

CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH

ORIGINAL APPLICATION NOS. 58 of 2013 & 434 of 2013

Thursday this the 22nd day of September, 2016
CORAM

Hon'ble Mr. Justice N.K.Balakrishnan, Judicial Member
Hon'ble Mrs. P. Gopinath, Administrative Member

OA 58/2013

- 1 Unnikrishnan K S/o Achuthan Nair, Upper Division Clerk,
Passport Office, Kozhikode, residing at Souparnika,
Kanniparamba PO, Mavoor, Kozhikode.
- 2 Rajagopal PT S/o Gopala Menon, Upper Division Clerk,
Passport Office, Kozhikode residing at Krishna Vilas,
Kallai PO, Kozhikode.
- 3 P.Sivarani W/o Surendran, Upper Division Clerk,
Passport Office, Malappuram, residing at Sandram,
Madhuravanam Road, Civil Station PO, Kozhikode.
- 4 Vinodhini P W/o Jayaraj, Upper Division Clerk,
Passport Office, Malappuram, residing at Amrutham,
Kommeri PO, Kozhikode.
- 5 Girija N W/o Gopi VT, Upper Division Clerk,
Passport Office, Malappuram, residing at Passport Office
Quarters No.B-19, Eranhipalam, Kozhikode.
- 6 Remadevi P, W/o Vasudevan, Upper Division Clerk,
Passport Office, Malappuram, residing at Mayoogham,
Konott PO, Kozhikode.

...Applicants

(By Advocate Mr. T.C. Govindaswamy)



Vs:

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- 1 Union of India, represented by Secretary to Government,
Ministry of External Affairs, New Delhi.
- 2 The Joint Secretary (CPV) & Chief Passport Officer,
Ministry of External Affairs, New Delhi.
- 3 The Passport Officer, Passport Office, Eranhipalam,
Kozhikode-6.
- 4 The Passport Office, Passport Office, Malappuram.
- 5 Sri Shamji B Singh, Assistant, Passport Office, SNSM
Building, Karalkada PO, Thiruvananthapuram.
- 6 Ms.Vani K.S. Assistant, Passport Office, 80 feet Road
8 Block, Koramangala PO, Bangalore.
- 7 Ms. Thenmozhi T, Assistant, Passport Office, Shastri Bhavan,
26,Haddows Road, Nungambakkam, Chennai.6.
- 8 Sobha Ajayakumar, Assistant, Regional Passport Office,
Kochi, residing at Krishna Leela, Aims, Ponekkara PO,
Kochi.41.
- 9 K.V.Kochurani, Assistant, Regional Passport Office,
Kochi residing at Komaranchath House, Vaduthala PO, Boat
Jetty Road, Kochi.23.
- 10 Jyothirmayi VS, Assistant, Regional Passport Office, Kochi
residing at Qrs.No.III/6, Plot No.1, RPO Quarters,
Panampilly Nagar PO, Kochi-36.
- 11 P.C. Beena, Assistant, Regional Passport Office, Kochi
residing at Qrs No.III/22, Plot No.11, RPO Quarters, Perumanoor
PO, Kochi.15.
- 12 Jiji Roby, Assistant, Regional Passport Office, Kochi
residing at Qrs.No.III/6, Plot No.1,RPO Quarters;
Panampilly Nagar PO, Kochi.36.
- 13 Mini Paul, Assistant, Regional Passport Office, Kochi
residing at Qr.No.III/15, Plot No.II, RPO Quarters, Perumanoor,
Kochi.15.
- 14 Annie Alex, Assistant, Regional Passport Office, Kochi
residing at Kallakulam House, Gazari Nagar, Lane-4
Eroor PO, Tripunithura, Ernakulam.



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- 15 Daisy Poulse, Assistant, Regional Passport Office, Kochi residing at Kannampillil Pethenpurackal House, Nadakkavu, PO, Udayamperoor, Ernakulam.
- 16 Latha AS, Assistant, Regional Passport Office, Kochi residing at Kadalassery House, Thekkinethunirappa, Chottanikkara PO, Ernakulam.312.
- 17 Ani Sabu, Assistant, Regional Passport Office, Kochi residing at Myalil House, Lourde Church Road, Perumanoor PO, Koch.15.

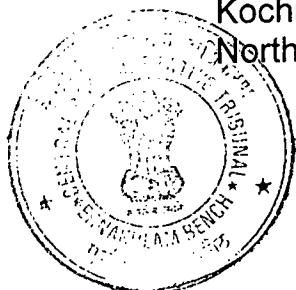
(Respondents 7 to 17 impleaded vide order dated 14,10.2013 in MA 1067/2013)

....Respondents

(By Advocate Mr. Thomas Mathew Nellimootil for R 1 to 4
Advocate Mr. P. Ramakrishnan for R 8 to 17)

OA 434/2013

- 1 Ponnu KM, Upper Division Clerk, Regional Passport Office, Kochi, residing at Qrs No.2/3, Perumanoor PO, Kochi-15.
- 2 Vijayalakshmi CV, Upper Division Clerk, Regional Passport Office, Kochi residing at Chiramel House, SN Puram, Asokapuram Po, Aluva.
- 3 Vasanthakumari TM, Upper Division Clerk, Regional Passport Office, Kochi residing at Molampurath Kottarathil House, Irimpanam PO, Tripunithura PO, Ernakulam District.
- 4 CC Mani, Upper Division Clerk, Regional Passport Office, Kochi, residing at Nalukandathil House, Narakkal PO.
- 5 Sarojini KA, Upper Division Clerk, Regional Passport Office, Kochi residing at Koonamthara House, Perumpadanna,N.Parur PO. 683513.
- 6 P.K.Sudharma, Upper Division Clerk, Regional Passport Office, Kochi, residing at Regional Passport Office Qrs. No.3/V, Panampilly Nagar, Kochi.36.
- 7 Reena KR, Upper Division Clerk, Regional Passport Office, Kochi, residing at Chakkanad House (Abhayam), Kesari Road, North Parur-683513.



