

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.532/2011

Wednesday.this the ..~~6~~th.....day of February 2013.

CORAM

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms. K.NOORJEHAN, ADMINISTRATIVE MEMBER

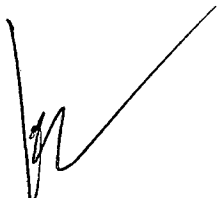
1. K.K.Jose
Private Secretary
Central Administrative Tribunal
Ernakulam Bench,
Kaloor, Cohin-17.
2. T.R.Sivakumar
Private Secretary
Central Administrative Tribunal
Ernakulam Bench,
Kaloor, Cohin-17.
3. C.V.Ramesan
Private Secretary
Central Administrative Tribunal
Ernakulam Bench,
Kaloor, Cohin-17.

Applicants

[By Advocate:Mr.S.Radhakrishnan)

Versus

1. Union of India, represented by the Secretary
Department of Personnel & Training
Ministry of Personnel, Public Grievances & Pension
North Block, New Delhi-110001.
2. The Secretary
Ministry of Finance
North Block, New Delhi-11001
3. The Principal Registrar
Central Administrative Tribunal
Principal Bench, 61/35, Copernicus Marg



New Delhi-110001.

Respondents

[By Advocate: Mr.A.D.Raveendra Prasad, ACGSC)

This Original Application having been heard on 17th January 2013, this Tribunal on...~~6th~~...February 2013 delivered the following:

ORDER

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

The three applicants, holding the post of private secretary in the Central administrative Tribunal, have prayed for the following reliefs: –

- (i) Call for the records connected with the case.
- (ii) Declare that the Private Secretaries of CAT had already been equated with the Private Secretary of CSS by the Principal Bench of the CAT and it was upheld by the Apex Court.
- (iii) Declare that the PS of the CAT are entitled to get the same treatment as the PS of the CSSS.
- (iv) Declare that each Hon'ble Member of the CAT is entitled to get one Principal Private Secretary and one Stenographer Gr.C, as per Annexure A3.
- (v) Direct the respondents to promote eligible and qualified PS to the post of Principal Private Secretary as has been done in the case of CSSS by upgradation of the post.
- (vi) Direct the respondents to extend the scheme of upgradation of post of PS in CSSS to the post of Principal Private Secretary in CAT on the same terms and conditions.
- (vii) Pass such other relief as are deemed fit, just, fair and proper in the facts and circumstances of the case.

2. The case of the applicants is that the applicants are functioning as Private Secretaries in the Central Administrative Tribunal and by virtue of various judicial orders, their cadre has always been made comparable with that of the Central Secretariat Stenographers Services (CSSS). In the CSSS Cadre, the number of posts of Principal Private Secretary has been made corresponding to the number of posts of Secretaries/Addl. Secretaries and a similar treatment was extended to the Stenographic cadre of the C.A.T. also when 16 posts of Private Secretary were upgraded to Principal Private Secretaries to be attached to each of the Vice Chairman whose status was comparable to that of the High Court Judge. After amendment had been made in 2007, abolishing the post of Vice Chairman and elevating the status of Members of the Tribunal to that of a high Court Judge, each of the member of the Tribunal became entitled to the services of the Principal Private Secretaries.

Thus, it was incumbent upon the respondents to upgrade requisite number of Private Secretaries to that of Principal Private Secretaries. This not having been done despite due representations, the applicants came up before the Tribunal seeking the reliefs as extracted above.

3. The case of the respondents is that the applicants cannot claim any parity with the CSSS as the Rules for their cadre are different. Again, the Apex Court in the case of Unnimenon rejected the claim of such parity being claimed in respect of Accounts Officers of the C.A.T. Further, a Committee has been formed to consider the requirement of additional Principal Private Secretaries.

4. Counsel for the applicants argued that the case has to be analyzed from two different angles:-

(a) The requirement of a Principal Private Secretary to each of the Hon'ble Members of the Tribunal by virtue of their status.

(b) The comparable status of the Central Secretariat Stenographers Service with that of the Stenographic grade in the C.A.T.

5. As regards (a) above, there cannot be any doubt that the status of a Member of the C.A.T. having been equated with that of a High Court Judge, coupled with the fact that it is the Secretary to the Central Government with two years service or equivalent who would be eligible to be appointed as Member in the Central Administrative Tribunal, each Member should be entitled to a Principal Private Secretary.

