CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
ERNAKULAM

....

DATE OF DECISION 20.8.1990

CORAM

Hon'ble Mr. S.P.Mukerji, Vice Chairman

Hon'ble Mr. A.V.Haridasan, Judicial Member

O.A. 434/89 AND O.A. 609/89

I. O.A. 434/89

A. Ramakrishnan Nair & 7 others ..... Applicants

Shri M.Girijavallabhan ..... Counsel for the applicants

Versus

Union of India (Secretary, Ministry of Defence) & 2 others ..... Respondents

Mr. P.Santhosh Kumar, ACGSC ..... Counsel for the respondents

II. O.A. 609/89

K.J.Rosy ..... Applicant

Mr. M.Girijavallabhan ..... Counsel for the applicant

Versus

Union of India (Ministry of Defence) and 5 others. ..... Respondents

Mr. V.Krishnakumar, ACGSC ..... Counsel for the respondents

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? ~~Yes~~ No
4. To be circulated to all Benches of the Tribunal? ~~Yes~~ No

JUDGEMENT

(Shri S.P.Mukerji, Vice Chairman)

Since common questions of facts, law and relief are involved in the aforesaid two applications, filed under section 19 of the Administrative Tribunals Act, they were heard together and a common order has been passed as follows:

2. The 8 applicants in the first case, O.A.434/89, were originally appointed as Assistant Store Keepers under the Southern Naval Command

on a casual basis between 12.11.74 and 13.10.77. Their first appointment was through Employment Exchange and they passed the test/ interview as prescribed for regular appointment. They were, however, given technical or artificial breaks after every 89th day of service and re-appointed to the same post. They were subsequently appointed on a regular basis as Assistant Store Keeper on various dates between 31.1.78 and 3.4.79. They have claimed that they should be regularised from their respective dates of first appointment on a casual basis, ignoring the period of technical breaks, with all consequential benefits as prescribed in the relevant orders, as also the benefit of reckoning their seniority from the date of their initial casual appointment.

3. The solitary applicant in the second appllication (O.A.609/89) was originally appointed as LDC on a casual basis in the Naval Armament Depot, Alwaye, under the Southern Naval Command, on 17.2.1975. She was also appointed after proper selection and was retained on a casual basis with intermittent breaks in service. She was, however, regularised against a regular vacancy with effect from 1.6.79 and given the benefit of seniority in the LDCs cadre with effect from 3.4.79, i.e. from the commencement of her last spell of casual service without break immediately prior to the regularisation. She has also prayed that the respondents be directed to regularise her as an LDC with effect from 17.2.75, i.e., the date of her first casual employment with all consequential benefits including the benefit of seniority from that date. The material facts of these cases can be summarised as follows:

4. The Ministry of Defence had issued a circular dated 26.9.66 indicating that "non-industrial personnel who had been in employment for more than one year without break should be converted into regular employees with effect from the date of their initial employment as casual employees, if the Commandants etc. are satisfied that their services will be required on a long term basis." (page 66 of the Paper Book in OA 434/89). This letter was followed by another circular of the Ministry of Defence dated 24.11.67 (Exbt.R1 in the first case, page 56 of the Paper Book) with the following

clarification:

> "....I am also directed to say that the past service rendered from the date of appointment by such of the casual non-industrial personnel including those mentioned in para 1 above who are converted as regular non-industrial employees will be treated as having been rendered in the regular capacity. They will be entitled to all benefits, as for regular employees viz. fixation of pay, grant of annual increments, calculation of leave, pension and gratuity, terminal benefits, three years limit of children education allowances, re-imbursement of tuition fees, house rent allowances, travelling allowances, leave travel concession, compensatory and other allowances, medical attendance, medical re-imbursement, grant of quasi permanent status, and compulsory contribution to general provident fund/ contributory provident fund, advance of pay, etc. The financial benefits will however, be allowed from the date of issue of these orders or the date from which the individual converted into a regular employee whichever is later...."

Para 4 of the same circular indicated further as follows:

> "....In cases involving break in casual services the benefits of these orders will be admissible from the commencement of only the latest spell of continuous service without break and that the period of service earlier to the break would be ignored even though their duration may have been more than a year...."

5. The above circular was followed by still another circular dated 27.5.80 (Exbt. R2 ibid) which modified the circular of 24.11.67 stating clearly that the benefits accruing from the conversion of casual employees to regular employees will entitle them to various financial benefits excepting seniority, probationery period and grant of quasi permanent status. It also stated that service rendered on casual basis prior to the appointment on regular basis shall not count for seniority. The modified version as quoted from the letter of Chief of Naval Staff dated 20.10.86 (page 65 of the Paper Book ibid) reads as follows:

> "I am also directed to say that the past service rendered from the date of appointment by such of the casual, non-industrial personnel including those mentioned in para 1 above who are converted as regular non-industrial employees will be treated as having been rendered in the regular capacity. They will be entitled to all benefits as for regular employees viz., fixation of pay, grant of annual increment, calculation of leave, pension and gratuity, terminal benefits, three year limit of children education allowance, reimbursement, tuition fees, house rent allowance, travelling allowance, compensatory and other

allowances, medical attendance, medical reimbursement and compulsory contribution to General Provident Fund/ Contributory Provident Fund, advance of pay., EXCEPTING SENIORITY, probationary period and grant of quasi-permanency status which aspects will be regularised under the orders issued from time to time in respect of persons appointed on regular basis. SERVICE RENDERED ON CASUAL BASIS PRIOR TO APPOINTMENT ON REGULAR BASIS SHALL NOT COUNT FOR SENIORITY. The financial benefit will however be allowed from the date of issue of these orders or the date from which the individual is converted into a regular employee whichever is later."

