

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.NO. 523/2004

TUESDAY THIS THE 2nd DAY OF MAY, 2006.

CORAM:

HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

HON'BLE MR GEORGE PARACKEN, JUDICIAL MEMBER

1. Ravindranath V.K.  
Lower Division Clerk,  
Passport Office, Kozhikode.
2. C.K.Jayalekha,  
Lower Division Clerk,  
Passport Office, Kozhikode.
3. Suhasini K,  
Lower Division Clerk,  
Passport Office, Kozhikode.
4. Vinodini.P.,  
Lower Division Clerk,  
Passport Office, Kozhikode.
5. Geethamani.T.P.,  
Lower Division Clerk,  
Passport Office, Kozhikode.
6. Remadevi.P.,  
Lower Division Clerk,  
Passport Office, Kozhikode.
7. Prabhavathi.K.E.,  
Lower Division Clerk,  
Passport Office, Kozhikode.
8. Girija.N.,  
Lower Division Clerk,  
Passport Office, Kozhikode.
9. Sivarani.P.,  
Lower Division Clerk,  
Passport Office, Kozhikode.
10. Baby Sreeja.V.,  
Lower Division Clerk,  
Passport Office, Kozhikode.

11. Rajagopal.P.T.,  
Lower Division Clerk,  
Passport Office, Kozhikode.
12. Sheeba.V.,  
Lower Division Clerk,  
Passport Office, Kozhikode.
13. Vijayan.K.,  
Lower Division Clerk,  
Passport Office, Kozhikode.
14. Sreelatha.K.,  
Lower Division Clerk,  
Passport Office, Kozhikode.
15. Unnikrishnan K,  
Lower Division Clerk,  
Passport Office, Kozhikode. - Applicants

By Advocate Mr MR Hariraj

v.

1. Union of India represented by  
the Secretary to Government of India,  
Ministry of External Affairs,  
New Delhi.
2. The Regional Passport Officer,  
Passport Office, Calicut.
3. Joint Secretary (CPV),  
Chief Passport Officer,  
Ministry of External Affairs,  
Patialia House Annex,  
Tilak Marg, New Delhi. - Respondents


By Advocate Mr Aysha Youseff, ACGSC


The application having been heard on 20.4.2006, the Tribunal on 2.5.06 delivered the following:

### ORDER

HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

In this O.A., the applicants (14 in number) all Lower Division Clerks(LDC) in the Passport Office, Kozhikode seek the reliefs of fixation of pay, regularization of period of absence and certain other benefits granted vide earlier orders of this Tribunal.





2. As per the undisputed facts, all the applicants commenced service as casual employees. For getting their regularization with effect from the date of initial appointment, they moved and secured an order from this Tribunal in O.A 1333/91. According to the said order(A-2) dated 25.3.1993, the O.As were allowed and the respondents were directed to conduct a departmental test and regularise successful candidates. Such test was conducted but not in accordance with the directions in A-2, which led to another O.A 3/94. Vide A-3 order in O.A.3/94, passed on 8.8.95, this Tribunal found that the test was not as per the directions contained in the earlier O.As (of A-2) and ordered the test to be conducted within six months. This order was challenged before the Hon'ble Supreme Court, through an S.L.P. which was dismissed. A test for regularization was conducted in 1997 and the applicants regularised prospectively. Such prospective regularization was opposed by the applicants through O.A.1557/98. The order passed in the O.A on 20.4.2001 (A-4), was challenged before the Hon'ble High Court which led to the passing of A-5 order by the Hon'ble High Court on 25.9.2002. By virtue of the said order, the matter was remanded back to the Tribunal. In pursuance of the same, the matter was reconsidered by this Tribunal who passed the orders (A-6) on 14.7.2003. The operative portion of the same is reproduced here below:

*"5. In the light of what is stated above, we allow the application in part. The claim of the applicants for seniority above respondents 4 to 43 with effect from the date of their initial engagement as casual labourers is rejected. Declaring that the applicants are entitled to have their service regularised as LDCs with effect from the dates of their initial appointment as Casual Labourers in view of the judgment of this Tribunal in O.A.1037/91 and 1333/91, we direct the respondents to grant the applicants the benefit of regularisation with effect from the initial date of their engagement for all purposes other than seniority namely eligibility to appear in the promotion tests or examination, and for terminal benefits etc. We also direct the respondents to issue appropriate orders notionally fixing their pay and date of regularisation*

