

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA No.508/12

Thursday this the *4th* day of July, 2013.

CORAM

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Mr. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

K.R.Manoharan, age 56 years
S/o K.A.Raman
Upper Division Clerk
Central Administrative Tribunal
Ernakulam Bench, Ernakulam-682 017.
Residing at Kattookkaran House
Kuzhupilly, Ayampally P.O.
Ernakulam District-682 505.

Applicant

(By Advocate:Mr.T.C.Govindaswamy)

Versus

1. **Union of India represented by**
Secretary to the Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training
New Delhi-110 001.
2. **The Principal Registrar**
Central Administrative Tribunal
Principal Bench
No.61/35, Copernicus Marg
New Delhi-110 001.
3. **The Registrar**
Central Administrative Tribunal
Ernakulam Bench
Indira Nagar, Sastha Temple Road
Kaloor, Kochi-682 017.
4. **The Secretary to the Government of India**
Ministry of Defence
Armed Forces Headquarters
New Delhi-110 001.

Respondents

(By Advocate: Mr.M.K.Aboobacker, ACGSC)

*This application having been heard on 2nd July, 2013, this Tribunal on *4/7/13*
July, 2013 delivered the following:*

ORDER

HON'BLE DR.K.B.S.RAJAN, JUDICIAL MEMBER

The applicant, originally belonging to the Armed Forces Headquarters Civil Services (AFHQ for short) Clerical Grade since 12-11-1982, came on deputation to the Central Administrative Tribunal (C.A.T. for short) on 15-11-1985 in the Bangalore Bench of the Tribunal and later on got himself transferred to the Ernakulam Bench. Along with him came on deputation from the very same organization, certain other individuals including one Shri Sripatha Rao (Bangalore Bench) and another Ms. Krishnaveni (Madras Bench). Of these, the former was senior to the applicant, while the latter i.e. Ms. Krishnaveni, junior in the said AFHQ Clerical Grade. In January, 1989, the AFHQ intimated the applicant about his turn for being considered for promotion to the post of Upper Division Clerk. The C.A.T. was asked to relieve the applicant to take up the promotion in the AFHQ. In case he was not desirous of reversion to the parent cadre within the specified date (31- 01-1989), he was to give a declaration accordingly. Annexure A-2 order dated 05-01-1989 refers. The exigencies in the domestic front dissuaded the applicant to move out of C.A.T. According to the applicant, the same situation prevailed in the case of the other two as well. As on 01-11-1989, the C.A.T. Recruitment Rules came into existence and at that material point of time, each Bench had its own complement, with promotion chances within the Bench, independent of other Benches. Process of absorption in the C.A.T. was also initiated in accordance the terms of the Recruitment Rules. Of the three, i.e. Ms. Krishnaveni, the applicant and Shri Sripatha Rao, Ms. Krishnaveni was deemed to have been absorbed as Upper Division Clerk. Shri Sripatha Rao moved the C.A.T. Bangalore Bench in OA No. 36 of 2010 seeking assignment of inter-se seniority and fitment with specific reference to Ms. Krishnaveni. His claim was allowed, vide order dated 09-02-2011 at Annexure A-3. The applicant herein, finding the above benefit having accrued to two others, to his exclusion, made a representation dated 31-05-2011 addressed to the 2nd Respondent, i.e. the Principal Registrar, C.A.T. (PB), New Delhi, vide Annexure A-4. The respondents, vide Annexure A-1 rejected the claim of the applicant on the ground that the applicant exercised his option to be absorbed as LDC at the time of absorption and his seniority would be as per Rule 5 of the Recruitment Rules, i.e. as LDC only.

2. The applicant has raised the following grounds -

(a) All those who had come from the AFHQ to C.A.T., on deputation were all identically situated and there is no reason why the applicant alone should be discriminated in matters of absorption as Upper Division Clerk w.e.f. 01-11-1989.

