

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH,  
ALLAHABAD**

**Original Application No. 817 of 2007**

Allahabad this the, 30/7/ day of September, 2011

**Hon'ble Mr. Justice S.C. Sharma, Member (J)  
Hon'ble Mr. D.C. Lakha, Member (A)**

Vijai Kumar Srivastava, Aged about 51 years, S/o Late Shri Raghuvir Sahai, R/o 97, Ram Bagh, Allahabad.

**Applicant**

**By Advocate: Mr. Rakesh Verma**

**Vs.**

1. Union of India through Secretary, Department of Personnel & Training, New Delhi.
2. The Principal Registrar, Central Administrative Tribunal, Principal Bench, 61/35, Copernicus Marg, New Delhi.
3. The Registrar, Central Administrative Tribunal, Allahabad Bench, Allahabad.

**Respondents**

**By Advocate: Mr. S.N. Chatterji**

**O R D E R**

**By Hon'ble Mr. Justice S.C. Sharma, J.M.**

Instant O.A. has been instituted for the following relief (s): -

"(i) to issue a writ, order or direction in the nature of mandamus directing the respondents to allow actual monetary benefits of the pay-scale of Rs.5500-175-9000 with effect from the date of promotion i.e. 01.10.1995 and to pay the arrears thereof from the said date of 01.10.1995 to 09.10.2005, with interest thereon @ 12% per annum, within a period as may be fixed by this Hon'ble Tribunal.

(ii) to issue any other suitable writ, order or direction in the facts and circumstances of this case, which this Hon'ble Tribunal may deem fit and proper.

*Rakesh Verma*

(iii) *To award the cost of the petition in favour of the petitioner."*

2. Pleadings of the parties may be summarized as follows: -

It has been alleged by the applicant that he was initially appointed as L.D.C. in the pay scale of ₹950-1500/- in Civil Court, Ballia w.e.f. 03.09.1979/09.01.1980. Thereafter, applicant was appointed on deputation basis in the Central Administrative Tribunal, Allahabad in same pay scale w.e.f. 02.03.1988 as L.D.C. The applicant continued to be posted as such till 14.02.1990. Thereafter, applicant was duly promoted and absorbed as U.D.C. in the pay scale of ₹1200-2040/- w.e.f. 15.02.1990. Earlier, the method of assignment of seniority of the staff was as per seniority in different Benches of the CAT on deputation basis and later on absorbed. Earlier, the bench wise seniority was being arbitrarily followed; different Original Applications were filed for fixation of seniority by different employees. Ultimately, the controversy was settled by the Hon'ble Apex Court in Civil Appeal No. 2704 of 1997 M. Ramchandran Vs. Govind Ballabh and others vide Judgment dated 21.09.1999. Direction was given to the respondents to prepare the seniority list of the entire staff on All India basis. The applicant was absorbed w.e.f. 15.02.1990 and was also allowed promotion on the post of U.D.C. from the same date. Numerous employees working in different Benches of the Tribunal filed different OAs before different Benches, and it has been prayed that the Judgment is in rem and hence all the similarly situated persons are entitled for the benefit of Judgment. The applicant who was absorbed and promoted as UDC w.e.f.

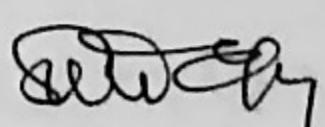
*R.W.D.C.*

15.02.1990 was allowed and promoted and absorbed anti dating w.e.f. 01.09.1989 as per the review D.P.C. Other similarly situated persons were also allowed the benefit of the Judgment, and the revised final seniority list was prepared on All India basis of UDC, absorbed as on 01.09.1989, issued on 02.09.2005. Name of the applicant appeared at serial No. 34, whereas persons placed at serial No. 35 to 75 were junior to the applicant as UDC on the basis of All India basis seniority of the UDC. The applicant was allowed promotion on the post of Assistant in the pay scale of ₹ 5500-9000/- on regular basis vide order dated 29.09.2005. The applicant was relieved to join in the above capacity at new place of posting from Allahabad to Jodhpur vide order dated 05.10.2005 and the applicant joined at Jodhpur Bench as Assistant w.e.f. 10.10.2005. The applicant was promoted as Section Officer on ad hoc basis w.e.f. 11.05.2006, later on he was regularized w.e.f. 17.01.2007 in the pay scale of ₹ 6500-10500/- and he continued as such at Allahabad Bench of the Tribunal. The grievance of applicant is that the persons who were below to him in the revised final seniority list, were allowed promotion as Assistant w.e.f. an earlier date than the applicant. Under the strength of their promotion, they have earned monetary benefits also whereas the applicant who though was sufficiently senior to those persons, had been allowed promotion from subsequent date, and that too on notional basis restricting the benefit of the higher pay scale only w.e.f. the date of joining. As such, since under the strength of promotion order dated 29.09.2005, the applicant has joined as Assistant at Jodhpur Bench w.e.f. 10.10.2005, the monetary benefits with arrears thereof have illegally been snatched for the

