

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 515/97

Tuesday, this the 25th day of August, 1998.

CORAM:

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

HON'BLE MR AM SIVADAS, JUDICIAL MEMBER

1. M.A. Sudarsana Babu,
Upper Division Clerk,
Regional Passport Office,
Cochin - 682 036.
2. K.K. Ambujakshy,
Upper Division Clerk,
Regional Passport Office,
Cochin - 682 036.
3. M. Rajappan,
Upper Division Clerk,
Regional Passport Office,
Cochin - 682 036.
4. P.K. Ashok Kumar,
Upper Division Clerk,
Regional Passport Office,
Cochin - 682 036.
5. N. Sathiamma,
Upper Division Clerk,
Regional Passport Office,
Cochin - 682 036.
6. V.P. Joy,
Upper Division Clerk,
Regional Passport Office,
Cochin - 682 036.
7. Kumari Bosco,
Upper Division Clerk,
Regional Passport Office,
Cochin - 682 036.

...Applicants

By Advocate Mr.Mohan Pulikkal

Vs.

1. Union of India
represented by its Secretary,
Ministry of External Affairs,
Government of India,
New Delhi.
2. Joint Secretary (CPV) & Chief Passport Officer,
Ministry of External Affairs,
Government of India.

3. Regional Passport Officer,
Regional Passport Office,
Panampilly Nagar,
Cochin - 682 036.
4. N.J. Mary,
Upper Division Clerk,
Regional Passport Office,
Cochin - 682 036.
5. V.M. Eliamma,
W/o. Sebastian Julius,
Upper Division Clerk,
Passport Office, Cochin - 36.
6. K. Micle,
S/o. M.P. Augustine,
Upper Division Clerk,
Passport Office, Cochin - 36.
7. B. Sreekumar,
S/o. N. Bhaskaran Pillai,
Upper Division Clerk,
Passport Office, Cochin - 36.

...Respondents

By Advocate Mr.S. Radhakrishnan, ACGSC (R1-3)
By Advocate Mr.P. Ramakrishnan (R4-7)

The application having been heard on 25.8.98, the
Tribunal on the same day delivered the following:

ORDER

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

Applicants are UDCs in the Regional Passport Office.

By A-2 Seniority List dated 17.11.94, the respondents regulated the inter se seniority of regularised Daily Rated Clerks who are regularised on the same date on the basis of date of birth. Aggrieved by this, applicants filed O.A.74/94 which was disposed of by the Tribunal with a direction to consider the representation submitted by the applicants. Thereupon, respondents issued a fresh Seniority List A-5. It is submitted that the Seniority List prepared along with A-5 relating to the Assistants was challenged in O.A.1600/95 and connected cases by the Assistants and by A-6 order, the Tribunal quashed the Seniority List of Assistants on the ground that no notice was given to the affected parties before releasing the Seniority List of Assistants. The respondents thereupon issued A-8 orders dated 25.4.96 withdrawing A-5 Seniority List and restoring the pre-revised Senio-

rity List of UDCs dated 17.11.94 (A-2). Applicants submitted representations against A-8 which were rejected by A-11 and A-12 orders. Applicants have filed this application challenging the A-2 Seniority List and A-8 orders restoring A-2 Seniority List and also the orders rejecting their representations (A-11 & A-12). They contend that the inter se seniority of persons regularised on the same date has to be determined on the basis of length of service put in by them as Daily Rated Clerks. The A-5 Seniority List ought not to have been withdrawn because it was issued in pursuance of orders of the Tribunal in O.A. 74/94 with due notice to all affected parties by paper publication and A-5 list was not challenged before the Tribunal. They also submit that the withdrawal of A-5 Seniority List without giving notice is in violation of the principles of natural justice. Rule 11 of the Central Passport and Emigration Organisation (Initial Constitution and Maintenance) Rules, 1959 is silent as far as the method of determining the inter se seniority of officials having various lengths of temporary service but have been regularised on the same date. In the absence of provision to determine such inter se seniority the respondents adopted the length of temporary service as criteria while preparing A-5 Seniority List. This cannot be faulted since the Tribunal in O.A. 2323/93 has not held that such principle is illegal. The Supreme Court has held in several decisions that the period of officiating service till the regularisation of service in accordance with rules will count for the purpose of determining Seniority. A-5 Seniority List is in accordance with the Statutory Recruitment Rules and is drawn up strictly adhering to Rule 11 referred to above. Applicants pray that A-8 be set aside to the extent it withdraws A-5 Seniority List and maintains A-2 Seniority List and that A-2, A-11 and A-12 be quashed. They also pray for a direction to the respondents 1-3 to make further promotions from the cadre of UDCs based on A-5 Seniority List.