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- 8 Suhara Beevi NM, Upper Division Clerk, Regional Passport Office, Kochi residing at Panayappilly House, Eloor North, Udyogamandal-683501.

....Applicants

(By Advocate Mr. T.C. Govindaswamy)

Versus

- 1 Union of India, represented by Secretary to Government, Ministry of External Affairs, New Delhi.
- 2 The Joint Secretary (CPV) & Chief Passport Officer, Ministry of External Affairs, New Delhi.
- 3 The Passport Officer, Regional Passport Office, Kochi-682036
- 4 XATV Jyothi, Assistant, Regional Passport Office, 80 feet Road, 8 Block, Koramangala PO, Bangalore-560095. Karnataka.
- 5 JLC Arokia Mary, Assistant, Passport Office, Thiruchirappally-1, Tamilnadu.
- 6 Pyrare Lal, Assistant, Passport Office, Jalandhar-1, Punjab State.
- 7 Sobha Ajayakumar, Assistant, Regional Passport Office, Kochi, residing at Krishna Leela, Aims, Ponekkara PO, Kochi.41.
- 8 K.V.Kochurani, Assistant, Regional Passport Office, Kochi residing at Komaranchath House, Vaduthala PO, Boat Jetty Road, Kochi.23.
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- 13 Annie Alex, Assistant, Regional Passport Office, Kochi residing at Kallakulam House, Gazari Nagar, Lane-4 Eroor PO, Tripunithura, Ernakulam.
- 14 Daisy Poulouse, Assistant, Regional Passport Office, Kochi residing at Kannampillil Pethenpurackal House, Nadakkavu, PO, Udayamperoor, Ernakulam.
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- 16 Ani Shibu, Assistant, Regional Passport Office, Kochi residing at Myalil House, Lourde Church Road, Perumanoor PO, Kochi.15.

(Respondents 7 to 16 impleaded vide order dated 14.10.2013 in MA 1068/13)

.....Respondents

(By Advocate Mr. N. Anil Kumar, Senior Panel Central Govt.Counsel for R. 1 to 3 & Advocate Mr. P. Ramakrishnan for R. 7 to 16)

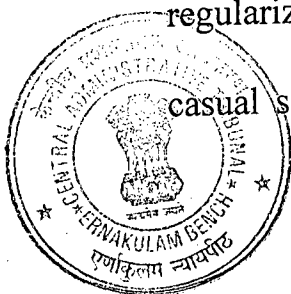
The above application having been finally heard on 01.09.2016, the Tribunal on 22.09.2016 delivered the following:

ORDER

Per: Justice N.K. Balakrishnan, Judicial Member

In OA 58/013 there are six applicants who contend that they are entitled to be placed senior to Respondents 5, 6, 7 and others who were initially enraged on casual basis later than the applicants and hence they seek a declaration that the official respondents are bound to determine the inter-se seniority of those who were working on casual basis and later regularized as LDCs based on their seniority as casual labour/length of casual service. Consequential direction is also sought. In OA 434/2013

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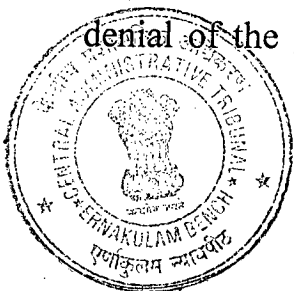
there are eight applicants. The claim made therein is also identical. Since the issue involved in both the cases is identical, both these cases are heard and disposed of by this common order.

2. The applicants in OA 58/2013 contend that they were initially appointed on casual basis as LD Clerks in the various offices. Except the 2nd applicant in OA 58/2013 other applicants joined the Regional Passport Office (RPO) at Calicut whereas the 2nd applicant therein joined at RPO Trivandrum. Applicants 1 to 6 in OA 434/2013 were stated to have been appointed on 25.9.1989 and applicants 7 and 8 were appointed on 18.4.1990 and 22.5.1990. They were sponsored by the employment exchange and were also subjected to written examination and interview. Since their appointments were not treated as regular, they approached the Tribunal filing different O.As. 903/91, 1037/91, 1333/91 and other original applications which were disposed of by a common order (Annexure A1) as per which the Tribunal directed the official respondents to conduct a test and to regularize the applicants in service. That order was not implemented by the respondents. While so a notification was published by the Staff Selection Commission (SSC) in 1993 for conducting a selection for regular appointment for all the persons appointed on casual basis against the regular post of LDC in different departments. The applicants challenged the same filing OA 3/1994 seeking a declaration that the respondents are bound to



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conduct a test strictly in terms of the directions contained in Annexure A1. Some of them who had taken the chance to participate in the test conducted by the SSC were regularized during the year 1994-95, 1995-96 etc., without giving due regard to the persons like the applicants in whose favour Annexure A1 order was in force. OA 3/1994 was disposed of by the Tribunal declaring that the action on the part of the respondents in conducting the test through SSC is not in conformity with Annexure A1 order vide Annexure A2. The SLP which was pending before the Hon'ble Supreme Court was disposed of on 23.10.1996 vide Annexure A3. Subsequently the respondents issued a notification dated 2.12.1996 proposing to conduct the examination on 15.1.1997 as directed in Annexure A2 order of this Tribunal. (Annexure A4). All the applicants got themselves qualified and accordingly they were issued orders of appointment. The applicants (except 2nd applicant) thereafter joined on 22.4.1997 against the regular post of LDCs. The 2nd applicant was shown to have joined on 23.4.1997. The entire service of the applicants right from the beginning was against regular sanctioned posts. The question of inter-se seniority of applicants vis-a-vis the persons identically situated with effect from the date of appointment was at large. The representations submitted by the applicants were not independently considered. Aggrieved by the denial of the grant of eligible seniority, applicants approached along with