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*accordingly. Annexure A8 order is set aside finding that the orders issued hitherto did not amount to full implementation of the judgment of the Tribunal (Annexure A1). There is no order as to costs."*

3. Apparently in pursuance of the above mentioned order, A-7 order No.V.IV/578/18/97 was issued on 12.12.03. As per this order, applicant-1 was appointed as an LDC in a temporary capacity with effect from 1.12.1988, from the date of his initial engagement as casual labour. Other benefits conferred in the A-7 order included, all consequential benefits such as fixation of pay, eligibility to appear in any test for examination if held for his promotion to the next higher grade counting of qualifying service for terminal benefits etc. from 1.12.88 except seniority in the grade of LDC which will be counted from 22.4.1997. No mention was made in that order about regularization from this date, which was one of the components of the A-6 order. Similarly worded orders were issued in the case of other applicants. In response to certain queries (not part of the material papers), impugned A-1 order No.V.IV/441/15/98-Vol.II dated 3.3.2004 was sent to the Passport Officer, Kozhikode on three issues, fixation of pay, regularization of period of absence and other consequential benefits. Subsequently, impugned A-8 orders No.1(25) AD/KZD/97 dated 2.6.3.2004 were issued containing fixation of pay in respect of A-1. Challenging both A-1 and A-8 orders, the applicants have come before this Tribunal.

4. They seek the following reliefs of directing the respondents:

- (i) to reckon the services of the applicants from the dates of initial engagement for the purpose of grant of ACP.
- (ii) to regularise the periods of absence as service for all purposes.

5. The grounds advanced by them are as follows:

- i) The delay in issuing orders of regularization was not attributable to the applicants; the examinations for regularization were not conducted as per the time schedule prescribed by the C.A.T., and hence they

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<sup>not</sup> should be asked to bear the burden of delay .

ii) The Tribunal, having ordered to give benefits of regularization from the initial date of engagement for all purposes except seniority, the refusal to reckon the period from the date of initial engagement, viz, 1.12.88 for the ACP benefits is not sustainable.

lii) The delay in regularization not being attributable to the applicants, denial of back wages from the date of regularization is unsustainable.

iv) Regularisation<sup>or</sup> of break in services as leave not due is again unsustainable as it is against the service law.

6. The respondents oppose the application. According to them,

(i) The applicants were given all benefits due to them flowing from the A-6 order, including the arrears of pay from the date of their entry into the cadre of LDC, apparently from 22.4.97.

(ii) For getting the ACP benefits, the residency period of 12 years is to be counted from 22.4.97.

(iii) A-6 orders contemplated only a notional fixation of the pay of the applicants.

(iv) The breaks in services occurred not because work was refused to the applicants when they were casual labourers but because of non-attendance at the instance of the applicants themselves.

7. Heard both parties and perused the documents carefully.

8. The applicants relied upon certain judgments by the Hon'ble High Court of Kerala and the Supreme Court. The dicta therein are presented now. The dictum in 1978 KLT 29 was "*A government servant cannot be said to have forfeited his claim for arrears of salary when he did not get his due promotion for no fault of his.*"

The dictum in 2005 (3) KLT 499 was - "*Here, the petitioner is not entitled to salary for the period of retrospective notional appointment on the ground of 'no*



*work no pay'. Difference in salary for the retrospectively promoted post cannot be denied on the ground of "no work no pay" because there is no difference in work of Assistant Public Prosecutor Grade II and Assistant Public Prosecutor Grade I. The petitioner was doing the same work. There is no question of 'no work' in the promoted post. The matter is covered by the service rules. R.23(C) of part I of the Kerala Service Rules is a clear provision in the service rules that promotions which do not involve a change of duties should be given effect from the date on which the vacancy arose. Here there is no change of duties. It is only promotional aspect with a change of salary alone and for no fault of the petitioner, he was denied promotion at the particular date. Therefore, petitioner will be entitled to the difference in salary in the promoted post."*

