

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**Original Application No. 53 of 2011**

*Thursday*, this the 01<sup>st</sup> day of March, 2012

**CORAM:**

**HON'BLE MR. JUSTICE P.R. RAMAN, JUDICIAL MEMBER  
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**


1. P.T. Rajagopal, U.D. Clerk,  
Passport Office, Kozhikode.
2. K. Unnikrishnan, U.D. Clerk,  
Passport Office, Kozhikode.
3. N. Girija, U.D. Clerk,  
Passport Office, Kozhikode.
4. P. Vinodini, U.D. Clerk,  
Passport Office, Kozhikode.
5. P. Sivarani, U.D. Clerk,  
Passport Office, Kozhikode.
6. P. Remadevi, U.D. Clerk,  
Passport Office, Kozhikode.
7. T. Lalitha, U.D. Clerk,  
Passport Office, Kozhikode.
8. K.S. Sindhu, U.D. Clerk,  
Passport Office, Thiruvananthapuram.
9. K.R. Reena, U.D. Clerk,  
Passport Office, Ernakulam.
10. N.M. Suhara Beevi, U.D. Clerk,  
Passport Office, Ernakulam.
11. K.M. Ponnu, U.D. Clerk,  
Passport Office, Ernakulam.


... Applicants

[By Advocate Mr. P. Santhosh Kumar]


versus

1. Union of India, represented by  
The Secretary, Ministry of External Affairs,  
Government of India, New Delhi.
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2. Joint Secretary (CPV) and  
Chief Passport Officer,  
Ministry of External Affairs, New Delhi.
  3. Regional Passport Officer, Kozhikode.
  4. Passport Officer, Passport Office,  
Thiruvananthapuram.
  5. Passport Officer, Passport Office, Kochi.
  6. The Secretary Personnel,  
Department of Personnel and Training,  
Ministry of Personnel, Public Grievances  
and Pension, North Block, New Delhi.
  7. The Joint Secretary, Establishment Division,  
Department of Personnel and Training,  
Ministry of Personnel, Public Grievances  
and Pension, North Block, New Delhi.
  8. Rajalakshmy Balachandran, Assistant,  
Passport Office, Kochi.
  9. K. Muraleedharan Pillai, Assistant,  
Passport Office, Kochi.
  10. Reema Babu, Assistant,  
Passport Office, Kochi.
  11. Ani Shibu, Assistant,  
Passport Office Kochi.
  12. Shibu John, Assistant,  
Passport Office, Kochi.
  13. Ajith Kumar S., Assistant,  
Passport Office, Kochi.
  14. Sobha Ajayakumar, Assistant,  
Passport Office, Kochi.
  15. Sheela Reghu, Assistant,  
Passport Office, Kochi.
  16. Daisy Paulose, Assistant,  
Passport Office, Kochi.
  17. Annie Alex, Assistant,  
Passport Office, Kochi.
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18. Omana Pradeep, Assistant,  
Passport Office, Kochi.
  19. K.V. Kochurani, Assistant,  
Passport Office, Kochi.
  20. V.S. Jyothirmayi, Assistant,  
Passport Office, Kochi.
  21. Sunu K. Paul, Assistant,  
Passport Office, Kochi.
  22. K.C. Bindu, Assistant,  
Passport Office, Kochi.
  23. Beena Somasekhjaran, Assistant,  
Passport Office, Kochi.
  24. A.S. Latha, Assistant,  
Passport Office, Kochi.
  25. P.A. Preetha, Assistant,  
Passport Office, Kochi.
  26. C.P. Suhasini, Assistant,  
Passport Office, Kochi.
  27. Mini Paul, Assistant,  
Passport Office, Kochi.
  28. K.R. Sheeba, Assistant,  
Passport Office, Kochi.
  29. Jiji Roby, Assistant,  
Passport Office, Kochi.
  30. Shobana Varghese, Assistant,  
Passport Office, Kochi.
  31. K. Satheesh Kumar, Assistant,  
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  32. K.V. Santhosh Kumar, Assistant,  
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  33. Asokan K.K., Assistant,  
Passport Office, Kozhikode.
  34. Venu Gopalan P., Assistant,  
Passport Office, Kozhikode.
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35. Saly Joseph Mani, Assistant,  
Passport Office, Kozhikode.
36. U.V. S. mitha, Assistant,  
Passport Office, Kozhikode.
37. Jijy K, Assistant,  
Passport Office, Kozhikode.
38. Ushakumari K.T., Assistant,  
Passport Office, Kozhikode.
39. Reeja. V., Assistant,  
Passport Office, Kozhikode.
40. Venu Gopal E.M., Assistant,  
Passport Office, Kozhikode.
41. Pankaja O.K., Assistant,  
Passport Office, Kozhikode.
42. Babu P.K., Assistant,  
Passport Office, Kozhikode.
43. Reena P.K., Assistant,  
Passport Office, Kozhikode.
44. Sheeba K., Assistant,  
Passport Office, Kozhikode.
45. Bindu K., Assistant,  
Passport Office, Kozhikode.
46. Rema A.R.K., Assistant,  
Passport Office, Kozhikode.
47. Bindu M., Assistant,  
Passport Office, Kozhikode.
48. Anithakumari M.K., Assistant,  
Passport Office, Kozhikode.
49. Ramadasan T.K., Assistant,  
Passport Office, Kozhikode.
50. Jayasree C., Assistant,  
Passport Office, Kozhikode.
51. Baby Shylaja Kaniyil, Assistant,  
Passport Office, Kozhikode.