6. As regards (b) above, the respondents have all along been treating the stenographic services in the C.A.T. at par with that of the C.S.S.S. of the Central Secretariat. Orders at Annexures A-2 would go to show that the upgradation of 16 posts of Private Secretary to Principal Private Secretary was on account of the fact that there were then 16 Vice Chairmen in the Tribunal and each of them having been treated as equivalent to High Court

Judge/Secretary to the Government of India as held by the Tribunal in the case of S.K. Sareen vs Union of India (OA No. 777 of 1992) which order has been upheld by the High Court of Delhi and the Apex Court. Today, the post of Vice Chairman has been done away with and the members have the status of the High Court Judges as per the amended Act. As such there is absolutely no justification in the respondent's inaction in upgrading the post of Private Secretary to Principal Private Secretary to make the total number of Principal Private Secretaries equal to the number of Members.

7. Counsel for the respondents, on the other hand, argued that of the three applicants, one has already been promoted as Deputy Registrar and one more is likely to be promoted. Further, a committee has been set up to study the entire case and some time is required in this regard.

8. Arguments were heard and documents perused.

9. The Central Administrative Tribunal is a statutory body constituted under the provisions of the Administrative Tribunals Act, 1985 and the conditions of services of both the Chairman, Vice Chairmen and Members of the Tribunal on the one hand and the staff members of the Tribunal on the other are all contained in the attendant Rules thereto. The Principal Seat of the Tribunal (called the Principal Bench) is situated at Delhi, while in all there are 17 Benches all over India.

10. Earlier, the constitution of the Tribunal had a three tier system – (a) Chairman (b) Vice Chairman and (c) Members (Judicial and Administrative). Certain qualifications have been prescribed for the posts and the same are as under:-

“6. Qualifications for appointment as Chairman, Vice Chairman or other Members:- (1) A person shall not be qualified for appointment as the Chairman unless he-

(a) is, or has been, a Judge of a High Court; or

(b) has, for at least two years, held the office of Vice-Chairman [];

(c) Omitted.

(2) A person shall not be qualified for appointment as the Vice-Chairman

unless he-

(a) is, or has been, {or is qualified to be,} a Judge of a High Court;

or

(b) has, at least two years, held the post of a Secretary to the Government of India or any other post under the Central or a State Government carrying a scale of pay which is not less than that of a Secretary to the Government of India; or

~~[(bb) has, for at least five years, held the post of an Additional Secretary to the Government of India or any other post under the Central or a State Government carrying a scale of pay which is not less than that of an Additional Secretary to the Government of India; or]~~

(c) has, for a period of not less than three years, held office as [a Judicial Member or an Administrative Member].

[(3) A person shall not be qualified for appointment as a Judicial Member unless he-

(a) is, or has been, or is qualified to be, a Judge of a High Court; or

(b) has been a member of the Indian Legal Service and has held a post in Grade I of that Service for at least three years.

(3-A) A person shall not be qualified for appointment as an Administrative Member unless he-

(a) has, for at least two years, held the post of an Additional Secretary to the Government of India or any other post under the Central or a State Government carrying a scale of pay which is not less than that of an Additional Secretary to the Government of India; or

(b) has, for at least three years, held the post of a Joint Secretary to the Government of India or any other post under the Central or a State Government carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India, and shall, in either case, have adequate administrative experience.].

(4)[Subject to the provisions of sub-section 97), the Chairman], Vice Chairman and every other Member of the Central Administrative Tribunal shall be appointed by the President..

(5) [Subject to the provisions of sub-section (7), the Chairman,] Vice-Chairman and every other Member of an Administrative Tribunal for State shall be appointed by the President after consultation with the Governor of the concerned State.

(6)The Chairman, Vice Chairman and every other Member of a Joint Administrative Tribunal shall, subject to the terms of the agreement between the participating State Governments published under sub-section (3) of Section 4, (and subject to the provisions of sub-section (7) be appointed by the president after consultation with the Governor of the concerned States.

(7) No appointment of a person possessing the qualifications specified in this section as the Chairman, a Vice Chairman or a Member shall be made except after consultation with the chief Justice of India.]

