

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 417 of 2008

Wednesday, this the 11th day of March, 2009

C O R A M :

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

M.K. Balachandran Pillai,
S/o. Late Shri K. Krishna Panicker,
Section Officer/Court Officer,
Central Administrative Tribunal,
Ernakulam Bench,
Residing at Krishnanjali, 28/2903,
Ponneth South Road, Kadavanthra,
Ernakulam.

... Applicant.

(By Advocate Mr. M.R. Hariraj)

v e r s u s

1. Union of India represented by
The Secretary to Government of India,
Ministry of Personnel, Public Grievances
And Pension, New Delhi.
2. The Principal Registrar,
Central Administrative Tribunal,
Principal Bench, New Delhi.
3. The Registrar,
Central Administrative Tribunal,
Ernakulam Bench, Ernakulam.

... Respondents.

(By Advocate Mr. George Joseph, ACGSC)

The Original Application having been heard on 17.02.09, this
Tribunal on 11.3.09 delivered the following :

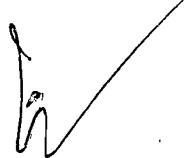
O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicant who joined on deputation in the C.A.T. in 1986 as LDC and who was regularly absorbed as UDC in the CAT w.e.f. 01-11-1989 had earlier filed the following applications in connection with his seniority and attendant issues: -

- (a) OA No. 900/1993 – Praying that his date of appointment as UDC in the Tribunal be antedated to 07-08-1986. This was dismissed.
- (b) OA No. 633/1999 – Claiming seniority in the grade of UDC w.e.f. 01-02-1983 (the day when the applicant in the parent department was promoted as Lower Division Clerk, which is analogous to the post of UDC in Central Government organizations). This was closed in view of the decision by the Apex Court in Civil Appeal 2704/1997 - ***M. Ramachandran v. Govind Ballabh, (1999) 8 SCC 592***, wherein the Apex Court has held as under:-

"12. We are of the considered opinion that sub-rule (2) of Rule 5 is the relevant rule relating to the determination of the seniority of the officers recruited to the service under sub-rule (1) of Rule 5. The seniority of such recruited officers is required to be determined with reference to the dates of their regular appointment to the posts. The proviso to sub-rule (2) shall cover the case of such officers whose seniority cannot be determined under sub-rule (2) as is the present case of the persons appointed/recruited on the same date. In such a case the seniority of the officers recruited from the same source has to be determined by giving them the benefit of the equivalent post held by them in their parent departments."

- (c) OA No. 160/2000 – As the applicant's seniority in the grade of UDC was not given in accordance with the above said judgment of the Apex Court, this OA was filed which had been allowed quashing the impugned orders therein and directing the respondents to assign the seniority of the applicant taking



into account the period he had held on analogous or higher post and to grant benefits consequent to such revision of seniority and monetary benefits thereon. Respondent's petition before the High Court in OP. No. 20900/2001 has been dismissed. Thus, the respondents had published a revised seniority list of UDC as on 31-03-2000, in purported compliance of the order in OA No. 160/2000.

- (d) MA No. 632/2002: Filed by the applicant for a direction to the respondents to prepare all India seniority list as on 01-11-1989 and to grant the applicant consequential benefits. This was allowed by the Tribunal.
- (e) M.A. No. 672/2003 – Filed by the applicant due to non implementation of the orders in M.A. No. 632/2000. During the pendency of this MA, final seniority of UDC as on 01-11-1989 was published. The said M.A. was therefore, closed.
- (f) CPC No. 6/2004 – was filed as no promotion and attendant benefits were granted consequent to the revision of the seniority. During the pendency of the said CPC, the applicant was promoted as Assistant w.e.f. 31-05-1994 and thereafter as Section Officer on ad hoc basis w.e.f. 16-02-2002 and on regular basis w.e.f. 19-02-2003, all retrospective promotions being on notional basis only. CPC was closed due to the above development leaving it open for the applicant to ventilate his grievances if any over notional and not actual promotion in accordance with law.

2. Zealously availing of the liberty granted to the applicant as stated above, the applicant pointed out the anomalies in the seniority list of UDC and requested that that he be promoted as Assistant and Section Officer from the date his junior Shri V.K. Sreevastava was promoted. The respondents had published a revised seniority of UDC in September 2005 and as a consequence thereof, applicant's promotion as Assistant was ante-dated from 31-05-1994 to 01-10-1990, notionally. Final seniority list of Assistant was also published and the date of

promotion of the applicant as Section Officer was antedated w.e.f. 01-10-1998.