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others before this Tribunal filing OA 1557/98. OA 1557/98 was allowed in favour of the applicants, but some of the direct recruits regularly appointed prior to 1993 approached the Hon'ble High Court praying that their rights have been affected as the order was passed without they being heard. The OA was remitted to this Tribunal to be heard afresh. The OA was finally decided as per order dated 4.7.2003 vide Annexure A6 in OA 434/13. Party respondents are persons directly recruited through Staff Selection Commission on dates prior to 1993. order were issued by the office of the 2nd respondent pursuant to Annexure A6. Another OA 523/2004 was filed which was disposed of as per Annexure A9 in OA 434/13 in which it was declared that the service rendered from the date of initial engagement would count for the purpose of ACP and that the applicants would be entitled to back wages from their initial date of engagement and their break in service should be re-considered under the CCS (Leave) Rules. Annexure A9 was challenged before the Hon'ble High Court, which was finally dismissed by the Hon'ble High Court as per Annexure A10 judgment dated 9.4.2008. Though A10 was challenged before the Hon'ble Supreme Court the SLP was dismissed vide Annexure A11. A10 order was implemented by Annexure A12. OA 196/2010 was filed for a declaration that persons like the applicants who were appointed on casual basis are not entitled to reckon their service for the purpose of seniority. That application was filed by



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some of the direct recruits. That OA was referred to a Full Bench. The Full Bench finally decided and thereafter passed an order on the same. If Annexure A1 order of the Tribunal had been complied with, the applicants would have been regularized at least with effect from 25.3.1993 and their inter-se seniority could have been fixed based on the date of initial engagement as casual labourers. Hence the applicants contend that they should be regularized w.e.f. 25.9.1993.

3. Respondents 1 to 4 resisted the claim contending as follows.

As per Annexure A1, this Tribunal had directed the respondents to conduct LDCE on the same lines, the LDCE was held in the year 1985. Accordingly LDCE was conducted through SSC and eligible LDCs were selected therefrom. Though in OA 3/94 the Tribunal directed the department to hold LDCE, the Tribunal did not cancel the selection of the candidates made through LDCE conducted through the SSC or to revise their seniority. It was specifically held by the Tribunal in Annexure A8 that the applicants are entitled for regularization with effect from the initial date of their engagement for all purposes other than seniority. Thus excluding seniority, other benefits were given to the applicants. As the seniority was fixed and it remained in existence for a reasonable period the challenge against the same cannot be entertained after several years. The order of regularization cannot destroy the seniority right of the direct recruits.



4, Some of the persons who were likely to be affected by the order to be passed by this Tribunal were impleaded as party respondents. Some of them entered appearance and filed reply statement refuting the claim made by the applicants. Their contention is that the OA is hopelessly barred by limitation. The issue regarding the seniority has long been concluded as early as in the year 1997 and the present attempt to re-open the seniority by determining the date of applicants' service by seeking to count their casual service after more than fifteen years is futile and without any reasonable basis. Seniority cannot be re-agitated after long lapse of time. It will be violative of the sit back principle of law. The applicants were regularized in service in 1997 and they had been assigned seniority as LDC from that date only. Applicants wanted to reassign the seniority on the basis of initial date of engagement as casual workers. At least 100 direct recruits had been appointed through the SSC during 1993 to 1997 vide Annexure R.7(a). Even during 1995-96 and 1996-97 a number of candidates were directly recruited through SSC and majority of them are working in Passport Offices and different Passport Seva Kendras all over India. Therefore, publication in the notice board or in the newspaper is not sufficient to hold that all those persons are aware of the filing of these O.As. The affected parties are to be personally impleaded by name. The applicants were regularized on 22.4.1997 and they accepted the same without demur. OA 1557/98 was



filed seeking a direction to regularize their service with effect from the respective dates from which they were initially engaged, with all consequential benefits such as seniority. As per the final order passed therein the applicants therein were granted the date of regularization with effect from the date of their initial engagement, other than seniority. The issue of seniority has already been decided by this Tribunal and it has become final. The applicants cannot re-agitate that issue afresh. The respondents who had been regularized as LDCs in October 1994, had been promoted as UDC in 1994-96. In 2009, they were again promoted as Assistant after qualifying the LDCE and those were working as such. But the applicants are working as UDCs and continuing as such. The seniority in the Passport Organizations is maintained on all India Basis. Ever since from the date the party respondents commence their service in 1994 they were held seniors to the applicants so that the seniority position cannot now be unsettled. Hence those respondents prayed for dismissal of the applications.

5. The point for consideration is whether the applicants are entitled to get their seniority ante-dated as claimed by them?

6. We have heard the learned counsel appearing for both sides and have gone through the pleadings and records produced by the parties.

It is unnecessary to dwell much on the earlier round of litigations.



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In most of the cases, the party respondents herein were not made parties to those cases and as such the finding or orders in those cases cannot affect their seniority. It is important to note that most of the applicants herein were parties to OA 75/2010. Annexure A15 in OA 58/2013 is the order passed by this Tribunal on 15.3.2011 in OA 196/2010 and 75/2010. The claim made by the applicants in OA 75/2010 was regarding the refusal of the official respondents to refix their seniority and to pay the pay and allowances with effect from the date of their initial entry as daily rated clerks. OA 196/2010 was filed by persons who were working as Superintendents and Assistants in different Passport Offices in Kerala. They were aggrieved by the order dated 8.12.2009 issued by the 2nd respondent therein by which respondents 4,5 and 6 therein were assigned seniority from the dates of their initial engagement on casual basis. The earlier orders passed by this Tribunal were considered in Annexure. A15. In para 11 it was stated that the judgment rendered by this Tribunal on 4.7.2003 in OA 1557/1998 was specific and that no seniority has to be assigned to the employees recruited initially on casual basis and subsequently regularized with effect from the date of their engagement as casual labourer clerks. Except seniority they were given all other benefits in that case including benefits to appear in the examination and for terminal benefits etc., as decided in the earlier round of litigation. That order was rendered subsequent to the