EXPLANATION-In computing for the purposes of this Section, the period during which a person has held any post under the central or a State Government, there shall be included the period during which he has held

any other post under the Central or a State Government (including an office under this Act) carrying the same scale of pay as that of the first mentioned post or a higher scale of pay."

11. The secretarial assistance to the Chairman, Vice Chairman (till such posts existed) and members of the Tribunal is provided by recruitment of persons in the secretarial Cadre. The said secretarial Cadre consists of (a) Sr. Principal Secretary; (b) Principal Private Secretary; (c) Private Secretary; (d) Steno Grade C/Court Master and (e) Steno Grade D.

12. The Principal Private Secretaries of which we are concerned in this O.A, are governed by the Central Administrative Tribunal (Principal Private Secretary) Recruitment Rules, 1996 as amended by the 1998 Rules. The Schedule to the 1996 Rules reads as under:-

Schedule

Name of post		No. of posts	Classification	Scale of pay	Whether selection post or non-selection	Whether benefit of added years of service admissible under Rule 30 of the General Civil Service (Pension) Rules, 1973	Age limit for direct recruits
1	2	3	4	5	6	7	
Principal Secretary	Private	1 (1996)	General Central Service Group 'A' Gazetted Ministerial	Rs.2000-100-3500-125-4500	Selection	Not applicable	Not applicable
8	9	10	11	12	13	14	
Educational and other qualifications required for direct recruits	Whether age and edu. qualifications prescribed for direct recruits will apply in the case of promotees	Period of probation, if any.	Method of recruitment whether by direct recruitment or by deputation/transfer and percentage of vacancies to be filled by various methods	In case of recruitment by promotion/deputation	Composition of departmental promotion committee	Circumstances in which UPSC has to be consulted in taking recruitment	

Not applicable le	Not applicable	Not applicable	By promotion	Private Secretary in the scale of pay of Rs.2000-50-2300-EB-75-3300-100-3500 with at least 8 years regular service in the grade	Group-A, DPC consisting of (i) Chairman, CAT or a Vice Chairman of the Tribunal to be nominated by the Chairman, CAT (ii) Member, CAT to be nominated by the Chairman - Member (iii) Registrar, Principal Bench or any other Registrar/Joint Registrar to be nominated by the Chairman - Member
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13. Of the above, the Senior Principal Private Secretary is attached to the office of the Chairman, and along with him, Principal Private Secretary and Steno Grade C have also been attached to the office of the Chairman. By Annexure A-2 order dated 9th February, 2005, in all sixteen posts of Private Secretaries were upgraded to Principal Private Secretaries, attached to the Vice Chairman of the Tribunal. The number of Principal Private Secretaries were comparable to the total number of sanctioned posts of Vice Chairmen at that point of time. And, at that time, the status of Vice Chairman was equated with that of a High Court Judge.

14. In 2007 amendment to the A.T. Act, 1985 has been passed which inter alia made the following provisions.

THE ADMINISTRATIVE TRIBUNALS (AMENDMENT) ACT, 2006

NO. 1 OF 2007 [29th December, 2006]

An Act further to amend the Administrative Tribunals Act, 1985.

BE it enacted by Parliament in the Fifty- seventh Year of the Republic of India as follows:-

Short title and commencement.-

1 (1) *This Act may be called the Administrative Tribunals (Amendment) Act, 2006.*

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act.

Amendment of section 3.-

2. In section 3 of the Administrative Tribunals Act, 1985 (hereinafter referred to as the principal Act),-

(I) in clause (i), for the words "the Chairman or a Vice- Chairman", the words "the Chairman" shall be substituted.

(II) in clause (ia), the words "and a Vice- Chairman" shall be omitted.

(III) for clause (u), the following clause shall be substituted, namely:-' (u) " Vice-Chairman" means a Member who has been authorized by the appropriate Government to perform administrative functions at each of the places where Benches of the Tribunal have been set up.'

Amendment of section 4.-

3. In section 4 of the principal Act, in sub- section (4), for the words "Chairman, Vice- Chairman and other Members", the words "Chairman and other Members" shall be substituted.