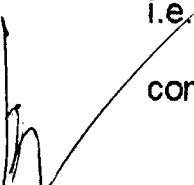
3. The applicant has made representation requesting to give fixation of pay as Assistant and Section Officer with reference to his junior V.K. Sreevastava and to pay the pay and allowances with arrears of such promotion. However, by the impugned order dated 10th June, 2008, the respondents have rejected the claim of the applicant and hence this O.A seeking the following relief(s):

- (i) To quash Annexure A-13;
- (ii) To direct the respondent step up the pay of the applicant to that of his junior from the date on which the junior has been drawing more pay than the applicant;
- (iii) To draw and disburse to the applicant all monetary benefits flowing from the said stepping up and the grant of retrospective promotion to the applicant due to recasting his seniority with interest @ 18% per annum from the dates on which the said amounts fell due till the date of actual payment;
- (iv) Grant such other reliefs as may be prayed for and the Court may deem fit to grant, and
- (v) grant the costs of this Original Application.

4. Respondents have contested the O.A. According to them, the relief sought for by the applicant is two fold (pay for the ante-dated

promotion on the one hand and parity with pay of the junior on the other) which are not consequential to each other and hence, the same cannot be granted. As regards junior Sreevastava drawing more pay, according to the respondents, the same was due to the fact that Shri Sreevastava was promoted as Assistant prior to the applicant on the basis of the then existing Bench-wise seniority list of UDCs. Subsequently in pursuance of Court directions, the seniority list of UDCs was prepared on all India basis as on 01-11-1989 and year-wise basis thereafter. As the anomaly is not directly as result of application of FR 22(c) (now FR 22(1)(a)(1) as required under order 27(1) (c) but due to the fact that earlier promotion was on Bench-wise seniority basis, the applicant is not entitled to the same. The respondents have also stated that a similar case bearing OA No. 2118/2007 filed by Smt. V.P. Kamalamma, Registrar, Jodhpur Bench was dismissed by the Principal Bench vide order dated 24-04-2008. Annexure R-1 refers. The counter contains certain other decisions of the Apex Court wherein the doctrine of no-work no pay was explained.

5. The applicant has filed his rejoinder in which he has stated that both monetary benefit claimed for retrospective promotion and stepping up of pay at par with junior have sprung up from a single cause of action i.e. revision of seniority list and as such they should be held to be consequential, the latter to augment the arrears. Again, the decision in



the case of Smt. Kamalamma is not applicable to the case of the applicant as that case is not similar to that of the applicant. Nor are the decisions relied upon by the respondents applicable to the facts of the case of the applicant.

6. Counsel for the applicant argued that when the mistake in drawing the seniority list is attributable to the respondents, and when on rectification of the same, the applicant was to be promoted retrospectively as Assistant and Section Officer, the logical consequence is that the applicant is granted the arrears of pay and allowances, instead of making the promotion on notional basis.

7. The other decisions relied upon by the counsel for the applicant are as under:-

- (a) 1984 KLT 148
- (b) ILR 1991(3) Kerala 98
- (c) 2003(1) KLT 60
- (d) 1997 (1) KLT 601
- (e) 2003(1) KLT 60
- (f) Order in OA No. 68/04

8. Counsel for the respondents submitted that the case of Kamalamma squarely applies to the facts of this case.

[Signature]

9. Arguments were heard and documents perused. The question is as to whether the applicant enjoys any legal right to claim arrears of pay and allowances in respect of his retrospective promotion.

10. The sequence of events would reflect that earlier there was Bench-wise seniority when on the basis of requirement in the respective benches, promotions were made. It was later on that the seniority became one. In that process, juniors having got promotion earlier than the senior etc., became more manifest. This kind of junior drawing more pay cannot afford the benefit of stepping of pay to the senior as held by the Apex Court in the case of *Union of India v. R. Swaminathan*, (1997) 7 SCC 690 wherein the Apex Court has held as under:-

"9. We are, however, in the present case, concerned basically with Fundamental Rule 22(l)(a)(1) and the proviso to Fundamental Rule 22 because, in all these appeals, the junior employees who have got higher pay on promotion than their seniors, had officiated in the promotional post for different periods on account of local ad hoc promotions granted to them. This is because the Department of Telecommunications is divided into a number of circles within the country. The regular promotions from the junior posts in question to the higher posts are on the basis of all-India seniority. The Heads of Circles have, however, been delegated powers for making local officiating arrangements based on Circle seniority to the higher posts in question against short-term vacancies up to 120 days in the event of the regular panelled officers not being available in that Circle. This period of 120 days was subsequently revised to 180 days. Under this provision for local officiation, the seniormost official in the Circle is allowed to hold the charge of the higher post for a limited duration. This is purely out of administrative considerations and is resorted to in order to tide over the