6. The contention and claim of the applicants in these two applications are that, in accordance with the circulars of 1966 and 1967, as stated above, they are entitled to being regularised from the date of their first appointment on a casual basis, ignoring technical breaks, and not from the date of occurrence of a regular vacancy later on, and that in the respective grade of Assistant Store Keeper/ LDC, their entire service even on a casual basis prior to their regularisation should be counted for seniority. They have challenged the circular of 27.5.80 issued after they were regularised, depriving them the benefit of seniority for their casual service with retrospective effect. In their claim, they have relied upon certain judgements of the High Court of Andhra Pradesh and the Hyderabad Bench, Calcutta Bench and Madras Bench of the Tribunal. The respondents, however, have relied upon the judgement of the New Bombay Bench of the Tribunal, whereby benefit of seniority for the period of casual employment was not to be given, even though such employees are treated as regular employees during the period of casual service, in accordance with the aforesaid clarifications.

7. At this stage, it will be useful to advert to the various judgements referred to by both the parties. The origin of the controversy starts from the judgement in appeal delivered by the Division Bench of the High Court of Andhra Pradesh against the order of a Single Judge, in writ appeal No. 239/80. The judgement was delivered on 20.12.85. A copy of the judgement is at Annexure-A (page 12 of the Paper Book in the first application). The petitioners in

that case were casual employees in the Naval Establishments at Visakhapatnam under the Eastern Naval Command. They were appointed on a casual basis between 1970 and 1976 with intermittent breaks and they sought regularisation of their appointment with all consequential benefits from their original date of casual employment. The Single Judge had held that "the petitioners are holding the post temporarily and they cannot claim, as of right, the benefits of regular employees". Relying upon an earlier judgement of that High Court and adverting to the various circulars issued by the Ministry of Defence, including the circular of 24.11.67, but without adverting to the circular of 27.5.80, the Division Bench set aside the order of the Single Judge. In implementation of this High Court judgement, the respondents not only regularised those who were petitioners before the Andhra Pradesh High Court, but also those casual employees of Eastern Command who were senior to the petitioners, and the petitioners and all those casual employees who were senior to them were regularised from the dates of their initial appointment (page 30 of the Paper Book in the first case). However, the casual workers in the Eastern Naval Command, including casual Assistant Store Keepers of that Command who were similarly circumstanced like the petitioners before the Andhra Pradesh High Court, moved the Hyderabad Bench of the Tribunal in a number of applications, claiming that they should also be regularised with effect from the dates of their initial appointment on a casual basis, by condoning the artificial breaks in the casual employment and not from later dates, depending upon their last spell of continuous casual employment. They referred to the various circulars issued by the Ministry of Defence and the judgement of the Division Bench of the High Court of Andhra Pradesh dated 20.12.85. The Hyderabad Bench of the Tribunal disposed of all the applications by its judgement dated 14.5.87, a copy of which

has been appended as Annexure-B (page 17 of the Paper Book in the first case). Finding the applications to be belated, the Hyderabad Bench of the Tribunal disposed all the applications with the limited direction to the Department to regularise the applicants from the date of their initial appointment with consequential financial benefits, provided any one of their juniors is so given the benefits pursuant to the judgement of the High Court in Writ Appeal No. 239/80 and Writ Petition No. 726/81 in similar matters, viz., TA 611/86 (W.P.2733 of 1983). In implementation of the orders of the High Court and Hyderabad Bench of the Tribunal, the services of all eligible applicants of Eastern Naval Command in the above case were regularised from the date of their initial appointment. Others in that Command who were senior to them were also given the same benefit. The benefit, however, was not given to the casual employees of the Southern Command like the applicant before us as, according to the respondents, the casual employees of Southern Command cannot claim seniority over the casual employees of Eastern Command. It may also be noted that since in the Eastern Command casual employees were regularised from the date of their initial appointment, the question of applying the circular of 27.5.80 in their cases did not arise. By this circular, as it may be recalled, no benefit of seniority by virtue of the service rendered before regularisation could be given. Since in these cases of Eastern Command the regularisation took place from the very inception of casual employment, the benefit of seniority automatically flowed from the order of regularisation and the circular of 27.5.80 was excluded.

8. The next relevant judgement came from the Calcutta Bench of the Tribunal. A copy of this judgement has been appended with the Rejoinder as Annexure-A in the first application (page 76 of the Paper Book). Here also, Clerks, Assistant Store Keepers, and Stenographers of the Naval Command claimed that they should also be regularised from the date of their initial appointment on a casual basis, in accordance with the circular of 24.11.67, and their

entire service including casual service should be counted for all purposes, including seniority. They claimed the benefits given to the applicants before the Hyderabad Bench of the Tribunal and mentioned the letter of the Chief of Naval Staff dated 3.11.86 directing that the decision of the High Court of Andhra Pradesh should be implemented in respect of similarly placed employees. Rejecting the contention of the respondents about the application being time-barred, the Calcutta Bench went into the merits of the case. That Bench referrred to the circular of 24.11.67 which unreservedly granted regularisation of entire casual service for all purposes and seniority as follows:

> "...But we find it from the copy of the letter issued by the Ministry of Defence on 24.11.67 that as early as in 1967 it was directed that the past service rendered from the date of appointment by casual non-industrial personnel who were converted as regular non-industrial employees such employees would be treated as having been rendered in the regular capacity. It was further directed that such employees would be entitled to all benefits as per regular employees...."