(b) The applicant was senior to Ms. Krishnaveni in the AFHQ, i.e. the Parent Cadre. Upsetting the inter-se seniority as available in the Parent Department, the said Ms. Krishnaveni had been deemed to have been absorbed as UDC w.e.f. 01-11-1989, without following the inter-se seniority, which is unconstitutional.

(c) Shri Sripathi Rao also was not initially absorbed as UDC w.e.f. 01-11-1989 and by virtue of order in OA No. 36 of 2010 of the Bangalore Bench, he had been afforded deemed absorption as UDC from 01-11-1989 and as such, a like treatment to the applicant ought to have been afforded to the applicant.

3. The applicant has, therefore, prayed for the following reliefs:-

- (i) *Call for the records leading to the issue of A1 and quash the same;*
- (ii) *Declare that the applicant is entitled to be deemed to have been absorbed as an Upper Division Clerk in the Central Administrative Tribunal with effect from 01.11.1989 with all consequential benefits emanating there from and to direct the respondents to grant the benefits on that basis.*
- (iii) *Award costs of and incidental to this application.*
- (iv) *Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.*

4. Respondents have contested the O.A. They have taken the preliminary objection of limitation as well as non joinder of parties. As regards the merits of the matter, they have maintained that Shri Sripathi Rao had been afforded promotion as UDC in the Parent Cadre w.e.f. 19-02-1988 and at the time of exercising of option, he had opted for absorption as UDC and not LDC. So is the case with Ms. Krishnaveni, who too was granted promotion as UDC on ad hoc basis in the C.A.T. at the Bench, where she was posted on deputation. The applicant had during the material point of time was functioning only as LDC.

5. The applicant has filed his rejoinder, in which he had explained the reason for his non promotion as UDC, i.e. there being no vacancy to the post of UDC in Ernakulam Bench. He has claimed that the respondents ought to have protected

the inter se seniority of all those who had come from AFHQ, in which event, Ms. Krishnaveni would have figured in junior to the applicant and since she had been granted promotion, the applicant too ought to have been afforded the same benefit.

6. As the applicant submitted that the seniority list of UDC as published on various years would throw some light on the matter relating to seniority of the applicant, the respondents were directed to make available such seniority list and the same had been furnished by the respondents, vide Annexure R-2 and R-3 filed under a statement of the Respondents.

7. Counsel for the applicant submitted that in all, five individuals earlier working in the AFHQ came on deputation to C.A.T. Of these, admittedly, Ms. Krishnaveni happened to be Junior to the applicant as well as Shri Sripatha Rao. Of course, Sripatha Rao is senior to the applicant in the C.A.T. All were considered for promotion as UDC in the AFHQ and communication as at Annexure A-2 had been sent to others as well. In some cases, by virtue of availability of vacancy in the post of UDC, promotions on ad hoc basis were given and so far as Ernakulam bench is concerned, since there was no vacancy of UDC, the applicant remained as LDC only. Promotion to the post of UDC in other Benches was only under fortuitous circumstances. When absorption took place as on 01-11-1989, it was expected that the seniority as in the parent cadre would be maintained, in which event the applicant would have been positioned above Ms. Krishnaveni. In fact, such an order of seniority was maintained within the applicant and Shri Sripatha Rao, whose seniority position was above the applicant. Seniority list circulated on 23-09-2008 vide Annexure R-2 refers. However, Shri Sripatha Rao, on the basis of the fact that Ms. Krishnaveni had been absorbed as UDC, moved the aforesaid OA No. 36 of 2010 and got an order which was implemented and his position in the seniority had been advanced. The counsel for the applicant also stated that initially, the said Sripatha Rao was granted regular promotion as UDC in the C.A.T. only in 1994. It was later that his promotion was advanced and his seniority as UDC reflected on the date of absorption on 01-11-1989. The applicant stands in the very same pedestal as the aforesaid Sripatha Rao and accordingly he had also penned a representation, vide Annexure A-4 dated 31-05-2011 but the respondents rejected the same through the impugned Annexure A-1 order.