52. Mini P., Assistant,  
Passport Office, Kozhikode.
  53. Sobhana V., Assistant,  
Passport Office, Kozhikode.
  54. Beena P., Assistant,  
Passport Office, Kozhikode.
  55. G. Umadevi, Upper Division Clerk,  
Passport Office, Malappuram.
  56. V. Ajish Babu, UD Clerk,  
Passport Office, Kozhikode.
  57. N. Ajildas, UD Clerk,  
Passport Office, Kozhikode.
  58. P. Mohanan, UD Clerk,  
Passport Office, Kozhikode.
  59. Juni Susan Abraham, UD Clerk,  
Passport Office, Kozhikode.
  60. N.K. Ajayakumar, UD Clerk,  
Passport Office, Kozhikode.
  61. C.P. Manoharan, UD Clerk,  
Passport Office, Kozhikode.
  62. M. Sunil Kumar, UD Clerk,  
Passport Office, Kozhikode.
  63. N.K. Beena, UD Clerk,  
Passport Office, Kozhikode.
  64. N. Geetha, UD Clerk,  
Passport Office, Malapuram.
  65. C.P. Rema, UD Clerk,  
Passport Office, Malapuram.
  66. S.S. Beena, UD Clerk,  
Passport Office, Trivandrum.
  67. S. Ushakumari Amma, UD Clerk,  
Passport Office, Trivandrum.
  68. A.R. Parameswaran, UD Clerk,  
Passport Office, Trivandrum.
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69. R.S. Murali, UD Clerk,  
Passport Office, Trivandrum.
70. P. Solie, UD Clerk,  
Passport Office, Trivandrum.
71. A. Vijayakumar, UD Clerk,  
Passport Office, Trivandrum.
72. S. Jasmine, UD Clerk,  
Passport Office, Trivandrum.
73. Zeema Mary, UD Clerk,  
Passport Office, Trivandrum.
74. L.G. Salilaja, UD Clerk,  
Passport Office, Trivandrum.

... Respondents

[By Advocates Mr. Sunil Jacob Jose, SCGSC (R1-7),  
M/s. N. Nagaresh & TV Vinu (R8,9,38,39,46,50,51&54),  
Mr. M.R. Hariraj (R40,41,43,52&53)  
Mr. Shafik M.A. (R56to58, 60,62 to 65)  
Mr. P. Ramakrishnan (R10to37, 45&47 to 49)  
Mr. Mathew Kuriakose (R42 & 44)]  
[M/s Dandapani Associates]

This application having been heard on 15.02.2012, the Tribunal on 01/03/12 delivered the following:

### **ORDER**

**By Hon'ble Mr. K. George Joseph, Administrative Member -**

As per circular dated 17.09.2008 (Annexure A-1) applications were invited from eligible candidates for filling up 113 posts of Assistants in the Regional Passport Offices in Kerala through Limited Departmental Examination (LDE) to be held on 23.11.2008. The eligibility criteria was specified as under:

- (i) Eight years of regular service in UDC grade;
- (ii) UDC with sixteen years of combined regular service as UDC & LDC in CPO cadre;

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(iii) In the case of persons holding the post of UDC on regular basis before the commencement of CPO RRs 2004, i.e. 3<sup>rd</sup> March, 2004 2004, the eligibility service for promotion to the posts of Assistants shall be five years regular service in the feeder grade;

(iv) Possession of a Bachelor's Degree of a recognized University or its equivalent.