In the judgement, the Calcutta Bench of the Tribunal also referred to the decision of the Madras Bench of the Tribunal dated 10.12.87 in O.A. 340 to 345 of 1987 whereby the applicants equally circumstanced were given the same benefits as were given by the Hyderabad Bench of the Tribunal (page 80 of the Paper Book in the first case).

9. Let us pause here a bit. Till the judgement of the Calcutta Bench there is no controversy on the following points:

(a) In accordance with the circular of 24.11.67 the entire casual service has to be considered to be regular service for all purposes including seniority.

(b) The casual employees should be regularised after one year of service from the date of their initial appointment on a casual basis.

(c) The circular of 27.5.80 need not apply so long as regularisation is done from the date of initial casual appointment. This is because there will be no pre-regularisation casual service to be ignored for the purpose of seniority.

Difficulty arose by the judgement of the New Bombay Bench of the Tribunal dated 24/25 August 1989 in OAs 516 and 732 of 1988. A copy of this judgement is available as Exbt. R3 in the first case (page 60 of the Paper Book in the first case). The applicants before them were originally appointed as Assistant Store Keepers, PAs, Stenos, LDCs, UDC, Chowkidars, etc. on a casual basis in the Southern Naval Command and Goa area. They were given artificial breaks after every 89 days for one or two days. Their prayer was that they should be regularised from the date of their initial appointment as casual employees based on the circular of November 1967 and May 1980 and their breaks in service be condoned in accordance with the judgement of the Andhra Pradesh High Court. The New Bombay Bench agreed with the judgement of the Andhra Pradesh High Court only on the point that the casual employees should be regularised from the date of their initial appointment on a casual basis ignoring the artificial breaks, but did not agree on other points and directed that, by circulars of 24.11.67 and 27.5.80, benefits of seniority will be given only from the date they are absorbed against regular vacancies. That Bench did not consider the relief given by the Andhra Pradesh High Court as a copy of the writ petition filed in that case was not before them. The Bench noted that there was no reference to the circular of 27.5.80 in the judgement of that High Court. It thought that had this circular been brought to their notice, the judgement would have been different. Though a reference was made to the judgement of the Hyderabad Bench of the Tribunal dated 14.5.87, it was not taken into consideration as a copy of the judgement, which had not been reported till then, had not been producedby the applicants before the New Bombay Bench.

10. The respondents before us in both these cases have relied on the aforesaid judgement of the New Bombay Bench of the Tribunal

by which service on a casual basis has not been admitted for purposes of seniority. They have argued that the benefit of regularisation from the date of casual appointment given to the applicants and those senior to them in the cases before the Hyderabad Bench cannot be extended to others who are not a party in that case and in the writ petition decided by the Andhra Pradesh High Court. They have also argued that the applicants before us should have no grievance as no person junior to them in their own Command has been regularised from a date earlier than the date of regularisation of the applicants. They have gone on to say that the question of seniority or juniority between casual workers of Southern Command and those in the Eastern Command does not arise.

11. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. Fortunately for us, we have got the judgement of the High Court of Andhra Pradesh dated 20.12.85 (Annexure-A, page 12 of the Paper Book in the first case), the judgement of Hyderabad Bench of the Tribunal dated 14.5.87 (Annexure-B, p.17 of the same Paper Book), the judgement of the Calcutta Bench of the Tribunal dated 17.5.88 (Annexure-K, page 76 of the same Paper Book), the judgement of the Madras Bench of the Tribunal dated 10.12.87, referred to in para 7 of the judgement of the Calcutta Bench (page 80 ;of the same Paper Book), and finally the judgement of the New Bombay Bench of the Tribunal dated 24/25.8.89 (Exbt. R3, page 60 of the same Paper Book), on the same issue in respect of the casual employees of the various Naval Commands, who have been regularised. The two issues which are to be resolved in the two cases before us are as follows:

(a) Whether the applicants should be regularised with effect from the date of their first initial appointment as casual employees after condoning the technical breaks; and

(b) from which date their seniority in the regular cadre in which they have been regularised should be counted.

12. In so far as the first issue is concerned, there is a consensus of findings by the High Court of Andhra Pradesh and all the Benches of the Tribunal to the effect that, in accordance with the various orders of the Ministry of Defence, the applicants are entitled to be converted into regular employees with effect from the date of their initial employment as casual employees and that if there have been some technical breaks during their entire period of casual employment, the same are to be condoned. The relevant portion of the order dated 24/25.8.89 of the New Bombay Bench of the Tribunal which typifies the findings in all cases is as follows:

> "Respondents shall give all benefits due to the applicants in both the cases as per the Ministry of Defence letter No.83482/EC-4/Org.4(Civ)(d)/13754/D(Civ-II) dated 24.11.67 as amended by corrigendum No. 13051/OS-SC(ii)/2968/D (Civ-II) dated 27.5.80, from the dates on which the applicants were initially appointed on casual basis, by ignoring the artificial or technical breaks in their services."

13. We see no reason to depart from the above decision in case of the applicants before us in these two cases and others similarly circumstanced. The stand taken by the respondents that the decision given by the High Court and the various Benches of the Tribunal should be applicable only to the applicants before them, cannot be accepted. Apart from the fact that a principle which is held good by the High Court of Andhra Pradesh and endorsed by the Hyderabad Bench, Calcutta Bench, Madras Bench and New Bombay Bench of the Tribunal cannot be dismissed as not applicable in case of the applicants who are similarly circumstanced as the applicants before those Benches, the applicants before us belong to the same cadre as the applicants in the aforesaid cases, and over and above that, they admittedly figure in the same all-India Seniority List, irrespective of the Naval Command to which they belong. The letter dated 3.11.86 of the Chief of Naval Staff (vide p.77 of the Paper Book) also extended the benefit of Andhra Pradesh High Court's judgement to all similarly circumstanced.