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period from 01.10.1995 to 09.10.2005. There were several junior persons but they were promoted earlier to applicant and their dates of promotion have been mentioned in the O.A. Earlier method of determining the seniority of U.D.C. was wrong, against the law, rules and due to fault of the respondents in fixing the seniority, applicant was not given proper place in the seniority list and he was deprived payment from due date. There was no fault of the applicant in not getting promotions on due dates, whereas juniors had been enjoying the benefit of higher pay scale from earlier. One Mr. M.K. Balachandra Pillai posted at Ernakulam Bench as U.D.C. and whose name is recorded at serial No. 7 of the revised final seniority list of U.D.C. while working as Assistant on ad hoc basis filed an O.A. No. 160 of 2000 before the Ernakulam Bench, questioning his fixation of seniority as U.D.C., and the O.A. of Mr. Pillai was decided by the Bench, and it was ordered to respondents to correctly assign the seniority of Mr. Pillai taking into account the period of holding an equivalent or higher post by him in his parent department as per Rule 5 (2) and gave all consequential benefits to which he was entitled due to revision of such seniority. The applicant is also entitled for the benefit of Judgment of Ernakulam Bench as he is also similarly situated. As the respondents are not granting the monetary benefits to applicant, he filed the present O.A.

3. The respondents have contested the O.A., filed the Counter Reply and denied from allegations made in the O.A. It has further been alleged that earlier the seniority list in the cadre of U.D.C. was being maintained on decentralized/Bench wise basis and the



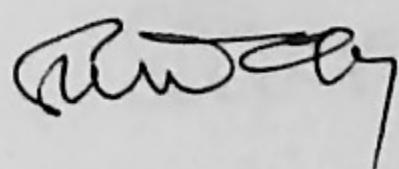
officers senior in their respective Benches were promoted to the next higher grade on the basis of Bench wise seniority. However, in pursuance of various Court orders, the seniority list in U.D.C. cadre has been revised on centralized basis w.e.f. 01.11.1989 and all earlier promotions made on the basis of Bench wise seniority list have been reviewed or are being reviewed by convening reviewing DPCs. The promotions of those officers to the higher grade have been made in accordance with their placement in the All India Seniority list with consequential benefits such as seniority, notional pay fixation etc. However, in terms of FR 17 and principle of 'no work, no pay', no arrears for the period of notional promotion is admissible to the applicant and the applicant is only entitled for notional promotion, and fixation of seniority but the applicant has no grievance for that. Earlier the seniority in the grade of UDC was being maintained on Bench wise basis and promotions in the grade of Assistants were being made on the basis of Bench wise seniority. This exercise has resulted in such a situation that some persons who were promoted in higher grade on the basis of Bench-wise seniority have become junior as per the centralized seniority list. Having into account all these facts and the Judgment of different Courts, All India seniority list was prepared of the officials working in different Benches of the CAT and a review D.P.C. was convened for giving promotions. The applicant was given notional promotion w.e.f. 01.10.1995 whereas on actual basis from the date of taking over the charge on the post i.e. 10.10.2005 <sup>that P</sup> <sub>A</sub> the applicant is entitled for notional seniority, notional pay fixation w.e.f. 10.10.1995, no arrears for the intervening period can be granted to him in terms of FR 17

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and the principle of 'no work, no pay' is followed. The Judgment relied upon by learned counsel for the respondents is most relevant in the facts and circumstances of the case. The Judgment of Ernakulam Bench has been implemented to the effect of giving notional seniority/promotion but no arrears for the period of notional promotion has been allowed as the same is not admissible under the rules, and the applicant has also been allowed notional benefits in view of Order passed in O.A. No. 160 of 2000. It is alleged that the O.A. lacks merits and is liable to be dismissed.