Amendment of section 5.-

4. In section 5 of the principal Act,-

(a) in sub- section (1), for the words "a Chairman and such number of Vice-Chairman and Judicial and Administrative Members", the words "a Chairman and such number of Judicial and Administrative Members" shall be substituted;

(b) in sub- section (4),-

(i) in clause (b), for the words "the Vice- Chairman or other Members", the words "a Member" shall be substituted;

(ii) in clause (c),-

(I) For the words "the Vice- Chairman or the Judicial Member", the words "the Judicial Member" shall be substituted;

(II) for the words "the Vice- Chairman or, as the case may be, the Judicial Member or the Administrative Member", the words "the Judicial Member or the Administrative Member, as the case may be" shall be substituted.

Substitution of new section for section 6.-

5. For section 6 of the principal Act, the following section shall be substituted, namely:-"

6. Qualifications for appointment as Chairman, Vice- Chairman and other

members.- (1) A person shall not be qualified for appointment as the Chairman unless he is, or has been, a Judge of a High Court: Provided that a person appointed as Vice- Chairman before the commencement of this Act shall be qualified for appointment as Chairman if such person has held the office of the Vice- Chairman at least for a period of two years.

(2) A person shall not be qualified for appointment,-

(a) as an Administrative Member, unless he has held for at least two years the post of Secretary to the Government of India or any other post under the Central or State Government and carrying the scale of pay which is not less than that of a Secretary to the Government of India for at least two years or held a post of Additional Secretary to the Government of India for at least five years or any other post under the Central or State Government carrying the scale of pay which is not less than that of Additional Secretary to the Government of India at least for a period of five years: Provided that the officers belonging to All- India services who were or are on Central deputation to a lower post shall be deemed to have held the post of Secretary or Additional Secretary, as the case may be, from the date such officers were granted proforma promotion or actual promotion whichever is earlier to the level of Secretary or Additional Secretary, as the case may be, and the period spent on Central deputation after such date shall count for qualifying service for the purposes of this clause;

(b) as a Judicial Member, unless he is or qualified to be a Judge of a High Court or he has for at least two years held the post of a Secretary to the Government of India in the Department of Legal Affairs or the legislative department including Member- Secretary, Law Commission of India or held a post of Additional Secretary to the Government of India in the Department of Legal Affairs and Legislative Department at least for a period of five years.

(3) The Chairman and every other Member of the Central Administrative Tribunal shall be appointed after consultation with the Chief Justice of India by the President.

(4) Subject to the provision of sub- section (3), the Chairman and every other Member of an Administrative Tribunal for a State shall be appointed by the President after consultation with the Governor of the concerned State.

(5) The Chairman and every other Member of a Joint Administrative Tribunal shall, subject to the provisions of sub- section (3) and subject to the terms of the agreement between the participating State Governments published under sub- section (3) of section 4 of the principal Act, be appointed by the President after consultation with the Governors of the concerned States. Explanation.- In computing for the purpose of this section, the period during which a person has held any post under the Central or State Government, there shall be included the period during which he has held any other post under the Central or State Government (including an office under this Act) carrying the same scale of pay as that of first mentioned post on a higher scale of pay."

Amendment of section 7.-

6. In section 7 of the principal Act, for the words " Vice- Chairman or, as the case may be, such one of the Vice- Chairman", the words " such one of the Members" shall be substituted.

Substitution of new section for section 8.-

7. For section 8 of the principal Act, the following section shall be substituted, namely:-

" 8. Term of office.-

(1) The Chairman shall hold office as such for a term of five years from the date on which he enters upon his office: Provided that no Chairman shall hold office as such after he has attained the age of sixty- eight years.

(2) A Member shall hold office as such for a term of five years from the date on which he enters upon his office extendable by one more term of five years: Provided that no Member shall hold office as such after he has attained the age of sixty- five years.

(3) The conditions of service of Chairman and Members shall be the same as applicable to Judges of the High Court."

Amendment of section 9.-

8. In section 9 of the principal Act, the word " Vice- Chairman" wherever it occurs shall be omitted.

Amendment of section 10.-

9. In section 10 of the principal Act,-

(i) the word " Vice- Chairman" wherever it occurs shall be omitted;


(ii) after the proviso, the following proviso shall be inserted, namely:- " Provided further that where a serving Government officer is appointed as a Member, he shall be deemed to have retired from the service to which he belonged on the date on which he assumed the charge of the Member but his subsequent service as Member shall, at his option, be reckoned as a post- retirement re- employment counting for pension and other retirement benefits in the service to which he belonged."