14. In the above circumstances and in conformity with the various decisions of High Court of Andhra Pradesh, Hyderabad Bench, Calcutta Bench, Madras Bench and New Bombay Bench of this Trbunal, we allow this application in part with the direction that the respondents shall ignore the artificial or technical breaks in the casual services of the applicants and regularise them from the date of their initial appointment on a casual basis with all benefits due to them as per Ministry of Defence Letter No.83482/EC-4/Org.4 (Civ)(d)/13754/D(Civ-II) dated 24.11.67 as amended by corrigendum No. 13051/OS-SC(ii)/2968/D(Civ-II) dated 27.5.80.

15. As regards the issue at (b) above regarding the date from which the seniority of the applicants in their respective grade should be reckoned, except for the New Bombay Bench of the Tribunal, all other Benches have impliedly accorded seniority to the applicants on the basis of their date of initial appointment without bringing in the restriction imposed by the circular dated 27.5.80. This circular, as indicated earlier, stated that casual employees regularised will get all financial benefits, except of seniority, and the service rendered on casual basis prior to employment on regular basis will not count for seniority. The mischief of this letter dated 27.5.80 has been avoided in all the aforesaid cases by directing the respondents to condone the artificial breaks and regularise the casual services of the applicants from the date of their initial appointment on a casual basis. Thus, their entire casual services having been regularised and there being no casual service prior to their regularisation, the question of not counting pre-regularisation service for seniority did not arise. It may be noted that in case of applicant in OA 609/89 the respondents themselves having regularised her services as an LDC with effect from 1.6.79 against a regular vacancy, still gave her seniority with effect from 3.4.79, i.e., the date when her last spell of casual employment started. Thus, the question

of seniority as given by the respondents themselves was never related to the availability of regular vacancy for absorption in the regular cadre. Once, therefore, the technical breaks between various spells of casual employment are condoned, according to repondents' own policy, the applicants automatically will get the benefit of seniority from the commencement of the first spell of casual employment. Therefore, there being no casual service after condonation of breaks prior to the date of their regularisation, the applicants will count their entire period of casual service converted to regular service for purposes of seniority. This is what has been contemplated by the various Benches of the Tribunal referred to above, except the New Bombay Bench which, relying on the circular of 27.5.80 on the question of seniority, directed as follows:

> "Respondents shall fix the seniority of the applicants in their respective grade from the dates on which they are absorbed against regular vacancies." (emphasis added)

We respectfully disagree with the aforesaid direction of the New Bombay Bench of the Tribunal for a number of reasons as discussed below.

16. Though the New Bombay Bench directed the respondents to give all benefits due to the applicants as per the Ministry of Defence letters of 24.11.67 and 27.5.80 as quoted in para 12 above, by directing further that the seniority should be fixed from the dates on which absorption against regular vacancies had been allowed, there is inconsistency between the two directions. The relevant portion of the circular of 24.11.67 has been quoted by us in para 4 above. According to this circular "past service rendered from the date of appointment by such of the casual non-industrial personnel including thosementioned in para 1 above who are converted as regular non-industrial employees will be treated as having been rendered in the regular capacity." According to this circular, the status of 'casual' employment gets converted to 'regular non-industrial' employment and their casual service has to be treated as having been rendered in the regular capacity. There is no indication whatsoever that

this conversion to regular employment will be dependant upon the availability of regular vacancy. If, as directed by the New Bombay Bench, seniority is to be given from the date of absorption against regular vacancies, the significance of the conversion of casual employees to regular employees with all benefits will disappear.

17. The relevant portion of the circular of 27.5.80 as quoted in para 5 above merely indicates that the "services rendered on casual basis prior to appointment on regular basis shall not count for seniority". Once the casual employees are converted into regular employees from the date of their initial casual employment after condoning intermittent breaks, their entire service rendered on a casual basis becomes regular service and will not be affected by the restrictive order of 27.5.80. The latter will apply in a case where certain intermittent breaks are not condoned and in accordance with para 4 of the circular of 1967, as quoted in para 4 above, the conversion to regular service takes place with effect from the last spell of continuous service without break. In that case, the seniority will be taken from the commencement of that spell of continuous casual service and the casual service rendered prior to the break will not count for seniority. This is exactly what had been done in case of the applicant in the second case. She was, though regularised with effect from 1.6.79 against a regular vacancy, given seniority with effect from 3.4.79 from which date her last spell of casual employment without break commenced (page 57 of the Paper Book and page 2 of the Counter Affidavit dated 19th February 1990 in the second case, OA 609/89). If the direction of the New Bombay Bench is followed, then the applicant in the second case will lose her seniority given by the respondents themselves from 3.4.79 and count in only from 1.6.79. This obviously has never been the intention of the respondents. Further, once the breaks in service are condoned, the last spell of continuous casual service gets linked up with the first spell of continuous casual service without break and by the

circulars of 1967 and 1980 the casual employee is converted into a regular employee from the date of commencement of the first spell of casual employment. In that circumstance, the question of depriving him of the seniority from the date of commencement of the first spell of casual employment will not arise.