A special dispensation to the above criteria was granted as follows:

"(i) Relaxation of 1 year i.e. from five years to four years in respect of UDCs who were promoted as on 21.01.2003; and

(ii) Relaxation of 2 years i.e. from five years to 3 years in respect of UDCs who were promoted as on 21.01.2003; and

All UDCs who have put in three years of regular service as on 1.1.2008 are eligible for LDE examination. Those UDCs who are in the zone of departmental promotion can also apply for the proposed LDE."

Some of those whose candidature was rejected, approached this Tribunal by filing O.A. Nos. 651/08, 652/08, 656/08, 658/08, 667/08, 737/08, 754/08 and 45/2009. They were permitted to appear in the examination as per the interim orders of this Tribunal. In the final order dated 01.04.2009 in the above O.As, it was held that "in respect of those UDCs who have put in 16 years of combined service as of 26<sup>th</sup> September, 2008, and who are eligible for sitting in the examination, denying them the permission to participate in the examination is illegal. The operative part of the said order is reproduced as under:

"22. To sum up,

a) O.A. No. 737/08 is dismissed.

b) For Applicants in OA No. 739/08, 754/08 and 45/09, as they are holding the post of UDC and are having combined service of 16 years, respondents shall conduct the requisite examination within 3 months from the date of communication of this order and on the basis of performance in that examination, their promotion shall be worked out.



c) In respect of applicants in other O.As, who have given their examination on the strength of interim order and which has been made provisional, the same be treated as absolute and promotion be granted on the basis of the results in that examination.

23. Under the circumstances, there shall be no orders as to cost."

The cut off date for combined service of 16 years was fixed as 26.09.2008. The applicants 1 to 6 in O.A. No. 737/2008 are also the applicants in the instant O.A. O.A. No. 737/2008 was dismissed on the ground that the applicants therein had not functioned as UDC even for a day before the date of examination. Writ Petitions (C) No. 11317/2010 dated 21.05.2010, 5031/2010, 5131/2010 and 5092/2010 confirmed the order of this Tribunal in O.A. No. 651/08, 737/08 and connected cases. The supplementary examination was held on 21.03.2010 in compliance with the order of 01.04.2009. The O.A. Nos. 154, 174, 178, 185, 190, 198 and 204 of 2010 etc had been filed challenging the cut off dated of 26.09.2008 and the applicants therein were allowed to appear in the supplementary examination as per the interim order of this Tribunal. The applicants herein had filed O.A. Nos. 174/10, 178/10 and 198/10 which were, however, dismissed as withdrawn. As directed by this Tribunal, the result of the examination held on 23.11.08 was published. A combined seniority list of those who were eligible to appear in the examination and those who appeared on the strength of interim orders of this Tribunal was released. Annexure A-3 order dated 28.08.2009 promoting 112 persons to the grade of Assistants on the basis of the combined seniority list as above was issued. Aggrieved by the said order, the applicants have filed the instant O.A for the following reliefs:

- (i) Set aside Annexure A3 order of promotion in so far as the respondents 8 to 54 are concerned;





- (ii) Issue a declaration that the respondents 55 to 74 are not entitled for promotion as Assistants even though they passed the LD Examination conducted on 21.03.10 since they are not having the necessary qualifying service of combined regular service in the category of LDC and UDC as on the cut off date of 26.09.2008;
- (iii) Issue a declaration that the applicant who appeared for the examination on 21.03.2010 and passed are entitled for promotion as Assistants as they are having the necessary qualification as on 12.01.2010, the date of fax message calling for the examination;
- (iv) Issue a direction to the official respondents to promote the applicants as Assistants by virtue of passing the examination conducted on 21.03.2010;
- (v) Pass any other order or direction which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

2. The applicants put the following grounds for the reliefs claimed:

Annexure A-3 order of promotion in so far as it relates to the respondents 8 to 54 is illegal and erroneous in violation of the Recruitment Rules as per the reply of the official respondents in O.A. No. 174/2010. The supplementary examination was held on 21.03.2010. On the date of Annexure A-4 notification, i.e., 12.01.2010, a number of vacancies arose after 26.09.2008. The applicants have passed the supplementary examination. As 57 candidates who appeared for the LDE held on 23.11.2008 did not have actual qualification prescribed, their promotion as Assistants has to be set aside. The cut off date of 26.09.2008 was fixed to favour a group of persons. No action has been taken by the official respondents to set right the illegal promotion by reverting the ineligible persons.

