dismissed leaving the question of law open. However, this may not be taken as precedent for future cases."

4. The applicant in Para-7 & 8 of the application has given the details of the Estate Clerks who were absorbed with effect from the respective dates of appointment and the orders of the Hon'ble Apex Court and her own case. From the perusal of the list, it is clear that all the persons who got absorbed from the dates of the appointment as Estate Clerks were junior to the applicant except the person who figures at Sl. No.1, PP Bridget and all are identically placed persons with no difference in terms of their appointment, service and other matters.

5. The respondents in their reply have mainly contended that the applicant was not a party in the O.A. 249/2002 and vehemently argued that since the Hon'ble Supreme Court dismissed the Civil Appeals leaving the question of law open

specifically stating that this may not be taken as precedent in future cases, the case of the applicant was rightly rejected vide Annexure –A/10 dated 27.3.2018. Apart from stating in general terms that the applicant is not entitled for the same relief, the respondents have repeatedly stated that they have not agreed for absorption of the applicant from the date of her appointment as Estate Clerk because of the fact of her not being an applicant in O.A. No. 249/2002. They have not disputed any of the facts stated in the application and they have not specifically stated as to how the applicant is not entitled for the relief claimed except for the fact that she was not a party in OA 249/2002. Nowhere in their counter have they stated that the applicant is on a different footing for not being considered based on the facts and circumstances of the case along with the applicants in O.A. 249/2002.

6. Merely harping on the point that the Hon'ble Apex Court mentioned that the dismissal of the Civil Appeal cannot be taken as a precedent in future cases will not help the case of the respondents since we have to look into the facts and circumstances of the case of the applicant in comparison with

that of the applicants who were before the Ernakulum Bench in O.A. No. 249/2002. Inasmuch as the respondents themselves are not stating anywhere that the case of the applicant is entirely different from that of the applicants in OA 249/2002 except for the fact that they were not before the Tribunal in that case, it is obvious that ends of justice will not be met unless the merit of the applicant's case in terms of their appointment and service are not considered objectively. As stated specifically by the applicant and not denied by the respondents, the applicant is in fact senior to every other person before the Ernakulum Bench except Sl. No.1. The respondents in their reply repeatedly stated that the applicant was not a party before the Ernakulum Bench in O.A. 249/2002 and by that fact alone, they would not be eligible to be considered. Secondly, they vehemently argued on the point that the order of the Hon'ble Supreme Court dated 16.5.2017 stated that the dismissal of the Civil Appeal should not be taken as a precedent in future cases.

7. Even with regard to the relative seniority of the applicant vis-à-vis the persons who were absorbed from the date of their appointment as Estate Clerks, there is not a single mention in

the reply of the respondents that the facts as stated by the applicant are not correct. They have stated that the applicant is a beneficiary of the scheme framed based on the directions of the Supreme Court order dated 27.8.1999 and she cannot claim the same relief as was extended to the other applicants who were parties in OA 249/2002 before the Ernakulam Bench of CAT and who only became eligible based on the subsequent orders of the Hon'ble High Court of Kerala and the Apex Court. It is to be noted that the applicant herein as well as the applicants in O.A. 249/2002 were all part of the same order dated 2.2.2000 relating to the absorption of Company Paid Staff in the office of the Official Liquidator in compliance with the orders of the Supreme Court in O.A. 5677 of 1994. In other words, there is absolutely no difference between the two sets of applicants. The issue was already dealt with in extenso by the Hon'ble High Court of Kerala right from the year 1993 and subsequently in the year 2008. We therefore find no reason not to extend the benefit of absorption as Lower Division Clerk with effect from the date appointment as Estate Clerks to the applicant as prayed for in this O.A. along with all consequential benefits. Since the applicant had already superannuated on retirement on

31.1.2010, she will be entitled for the fixation of pay and other benefits with effect from the date of appointment as Estate Clerk on par with what was granted for the applicants in OA 249/2002 before the Ernakulam Bench of CAT.

8. O.A., therefore, is allowed. There shall be no order as to costs.

(C.V. SANKAR)
MEMBER(A)

(S.N. TERDAL)
MEMBER(J)

01.04.2021

Asvs.