18. There is another legal difficulty in interpreting the circular of 27.5.80 in the manner the New Bombay Bench did and depriving the applicants of the benefit of their seniority of regularised casual service. The applicants admittedly were regularised between 31.1.78 and 3.4.79 in the first case before us and with effect from 1.6.79 in the second case. All benefits including that of seniority were to accrue to them by their conversion into regular employees. The administrative instructions of 27.5.80 cannot, therefore, be applied to them with retrospective effect to deprive them of their seniority. It is an established law that even statutory rules, much less administrative instructions, cannot be given retrospective effect to take away vested interests and the State action must be fair and equal. [P.W.Agarwal and others Vs. State of UP and others, ATR 1987 (2) SC 128, 1989 (9) ATC 773, 1988 (8) ATC 207, 1986 Supplementary SCC 584/595] It is also axiomatic in law that what is not permissible or possible under statutes or statutory rules cannot be made possible through administrative instructions. Accordingly, the instructions of 27.5.80 cannot be given retrospective effect to deprive the applicants of the benefit of seniority accruing from their being converted from casual to regular employees after condonation of intermittent breaks, from the date of their initial employment on a casual basis. We, therefore, cannot agree with the finding of the New Bombay Bench that benefit of seniority will accrue from the date they are regularised against regular vacancies. It is also seen from the judgement of the New Bombay Bench that the judgement of the High Court of Andhra Pradesh was not

considered by them on the ground that the copy of the writ petition was not made available and the judgement of the Hyderabad Bench of the Tribunal was not taken into account as the copy of the judgement was not made available to that Bench. The judgement of the Calcutta Bench of the Tribunal was not even mentioned, much less discussed, in the judgement. Had these judgements been gone into by the New Bombay Bench, their finding could have been different.

19. In the conspectus of facts and circumstances, we allow this application in part to the extent of directing that the applicants should be regularised from the dates of their original appointment on a casual basis by condoning the breaks in service as in other cases with all consequential benefits except that of seniority. So far as seniority is concerned, though we feel in line with the Hyderabad, Calcutta and Madras Benches of the Tribunal that the benefit of seniority will also accrue to the applicants from the date of original appointment as casual worker, since the judgement of the New Bombay Bench is to the contrary, differing with that judgement in this respect, we direct the Registry to refer the following issue to the Hon'ble Chairman for constituting a Larger Bench for a decision. This is because the judgement of the New Bombay Bench being also in relation to the Southern Naval Command, the need to have uniformity of decision is very necessary not only within the Southern Command but amongst all the Naval Commands as the Seniority Lists of Assistant Store Keepers etc. are on an all-India basis. The issue to be referred to is as follows:

> Whether the benefit of seniority to casual employees who are regularised in accordance with the Ministry of Defence letter dated 24.11.67 as amended by the corrigendum dated 27.5.80 can be given from the date of initial appointment on a casual basis, if the breaks in service are condoned, irrespective of the availability of a regular vacancy, especially in respect of those casual employees who were regularised prior to 27.5.80.

20/8/90

(A.V.Haridasan)
Judicial Member

20.8.90

(S.P.Mukerji)
Vice Chairman

Further order pronounced on 21.12.1990

20. After the order dated 20.8.90, the operative portion of which is included in para 19 supra, had been pronounced in the open court on 20.8.90 with a direction that the applicants should be regularised from the dates of their original appointment on a casual basis by condoning the breaks in service as in other cases with all consequential benefits except that of seniority, referring the question of seniority to a Larger Bench, the Larger Bench as constituted by the Hon'ble Chairman of the Central Administrative Tribunal heard the parties concerned on 26.11.90 in both the cases. That Bench pronounced the Full Bench finding on 29.11.90, the operative portion of which reads as follows:-

"20. We, therefore, answer the reference to the Full Bench as follows:-

(i) The benefit of seniority to casual employees who were regularised in accordance with the Ministry of Defence letter dated 24.11.1967, can be given from the date of initial appointment on a casual basis, if the breaks in service are condoned, irrespective of the availability of a regular vacancy. The corrigendum issued on 27.5.1980 will not apply to regularisation from dates prior to the dates of its issue, as in the present case.

(ii) The judgment of the New Bombay Bench dated 24/25.8.1989 in O.A. Nos.516 and 732 of 1988, is distinguishable as the applicants in those cases were absorbed after the issue of the corrigendum dated 27.5.1980. In view of this, we see no conflict between the judgments delivered by the various Benches of the Tribunal.

(iii) The applicants before us as well as those before the other Benches of the Tribunal similarly situated are borne on an All India seniority list. The judgment of the New Bombay Bench results in determination of the seniority of such persons who were before that Bench in a different manner. We leave open the question whether such determination is legally sustainable, as the same is not germane to the issue raised for our consideration.

"21. This order may be placed before the same Division Bench to dispose of the applications in the light of the foregoing answers."

Since in the two applications before us all the applicants had been regularised as Assistant Storekeepers on various dates between 3.1.78

and 3.4.1979 in OA 434/89 and as L.D.C with effect from 1.6.1979 i.e. before the corrigendum was issued on 27.5.1980, in accordance with the findings of the Larger Bench, they are entitled to the benefit of seniority from the date of their initial i.e. first appointment on a casual basis. Accordingly in continuation of our judgment dated 20.8.1990 by which the applicants were directed to be regularised from the dates of their original appointment on a casual basis by condoning the breaks in service with all consequential benefits except that of seniority, we direct now that the benefit of seniority should also be given to them as from the dates of their original appointment on a casual basis. The aforesaid two applications are disposed of on the above lines. There will be no order as to costs.

21. A copy of this order may be placed on both the files.

21/12/90

(A.V HARIDASAN)
JUDICIAL MEMBER

21.12.90

(S.P MUKERJI)
VICE CHAIRMAN

n.j.j

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
ERNAKULAM

DATE OF DECISION .... 29.11.1990.