3. In the reply statement filed by the respondents No. 40, 41, 43, 52 and



53, it was submitted that the instant O.A. is hit by limitation under Section 21 of the Administrative Tribunals Act, 1985. Without a proper application to condone the delay and no just reason to condone, the O.A. cannot be entertained. The prescription of cut off date as 26.09.2008 is said to be challenged in O.A. 174, 178 and 198 of 2010 which were dismissed as withdrawn. The order rejecting their candidature in the LDE is not challenged. The applicants being ineligible to appear in the LDE have no locus standi to file this O.A. The breaks in service of the answering respondents were regularised and treated as qualifying for all similarly placed individuals. The applicants are effectively attempting to reassail the order dated 01.09.2009 which is impermissible.

4. In the reply statement, the respondents 10 to 30, 45, 47 to 49 submitted that their eligibility to appear in the LDE was considered by this Tribunal in order dated 01.04.2009 and other orders which have been confirmed by the Hon'ble High Court of Kerala and the Apex Court. The prayer sought by the applicants in this O.A is barred by constructive re judicata as they have not challenged the dismissal of O.A. No. 737/2008. The applicants, themselves ineligible to appear in the examination, have no locus standi to examine the eligibility of the answering respondents. The second LDE is only a continuance of the first LDE for the persons who could not appear and, therefore, the question of changing the cut off date prescribed cannot arise.

5. On behalf of the official respondents, it was submitted that on the basis of LDE held on 23.11.08, a rank list of 69 eligible candidates excluding 57 candidates who were provisionally admitted was issued. On a direction from




this Tribunal, a combined rank list of all the candidates who appeared in the LDE on 23.11.2008 was prepared. Complying with the order of this Tribunal, a supplementary examination was held on 21.03.10. The applicants and the respondents 8 to 74 in this O.A are ineligible for appearing in the LDE as per the Recruitment Rules and relaxation given.

6. The respondents No. 42 and 44 in their reply statement submitted that the O.A is barred by limitation. The applicants were not eligible to appear in the LDE held on 21.03.10; as such they have no locus standi to challenge the appointment of the answering respondents to the post of Assistant. Like the respondents, the applicants also have break in service which has been deliberately suppressed by the them.

7. We have heard the learned counsel for the parties and perused the records.


8. This O.A. has been filed on 14.01.2011 seeking to set aside the order of promotion dated 28.08.09 to the extent it relates to the respondents No. 8 to 74 and to promote the applicants on the basis of their qualification as on 12.01.10 and passing of examination held on 21.03.2010. They submitted that they came to know that 57 persons were illegally promoted only when they received Annexure A-8 communication dated 16.07.10 under the RTI Act. We are in agreement with the contention of the party respondents that it is not a ground to enlarge the period of limitation. This O.A is hit by limitation under Section 21 of the Administrative Tribunals Act, 1985 and is liable to be dismissed on this count alone; yet having heard the case extensively, we



proceed to consider it on merits.

9. In O.A. No. 737/2008 filed by the applicants 1 to 6 herein, this Tribunal held that not having functioned as UDC even for a day prior to 23.11.08, they did not fulfil the requisite condition of 16 years combined service as LDC and UDC to appear in the LDE on that day and dismissed the O.A. This order has become final. The examination held on 21.03.2010 was supplemental to the examination held on 23.11.2008. As the Recruitment Rules did not prescribe any cut off date for completion of 16 years of combined service, relying on the decision in the case of *Bhupender Singh vs. State of Punjab*, 2000 (5) SCC 262, this Tribunal held that the last date of receipt of application in this case, i.e. 26.09.2008, should be the cut off date for determining the eligibility condition of 16 years of combined service. The supplementary examination held on 21.03.2010 for those who were eligible and were not allowed or did not appear in the examination held on 23.11.2008 is to be treated as a part and parcel of the examination held on 23.11.2008. If the applicants were not eligible to appear in the examination on 23.11.2008 as held by this Tribunal, it goes without saying that they are not eligible to appear in the supplementary examination on 21.03.2010.