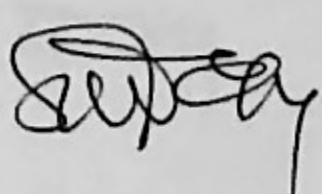
4. We have heard Mr. Rakesh Verma, Advocate for the applicant and Mr. S.N. Chatterji, Advocate for the respondents, and perused the entire facts of the case.

5. From perusal of pleadings of the parties, it is evident that most of the facts have been admitted by the parties. The controversy for determination in the present O.A. is only regarding payment of actual benefits to applicant w.e.f. 01.10.1995, the date on which notional promotion was given to applicant. It is an admitted fact that the applicant was initially appointed as L.D.C. in the pay scale of ₹ 950-1500/- in Civil Court, Ballia w.e.f. 03.09.1979/09.01.1980. After creation of CAT, applicant was appointed on deputation basis in the Central Administrative Tribunal, Allahabad in same pay scale w.e.f. 02.03.1988 as L.D.C. and the applicant continued to be posted as such till 14.02.1990. Thereafter, applicant was duly promoted and absorbed as U.D.C. in the pay scale of ₹1200-2040/- w.e.f.



15.02.1990. It is also admitted fact that earlier seniority of the staff was maintained Bench wise. Several employees of different Benches of the CAT challenged this practice of fixing seniority Bench wise, and the matter was ultimately settled by the Hon'ble Apex Court in Civil Appeal No. 2704 of 1997 M. Ramchandran Vs. Govind Ballabh and others vide Judgment dated 21.09.1999. A direction was given by the Hon'ble Apex Court to the respondents to prepare the seniority list of the entire staff on All India basis. It is also an admitted fact that after preparation of seniority, applicant was placed at serial No. 34 and absorbed as U.D.C. w.e.f. 01.09.1989 at Allahabad Bench of CAT as per review D.P.C. It is also a fact that several persons junior to the applicant, whose names below at serial No. 35 to 75 in the seniority list, were promoted earlier to the applicant. Admittedly, the applicant was allowed promotion to the post of Assistant in the pay scale of ₹ 5500-9000/- on regular basis vide order dated 29.09.2005. The applicant was relieved to join in the above capacity at new place of posting from Allahabad to Jodhpur vide order dated 05.10.2005 and the applicant joined at Jodhpur Bench as Assistant w.e.f. 10.10.2005. The applicant was promoted as Section Officer on ad hoc basis w.e.f. 11.05.2006, later on he was regularized w.e.f. 17.01.2007 in the pay scale of ₹ 6500-10500/- and he continued as such at Allahabad Bench of the Tribunal.

6. It has been alleged by the applicant that actual benefits have been paid to him in the pay scale of ₹ 5500-9000 w.e.f. 10.10.2005 from the date of actual promotion vide promotion order dated 29.09.2005 whereas applicant was allowed promotion



in the pay scale of ₹ 5500-9000/- w.e.f. 01.10.1995. It is alleged by the applicant that as promotion of Assistant was allowed to applicant retrospectively from 01.10.1995 hence he is entitled for monetary benefits from that date, and it is wrong to allege that the applicant is entitled for actual monetary benefits w.e.f. 10.10.2005 from the date of actual promotion. The juniors to applicant were allowed monetary benefits from earlier dates. Learned counsel for the applicant placed reliance on the Order passed by Ernakulam Bench of this Tribunal in O.A. No. 160 of 2000 *M.K. Balachandran Pillai Vs. The Registrar CAT, Principal Bench, New Delhi and others*. It will be material to reproduce the operative portion of the Order, which is as under: -

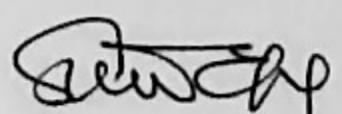
“. . . . . This is not supported by any rule or instructions. Hence Annexure A-6 order dated 17.12.99 rejecting the applicant's representation cannot be sustained and is liable to be quashed and set aside. Accordingly we set aside and quash A-6 memorandum dated 17.12.99 issued by the second respondent. We also quash and set aside A-7 seniority list to the extent it denied the applicant the benefit of his past service in his parent department in an analogous post. We direct the official respondents to correctly assign seniority to the applicant taking into account the period of holding an equivalent or higher post by the applicant in his parent department under Rule 5 (2) and its proviso and give all consequential benefits to which he would become entitled to by this revision of seniority. The monetary benefits if any shall be given within a period of three months from the date of receipt of a copy of this order.”