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direction of the Hon'ble High Court directing the Tribunal to consider the specific question as to whether by granting such retrospective seniority, it would adversely affect the service conditions of the direct recruits regularly appointed later though the claim was for seniority over the additional respondents 4 to 43 therein. There were orders passed by the Tribunal earlier in which party respondents herein were not made parties. The question was as to whether seniority should be given retrospectively from the date on which the applicants therein were initially engaged as casual labourers, especially because the seniority was specifically declined in the earlier order in OA 1557/98. It was observed by the Tribunal that even the order in OA 82/208 which was filed by some of the applicants, does not *ipso facto* refer to the seniority to be assigned from the date of their initial engagement. There were conflicting orders on the point as to whether the Casual Labourers who were subsequently regularized were entitled for seniority reckoned from the date of their initial engagement over the regularly appointed regular recruits. Hence in order to have an authoritative pronouncement on the issue the matter was referred to a Large Bench.

8. The learned counsel for the respondents would submit that the applicants herein conveniently did not produce the final order passed by the Full Bench of this Tribunal but Annexure A14 was produced. Whether it was a mistake or was a deliberate act, we are not now probing into. The



(Signature)

final order passed by the Full Bench of this Tribunal on 12.8.2011 has been placed before us at the time of argument. As can be seen from para 16 of the final order passed by the Full Bench, the applications of the direct recruits were allowed quashing Annexure A1 produced therein by persons like the applicants herein, by which the party respondents herein who were the applicants in OA 297/2008, OA 299/2008 and OA 300/2008 were held to be entitled to higher promotion based on the revised seniority. It was declared by the Full Bench that the parties (some of the applicants herein and similarly placed) are not entitled for seniority from the date of their initial engagement as casual employees over and above the party respondents herein. It was further declared that the applicants in OA 75/2010 and 82/2008 are not entitled to claim seniority as LDC with effect from the date of their initial entry into the service on casual basis. Thus OA 75/2010 filed by persons like the applicants herein was dismissed. As regards the reliefs sought in OA 82/2008, the same was also dismissed. But however, it was held that the applicants therein will be entitled for all consequential benefits other than seniority and monetary benefits as was given in OA 1557/2008, if not already granted. The relevant portion of Full Bench order is as under:

16. The Division Bench while considering the matter before reference have already held that the O.A. is maintainable. In the circumstances based on the answer as given above we allow this O.A. and quash Annexure A1



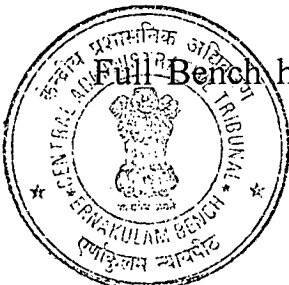
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to the extent it directed that the party respondents who are the applicants in O.A.Nos. 297,299 & 300 of 2008 are entitled to higher promotion based on the revised seniority. We declare that the party respondents are not entitled for seniority from the date of their initial engagement as casual employees over the applicants. In the light of the reference answered, we declare that the applicants in O.A. No.75/2010 and O.A.No.82 /2010 are not entitled to claim seniority as LDC with effect from date of their initial entry into the service on casual basis. O.A.No.75/10 is dismissed. As regards the reliefs sought for in O.A No.82/10 is concerned, the reliefs sought for to revise seniority in the category of LDC from the date of initial appointment and to pay the arrears of salary from the date of initial engagement, are dismissed. However, the applicants will be entitled for all other consequential benefits other than seniority and monetary benefits, as was given to the applicants in O.A.No.1557/08, if not already granted." (portion underlined to lay emphasis)

It is unfortunate that the applicants herein shut their eyes to the order passed by the Full Bench and again tried to beguile the court, as if the question of seniority was not decided against them. Perhaps in that context, the non production of the order passed by the Full Bench may also assume significance, the learned counsel for respondents contend. Be that as it may, without stating anything regarding the order passed by the Full Bench by which their claim for seniority was already turned down, they wanted to befoul this Tribunal. It is a clear case of abuse of the process of the court, the respondents contend.

9. It is pointed out by the learned counsel for the respondents that since some of the applicants were parties to the earlier proceedings in which the

Full Bench has decided that the applicants are entitled for regularization

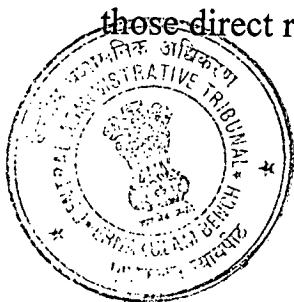


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with effect from the initial date of their engagement for all purposes other than seniority, the applicants cannot now contend that they are entitled to get seniority since their claim for seniority has been negated by the Full Bench in the decision rendered above. So much so, the plea again raised by the applicants in these OAs for seniority computing it with reference to the date of entry, i.e., in 1993, is clearly barred by res-judicata. Hence on that ground itself these applications are liable to be dismissed.

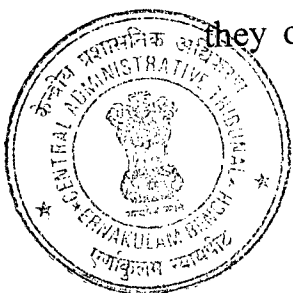
10. The respondents contend that these applications are barred by limitation.