CORAM

Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

Hon'ble Mr. N.V. Krishnan, Administrative Member

Hon'ble Mr. N. Dharmadan, Judicial Member

O.A.434/89 AND O.A. 609/89

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4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

(By Hon'ble Mr. P.K. Kartha, Vice-Chairman)

A Division Bench consisting of Hon'ble Mr. S.P. Mukerji, Vice-Chairman, and Hon'ble Mr. A.V. Haridasan,

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Judicial Member, has referred to the Full Bench the question of determination of seniority of non-industrial employees in the light of the Ministry of Defence letter dated 24.11.1967 as amended by the corrigendum dated 27.5.1980.

2. The applicants in OA-434/89 have worked as Assistant Storekeepers under the Southern Naval Command on casual basis between 12.11.1974 and 13.10.1977. Their first appointment was through Employment Exchange and they passed the test/interview as prescribed for regular appointment. They were, however, given technical or artificial breaks after every eightyninth day of service and re-appointed to the same post. They were subsequently appointed on a regular basis as Assistant Storekeepers on various dates between 31.1.1978 and 3.4.1979. They were also assigned seniority from the dates of their last spells of casual service without break immediately prior to regularisation. They have claimed that they should be regularised from their respective dates of first appointment on casual basis, ignoring the period of technical breaks, with all consequential benefits, including reckoning of their seniority from the date of their initial appointment.

3. The applicant in OA-609/89 was originally appointed as L.D.C. on casual basis in the Naval Armament Depot, Alwaye under Southern Naval Command on 17.2.1975. She was also appointed after proper selection and was retained on a casual basis with intermittent breaks in service. She was regularised against a regular vacancy w.e.f. 1.6.1979 but was given the benefit of seniority in the LDCs' Cadre w.e.f. 3.4.1979, i.e., from the commencement of her last spell of casual service without break immediately prior to regularisation. She has also prayed that the respondents be directed to regularise her as an L.D.C. w.e.f. 17.2.1975,

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i.e., the date of her first casual employment with all consequential benefits, including the benefit of seniority from that date.

4. It may also be mentioned that persons similarly situated had moved the Andhra Pradesh High Court and the Calcutta Bench, Hyderabad Bench, Madras Bench, and the New Bombay Bench of this Tribunal and the reliefs sought in the present applications before us had been granted to them, except in the case of the applicants before the New Bombay Bench as regards the benefit of reckoning seniority from the initial date of their appointment. The judgements delivered by the Andhra Pradesh High Court and the other Benches of this Tribunal have been cited before us and have been discussed in the reference order.

5. The relevant administrative instructions issued by the respondents are contained in the letter of the Ministry of Defence dated 24.11.1967 and the corrigendum dated 27.5.1980.

6. On 24.11.1967, the Ministry of Defence directed that the past service rendered from the date of appointment of the casual non-industrial employees who are converted as regular non-industrial employees, will be treated as having been rendered in the regular capacity, and that they will be entitled to all benefits as for regular employees. On 27.5.1980, they issued a corrigendum which stipulated that the service rendered on casual basis prior to appointment on regular basis, shall not count for seniority.

7. The Division Bench has observed that the two issues which are to be resolved in the two applications under reference are as under:-

(a) Whether the applicants should be regularised with effect from the date of their first initial

appointment as casual employees after condoning the technical breaks; and

(b) from which date their seniority in the regular cadre in which they have been regularised should be counted.

8. Insofar as the first issue is concerned, the Division Bench found that there was a consensus of findings by the High Court of Andhra Pradesh and all the Benches of the Tribunal to the effect that in accordance with the various orders of the Ministry of Defence, the applicants are entitled to be converted into regular employees with effect from the date of their initial employment as casual employees and that if there have been some technical breaks during their entire period of casual employment, the same are to be condoned. In view of this, the Division Bench reiterated the same view.

9. Regarding the date from which the seniority should be reckoned, except for the New Bombay Bench of the Tribunal, all other Benches (at Hyderabad, Calcutta and Madras) have impliedly accorded seniority to the applicants on the basis of their date of initial appointment without bringing in the restriction imposed by the circular dated 27.5.1980. The New Bombay Bench relying on the corrigendum of 27.5.1980, directed that "respondents shall fix the seniority of the applicants in their respective grade from the dates on which they are absorbed against regular vacancies."

10. The Division Bench disagreed with the aforesaid direction of the New Bombay Bench of the Tribunal and has referred the following issue to the Full Bench:-

"Whether the benefit of seniority to casual employees who are regularised in accordance with the Ministry of Defence letter dated

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24.11.67 as amended by the corrigendum dated 27.5.80 can be given from the date of initial appointment on a casual basis, if the breaks in service are condoned, irrespective of the availability of a regular vacancy, especially in respect of those casual employees who were regularised prior to 27.5.80."

11. We have heard the learned Counsel of the parties and carefully gone through the records of these cases and have considered the matter. The question of regularisation of the casual non-industrial employees was considered by a Division of the Andhra Pradesh High Court in Writ Appeal No.239/80 decided on 10.12.1985 (P.V. Ramana & Others Vs. Union of India represented by the Under Secretary, Ministry of Defence, New Delhi and others), the Hyderabad Bench of this Tribunal, in a batch of applications disposed of on 14.5.1987, the Calcutta Bench of the Tribunal in its judgement dated 17.5.1988 in O.A. Nos.23 and 24/A&N of 1987 (R.S. Pillai & Others Vs. Union of India & Others) and by the Bombay Bench in its judgement dated 24/25.8.1989 in O.A. Nos.516 and 732 of 1988 (N.R. Naik & Another Vs. Union of India through the Under Secretary, Ministry of Defence & Others). A copy of the judgement of the Madras Bench of the Tribunal to which a reference has been made in the judgement of the Calcutta Bench mentioned above, is not, however, part of the record. In none of the aforesaid judgements, is there any reference to the entitlement of the applicants to seniority from the respective dates of their initial appointment, though their services were directed to be regularised from those dates. Barring the judgement of the New Bombay Bench, in none of the other judgements of this Tribunal or of the judgement of the Andhra Pradesh High Court is there any reference to the corrigendum issued by the Ministry of Defence on 27.5.1980.