We have perused the operative portion of the Order of the Ernakulam Bench in O.A. No. 160 of 2000. The applicant of O.A. No. 160 of 2000 prayed for assigning the correct seniority of the

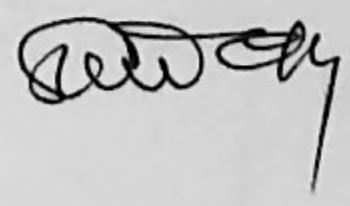
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applicant and also grant him to the actual consequential benefits. Vide this Judgment, respondents were directed to correctly assign seniority to the applicant taking into account the period of holding an equivalent or higher post by the applicant in his parent department, and give all consequential benefits to which he would become entitled to by the revision of seniority. There was no specific order for payment of actual benefits or monetary benefits to the applicant. Only it was ordered that the monetary benefits, if any, shall be given to applicant within a period of three months from the date of receipt of a copy of the order. This portion of the Order cannot be termed as a direction to the respondents for payment of actual benefits to applicant from the due date on which applicant was promoted. The grievance of applicant in the present O.A. is only regarding payment of monetary benefits, and not for fixation of salary of the applicant. Notional benefits have also been granted to applicant with effect from 01.10.1995. The dispute is regarding actual monetary benefits.

7. It has been argued by learned counsel for the applicant that due to faulty rule of fixation of seniority, applicant was deprived from promotion from due dates. It was fault of the respondents and the fault cannot be attributed to applicant. He had always been willing and ready to shoulder the responsibility but as earlier there was a procedure of preparing the Bench wise seniority of employees hence he was deprived from the benefit whereas his juniors were granted benefit earlier to applicant. Under these circumstances, as the applicant had been promoted retrospectively w.e.f. 01.10.1995 hence, he is entitled for



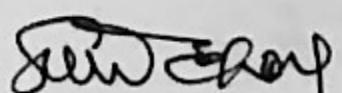
monetary benefit from 01.10.1995, and not from 10.10.2005 i.e. the date of taking over the charge as Assistant. Seniority lists are on record and seniority position of the applicant is not disputed. As we have already stated above that dispute is regarding monetary benefits from the due date i.e. 01.10.1995. Admittedly, applicant was promoted as Assistant vide order dated 20.09.2005 and taking over the charge at Jodhpur Bench on 10.10.2005. Undisputedly, notional benefits have already been given to applicant w.e.f. 01.10.1995, and actual benefits have been granted to applicant w.e.f. 10.10.2005. Learned counsel for the applicant placed reliance on the Order in O.A. No. 160 of 2000 M.K. Balachandran Pillai (supra). We have stated above that the CAT, Ernakulam Bench ordered for giving appropriate seniority to applicant of the case, and also directed to give monetary benefits. It has been alleged by the respondents in the Counter Reply that O.A. No. 160 of 2000 M.K. Balachandran Pillai was decided by the Ernakulam Bench of the CAT vide Order dated 18.04.2001, and a direction was given to give all consequential benefits including monetary benefits to applicant to which he became entitled by revision of seniority, and the Order of the Tribunal has been implemented. In the aforesaid case applicant has been given notional seniority/promotion on the basis of revised seniority position. But no arrears for the period of notional promotion have been allowed. Under these circumstances, applicant is not entitled to the actual monetary benefits. After the Counter Reply of the respondents, applicant filed Rejoinder Affidavit, wherein it has been alleged in para-10 that by implementing the Judgment of O.A. No. 160 of 2000, notional seniority and promotion was



given to the applicant of that case but it is contentious issue that what compliance has been made by the respondents, and the Order would not be guiding and deciding factor of the present O.A.