11. The applicants contend that these two applications are not barred by limitation pointing out that the O.As were filed earlier and hence the time will start only from the date of disposal of those cases. It eludes comprehension how it will save limitation. The cause of action for claiming seniority arose when the seniority was fixed earlier. The persons who were appointed between 1994 and 1997 as LDC were subsequently regularized. Unlike the applicants and others who were only casual workers, the party respondents who entered service through Staff Selection Commission and who were regularly appointed between 1994 and 1997 cannot be pushed down by the applicants who only joined as casual workers though subsequently their service was regularized. Whatever may be the case, ~~those direct recruits from 1994 to 1997 were regularized in service and their~~



seniority was fixed above the applicants. It is not a case where the applicants were kept in dark with respect to the seniority position. The applicants were fighting for getting regularization and all other benefits for quite a long time. Therefore, it cannot be contended that they were unaware of the seniority position fixed by the respondents with regard to the direct recruits, some of whom are impleaded as party respondents herein. Therefore, it is a case where the seniority of those direct recruits stood fixed at least by 1997. It cannot be denied that hundreds of such officers are appointed every year and after regularizing their services, their seniority positions used to be fixed at the appropriate time.

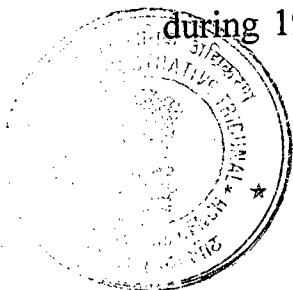
12. It is pointed out by the learned counsel for the party respondents that even in OA 1557/98 filed by the applicants, claimed benefit of regularization from the date of their initial engagement, but it was held by this Tribunal that they are entitled to the benefit of regularization with effect from the dates of their initial engagement for all purposes other than seniority. Therefore, the claim for seniority made by them in OA 1557/98 was in fact turned down. Therefore, with regard to the claim for seniority made by them in OA 1557/98, there is a concluded finding declining seniority claimed by them. If actually the applicants wanted to claim seniority over the party respondents who were selected through SSC then they ought to have claimed seniority in that OA 1557/98 itself. As that



claim was disallowed that should have been challenged. That plea was very much available at that point of time. As just stated above though that was also raised by the applicants it was negated by this Tribunal. Hence the decision in OA 1557/98 will operate as *res-judicata*. It is not necessary to dwell much on that aspect since in O.A 75/2010 (in which some of the applicants herein were parties) the Full Bench decided the issue against them. Still the applicants wanted to feign ignorance.

13. With regard to the plea of limitation also what has been stated above assumes much significance and relevance. The cause of action for claiming seniority arose in 1994 when the party respondents were selected through Staff Selection Commission. At any rate, since such selection continued upto 1997 at least the claim should have been made within one year from 1997. OA 1557/98 was then filed by them but their claim was turned down. The claim for seniority now claimed after several years must be held to be barred by limitation as well. It is not a case where the cause of action for claiming seniority arose all of a sudden in 2013.

14. It was specifically contended by the party respondents that their selection had taken place in 1992 and they were regularized as LDC in the year 1994. It is not in dispute that the party respondents whose services had been regularized as LDC in 1994 were subsequently promoted as UDC during 1995-96. In 2008 they were promoted as Assistants after they got



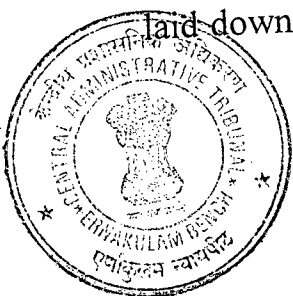
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themselves qualified in a Limited Departmental Examination. All of them are stated to be now working in the above capacity (as Assistants) whereas the applicants are working as UDCs.

15. The further fact is that the seniority in the Passport Organization is maintained on All India basis. Several hundreds of such officials who joined through SSC as LDCs in 1992 and in subsequent years were granted promotion as and when vacancies arose. It continued for several years. The seniority position of those several hundreds of persons cannot be unsettled after several years. The respondents have narrated as to the month or year when the party respondents entered service, regularized and when subsequently they were granted promotion etc. By filing these two applications after several years, the applicants wanted to unsettle the settled seniority which is not permissible.

16. It was held by the Hon'ble Supreme Court in *Mudgal's case - (1986)* 4 SCC 531 that a seniority list which remained in existence for 3-4 years unchallenged should not be disturbed. 3-4 years is a reasonable period for challenging the seniority and in case someone agitates the issue of seniority beyond this period, he has to explain the delay and laches in approaching the adjudicatory forum by furnishing satisfactory explanation. Here, the delay is of about 10 years. At any rate it is more than 6 years. The principle

laid down in *Mudgal* was followed by the Hon'ble Supreme Court in *Siva*



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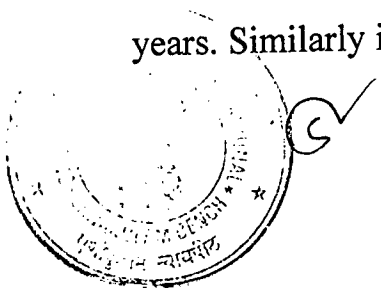
Shankar Mohapatra & Others Vs. State of Orissa -- 2011 SCC (L&S) 229

where it was held:

“Once the seniority had been fixed, and it remains in existence for a reasonable period, any challenge to the same should not be entertained.”

17. Even in the common order passed by the Full Bench in OA 75/10, 825/10 and 196/10 it was held that the seniority accrued to the party respondents herein which they enjoyed for a long period and having been promoted successfully to the next higher post from time to time, cannot be upset by conferring seniority on the casual employees not regularly recruited after following the same procedure as was applicable to the regular recruitment and to have a march over the regularly recruited employees. It is really unfortunate that the applicants did not even want to place that fact before the Tribunal presumably under the erroneous impression that Courts/Tribunals are so gullible to swallow such prevaricating statements made in the OAs suppressing the truth and suggesting falsehood.