exigencies of work. This practice, we are informed, has been followed in all Circles in the Department of Telecommunications since 1970. This is because, at times it is not possible to fill up all the vacancies in a particular Circle for various reasons such as non-joining by a particular person, chain promotions or short-term vacancies arising on account of leave etc. It is submitted before us by the Department that it is not always possible to convene meetings of the departmental promotion committee for filling up all the posts which are only available for short periods on all-India basis because of administrative problems. To fill up this gap, the Government has issued instructions from time to time to allow local officiating arrangements in the interest of work. The Department has also pointed out that all the aggrieved employees in these appeals have availed of such officiating promotions as and when such occasion arose in their Circle and they were eligible. The juniors, therefore, in each of these cases who have received a higher pay on their regular promotion than the seniors, have received this higher pay on account of the application of the proviso to Fundamental Rule 22."

11. In the case of *Union of India v. M. Suryanarayana Rao, (1998) 6 SCC 400*, the above decision of the Apex Court has been affirmed in

the following terms:-

"10. One of the reasons given by the Tribunal in support of its order is that when ad hoc promotions were made, the respondent was not considered therefor or offered the same and it was not as if he refused to take up higher responsibility. The reasoning is highly fallacious. As pointed out by learned counsel for the appellant, ad hoc promotions are made within the circles where vacancies arose and the respondent who was working in a different circle could not have been considered for such ad hoc promotion or offered the same. The fact that ad hoc promotions are made within the circles has been noticed by the Bench in R. Swaminathan case.



11. We respectfully agree with the ratio in *Union of India v. R. Swaminathan*¹ and allow this appeal. The order of the Tribunal in OA No. 913 of 1996 filed by the respondent is set aside and the said application is dismissed. No costs."

12. In a very recent decision of the Apex Court in the case of *Kerala SEB v. Saratchandran P.*, (2008) 9 SCC 396, the Apex Court has held as under:-

"16. It is now a well-settled principle of law that only because by reason of "fortuitous" circumstances an employee who is junior to another obtains some benefit to which he is ultimately not found to be entitled to, the same by itself may not be a ground to confer the same benefit upon the senior employee."

13. Thus, in so far as claim of the applicant for stepping up of pay at par with his junior Shri Srivastava is concerned, the same is impermissible in view of the afore said decision of the Apex Court and hence, the same is rejected.

14. Coming to the other relief, i.e. grant of pay for the retrospective promotion, the applicant's seniority had been revised consequent to which he got his promotion from retrospective effect. The fixation of seniority is on the basis of the decision by the Apex Court in the case of *M. Ramachandran vs Gobind Ballabh* (supra) which ruled that seniority should reckon taking into account the analogous or higher post held in the parent department. It is in the wake of such revision of

seniority that that the applicant got his promotion from retrospective date. The Apex Court in the case of **State of A.P. v. K.V.L. Narasimha Rao, (1999) 4 SCC 181**, held as under:-

"5. In normal circumstances when the retrospective promotions are effected all benefits flowing therefrom, including monetary benefits, must be extended to an officer who has been denied promotion earlier."

15. In the case of **State of Kerala v. E.K. Bhaskaran Pillai, (2007) 6 SCC 524.**, the Apex Court has held as under:-

"So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full back wages or 50 per cent of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the person is superseded and he has challenged the same before court or tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, in that case the court may grant sometimes full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard-and-fast rule. The principle "no work no pay" cannot be accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits also."

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16. Of course, it is not in all the cases arrears of pay and allowances are ordered. In many cases, such claim has been rejected by the Apex Court. For example, in the case of **K. Soumini v. State Bank of Travancore, (2003) 7 SCC 238**, when arrears for retrospective promotion were claimed by the appellant therein, the Apex Court has held as under:-

"While that be the position, the grant of relief to her, keeping in view the delay merely due to pendency of proceedings before court, was more in the nature of a gesture of gratis and not by way of any right, to which she was found to be entitled to. Consequently, the notional promotion given to her by the Bank with suitable revision of her pay scales itself is more than sufficient to meet the requirements, be it either in law or in equity."

17. Referring to the above decision, the Apex Court in the case of **Union of India v. B.M. Jha, (2007) 11 SCC 632**, declined to order for payment of arrears of pay and allowances.

