

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 415 of 2012

Thursday, this the 10th day of January, 2013

CORAM

**HON'BLE MR. JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

T.R. Sivakumar, aged 52 years,
S/o. T.A. Raman,
Working as Private Secretary,
Central Administrative Tribunal,
Ernakulam Bench, Sastha Temple,
Kaloor, Kochi - 682 017,
(Residing at : Karthika, II/341-A,
Near Nava Nirman Public School,
Vazhakkala, Kochi-682 021).

..... **Applicant**

(By Advocate – Mr. T.C.Govindaswamy)

versus

1. Union of India, represented by
The Secretary to Government of India,
Ministry of Personnel, Public Grievances &
Pensions, Department of Personnel,
North Block, New Delhi.
2. The Principal Registrar,
Central Administrative Tribunal,
Principal Bench, Copernicus Marg,
New Delhi-110 001.
3. The Deputy Registrar (Estt.),
Central Administrative Tribunal,
Principal Bench, Copernicus Marg,
New Delhi -110 001.
4. The Registrar,
Central Administrative Tribunal,
Ernakulam Bench, Sastha Temple,
Kaloor, Kochi - 682 017.

..... **Respondents**

(By Advocate – Mr. Pradeep Krishna, ACGSC)

This application having been heard on 03.01.2013, the Tribunal on
10-01-2013 delivered the following:



ORDER

By Hon'ble Mr. K. George Joseph, Administrative Member -

The applicant is working as Private Secretary with effect from 01.01.1999 in PB-3 with Grade Pay of Rs. 5400/- in the Ernakulam Bench of the C.A.T. Having attained eligibility as on 01.01.2007, his name was included in the tentative eligibility list for promotion to the post of Deputy Registrar. There are 13 vacancies in the cadre of Deputy Registrar as against the sanctioned strength of 24. The Departmental Promotion Committee (DPC) which met on 25.04.2012 refrained from making any recommendation on the ground that earlier/existing combined seniority lists of SO/CO/PS in the C.A.T have been quashed by this Tribunal in various cases and in order to comply with the directions of this Tribunal, the combined seniority list of SO/CO/PS had to be recast for which the recommendations made by the review DPC is pending with the Government since 02.03.2012. Aggrieved, the applicant has filed this O.A mainly for a direction to convene the DPC for filling up all the vacant posts of Deputy Registrars existing as on 01.04.2012 and to consider and promote him as Deputy Registrar in PB-3 plus Grade Pay of Rs. 6600/- with effect from 01.04.2012 with all consequential benefits including arrears of pay and allowances.

2. The applicant mainly contended that the respondents have not taken any conscious decision not to fill up the vacancies in the cadre of Deputy Registrar. They are bound to adhere to the time schedule fixed in Annexures A-8 to A-10 to convene the DPC in time and to consider and promote him at least with effect from 01.04.2012. He has been subjected to substantial

A handwritten signature consisting of a vertical line with a loop at the top and a diagonal line extending from the bottom right.

prejudice and recurring monthly losses on account of the inaction on the part of the respondents. In case there is any difficulty in convening the DPC, the respondents ought to have at least considered and promoted him on ad hoc basis so that he need not suffer any unnecessary monetary loss.

3. The respondents submitted that there is no inaction on their part resulting in substantial prejudice and recurring monthly loss to the applicant. A meeting of the DPC for considering appointment to the cadre of Deputy Registrar was convened on 25.04.2012. However, the DPC had refrained from making any recommendation as the earlier/existing combined seniority lists of SO/CO/PS in the CAT have been quashed by this Tribunal in various cases. In order to comply with the directions of this Tribunal in the cases of Shri V.K. Bawa, Smt. Rajalakshmi Ravi, Shri V. Madhavan, Shri A.K. Jha, Smt. Gowri Ramakrishnan and Smt. Meenakshi Bhaskaran, the seniority list of SO/CO/PS with effect from 01.11.1989 had to be recast. The recommendation of the review DPC on the same are pending with the Government since 02.03.2012. Therefore, the DPC observed that it may not be advisable to consider appointments to the post of Deputy Registrars until and unless the approval of the Government to recast seniority in the grade of SO/CO/PS as recommended by the review DPC is received from the Government.