18. It was held by the Hon'ble Supreme Court in *Ravindranath Vs. Union of India -- AIR 1970 SC 470* that it would be unjust to deprive the respondents of the rights which have accrued to them; each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set aside after a lapse of a number of years. Similarly it was held by the Supreme Court in *Amritlal Vs. Collector*



of *Central Excise -- 1975 4 SCC 714* that:

"the settled position of seniority should not be permitted to be agitated again, after a reasonable lapse of time. It would not be in the interest of administrative efficiency to let disputes of seniority to be permitted to be raised and prosecuted several years after the seniority had been settled in the department in the ordinary course of business."

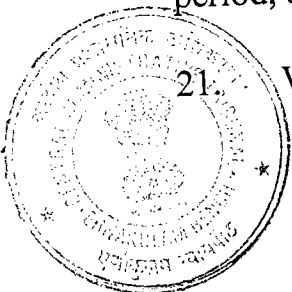
19. The delay and laches in so far as the claim made by the applicants to disrupt the vested rights regarding the seniority, rank and promotions which had accrued to a large number of respondents/officials during the period of 8 years was critically commented upon by the Hon'ble Supreme Court in *R.S.Makashi Vs. V.I.Menon -- (1982) 1 SCC 379*. Seniority once settled is decisive in the upward march in one's chosen work and calling and gives certainty and assurance and boosts the morale to do quality work. It was held by the Hon'ble Supreme Court in *H.S. Vankani & Ors. Vs. State of Gujarat and Ors., - 2000 (10) SCC L&S 1012* that seniority once settled is decisive in the upward march in one's chosen work or calling and gives certainty and assurance and boosts the morale to do quality work. The settled seniority position after lapse of several years cannot be unsettled.

20. It was held by the Hon'ble Supreme Court in *Siva Shankar Mohapatra & Others Vs. State of Orissa -- 2011 SCC (L&S) 229* that once the seniority had been fixed, and it remained in existence for a reasonable period, any challenge to the same should not be entertained.

21.

When settled positions of seniority are sought to be questioned after





a considerable lapse of time, the court would be inclined to decline jurisdiction in such cases and that the court would be loathe to interfere with the settled seniority after a lapse of time. Applicants were very well aware of the fact that their service had been regularized only with effect from 22.4.1997/23.4.1997 etc., and so they had been assigned seniority as LDC only from that date. Therefore, they must be deemed to have come to know of their seniority position at least in April 1997. They were well aware of that position when they filed OA 1557/1998. If actually they were aggrieved by the seniority, they should have questioned the same when they filed OA in 1998. If their claim had been disallowed, it should be given the stamp of finality and it cannot be allowed to be raked up after several years.

22. The applicants had accepted their dates of regular appointment as LDC as on 22/4/1997 & 23/4/1997. In OA 1557/98, they had actually sought a direction to regularize their services from the respective dates on which they were initially engaged with all consequential benefits such as seniority with effect from the date of initial engagement etc. But the Tribunal as per final order therein, though directed to grant the applicants the benefit of regularization with effect from the date of their initial engagement for all purposes, so far as the seniority claim is concerned, there was rejection of the same as per the order in OA 1557/98. In other words, as

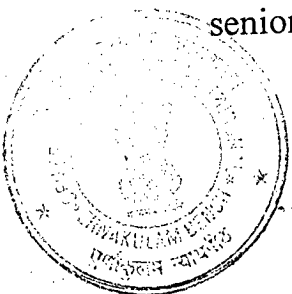
regards the claim of seniority raised by them, the order passed in OA



1557/98 is final. The contentions regarding the manner in which the LDCE was conducted etc., are not matters germane for consideration in this case since all those issues had already been decided and settled in the previous rounds of litigation.

23. The Full Bench considered OA 75/2010, 82/2010 and 196/2010 and passed a common order on 12.8.2011. There were eight applicants in OA 82/2010. Out of them except the second applicant others are the applicants in OA 434/2013. The Full Bench decided the case against the applicants on 12.8.2011 itself. These applications were filed in 2013. But strangely enough no mention whatsoever was made in these O.As about the orders passed therein by the Full Bench. It is submitted by Smt. Preethy Ramakrishnan, the learned counsel appearing for the party respondents that the common order mentioned above was not challenged before the High Court and as such it became final.

24. Without impleading the party respondents herein, the applicants or persons similarly placed were stated to have obtained orders from the Tribunal regarding regularization, pay and allowances. Such orders or judgments which are not inter-party cannot be pressed into service against the employees who were not made parties to those cases, so far as their claim of seniority is concerned. In fact in OA 1557/2008 the claim of seniority raised by the applicants was decided against them. That was taken



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note of by the Full Bench also. If there was any binding inter-party judgment rendered sill earlier the plea of *res judicata* if any available should have been raised by the party at the appropriate stage. If not raised the plea of *res judicata* itself will get barred by *res judicata*.

25. It is pertinent to note that in some of the OAs, the persons likely to be affected were not made parties and so some of them had to move the Hon'ble High Court, when the OP was pending, to get themselves impleaded. It was only then that the issue relating to their appointment etc., could be brought to light. The practice of filing applications without impleading the parties who are likely to be affected by the orders that might be passed in such cases is to be deprecated. Filing of such applications lead to multiplicity of applications/petitions/cases to be filed by persons who are affected, who do not get occasion to know the filing of such applications by other persons earlier. Therefore, it must be ensured that whenever such applications are filed, where the reliefs sought for are likely to affect the rights of other officials/employees, then those persons should be made parties to the proceedings, as otherwise, after a lapse of years, those persons would be driven to file applications questioning the correctness of the orders obtained in such cases where those persons were not made parties. It is to obviate such difficulties and unnecessary and unwarranted litigations

that the necessity of impleadment of parties who are likely to be affected



should be made mandatory.