Insertion of new section 10A.-

10. After section 10 of the principal Act, the following section shall be inserted, namely:-

" 10A. Saving terms and conditions of service of Vice- Chairman.- The Chairman, Vice- Chairman and Member of a Tribunal appointed before the commencement of the Administrative Tribunals (Amendment) Act, 2006 shall continue to be governed by the provisions of the Act, and the rules made thereunder as if the Administrative Tribunals (Amendment) Act, 2006 had not come into force:

Provided that, however, such Chairman and the Members appointed before the coming into force of Administrative Tribunals (Amendment) Act, 2006 , may on completion of their term or attainment of the age of sixty- five or sixty- two years, as the case may be, whichever is earlier may, if eligible in terms of section 8 as



amended by the Administrative Tribunals (Amendment) Act, 2006 be considered for a fresh appointment in accordance with the selection procedure laid down for such appointments subject to the condition that the total term in office of the Chairman shall not exceed five years and that of the Members, ten years."

Amendment of section 11.-

11. In section 11 of the principal Act,-

(I) in clause (b), the words " Vice- Chairman or" shall be omitted;

(II) clause (c) and clause (d) shall be omitted; and

(III) in clause (e), the words " or Vice- Chairman" at both the places where they occur shall be omitted:

(IV) in clause (f), the word " Vice- Chairman" at both the places where they occur shall omitted.

Substitution of new section for section 12.-

Financial and administrative powers of the Chairman.-

12. For section 12 of the principal Act, the following section shall be substituted, namely:-

" 12. (1) The Chairman shall exercise such financial and administrative powers over the Benches as may be vested in him under the rules made by the appropriate Government.

(2) The appropriate Government may designate one or more Members to be the Vice- Chairman or, as the case may be, Vice- Chairmen thereof and the Members so designated shall exercise such of the powers and perform such of the functions of the Chairman as may be delegated to him by the Chairman by a general or special order in writing."

Amendment of section 31.-

13. In section 31 of the principal Act, for the words " Chairman, Vice- Chairman and other Members", the words " Chairman and other Members" shall be substituted.

Amendment of section 32.-

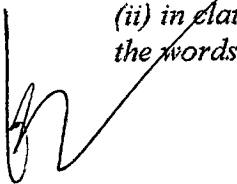
14. In section 32 of the principal Act, the word " Vice- Chairman" wherever it occurs shall be omitted.

Amendment of section 35.-

15. In section 35 of the principal Act, in sub- section (2),-

(i) in clause (b), for the words " Chairman, Vice- Chairman or other Member", the words " Chairman or other Member" shall be substituted;

(ii) in clause (c), for the words " Chairman, Vice- Chairman and other Members", the words " Chairman and other Members" shall be substituted.



15. With the above Amendment Act, 2007 the post of Vice Chairman was abolished and all the posts (other than the Chairman) have come to be called as Members. It was at this time that the status of the Members has been equated with that of High Court judges by providing that the service conditions of the Members would be the same as applicable to the Judges of the High Court. Accordingly, the terms and conditions, such as pay structure, leave, medical facilities, transport facilities, Leave Travel Concession, etc., of such members of the Tribunal have all been brought at par with that of the Judge of the High Court.

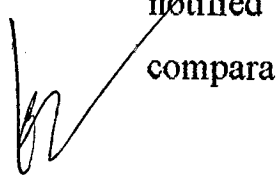
16. The hierarchy in the stenographic cadre in the C.A.T. is comparable to that of in the Central Secretariat Stenographic Services (CSSS). This equation, though not provided for in any statutory provision, has been so held in the following decisions of the Tribunal and on the basis of the same, whatever directions were given to the respondents have all been duly complied with:

(a) R.K. Sareen vs Union of India (OA No. 777 of 1992)

(b) K. Muraleedharan Nair and 4 others (OA No. 475 of 2006)

17. Two aspects are to be seen at this juncture. First is the entitlement of the Members of the Tribunal as to the services of a Principal Private Secretary and the next is whether the claim of the applicant for upgradation at par with that of the CSSS Cadre is justified.