4. The applicant in his rejoinder statement submitted that with respect to very same seniority of SO/CO/PS, there was no impediment in considering those who are working as Deputy Registrars for promotion to the post of Joint Registrars. If so, there cannot be any legal or factual impediment to consider

A handwritten signature consisting of a vertical line and a diagonal line crossing it.

those who are already working as SO/CO/PS for being promoted as Deputy Registrars also. It is beyond the jurisdiction of the DPC to refuse to make recommendations. The respondents have not produced copies of the orders of the C.A.T so as to substantiate their contention that the seniority lists of SO/CO/PS in the C.A.T have been quashed in various cases. When the DPC met on 25.04.2012, the final seniority list of SO/CO/PS as at Annexure A-3 as on 01.11.1989 was very much in existence. Thus, the reason stated by the DPC for not submitting its recommendations are non est. The DPC ought to have submitted its recommendations on whatever seniority that was available before it for the purpose of consideration of the appointing authority to effect promotions either on regular basis or on ad hoc basis. The respondents themselves had promoted a number of SO/CO/PSs as Deputy Registrars as evident by an office order dated 20.05.2011 at Annexure A-15. By this reason also, non consideration of the applicant for promotion to the post of Deputy registrar is not justified.

5. In the additional reply statement, the respondents submitted that the DoP&T vide order dated 30.10.2012 has accepted recommendation of the DPC only to the extent of promotion of Shri V.K. Bawa as Deputy Registrar with effect from 01.04.1992. The matter has again been taken up with the government to accept the recommendations of the DPC in totality and the decision of the Government is still awaited. They further submitted that Annexure A-3 draft seniority list of SO/CO/PS as on 01.01.2010 issued on 25.11.2010 in implementation of Annexure A-12 has not been finalized so far. In O.A. No. 2668/2008, Anjani Kumar Jha vs. Union of India and Others, filed before the C.A.T, Principal Bench, the Tribunal vide order dated 03.06.2010

A handwritten signature in black ink, appearing to be a stylized 'A' or a similar mark.

quashed and set aside the impugned seniority list of SO/CO/PS qua the applicant vis-a-vis respondents Nos. 3 to 6 therein with a direction to the respondents to issue a fresh seniority list in the grade of SO/CO/PS. In O.A. No. 191/2008, Smt. Rajalakshmi Ravi vs. Union of India and Others, the Madras Bench of this Tribunal vide order dated 16.06.2010 directed the respondents to pass a reasoned order by taking into account the statutory rule / Recruitment Rules and the judgement passed by the Full Bench of CAT in Raghbir Singh's case by treating her O.A as representation. In pursuance thereof, the benefit of past service rendered by the applicant in equivalent post in her parent department was granted as was done in the case of Shri M.N. Vijayan, SO. In O.A. Nos. 127/09 and 128/09 filed by Smt. Gowri Ramakrishnan and Smt. Meenakshi Bhaskaran, Private Secretaries, the Madras Bench of this Tribunal vide order dated 29.04.2011 directed the respondents to redraw and refix the seniority of the applicants in PS grade taking into account the date of their regular service in Steno 'D' in parent department. Again in O.A. No. 264/2009, V. Madhavan vs. Union of India and Others, the Madras Bench directed the respondents to grant him appropriate seniority in the cadre of Section Officer and to grant him consequential benefits of advancement of date of promotion to the post of Deputy Registrar.

6. We have heard Mr. T.C. Govindaswamy, learned counsel for the applicant and Mr. Pradeep Krishna, learned ACGSC appearing for the respondents and perused the records.

7. A meeting of the DPC for considering promotion of the eligible officers to the post of Deputy Registrar was convened on 25.04.2012. Hence we hold

A handwritten signature consisting of a stylized 'A' and a line extending to the right.

that the contention of the applicant that there was non-feasance on the part of the respondents to convene a meeting of the DPC in time is arbitrary, discriminatory and contrary to law, is not substantiated. So also, there is no inaction on their part resulting in substantial prejudice to him.

8. The DPC which met on 25.04.2012 refrained from making any recommendation for promotion to the post of Deputy Registrar observing that it is not advisable to do so until the approval of the Government to recast the combined seniority in the grade of SO/CO/PS as recommended by the review DPC in compliance with the directions of this Tribunal in various cases, is received. The recommendations of the Review DPC which were pending with the Government since 02.03.2012 have been accepted vide order of the DoP&T dated 30.10.2012 only to the extent of promotion of Shri V.K. Bawa as Deputy Registrar with effect from 01.04.1992. The matter has again been taken up with the Government of India to accept the recommendations of the DPC in totality. The respondents have not shown how the acceptance of the recommendations by the Government of India is going to affect the seniority of the applicant and his position in the tentative eligibility list placed before the DPC which met on 25.04.2012. The recommendations of the review DPC is for antedating of promotions in the grade of Deputy Registrar. The relevant extract of the recommendations of the said DPC is reproduced as under:

“.... The recommendations of the Review DPC, of which one among us was member, for antedating of promotions in the grade of Deputy Registrars, with the approval of Hon'ble the Chairman have already been sent to DOPT on 02.03.2012. We have been informed that the approval of the Government to the recommendations of the Review DPC is still awaited. Since, it may not be advisable to consider making

A handwritten signature in black ink, appearing to be a stylized 'A' or a similar character.

appointments to the post of DRs until and unless approval of the Government to recast the seniority in the grade of SO/CO/PS as recommended, is received from the Government, we refrain in doing so."

(emphasis supplied)

The observation of the DPC that it may not be advisable to consider promotions to the post of Deputy Registrars until the approval of the Government to recast the seniority in the grade of SO/CO/PS, has no factual basis in as much as antedating the promotions of certain officers in the grade of Deputy Registrar does not materially affect consideration of the applicant, or for that matter others too, in the tentative eligibility list placed before the DPC. Promotions to the post of Deputy Registrar have been made even as late as 20.05.2011 (Annexure A-15) without recasting the combined seniority lists. The submission of the applicant that the persons upto serial No. 19 in Annexure A-3 have already been promoted as Deputy Registrars or Principal Private Secretary is not controverted by the respondents. There is no contention on the part of the respondents that in the event of acceptance of the recommendations in toto by the Central Government, any of the officers in the tentative eligibility list will have to be dropped from it. Even if such an eventuality is apprehended, the promotion or ad hoc promotion can be made subject to recasting of seniority list.

9. In paras 7 and 8 of the reply statement, the respondents have stated that the earlier / existing combined seniority lists of SO/CO/PS have been quashed by this Tribunal in various cases and that in order to comply with the directions in the cases of V.K. Bawa, Smt. Rajalakshmi Ravi, Shri V. Madhavan, Shri A.K. Jha, Smt. Gowri Ramakrishnan and Smt. Meenakshi Bhaskaran, the seniority lists of SO/CO/PS with effect from 01.11.1989 have



to be recast. But they have not substantiated the same by producing the relevant orders of this Tribunal. In O.A. No. 337/2007, filed before the Principal Bench, V.K. Bawa vs. Union of India and Others, the direction was "to redetermine the seniority of the applicant pursuant upon the decision of the Apex Court in M. Ramachandran (supra) in the cadre of Section Officer by taking the date of regular promotion as 01.07.1983 and thereafter as a consequence consider by apt methodology in law preponing the promotion of applicant on the post of Deputy Registrar/Joint Registrar (OB) by reckoning this seniority." There is no direction to quash the combined seniority lists of SO/CO/PS, as claimed by the respondents. Redetermination of seniority is restricted to the applicant in the said OA. In O.A. No. 191/2008, Rajalakshmi Ravi vs. The Principal Registrar and Others, the Madras Bench of this Tribunal directed the respondents No.1 and 68 "to pass a reasoned order by taking into consideration the statutory rule provided in the Central Administrative Tribunal (Group B & C Miscellaneous Posts) Recruitment Rules, 1989 by treating this O.A as her representation, within a period of 05 weeks from the date of receipt of a copy of the order". Here again, the combined seniority list of SO/CO/PS has not been quashed by the Tribunal. In this case also, the direction is restricted to the applicant therein. In O.A. No. 2668/2008, Anjani Kumar Jha vs. Union of India and Others, the operative portion of the order reads as "In the result, the impugned seniority list is quashed and set aside qua the applicant vis-a-vis private respondents No. 3 to 6 with the directions to issue a fresh seniority list of SO/CO/PS within a period of three months from the date of receipt of a certified copy of the order." Here also, the combined seniority list of SO/CO/PS has been set aside only to the extent it related to the applicant and the respondents Nos. 3 to 6

A handwritten signature or mark, appearing to be a stylized 'A' or a similar character, is located at the bottom center of the page.

therein. In O.A. No. 264/2009, V. Madhavan vs. Union of India and Others, the operative part of the order of the Madras Bench of this Tribunal reads as "For the aforesaid reasons, we set aside the impugned order dated 16.02.2009 and direct the respondents to grant him appropriate year of seniority in the cadre of Section Officer as per the OM cited supra and also consequential benefits of advancement of date promotion of applicant to the post of Deputy Registrar". The combined seniority list of SO/CO/PS has not been quashed by the Madras Bench in this OA also. In O.A. No. 127/2009, Mrs. Gowri Ramakrishnan vs. The Registrar, C.A.T, Principal Bench and Others, the operative part of the order of the Madras Bench of this Tribunal reads as "In view of the above, the impugned seniority list published vide PB/7/1/2002/Estd.I/2156/A dated 22/25.02.2008 is hereby quashed and set aside in so far as the applicant is concerned". Here again, the impugned seniority list is set aside to the extent it related to the applicant in the said O.A.