26. It is settled law that no adverse orders can be passed against persons who were not made parties to the litigation. Following the three judges Bench decision in *Prabodh Varma Vs. State of UP – (1984) 4 SCC 251* and other decisions of the Hon'ble Supreme Court; namely *Indu Shekar Singh Vs. State of UP – (2006) 8 SCC 129*, *Reshmi Mishra Vs. MP Public Service Commission – (2006) 12 SCC 724*, *Trideep Kumar Dingal Vs. State of West Bengal – (2009) 1 SCC 768*, it was held in *Public Service Commission Vs. Mamta Bisht- 2010(12) SCC 204* that while dealing with the concept of necessary parties and the effect of non impleading of such a party in the matter, when the selection process is assailed, if a person who is likely to suffer from the order of the court was not impleaded as a party, he has a right to ignore the said order as it was passed in violation of the principles of natural justice. The decision in *Udit Narain Singh Malpaharia Vs. Board of Revenue- AIR 1963 SC 786* followed by the Supreme Court in *Mamta Bisht's* case (supra) also laid down the same principle.

27. In *J.S. Yadav Vs. State of UP – (2011) 6 SCC 570* the supreme Court held:

“31. No order can be passed behind the back of a person adversely affecting him and such an order, if passed, is liable to be ignored being not binding on such a party as the same has been passed in violation of the principles of



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natural justice."

It was also held in *Vijay Kumar Kaul Vs. Union of India*:

"36. "Another aspect needs to be highlighted. Neither before the Tribunal nor before the High Court, Parveen Kumar and others were arrayed as parties. There is no dispute over the factum that they are senior to the Appellants and have been conferred the benefit of promotion to the higher posts. In their absence, if any direction is issued for fixation of seniority, that is likely to jeopardise their interest. When they have not been impleaded as parties such a relief is difficult to grant."

28. Again in *State of Rajasthan Vs. Chab Lal Chanwal* – (2014)

1SCC 144 it was held:

"14. Despite the indefatigable effort, we are not persuaded to accept the aforesaid preponement, for once the Respondents are promoted, the juniors who have been promoted earlier would become juniors in the promotional cadre, and they being not arrayed as parties in the lis, an adverse order cannot be passed against them as that would go against the basic tenet of the principles of natural justice."

29. All these decisions (supra) highlighted and emphasized the necessity of impleadment of a party who would suffer from the order of the court, as otherwise, it would amount to violation of the principles of natural justice. The fact that the department/official respondents were there to defend the case is no reason to hold that the actual parties who would suffer by the order of the court should be kept in dark and an order can be passed against the interest of those persons. Thus if there was any such order against the party respondents in any earlier proceedings, without they being made parties to the same, the same cannot operate against those party respondents.

In other words, the party respondents can very well ignore those orders to

the extent the earlier order offends their claim of seniority or any other right.

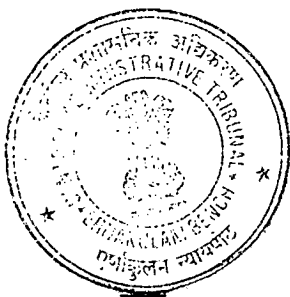


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The decisions cited supra were recently followed by the Hon'ble Supreme Court in *Ranjan Kumar and others- (2014) 16 SCC 187*.

30. It is pertinent to note that in the common order passed by the larger Bench on 12/8/2011, all the Supreme Court decisions relevant for the case were cited and it was after a detailed consideration of the claim made by the applicants for seniority, the same was disallowed. It is incomprehensible why the applicants shut their eyes to the order passed by the Full Bench. By filing this OA suppressing the fact, the applicants have exhibited their unabashed brazenness. In short they wanted to play fraud on the Tribunal. It is highly deprecated. The relevant paragraphs of the Full Bench decision of C.A.T in OA 75/2010 and connected cases are quoted here to unravel the fallacy of the case put forward by the applicants and the ingenious way they projected a false case knowing it to be false. The relevant paragraphs are as under:-

"11. Admittedly, before the regular appointments were made through the Staff Selection Commission by direct recruitment, appointments were made in the Passport Offices on casual basis and those employees continued for a longer period and subsequently in order to regularize their services, an examination was held and based on the result of the examination, the L.D.Cs who were thus working on casual basis, were regularized. The Department regularized their services only from the date of the result of the examination. It was thereafter that the same was challenged and they were directed to be regularized with retrospective effect. But when regularly recruited employees contested the matter on the question of seniority, the issue as to whether the casual employees should be given seniority



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also over the regularly recruited staff who had been promoted subsequently to next higher position, came up for consideration and the claim for seniority was negatived in O.A.No.1557/98 and OA 436/05. The reason being that the casual employees became members of the cadre only when they were qualified by passing in the examination, but they having continued in the establishment as casual employees from their date of initial appointment, though not regular, was extended the benefit of regularization and other benefits, other than seniority and monetary benefit. It was held that the claim of the applicants in O.A.No.1557/98 for seniority for the service rendered by them as casual labourers is not sustainable as it is settled law that in the absence of any rule to the contrary seniority will depend on the length of service after regular entry in the cadre/grade. We are not told that the position of law as reiterated in the order in O.A.No.1557/98 is in any way incorrect or wrong. It is settled principle in the service jurisprudence that seniority is a civil right which has an important and vital role to play in one's service career. Further promotion of a Government servant depends either on strict seniority or on the basis of seniority-cum-merit or merit-cum- seniority etc. Seniority once settled is decisive in the upward march in one's chosen work or calling and gives certainty and assurance and boosts the morale to do quality work. It was held by the Apex Court that the settled seniority position after lapse of several years cannot be unsettled. (see *H.S. Vankani & others vs. State of Gujarat & others*; (2010) 1 SCC (L&S) 1012.