12. In our considered opinion, once it is concluded that the applicants should be regularised with effect from the date of their intial appointment as casual employees after condoning the technical breaks, it is implicit that those employees would be entitled to seniority from the same date of their initial appointment in which they have been

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regularised.

13. In G.P. Doval Vs. Chief Secretary, Government of U.P., 1984 (4) S.C.C. 329 at 342, the Supreme Court has observed that "It is thus well settled that where officiating appointment is followed by confirmation, unless a contrary rule is shown, the service rendered as officiating appointment cannot be ignored for reckoning length of continuous officiation for determining the place in the seniority list". (See also Delhi Water Supply and Sewage Disposal Committee & Others Vs. R.K. Kashyap & Others, 1989 S.C.C. (L&S) 253).

14. The New Bombay Bench has struck a different note by relying on the corrigendum dated 27.5.1980 which has no application to the facts and circumstances of the two applications before us.

15. In the case before the New Bombay Bench, it is clear that the applicants were absorbed after the issue of the corrigendum dated 27.5.1980, while in the case of the applicants before us, they had been regularised much earlier than the issue of the said corrigendum. The applicants in OA-434/89 were regularised on various dates from November, 1974 to April, 1979, while the applicant in OA-609/89 was regularised w.e.f. 1.6.1979. Consequently, the decision of the New Bombay Bench is clearly distinguishable.

15-A. The corrigendum dated 27.5.1980 while providing that the past casual service rendered prior to regular appointment

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be treated as service rendered in a regular capacity, also stipulates that this will not include treating the earlier service (though treated as having been rendered in a regular capacity) for purposes of seniority and that service rendered on casual basis prior to appointment on regular basis shall not count for seniority. Corrigendum is normaly issued to correct mistakes or errors in an earlier document and this is done without undue delay. Corrigendum is treated as part and parcel of the earlier document.

15-B. In the instant case, the corrigendum was issued after a lapse of about 12 years and it appears to be in the nature of an amendment which will have only prospective operation in the absence of a contrary indication therein. The applicants have not challenged its validity on the ground that their regularisation had taken place prior to the date of its issue. However, the respondents have contended that it has retrospective operation from 1967. In our view, this is not tenable.

16. The learned counsel for the respondents contended that the various benefits to which the employees who have been regularised by the Ministry of Defence letter dated 24.11.67, have been spelt out therein, but the said letter is silent on the benefit of seniority to which they would be entitled. According to them, this has been clarified in the corrigendum issued on 27.5.1980. As already indicated above, the corrigendum has no application to the facts and circumstances of this case and, therefore, it is unnecessary to go into the matter further.

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In the absence of any rule to the contrary, the very concept of regularisation dating back to the initial appointment coupled with condonation of breaks in service, necessarily implies that seniority should be reckoned from the date of initial appointment and not from the date of regularisation as such.

17. Before parting with this case, it may be mentioned that Shri Biju, learned counsel, appeared before us seeking oral request to intervene in the proceedings pertaining to OA-609/89 on the ground that a large number of persons would be adversely affected if the applicants are given reliefs sought by them in these applications. He mentioned the name of one, Babu Rajendra Prasad, who had been regularised from a date much earlier than the date when the present applicant in OA-609/89 was working only on casual basis. He submitted that between 1975, when the applicant in OA-609/89 was initially appointed on casual basis, and 1979, when she was regularised, several confirmations and promotions had taken place in the office of the respondents, and that in case the Tribunal comes to the conclusion that the applicants would be entitled to seniority from the date of initial appointment of the applicant in OA-609/89, it will have the effect of unsettling the settled state of affairs. He relied upon the decision of the Supreme Court in Amrit Lal Barry Vs. Collector of Central Excise (A.I.R. 1975 S.C.538) in this context.

18. No petition has been filed by the Intervenor before us. The issue referred to the Full Bench is for stating the correct law in regard to the determination of seniority in the context of the administrative instructions issued by the Ministry of Defence, referred to above. The individual cases will have to be considered by the Division Bench on

merits. We, therefore, leave open the question raised by the learned counsel for the Intervenor.

19. Another point raised by the learned counsel for the Intervenor is that the applications before us are not maintainable on the ground that all the persons who are likely to be affected by our decision have not been impleaded as the respondents. We are not impressed by this contention. In D.D. Joshi Vs. Union of India, 1983 S.C.C. (L&S) 321 at 336, a similar contention which was advanced before the Supreme Court, was rejected with the following observation:-

> ".....The decision in G.M., South Central Railway, Secunderabad (AIR 1974 S.C. 1755), would permit us to negative the contention, this being not a case of individual claim or claim of seniority by one person against specified others, but a question of interpretation of a provision and which interpretation could be given because it would be binding on the Union of India, the presence of others is unnecessary. Union of India would have merely to give effect to the decision of this Court. Therefore, the absence of those who may, by our interpretation, be adversely affected in the facts and circumstances of the case, need not be necessarily here and if the relief could have been granted, the same would not have been denied on the ground that proper parties were not before the Court."

20. We, therefore, answer the reference to the Full Bench as follows:-

(i) The benefit of seniority to casual employees who were regularised in accordance with the Ministry of Defence letter dated 24.11.1967, can be given from the date of initial appointment on a casual basis, if the breaks in service are condoned, irrespective of the availability of a regular vacancy. The corrigendum issued on 27.5.1980 will not apply to regularisation from dates prior to

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the date of its issue, as in the present case.