8. Counsel for the respondents, referred to the reply filed highlighting the aspect of limitation as also non joinder of parties. He has stated that if the date of absorption is taken into account for working out the occurrence of cause of action, then it dates back to 24 years. Thus, the case is hit by law of limitation. He has

also referred to non jointer of necessary parties and in this regards, relied upon the decision in the case of **Vijay Kumar Kaul vs Union of India (2012) 7 SCC 610.**

9. As regards the merits of the matter, the counsel submitted that the case of Krishnaveni and that of Sripatha Rao stood in identical pedestal, while that of the applicant in a different pedestal. In the other two cases, the parent Department had afforded the promotion of UDC and further that the option exercised by them at the time of absorption was in the grade of UDC, in contradistinction to the fact that the applicant was not afforded any promotion by the parent Department and further that consciously he had exercised his option for absorption as LDC only. This distinguishing feature is sufficient to hold that the applicant is not entitled to the same benefits or concession as made available to the other two individuals.

10. Counsel for the applicant in the rejoinder has submitted that all said and done, the decision has to take place on the basis of the facts on record. If the applicant as well as Sripatha Rao had been placed only as LDC, at the time of absorption then that Shri Sripatha Rao had opted for UDC was not of much consequence. All that is to be seen is whether the said Sripatha Rao was afforded any promotion in the parent Department. Records alone would be able to throw light in this regard. As regards limitation, the cause of action arose when Shri Sripatha Rao got the benefits as per the order in OA No. 36/2010 of the Bangalore Bench. Insofar as non-jointer of parties is concerned, even in the case of Sripatha Rao, there had been no private respondents.

11. Arguments were heard and documents perused. First, as to the law of limitation and the other technical objection of Non-jointer of Parties. Apparently, the applicant had been under the impression that once the absorption had taken place as LDC the same could not be changed. This impression got changed when the applicant happened to see that Shri Sripatha Rao could succeed in his OA before the Bangalore Bench. It is thereafter that the applicant preferred representation. In the case of **Bhoop Singh vs Union of India, (1992) 3 SCC 136**, on a writ petition filed in 1969-70 by some dismissed Constables of Delhi Police, in 1975, the Delhi High Court allowed the writ petition and ordered reinstatement. On the basis of the same, one Dharmpal filed a writ petition, which was transferred to CAT and the Tribunal condoned the delay involved and when the respondents took up the matter to the Apex Court, the Apex Court had dismissed the petition of the respondents. It was thereafter, that Shri Bhoop Singh wanted the same relief as Dharmpal had obtained, but the CAT rejected case on account of limitation and the same had been upheld by the Apex Court. In the instant case, Sripatha Rao could be equated to the first writ petitioner, while the applicant to

Dharm Pal. From this point of view, limitation would not stare at the applicant. However, in so far as non joinder of necessary parties is concerned, the counsel for the applicant submitted that all that had been prayed for in the OA is a declaration to the effect that the applicant is entitled to be deemed to have been absorbed as UDC in 1989. The relative seniority is only a consequence thereof and the respondents could well put all those to notice whose seniority could be affected. Such a declaration would directly affect the seniority position of some of the UDCs. In the case of **Vijay Kumar Kaul (supra)**, the Apex Court had held as under:-

26. From the aforesaid pronouncement of law, it is manifest that a litigant who invokes the jurisdiction of a court for claiming seniority, it is obligatory on his part to come to the court at the earliest or at least within a reasonable span of time. The belated approach is impermissible as in the meantime interest of third parties gets ripened and further interference after enormous delay is likely to usher in a state of anarchy.

27. The acts done during the interregnum are to be kept in mind and should not be lightly brushed aside. It becomes an obligation to take into consideration the balance of justice or injustice in entertaining the petition or declining it on the ground of delay and laches. It is a matter of great significance that at one point of time equity that existed in favour of one melts into total insignificance and paves the path of extinction with the passage of time.

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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.