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2. The respondents 1-3 submit that they had decided to adopt the same principle to prepare the Seniority List of Assistants and UDCs. As a result of O.A. 1600/95, the revised Seniority List of Assistants was quashed and the earlier Seniority List of Assistants was restored. The respondents thereupon decided to adopt the same principle for the Seniority of UDCs and therefore restored the old Seniority List of UDCs.

3. Respondents 4-7 submit that A-2 has been drawn up following the practice adopted for several years and which is also the practice for other cadres like that of LDC. By issuing A-5, a settled principle was sought to be disturbed without the support of any law or rule.

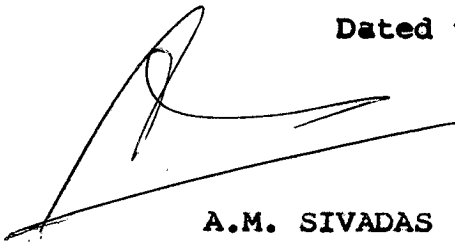
4. We notice that the Rule 11 of the Central Passport and Emigration Organisation (Initial Constitution and Maintenance) Rules, 1959 states that the Seniority in a Grade shall count from the date from which the officer has continuously held a post in that grade or an equivalent grade otherwise than in a purely temporary basis as local arrangement or has continuously drawn pay exceeding the maximum of the time scale of pay of grade whichever is earlier. This rule has not been challenged. It is clear from this rule that the Seniority will only count from the date from which the officer has continuously held a post in that grade and therefore the period of service prior to the date from which the officer has continuously held the post will not count for Seniority. The decisions of the Supreme Court referred to in the application do not support the applicants since they relate to totally different state of affairs. The service of the applicants prior to regularisation is only Daily Rated Service. In the absence of a provision in that regard to determine the inter se Seniority of persons who have been regularised on the same date and who have held continuously a post in the grade from the

same date, the respondents have adopted the principle of date of birth. The rules in that regard have neither been produced by the respondents nor are they challenged by the applicants.

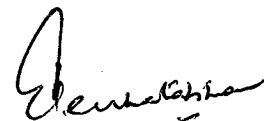
5. In the circumstances, we do not see any reason to quash the Seniority List A-2. It would therefore follow that the orders A-8, A-11 and A-12 also need not be quashed.

6. Application is dismissed. No costs.

Dated the 25th day of August, 1998.



A.M. SIVADAS
JUDICIAL MEMBER



P.V. VENKATAKRISHNAN
ADMINISTRATIVE MEMBER

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LIST OF ANNEXURES

1. Annexure A2 : True extract of seniority list of Officers in Grade VI(UDC/Steno) of the Central Passport Organisation issued under O.M. No.V.IV/582/6/94 dated 17.11.94 of the Under Secretary(PVA) for 1st respondent.
2. Annexure A5 : True extract of the revised seniority list of Officers in Grade VI(UDC/Steno) of the Central Passport Organisation issued under O.M. No.V.IV/582/2/95 dated 14.3.1996 of the Under Secretary(PVA) for the first respondent.
3. Annexure A6 : True copy of the Order in OA Nos.1600/95, 64 & 122 of 1996 of the Central Administrative Tribunal, Ernakulam Bench. dated 20.3.1996.
4. Annexure A8 : True copy of Memorandum No.CHN/582/1/96 dated 25.4.1996 of the third respondent.
5. Annexure A11: True copy of the Memorandum No.CHN/582/0/95 dated 28.2.1997 of the third respondent.
6. Annexure A12: True copy of Memorandum No.CHN/582/0/95 dated 5.2.1997 of the third respondent.

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