18. In **State of Haryana v. Rai Chand Jain, (1997) 5 SCC 167**, the High Court had ordered for retrospective promotion and consequential benefits and when the matter was pending before the Apex Court, the Government itself has provided for the arrears of pay as per the following observation of the Apex Court:

"3. These appeals by special leave arise from the judgment and order dated 2-11-1993 of the High Court of Punjab and Haryana made in CWP No. 13493 of 1991 and batch. It is not necessary to narrate all the factual details. Suffice it to

state that the respondents claim payment of salary in the selection grade pay scales which the High Court has granted them. While we have taken the matter for final disposal, Shri Pankaj Kalra, learned counsel for the respondents, has brought to our notice the order issued by the Government on 20-8-1996 signed by the Joint Secretary (Finance), for Financial Commissioner and Secretary to Government, Haryana, Finance Department which reads as under:

"I am directed to invite your attention to the subject noted above and to say that prior to 1-4-1979 the selection grade to Groups C and D category employees was admissible on the basis of the number of permanent posts in a particular cadre and later on, till 1-1-1986, the date on which this practice was altogether abolished, for determining the number of selection grade posts, the temporary posts in existence for the preceding three years were taken into account.

CWPs Nos. 2143 of 1994 and 11255 of 1995 were filed in the High Court by some teachers of the Education Department and while disposing these of, the Hon'ble High Court directed to grant the selection grade on the basis of total strength, including permanent and temporary posts, with all consequential benefits, to the petitioners. Thus the employees of the Education Department have already been granted this benefit as per the judgment.

The Government has, therefore, decided that the selection grade wherever available prior to 1-1-1986 may be worked out on the basis of total strength including permanent and temporary posts and all consequential benefits including arrears of 38 months preceding the date of such decision, be allowed to eligible employees."

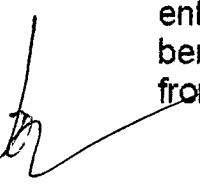
4. In view of the above direction, we are of the view that since the Government itself has accepted to compute the selection grade wherever available prior to 1-1-1986 and to work it out on the basis of the total strength of the cadre including permanent and temporary posts with consequential benefits including arrears for 38 months preceding the date of the decision, i.e., 20-8-1996, these cases need no interference.

5. Mr Pankaj Kalra, learned counsel has stated that fixation of 38 months for payment of arrears is arbitrary. We find no force in the contention. It is for the Government to decide as a part of the executive policy as to from which date the arrears would be granted to the employees. The matter being an executive policy in character, we do not think that the decision taken by them is arbitrary violating Article 14 of the Constitution.

6. In view of the above order, we think that there is nothing for this Court to interfere with the judgment of the High Court. The appeals are accordingly dismissed. No costs."

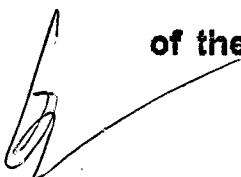
19. Thus it could be seen that in so far as arrears of pay and allowances when promotions are made retrospectively, no right has been crystallized by the individual for claiming arrears of pay and allowances. It may be at the instance of the Government itself as in the case of **Rai Chand Jain** (supra) or by Court order. In the instant case what is to be seen is whether while ordering the respondents to assign correct seniority by drawing a fresh seniority, the respondents have been directed to consider the applicant for further promotion and also for arrears of pay. The operative portion of order dated 18th April, 2001 reads as under:-

"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 date of receipt of a copy of this order."



20. Thus, there is already a direction that along with seniority, consequential benefits would follow and the term consequential benefits include monetary benefits also, as otherwise the above time schedule would not have been given. While seniority has been given, promotion has been given what has not been given is the arrears of pay and allowances, and it is this that the applicant claims. Since the respondents have not challenged the above order of this Tribunal, and have rather implemented it, it is imperative that that part should also be complied with. To this extent, the applicant has crystallized his rights and hence, this case is distinguishable from the decisions relied upon by the respondents in the counter and other similar decisions.

21. But even where the consequential benefits are ordered, as held in the case of **Rai Chand Jain (supra)**, to what extent the arrears should be given is a matter that is to be left to the respondents. For, understandably, the respondents may have to take into account the extent of expenditure involved as such payment for retrospective promotion cannot be with reference to the applicant alone but to all similarly situated. **Hence, it would be only appropriate leave the matter at the discretion of the respondents to have a holistic view of the entire matter and to arrive at a judicious decision whether**

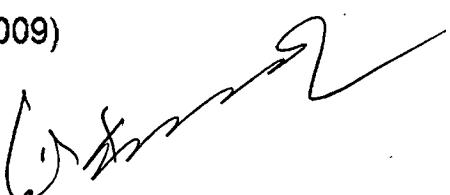


**arrears of pay and allowances are to be paid to such individuals
who have been given retrospective promotion.**

22. With the above observations, the OA is disposed of. No costs.

(Dated, the 11th March, 2009)


(K. NOORJEHAN)
ADMINISTRATIVE MEMBER


(Dr. K B S RAJAN)
JUDICIAL MEMBER

CVR.