(ii) The judgement of the New Bombay Bench dated 24/25.8.1989 in O.A. Nos.516 and 732 of 1988, is distinguishable as the applicants in those cases were absorbed after the issue of the corrigendum dated 27.5.1980. In view of this, we see no conflict between the judgements delivered by the various Benches of the Tribunal.

(iii) The applicants before us as well as those before the other Benches of the Tribunal similarly situated are borne on an All India seniority list. The judgement of the New Bombay Bench results in determination of the seniority of such persons who were before that Bench in a different manner. We leave open the question whether such determination is legally sustainable, as the same is not germane to the issue raised for our consideration.

21. This order may be placed before the same Division Bench to dispose of the applications in the light of the foregoing answers.

(N. Dharmadan) 29.11.90
Judl. Member

29/11/90
(P.K. Kartha)
Vice-Chairman (Judl.)

29/11/90
(N.V. Krishnan)
Admv. Member

CCP-83/91 in
OA-434/89

21.1.92
(5)

Spm & AVH

Mr. Girijavallabhan for petitioner

—

Mr. NN Sugunapalan, SC CGSC takes notice of the C.C.P. and states that he will file a reply to the CCP. He may do so within 2 weeks with a copy to the petitioner.

List for further directions on 20.1.92

Adj

2.1.92

20.1.92
(20)

Spm & AVH

Mr. Girijavallabhan
Mr. Krishnakumar for respondents

—

The learned Counsel for the respondents seeks 2 weeks time to file reply to the CCP.

Accordingly, list for further direction on 3.2.92. No further adjournment will be given.

Adj

20.1.92

3.2.92
(22)

Sppm BAVH

Mr. Girija vallabhan
Mr. Krishnakumar

At the request of the learned Counsel for the respondents, list for further directions on 4.2.92

3.2.92

4.2.92

Sppm BAVH

Mr. Girijavallabhan.
Mr. Conniray. Rep. V Krishnakumar.

At the request of the learned Counsel for the respondents as the last opportunity two weeks time is given to either obtaining a stay order from the Supreme Court or implementing the order of the Tribunal.

List for further directions on CP on 18.2.92. A copy of the above order may be given to the learned counsel for respondents by hand.

4.2.92

5/2/92
order issued on 6/2/92

This was listed on 3/3 and on that date the case was adjourned to 19/3. (proceedings kept in 13 part refers)

SPM & ND

(24) Mr M Girijavallabhan
Mr V Krishnakumar, ACGSC

At the request of the learned counsel for the respondents, list for further directions on 19.3.92.

ND SPM

3.3.92

19-3-92
(7)

Mr Girijavallabhan
Mr Krishnakumar

At the request of the learned counsel for the respondents, list for further direction on 16.4.92. In case our judgement dated 21.12.90 is not complied with in full by them, Commodore Narula, Director of Civilian Personnel, Naval Headquarters, New Delhi would be required to attend in person before us on that date and explain why action under Contempt of Courts Act should not be initiated against him.

A copy of this order be given to the learned counsel for the respondents by hand.

Received today at 3.30 pm

Copy of order issued

(AVH) (SPM)

19-3-1992

SPM & ND

Mr. M. Girijavallabhan for the petitioner
Mr. V. Krishnakumar, ACGSC

We have heard the alleged Contemnor Commodore Narula, Director of Civilian Personnel, Naval Headquarters, New Delhi. We are not at all satisfied with the counter affidavit filed by him about non-implementation of the part of the judgment in O.A. 434/89 relating to fixation of seniority. There is no indication or expression of remorse for non-compliance of the judgment. There is no indication also of any intention of implementing the judgment in future within a particular period. Commodore Narula has simply stated

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that whatever has been possible has been done and " when " the question of seniority is decided by the Supreme Court will be implemented without any delay and for this ~~no~~ two months more time is necessary." The Even in respect of the time sought, this extension is not for implementation of the judgment but for obtaining the decision of the Hon'ble Supreme Court. No... ~~such~~ stay order has been obtained from the Supreme Court. Before we take further action in the OCP, we grant three weeks to Commodore Narula to file a supplementary statement as requested for by him. List for further direction on 26.5.92.

(N. Dharmadan)
16.4.92
Judicial Member

(S.P. Mukerji)
Vice Chairman
16.4.92

21/4/92
m/mob
21/4
order dt. 16/4/92 issued on 22/4
S
Supplementary affidavit filed on 11-5-92
A 21/4/92

26-5-92
(1) Mr M Girijavallabhan
Mr V Krishnakumar

We have heard the learned counsel for the parties and the contemner Commodore Narula, Director of Civilian Personnel, Naval Headquarters, New Delhi. Commodore Narula has filed also a statement and stated before us that in complaince with the judgement of this Tribunal dated 21.12.1990 in OA-434/89, all the applicants have been given benefits of seniority based on their dates of initial appointment on a casual basis. He further amplified ~~by~~ his statement by stating that those who were initially appointed later than the applicants have been placed below the applicants in the seniority list and that the review select list enclosed with the statement is based on the revised seniority list.

We accept this statement of Commodor Narula and discharge the notice of contempt with liberty to the petitioners to approach appropriate legal forum, in accordance with law in case they are aggrieved by the revised seniority list as stated by Commodor Narula. Commodor Narula has also stated before us that the original respondents will be prepared to make any corrections in the seniority list, should there be any such occasion for doing so.

Accordingly, the CCP is closed.

(AV Haridasan)
J.M.

(SP Mukerji)
V.C.

26-5-1992