18. In so far as the first aspect is concerned, with the amended Act (2007) the terms and conditions of the Members are the same as that of a High Court judge. The functions of the Members of the Tribunal are adjudication of service matters of the Central Government servants and those of certain other notified institutions. The onerous functions of the Members are certainly comparable to those of the High Court Judges as could be substantiated by the



observations of the Apex Court in some of the Judgments as hereunder:-

(a) In the case of *L. Chandra Kumar v. Union of India*, (1997) 3 SCC 261, the Apex Court has held as under:

"8.65 A Tribunal which substitutes the High Court as an alternative institutional mechanism for judicial review must be no less efficacious than the High Court. Such a Tribunal must inspire confidence and public esteem that it is a highly competent and expert mechanism with judicial approach and objectivity. What is needed in a Tribunal, which is intended to supplant the High Court, is legal training and experience, and judicial acumen, equipment and approach."

(b) In the case of *Union of India v. Kali Dass Batish*, (2006) 1 SCC 779, the Apex Court has observed as under:-

"It must be remembered that CAT is a Tribunal constituted under Article 323-A of the Constitution and is expected to have the same jurisdiction as that of a High Court. Consequently, Parliament has taken great care to enact, vide Sections 6 and 7 of the Act, that no appointment of a person possessing the qualifications prescribed in the Act as a member shall be made, except after consultation with the Chief Justice of India. The consultation with the Chief Justice of India is neither a routine matter, nor an idle formality. It must be remembered that a member of an Administrative Tribunal like CAT exercises vast judicial powers, and such member must be ensured absolute judicial independence, free from influences of any kind likely to interfere with independent judicial functioning or militate there against."

(c) The difference in status of a member prior and posterior to the 2007 Amendment has been taken note of by the Apex Court in the case of Shankar Raju vs Union of India (2011) 2 SCC 132 by referring to the provisions of Section 8 of the Act before and after Amendment:



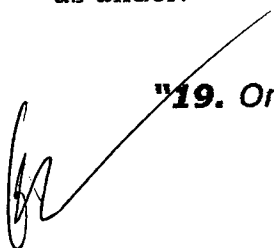
Section 8(Before Amendment)	Section 8(After Amendment)
<p>"8. <i>Term of office.</i>—The Chairman, Vice-Chairman or other Member shall hold office as such for a term of five years from the date on which he enters upon his office, but shall be eligible for reappointment for another term of five years: Provided that no Chairman, Vice-Chairman or other Member shall hold office as such after he has attained—</p> <p>(a) in the case of the Chairman or Vice-Chairman, the age of sixty-five years, and (b) in the case of any other Member, the age of sixty-two years.</p>	<p>8. <i>Term of office.</i>—(1) The Chairman shall hold office as such for a term of five years from the date on which he enters upon his office: Provided that no Chairman shall hold office as such after he has attained the age of sixty-eight years.</p> <p>(2) A Member shall hold office as such for a term of five years from the date on which he enters upon his office extendable by one more term of five years:</p> <p style="padding-left: 40px;">Provided that no Member shall hold office as such after he has attained the age of sixty-five years.</p> <p>(3) The conditions of service of Chairman and Members shall be the same as applicable to Judges of the High Court.</p>

(d) In an unfortunate event of a Member of the Tribunal having been harassed by the Police Authorities at Ranchi, when the Apex Court had dealt with the case, the following observation had been made by the Court in *Relating To Criminal Intimidation, In Re v. Union of India, (2009) 8 SCC 252*, at page 255 :

It is an obligation on the part of the State authorities and all other persons concerned to provide a conducive atmosphere for dispensation of justice. (underlining supplied)

(e) In yet another case, the respondents themselves had submitted before the Apex Court about the status of the Member of the Tribunal. In the case of *A.K. Behera v. Union of India, (2010) 11 SCC 322*, the Apex Court has observed as under:-

"19. On service of notice, the counter-affidavit has been filed




on behalf of the respondents by Ms Manju Pandey, Under-Secretary in the Ministry of Personnel, Government of India. In the counter-affidavit it is stated that the Administrative Tribunals (Amendment) Act, 2006 was intended to achieve the following objects:

(i) To abolish the post of Vice-Chairman in the Tribunals as it was creating an avoidable three-tier institution and resulting in anomalies in qualifications, age of retirement, service conditions, etc. The Act was passed so that all the Members of the Central Administrative Tribunal can be elevated to the same status as of a High Court Judge and, therefore, the service conditions of the Members of the Tribunals were upgraded to that of a Judge of the High Court i.e. the same as was of a Vice-Chairman under the unamended Act."