37. In this context we may refer with profit to the decision in *Indu Shekhar Singh v. State of U.P.* wherein it has been held thus:

"56. There is another aspect of the matter. The appellants herein were not joined as parties in the writ petition filed by the respondents. In their absence, the High Court could not have determined the question of inter se seniority."

38. In *Public Service Commission v. Mamta Bisht* this Court while dealing with the concept of necessary parties and the effect of non-impleadment of such a party in the matter when the selection process is assailed observed thus:

"9. ... in *Udit Narain Singh Malpaharia v. Board of Revenue*, wherein the Court has explained the distinction between necessary party, proper party

*and pro forma party and further held that if a person who is likely to suffer from the order of the court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice. More so, proviso to Order 1 Rule 9 of the Code of Civil Procedure, 1908 (hereinafter called 'CPC') provides that non-joinder of necessary party be fatal. Undoubtedly, provisions of CPC are not applicable in writ jurisdiction by virtue of the provision of Section 141 CPC but the principles enshrined therein are applicable. (Vide *Gulabchand Chhotalal Parikh v. State of Gujarat, Babubhai Muljibhai Patel v. Nandlal Khodidas Barot and Sarguja Transport Service v. STAT.*)*

*10. In *Prabodh Verma v. State of U.P. and Tridip Kumar Dingal v. State of W.B.*, it has been held that if a person challenges the selection process, successful candidates or at least some of them are necessary parties."*

12. The above cannot be lost sight of by the Tribunal, especially, when the counsel for the applicant relied heavily on the above.

13. As regards merits, all that is to be seen is whether the case of Sripatha Rao and that of the applicant stand in equal footing. The counsel for the respondents emphatically stated that they do not stand in equal footing. In this regard, he had referred to the following portion of the order at Annexure A-3 (OA No. 36/2010):-

"The applicant had stated in the OA that he had exercised his option for absorption as UDC and against such option he was absorbed as LDC with effect from 1-11-1989. As the respondents have not produced any document to disprove this claim, as already stated in para 15 above, the contention of the applicant has been accepted by us. It is also not disputed that the applicant was found eligible for absorption in the CAT. Having found the applicant eligible for absorption and having regard to the fact that he was promoted to the UDC cadre with effect from 19-02-1988, under NBR, the next issue to be decided is his seniority, which is to be fixed as per Rule 5(2)"

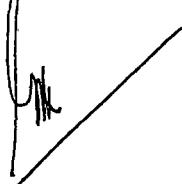
14. In Annexure A-1, the respondents have clearly stated that the applicant had opted for LDC for absorption. The option preferred by Sripatha Rao is for UDC. However, there was no documentary proof to prove the same. Omission to disprove has been taken to mean that the said Sripatha Rao had opted for UDC. The applicant could have attempted to obtain information in this regard from the authority concerned for comparison, which he had not chosen. In so far as

promotion as UDC in the parent Department, here again, the same has been so taken as there was no denial to the same. The finding of the Tribunal, would, however, be taken as correct unless proved otherwise.

15. The above two features – (a) option to be absorbed as UDC and (b) promotion as on 19-02-1988 as UDC under NBR are material difference when compared to the case of the applicant.

16. The situation would not have perhaps arisen, had there been independent seniority list Bench-wise. Though initially promotions were on Bench-wise basis, later on the same got merged into one seniority unit. It is on account of the same, that the case of the applicant who never held the post of UDC at the time of absorption on 01-11-1989 was considered for absorption as LDC for which he had exercised his option.

17. In view of the above, the applicant could not make out a case in his favour. If however, the applicant attempts to obtain the information about the option exercised by the said Shri Srivathsa Rao at the time of option and similarly he verifies the fact that the said Srivathsa Rao had been promoted to UDC on 19-02-1988 and if the same are not so as per records, he is at liberty to seek recourse to legal remedies as per law in which event, this order would not come in his way. With this observation, the OA is dismissed. No cost.


(K.GEORGE JOSEPH)
Administrative Member


(Dr K.B.S.RAJAN)
Judicial Member