*The dictum in 1993 (2)KLT 287 was - "...The respondents have no case that the petitioner was not given his due promotion due to a bona fide mistake or error that happened due to the exigencies in administration and that the authorities acted honestly and fairly at all times. We are highlighting the above aspect since, in our view, the principles laid down by a later Bench decision of this Court in Philomina v. State of Kerala (1984 KLT 59) is clearly distinguishable and cannot apply to a situation as the one in issue herein, on which great reliance was placed by the Government Pleader. We, therefore, hold that even on the larger question mooted before us, the appellant is entitled to succeed. We hold so."*

*The dictum in 1977 SCC 1868 was to allow the applicant to draw the salary on the date of his approaching the High Court based on the notional entry into the service from 1.1.59. A brief review of the facts in this case is in order. The applicant was denied promotion due to the mistake on the part of the respondents who had promoted the juniors. His plea was to give him promotion with effect from 1.1.59. He had approached the High Court on 20.12.67. The Hon'ble Apex Court denied any notional promotion with effect from 1.1.59 but*

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ordered such promotion from 20.12.67. He was given actually benefits of notional pay fixed with effect from 1.1.59 but actual benefits were to flow from 20.12.67.

9. The dictum in 1984 KLT 59 may be considered. In that, the Hon'ble High Court was considering the exceptions to the rule 'no work no pay'. Such exceptions referred to in the above judgment were first when a person was kept out of work or denied or deprived of his rightful place by an illegal order and secondly where the authority acted malevolently. Where, however, such mistakes crept in bonafide and unintentional and the authorities acted promptly, such notional benefits were not extensible.

10. The dictum in 1984 KLT 141 <sup>was</sup> ~~is~~ that if for no fault of his, promotion to a Government servant is delayed and it is given to him later with retrospective effect from the date on which it was due, the Government servant is naturally entitled to restoration of the benefits which he has lost not on account of his conduct or laches. It is only proper that the Government should restore to him all that is lost by way of salary or other emoluments.

11. The dictum in 1979 KLT 29 was *"No one can be penalised for no fault of his. Suppose a Government servant was reverted illegally or his services wrongly terminated and such reversion or termination is subsequently held to be wrong by a court of law and he is directed to be promoted or reinstated, could it be contended that such government servant is not entitled to the remuneration for the period during which he was under illegal reversion or illegal termination. The Government cannot take advantage of a mistake committed by them or an order passed by them in illegal exercise of their power. A Government servant cannot be said to have forfeited his claim for arrears of salary when he did not get his due promotion for no fault of his."* The applicants, citing the above argue that when promotions delayed for no fault of the applicants were given subsequently the benefits therefrom, from the date on which they were due, this



ratio would apply in their cases with greater force because theirs are cases of regularisation.

12. On the question of their claimed entitlement to ACP benefits, it is worthwhile taking a look at the enabling provision therefor. As per DoP&T O.M.No.35034/1/97-Estt.(D) dated August 9, 1999 on the ACP scheme, the following is found in A-1 to the said scheme, laying out inter-alia one of the conditions.

*4. The first financial upgradation under the ACP Scheme shall be allowed after 12 years of regular service( emphasis added) and the second upgradation after 12 years of regular service from the date of the first financial upgradation subject to fulfillment of prescribed conditions.*

It is already seen above this Tribunal had directed vide A-6 order to grant the applicants the benefit of regularization with effect from the initial date of their engagement. Such engagement was on 1.12.1988. Such benefit was for all purposes except seniority. A direction was also there to notionally fix the pay and the date of regularization. In the A-7 order as already noted, there is no specific reference to the fact of regularization in the impugned order A-1.

The respondents have taken the position that "...Para 3.2 of DOPT's OM No.35034/1/97-Estt(D) dated 9.8.1999 regular service for the purpose of the ACP scheme shall be interpreted to mean the eligibility service counted for regular promotion in terms of relevant recruitment rules. In the present case as per the ruling of the CAT their initial date of engagement as casual labourers will not be counted for promotion to the next higher grade. For the same date of their appointment to the cadre, which is 1997 will be counted. Therefore, in their case 12 years for the purpose of ACP may be counted from their appointment to the cadre of LDC and not from the date of their initial engagement." This is not reflective of the orders of this Tribunal which excluded only seniority from the purview of the benefit of regularization. Inasmuch as the respondents had not

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questioned the A-6 order in appeal or otherwise, this should stand and their regular service for the purpose of ACP should be deemed to have started from the date of their initial engagement. The respondents have not effectively put up their case on this point in their counter.