8. Thus, from the Counter Reply as well as from the Rejoinder Affidavit, it is an admitted fact that the Judgment of Ernakulam Bench of O.A. No. 160 of 2000 has been implemented by the respondents but the actual monetary benefits were not provided, and the applicant placed reliance on the Order of Ernakulam Bench of the CAT but at the same time applicant has alleged that if the respondents have not implemented the Order of the Ernakulam Bench then it has no meaning, and only the Order of the Ernakulam Bench is deciding and guiding factor. When reliance has been placed on the Order of the Ernakulam Bench and that Order of the Ernakulam Bench has been applicable but for actual payment of monetary benefits, the Order of the Ernakulam Bench has not been implemented then how it can be relied upon in the present O.A. for payment of actual monetary benefits w.e.f. 01.10.1995.

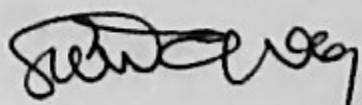
9. It has been argued by learned counsel for the respondents that in view of FR 17, no arrear for intervening period is admissible to applicant. The applicant has not shouldered responsibility of higher post hence he is not entitled for actual monetary benefits. As per rules, applicant is entitled for notional benefits, and the notional benefits have already been granted to applicant. It is not the case of applicant that he has been getting



lesser pay than his juniors. The grievance of applicant is only for actual payment of monetary benefits w.e.f. 01.10.1995. Reliance has been placed on the Judgment of the Hon'ble Apex Court reported in AIR 1990 SC 166 (Paluru Ramakrishnaili Vs. Union of India). The Hon'ble Apex Court held in the Judgment as under: -

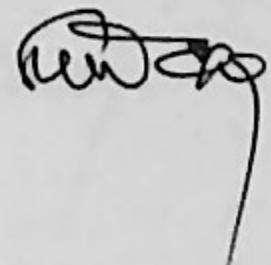
*"It is settled service rule that there has to be no pay for no work i.e. a person will not be entitled to any pay and allowance during the period for which he did not perform the duties of a higher post although after due consideration he was given a proper place in the gradation list having deemed to be promoted to the higher post with effect from the date his junior was promoted. So the petitioners are not entitled to claim any financial benefit retrospectively. At the most they would be entitled to re-fixation of their present salary on the basis of the notional seniority granted to them in different grades so that their present salary is not less than those who are immediately below them."*

It has been held by the Hon'ble Apex Court that a person will not be entitled for pay and allowance during the period for which he did not perform the duties of a higher post. It is material that after due consideration applicant was given a proper place in the gradation list having deemed to be promoted to the higher post with effect from the date his juniors were promoted. Hence, applicant is not entitled to claim any financial benefits retrospectively. At the most, applicant is entitled for re-fixation of present salary on the basis of notional benefits granted to him. It must not be lesser than his juniors. Learned counsel for the applicant argued that the Judgment of the Hon'ble Supreme Court, cited above by respondents' counsel, is not applicable to the facts of present case. We disagree with the arguments of



learned counsel for the applicant because the aforesaid Judgment of the Hon'ble Supreme Court is fully applicable to facts of the present case, and the principle has been laid down by the Hon'ble Supreme Court that if an employee has not performed the duty of higher post then he is not entitled to any pay and allowances of the higher post. It is an admitted fact that the applicant was actually promoted w.e.f. 10.10.2005 at Jodhpur Bench as Assistant and hence admittedly the applicant has not shouldered the responsibility of the higher post w.e.f. 01.10.1995, and in view of the Judgment of the Hon'ble Apex Court, the applicant is not entitled for actual monetary benefits from that date.