19. The Apex Court had, in the above case, after considering the affidavit of the Respondents, further observed as under:

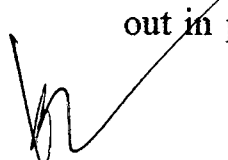
"23. What is asserted in the counter-affidavit is that as per Section 12 of the amended Act, the Chairman of the Tribunal would have all financial and administrative powers over the Benches, but the Vice-Chairman can be designated by the Central Government, obviously with concurrence of the Chairman, and a Member so designated would discharge such functions of the Chairman as the Chairman may direct and, therefore, it is wrong to contend that by introduction of Section 12(2) of the Act, the independence of the judiciary and independence of the Tribunal is sought to be curtailed by the executive. It is explained in the counter-affidavit that earlier the post of Vice-Chairman was not a promotional post for a Member of the Tribunal and the qualifications of the Vice-Chairman were different from a Member of the Tribunal, but, by amendment the qualifications of Members of the Tribunal have been raised to that of the Vice-Chairman and this change in qualifications neither affects the status of a retired High Court Judge nor confers arbitrary benefits on the non-Judicial Members and, therefore, the said provision is perfectly legal. It is further pointed out in the counter-affidavit that except the change in the nomenclature, a retired High Court Judge would get exactly the same facilities, if he is appointed today as Member of the Tribunal instead of designating him as Vice-Chairman of the Tribunal under the unamended Act and, therefore, it is wrong to contend that the amendments are violative of the provisions



of the Constitution. (underlining supplied)."

20. The above observations of the Apex Court and the admission by the DOPT before the Apex Court would go to show that the equation of the status of the Member of the Tribunal is with that of the High Court judge. It was for this reason that the service conditions have also been kept at par with that of the High Court judge. Again, the service condition should include identical conducive atmosphere and facilities comparable to that of the High Court judge. Viewed from this, entitlement of a Member for a Principal Private Secretary is more than justified.

21. Next is the question of equation of the Secretariat service with that of the Central Secretariat Stenographers service. In the CSSS cadre, the upgradation of various posts and the total number of posts in each of the grade corresponds to the status of the officers for whose assistances the services of such staff are utilized. In the CSSS cadre, the latest order passed is as at Annexure A-3 dated 28th October, 2005. This provides for availability of the services of one Senior Principal Private Secretary, one Private Secretary and one Steno Grade-C to each of the Secretary/Special Secretary/Additional Secretary to the Government of India and officers of equivalent rank working in the Ministries/Departments of Government of India. Vide Annexure A-4 OM dated 18th November 2005, it has been clearly stated that in order to maintain parity in the total number of posts of Senior PPS and PPS of the CSSS with that of the total number of posts of Secretary/Addl. Secretary level Officers (who are provided secretarial/stenographic assistance by the members of CSSS) the Government has also decided to appropriately adjust the total number of posts of PPS through up-gradation/down-gradation of posts of PS/PPS. Not only that such a numerical equation has been provided for in respect of the present sanctioned strength but even in future, there would be a corresponding parity in the numerical strength of CSSS cadre staff as is spelt out in para 4 of the said OM dated 18th November, 2005 wherein it has been



stated, "In order to maintain parity in the total number of posts of Senior PPS and PPS of CSSS with that of the number of posts of Secretary/Additional Secretary level Officers, in future, cadre authorities are requested to ensure that whenever there is any change in the number of posts of Secretary/Addl. Secretary/equivalent in their respective cadre units this Department may please be informed immediately to enable it to make appropriate adjustments in the number of Posts of PPS." It is on the same basis that the applicants claim that in their case too there must be up-gradation of posts of PS to PPS corresponding to the number of Members who are equated in status to that of High Court Judge.