12. In a recent decision of the Apex Court in *Shiba Shankar Mohapatra and others vs. State of Orissa and Others*; (2011) SCC(L&S) 229, it was held as follows:-

"Once the seniority had been fixed and it remains in existence for a reasonable period, any challenge to the same should not be entertained. In *Mudgal case*, (1986) 4 SCC 531, the Supreme Court has laid down in crystal clear words that a seniority list which remains in existence for 3 to 4 years unchallenged, should not be disturbed. Thus,



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3-4 years is a reasonable period for challenging the seniority and in case someone agitates the issue of seniority beyond this period, he has to explain the delay and laches in approaching the adjudicatory forum, by furnishing satisfactory explanation."

In *Sajeev v. Union of India*; 2009(4) KLT SN 67(F.B), a Full Bench of the Hon'ble High Court reiterated the principle that the theory of sit back has been applied almost uniformly in the context of a contention of delay and laches on the part of any person, who makes an attempt to prosecute a claim, which if accepted, would result in a situation where inter se positions which have been settled over the years will have to be revised. In *Uday Pratap Singh & Others vs. State of Bihar and others*; 1995 SCC (L&S) 85, the Hon'ble Supreme Court observed as follows:-

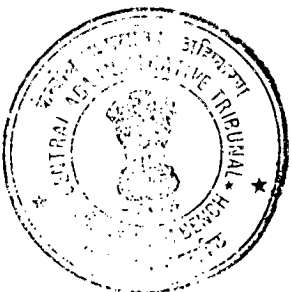
"By a catena of decisions of this Court, it is now well-settled that by an executive order the statutory rules cannot be whittled down nor can any retrospective effect be given to such executive order so as to destroy any right which became crystallized. In this connection, it is profitable to refer a decision of this Court in *T.R. Kapur v. State of Aryan's*, AIR 1987 SC 415, wherein it is held that rules framed under Article 309 of the Constitution cannot affect or impair vested rights, unless it is specifically so provided in the statutory rules concerned. It is obvious that an executive direction stands even on a much weaker footing. It is true, as laid down in *Bishan Sarup Gupta v. Union of India*, 1973 SCC(L&S) 1, that effect of up gradation of a post is to make the incumbent occupy the upgraded post with all logical benefits flowing therefrom and can be treated as promoted to the post. Still it cannot be gainsaid that no retrospective effect could be given to any merger of erstwhile lower branch into higher branch in the cadre so as to affect



the vested rights of incumbents already occupying posts in the erstwhile higher branch in the cadre. In the present case it has to be kept in view that the contesting respondents were directly recruited and appointed in the Senior Branch on 12.5.1974 and 25.5.1974 respectively, while the appellants were appointed on 2.11.1975 in the merged cadre. It is true that their order of appointment purports to give them appointment retrospectively from 1.4.1974 but such effect cannot be given so as to destroy the seniority rights of the writ petitioners, respondents herein, who were inducted as direct recruits in the Senior Branch prior to 2.11.1975."

13. In *Rabindra Nath Bose and others vs. Union of India and others*; AIR 1970 SC 470, the Apex Court declared that it is settled that Article 13 of the Constitution has no retrospective effect and therefore, any action taken before the commencement of the Constitution in pursuance of the provisions of any law which was a valid law at the time when such action was taken cannot be challenged and the law under which such action was taken cannot be questioned as unconstitutional and void on the score of its infringing the fundamental rights enshrined in Part III of the Constitution. In *Usha Devi v. State of Kerala*; 2002 (1) KLT 615, it was observed by the Hon'ble High Court of Kerala that rank list cannot be challenged after it had become final and after a long delay and unsettle the settled position for years.

14. The applicants in O.A.196/10 joined the service on regular basis after following the regular selection process as early as in 1982, subsequently got promoted to the next higher cadre as UDC in 1992, 1994 and 1996 respectively and again promoted as Assistants and Superintendents. Thus, by virtue of their seniority which they enjoyed for a long period and having been promoted successfully to the next higher post from time to time, cannot be upset by conferring seniority on the casual employees not regularly recruited after following the same



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procedure as was applicable to the regular recruitment and to have a march over the regularly recruited employees. Therefore, even though they had been in service as casual employees they are entitled for all the other benefits other than seniority. The casual employees as of right could claim seniority only when they became qualified by successfully passing in the examination. Their retrospective regularization is good enough for all purposes other than seniority. Accordingly, we answer the issue as follows:-

15. The casual employees are entitled to be regularized with effect from their initial engagement and will be entitled for all other consequential benefits other than seniority and monetary benefit.

16. The Division Bench while considering the matter before reference have already held that the O.A. is maintainable. In the circumstances based on the answer as given above we allow this O.A. and quash Annexure A1 to the extent it directed that the party respondents who are the applicants in O.A.Nos. 297,299 & 300 of 2008 are entitled to higher promotion based on the revised seniority. We declare that the party respondents are not entitled for seniority from the date of their initial engagement as casual employees over the applicants. In the light of the reference answered, we declare that the applicants in O.A. No.75/2010 and O.A.No.82 /2010 are not entitled to claim seniority as LDC with effect from date of their initial entry into the service on casual basis. O.A.No.75/10 is dismissed. As regards the reliefs sought for in O.A No.82/10 is concerned, the reliefs sought for to revise seniority in the category of LDC from the date of initial appointment and to pay the arrears of salary from the date of initial engagement, are dismissed. However, the applicants will be entitled for all other consequential benefits other than seniority and monetary benefits, as was given to the applicants in O.A.No.1557/08, if not already granted." (*underlined to lay emphasis*)

In the light of what is stated above, we hold that these two



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32. In the result, both these applications are dismissed with costs.

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(N. K. Balakrishnan)
Judicial Member

Date: 27/5/16

~~Deputy Registrar~~