10. In view of the above, we hold that the averment of the respondents that the combined seniority lists of SO/CO/PS were quashed by this Tribunal in various cases is factually wrong. Hence the reliance of the DPC on recasting of seniority which was limited to the parties in the O.As concerned was misplaced and the decision to refrain from making recommendations for promotions to the post of Deputy Registrars was not justified at all.

11. Further, Meenakshi Bhaskaran, Gowri Ramakrishnan and the private respondents in O.A. No. 127/2009, namely R. K. Sareen and M.A. Sunder, Anjani Kumar Jha and three private respondents in O.A. No. 2668/2008, i.e. S/Shri B.K. Juneja, S.K. Mukhopadhyay, D.J. Panchal figure in the tentative

A handwritten signature in black ink, appearing to be a stylized 'S' or a similar character, is located at the bottom center of the page.

eligibility list. Any inter se change in the position among them will not affect consideration for promotion to the post of Deputy Registrar. Promotions can be made provisional and subject to recasting, if necessary, by the competent authority. Others like Shri V.K. Bawa, Shri V. Madhavan and Mrs. Rajalakshmi Ravi, who do not figure in the eligibility list have already been promoted as Registrar/Joint Registrar/ Deputy Registrar, as the case may be. It is found that certain persons who were arrayed as private respondents (at Sl. Nos. 16, 32 to 35, 41 and 42) in O.A. No. 191/2008, Rajalakshmi Ravi vs. Union of India and Others, had been promoted vide order dated 20.05.2011, even after pronouncement of the order in the said case, without recasting the combined seniority list of SO/CO/PS. Therefore, non consideration of the applicant and others in the tentative eligibility list for promotion by the DPC appears to be discriminatory.

12. In para 6 of the additional reply statement filed by the respondents, the orders issued by this Tribunal in various cases and action taken by the respondents are stated. But there is no mention to the effect that the combined seniority lists of SO/CO/PS have been quashed in toto by this Tribunal. The seniority lists were quashed only to the extent they related to the applicants or the private respondents in those cases.

13. It was further submitted in the additional reply statement that Annexure A-3 draft seniority list of SO/CO/PS as on 01.01.2010 issued on 25.11.2010 in implementation of Annexure A-12 has not been finalized so far. Annexure A-3 draft combined seniority list of SO/CO/PS carries the following note below the heading "Note:- The seniority list of SO/CO/PS from Sl. No. 1 to 37 and



43 to 71 has already been finalized/circulated vide this office letter No. PB/7/1/2002/Estt.I dated 22.02.2008". Thus the respondents have admitted that the draft combined seniority list of SO/CO/PS pertains to Sl. Nos. 38 to 42 and 72 onwards only and for others, the seniority list has already been finalized. Any inter se change in the seniority position among a few officers will not materially affect the recommendations of the DPC, as stated earlier.

14. In the light of O.Ms at Annexures A-8 to A-10 and in the facts and circumstances of the instant case, especially the fact that there are 13 vacancies against the sanctioned of 24 in the cadre of Deputy Registrar, the DPC should have made its recommendations for promotion to the post of Deputy Registrar from the tentative eligibility list placed before it on 25.04.2012. There was no justification for the DPC to refrain from making its recommendations. Hence the O.A succeeds.

15. The respondents are directed to convene a review meeting of the DPC for making recommendations for filling up 13 vacancies in the cadre of Deputy Registrar from the tentative eligibility list placed before it on 25.04.2012 within a period of two months from the date of this order and to promote those, who are found fit, to the post of Deputy Registrar in PB-3 plus Grade Pay of Rs. 6600/-, within a period of two months from the date of receipt of the recommendations of the DPC. No costs.

(Dated, the 10th January, 2013)


K.GEORGE JOSEPH
ADMINISTRATIVE MEMBER


JUSTICE P.R. RAMAN
JUDICIAL MEMBER