10. O.A. Nos. 174, 178 and 198 of 2010 were filed by the applicants challenging the fixation of 26.09.2008 as cut off date. On the strength of interim orders passed therein, they participated in the examination on 21.03.2010 and passed the same. The O.As were dismissed as withdrawn subsequently. The interim order did not confer on them the eligibility to appear in the qualifying examination which they did not have on 23.11.2008



as determined by this Tribunal in O.A. No. 737/08. The applicants claim that they had the necessary qualification on 12.01.2010 which cannot substitute the cut off date of 26.09.2008. Therefore, passing of the examination on provisional basis does not entitle the applicants for promotion as Assistants. Thus, not having any locus standi, the applicants are precluded from challenging the order of promotion dated 28.08.2009 in respect of others.

11. The promotion order of 28.08.2009 is based on the combined rank of 69 eligible candidates and 57 candidates who were provisionally admitted as per order of this Tribunal vide order dated 14.11.2008, replacing the earlier rank list of 69 persons only. Subsequently another combined rank list based on the results of the examinations held on 23.11.2008 and 21.03.2010 was issued on 31.12.2010. Those who were aggrieved by the rank list of 31.12.2010 filed O.A. Nos. 43/11, 68/11 and 86/11. In the common order dated 08.04.2011, the said rank list was set aside for reviving it based on the following principles :

" i) All those persons who had requisite qualification as on cut off date viz. 26.9.2008 and who have appeared in the competitive examination are entitled to be included in the combined rank list based on the marks obtained by them in the examination.

ii) Those who did not satisfy the service eligibility conditions as on the cut off date cannot be included in the rank list merely for the reason that they have appeared in the examination on the basis of an interim order or otherwise.

iii) Since some of the candidates who have been included in the combined rank list having been promoted retrospectively within the 75% quota they cannot be included again in the combined rank list to fill up the 25% quota based on the examination. In such circumstances these vacancies will also be available to be filled up from the 25% quota. "



Accordingly, a revised combined rank list, fourth in the series of rank lists, was published on 01.07.2011, which was assailed in O.A. No. 380/2011. In the order dated 25.07.11, dismissing the same, it was held as under:

"4. The fact remains that an examination was held to fill up 113 vacancies of Assistants for which the feeder cadre is UDC. Those who could not participate in the examination but who were otherwise found eligible were enabled to participate in the examination either by an interim order or by conducting a supplementary examination as the case may be, with a view to do justice to the parties. If those who were found entitled to participate in the first examination are denied their rightful claim the course open for this Court was to either set aside the whole process giving everybody a chance to appear in the examination who are fully qualified as on the date of issuance of the notification or instead of cancelling the examination to order a supplementary examination to be held. The very purpose of holding a supplementary examination was to give an opportunity to those candidates who was unjustly denied entry to the examination. In other words they will relate back to Annexure A-1 notification when it was issued. As a matter of fact promotion to the post of Assistants could be made only if they pass the examination. There is no one among the applicants who were qualified even prior to notifying the vacancies. Thus the feeder category employees who were qualified otherwise have to pass the written test also and thus fully become qualified for promotion. It may be mentioned in this connection that the very promotion to the 25% quota is on merit basis. As such the denial of an opportunity to participate in the examination will virtually deny them to get promotion at the rightful time.

5. After consideration of all the aspects of the matter, the Tribunal directed the respondents to publish a combined rank list on the principles as involved and quoted above. The applicants are virtually challenging such finding. We do not think that any grounds have been made by the applicants warranting to take a different view. In the circumstances we find no merit in this Original Application and accordingly, it is dismissed with no order as to costs. "

Thus, the impugned order dated 28.08.2009 is liable to be revised, but the applicants herein have no case at all to challenge the said order, not being eligible to appear in the concerned LDE, they have no locus standi.



12. Devoid of merit, the O.A. is dismissed. Taking a lenient view, no cost is imposed on the applicants.



**K. GEORGE JOSEPH**  
**ADMINISTRATIVE MEMBER**

(Dated, the 01<sup>st</sup> March, 2012)



**JUSTICE PR RAMAN**  
**JUDICIAL MEMBER**

CVT.