13. Vide Annexure A-8 impugned document, decisions have been taken in respect of A-1 Shri.V.K.Raveendranath on pay fixation and arrears and on break in service. On the question of pay fixation, this Tribunal in their order had directed the respondents to grant the benefit of regularisation with effect from the initial date of engagement for all purposes. Only seniority has been excluded from the conferment of such benefits. It is to be therefore taken that the benefits of regularisation should include the pay fixation including the monetary benefits of backwages. The respondents would argue that the latter portion of the operative part of the directions envisages a direction to issue appropriate orders notionally fixing their pay and date of regularisation accordingly. We are of the considered view that notionalities referred to here is the date and not the flow of benefits and hence the backwages from the date of regularisation should flow into the hands of the applicants.

14. The last point for decision pertains to treatment of breaks in service. In the case of applicant 1, thirteen breaks in services have been identified making a total of 338 days vide A-8 document. For determining the dates of annual increments, such breaks have been treated as leave not due. Rule 2 of Central Civil Service(Leave) Rules, 1972(the Rules for short) envisages certain excluded categories of employees from their operation, which include vide 2(b) persons in casual or daily rated or part time employment. Admittedly, the applicants are covered under (b), having started as casual employees. As already laid down in the order of this Tribunal referred to above, they have been given the benefits of regularisation from the initial date of engagement. Once they are treated as regular employees from the date of initial engagement for all purposes

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(excluding, of course, seniority), such purposes should normally include leave also as permissible under the Rules. No examination of this issue seems to have been either done or claimed. Instead, the breaks in services of the applicants were treated under the provisions of Rule 31 of the said Rules as leave not due. The said Rule 31 (1) gives a general import of this category of leave as extracted below

*"(1) Save in the case of leave preparatory to retirement, leave not due may be granted to a Government servant in permanent employ or quasi permanent employ (other than a military officer) limited to a maximum of 360 days during the entire service on medical certificate subject to the following conditions:*

*(a) the authority competent to grant leave is satisfied that there is reasonable prospect of the Government servant returning to duty on its expiry;*

*(b) leave not due shall be limited to the half pay leave he is likely to earn thereafter;*

*© leave not due shall be debited against the half pay leave the Government servant may earn subsequently."*

From the above, it is seen that first, this leave is to be given on medical certificate and it is essentially for meeting medical contingencies. No authority is vested on anyone to treat any other period of absence as leave not due under this Rule. This is the point made by the applicant, not successfully countered by the respondents. The applicant's plea is therefore to treat this period as service for all purposes. The respondents point out that some of the major breaks in service occurred not because of the refusal of work by the respondents to the applicant but due to reasons personal to the applicants. The latter point out that in any case such periods of personal absence were with permission of the appropriate authorities. This point is not contested by the respondents. It is not made clear as to the implications of such permitted absence-whether it was a paid absence or it was only a permitted absence. If it is a paid absence, the question remains as to how much was the entitled period of leave for each one

of the applicants and by which provision they were so entitled. Besides, a proper appreciation of the issues would have been possible if all the spells of absence were properly categorised, spelling out the breaks when they could not attend due to non offer of work to the applicants or due to any other reason. The nature of treatment of such spells would be necessary for determining the dates of increments and the financial benefits flowing therefrom. We are of the considered view that the competent authorities concerned should determine the entire issue about the retrospective entitlement of the applicants for leave flowing from the retrospective regularisation and then treat such periods of absence as leave of an appropriate kind as provided for in the Rules.

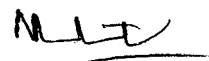
15. In the result we allow the application with the following orders/directions:

- (i) For the purpose of ACP benefit, the services of the applicants from the initial date of engagement should be considered,
- (ii) The applicants are entitled to backwages likewise from the initial date of engagement and
- (iii) Their breaks in services should be duly reconsidered under the CCS Leave Rules for appropriate treatment for working out the dates of increments and arrears

16. No costs.

Dated 2.5.2006.

  
GEORGE PARACKEN  
JUDICIAL MEMBER

  
N. RAMAKRISHNAN  
ADMINISTRATIVE MEMBER