10. Learned counsel for the applicant placed reliance on a Judgment of the Hon'ble Apex Court reported in 1999 SCC (L&S) 841 *State of A.P. Vs. K.V.L. Narasimha Rao and others* but having into account the facts of the case, the Judgment of the Hon'ble Supreme Court is of no help to the applicant. It was a case of reorganization of states and under these circumstances, large number of officers stood allotted from different States to the newly formed States and their services had to be integrated on various principles and several agencies were involved in the same. The Judgment has been delivered by the Hon'ble Supreme Court regarding the cases of different districts. Learned counsel for the applicant also placed reliance on the Judgments of the Hon'ble Supreme Court reported in 2005 SCC (L&S) 62 *Mohd. Ahmed Vs. Nizam Sugar Factory and others*, and (2007) 2 SCC (L&S) 487 *State of Kerala and others Vs. E.K. Bhaskaran Pillai*. But these Judgments are also of no help to the applicant. There



may be cases in which the principle of 'no work no pay' would not be followed but the applicant's case is not falling in those cases. In one of the cases, cited above, the Hon'ble Supreme Court held that a person was denied promotion on due date due to pendency of the departmental enquiry or criminal case thereafter if such person is exonerated in the departmental enquiry or acquitted in the criminal case then he will be entitled for actual monetary benefits, and the principle of 'no work no pay' will not be applicable in that case. Under what circumstances, applicant was not given promotion on due date is also material. Earlier in the CAT, seniority list was maintained of the U.D.C. bench wise and this was the rule which was existing at that time. It was after the Judgment dated 21.09.1999 in Civil Appeal No. 2704 of 1997 M. Ramchandran Vs. Govind Ballabh and others by the Hon'ble Supreme Court that the seniority list of U.D.C. and other staff were prepared on All India basis. As earlier Bench wise seniority was existing and the persons were promoted according to bench wise seniority. In those circumstances it was but natural that the persons who were junior in a particular Bench, were promoted earlier to a person who is senior in another Bench, and after preparation of All India seniority list, such an employee was ~~placed~~ promoted above to the junior, who was promoted earlier. When earlier applicant was deprived from promotion, different rules were existing for seniority and applicant was given promotion etc. in view of existing seniority list. It was only subsequently that all India basis seniority list was prepared in pursuance of direction of the Hon'ble Supreme Court. Hence, the respondents cannot be held responsible for these lapses, and it is immaterial and

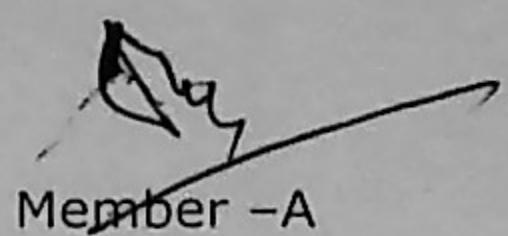
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irrelevant that the fault can be attributed to the respondents for not giving promotions on due dates.

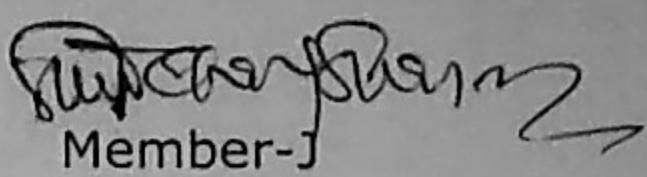
11. On the basis of above discussions, we have arrived at the conclusion that earlier bench wise seniority was maintained of the U.D.C. etc. and afterwards in pursuance of direction of the Hon'ble Supreme Court, All India seniority list was prepared of the staff working in the CAT and the employees were promoted notionally on due dates. Applicant was also promoted but as Assistant w.e.f. 01.10.1995 whereas actually the applicant was promoted on 10.10.2005. His salary was fixed notionally w.e.f. 01.10.1995 but actual monetary benefits were provided to the applicant w.e.f. 10.10.2005 as the applicant has not shouldered the higher responsibility of a higher post of Section Officer hence he is not entitled for benefit of actual payment but the applicant was entitled for notional benefits, and the notional benefits were provided to the applicant, and the grievance of applicant in the O.A. is regarding actual payment of monetary benefits. But in view of FR 17 and in view of the Judgment of the Hon'ble Supreme Court, as the applicant has not shouldered the responsibility of higher post hence he is not entitled for actual monetary benefits. Reliance has also been placed by the applicant on the Judgment of Ernakulam Bench in O.A. No. 160 of 2000 but the respondents while implementing the Judgment of the Ernakulam Bench have not granted the actual benefit to the applicant of that O.A. and it was on the basis of law of the land, and FR 17. O.A. lacks merit, and is liable to be dismissed.

*Sundaray*

12. O.A. is dismissed. No order as to costs.



Member -A



Member -J

/M.M/