22. Though the counsel for the respondents repeatedly submitted that there cannot be any comparison of the stenographic services of the CAT with that of the CSSS, the fact remains that such an equation has already been affirmed by the Tribunal in the case of S.R. Dheer and others vs Union of India (vide OA No. 164 of 2009). In that case, paragraphs 48 to 52 of the order dated 19-02-2009 as extracted below refers:-

"DISCUSSION AND CONCLUSION:

48. The word "historical" has been defined in Concise Oxford Dictionary, Tenth Edition (Revised) as belonging to or set in the past. Historical parity is the parity or equality maintained in the context of the present Original Application between the pay scales of PSs/SOs with that of their counterparts in CSS/CSSS in the wake of the recommendations by several Pay Commissions. A historical parity would be when it is established as an obligation to one who is claiming parity of pay scales with the class or category had been situated in the past at par in the equivalent pay scale with the counterparts with whom such parity is claimed. It is no more res integra as transpired from the Chart, which is not disputed by the respondents, that earlier in the cadre of Stenographers Grade #C#/Assistants in the Fourth Central Pay Commission, the scale of pay was Rs.1400-2600, which had been upgraded in case of CSS/CSSS to Rs. 1640-2900 by issuing an O.M. but it has

not been effected in CAT. The litigation resulted in an order passed by the DOP&T in pursuance of the direction of the Tribunal in OA No. 2865/1991 and CCP No. 262/1993 wherein it has been decided to grant pay scale to the counterparts CAT employees of Rs. 1640-2900 even without amending the recruitment rules. However, subsequently the rules were amended. In S.K. Sareen vs. Union of India & Ors. (OA No. 777/1992 decided on 20.12.1999), the pay scale of Rs.3000-4500 from 01.01.1986 was sought on the principle of #equal pay for equal work# at par with their counterparts in CSSS. When order was affirmed by the Delhi High Court on 19.04.2002 and SLP against which was also turned down, in CP 405/2003, an order was passed on 09.02.2005 upgrading the 16 posts of Private Secretaries to Principal Private Secretaries and one post of PPS to Senior Principal Private Secretary in the relevant pay scales at par with CSSS. This clearly shows that the parity in the pay scale has been maintained in the CAT relating to two categories upto the stage of Fourth CPC.

49. The only anomaly which had occurred on account of grant of pay scale of Rs. 1640-2900 has been set right on a judicial dicta which holds the field and was complied with.

50. In Fifth CPC the PSs/SOs were recommended the pay scale of Rs. 6500-10500 and also the counterparts in CSS/CSSS. However, the NFSG scale of Rs. 8000-13500 to the merged grade of A & B of PSs of CSSS has been allowed notionally w.e.f. 01.01.1996 and actually w.e.f. 03.10.2003. The applicants have raised this issue before the Ernakulam Bench where the CP converted into Misc. Application, an affidavit filed by the Government clearly indicates that the Commission has examined and recommended the issue of parity of employees of CAT with their counterparts in CSS/CSSS cadre in para 7.32.15 of the Report of the 6th Pay Commission. It is further reiterated on acceptance by the DOP&T vide letter dated 27.03.2008 where the parity, recommended by the 6th CPC in para 3.1.9 and 7.32.15 of the Report, with counterparts in CSS/CSSS has been accepted.

51. In the above view of the matter regarding the parity of pay scale in 5th CPC in the wake of an admitted fact of the historical parity between the CSS/CSSS with counterparts in CAT, a final decision is awaited for grant of

NFSG grade of Rs.8000-13500 notionally and actually to the employees of the Tribunal. However, as this is not the issue before us, except reiterating in law their demand, the issue of historical parity between the PSs/SOs of CAT and on the other hand SOs/PSs of CSS/CSSS is no more res integra and once accepted by the government and recommended by 6th CPC, the aforesaid recommendations contained in paragraphs 3.1.9 and 7.32.15 having been accepted by the Government, the stand now taken by the respondents that what is applicable to the applicants in the present OA is para 3.1.14 of the recommendations of the 6th CPC is absolutely misconceived. It is pertinent to note that this para applies to non-secretariat offices and to those for whom there is no historical parity with CSS/CSSS and in favour of whom a criteria of recommendations has not been laid down in the 6th CPC recommendations. On a juxtaposition, 6th CPC while making its recommendations in para 7.32.15 as to cadre structure of higher pay scale in CAT reiterated that Assistants and Stenographers in CAT have demanded pay scales at par with their counterparts in CSS/CSSS and as the Commission has already recommended parity between the similarly placed posts in field offices and Secretariat, no separate recommendation has been made. The only logical and rationale inference to be drawn is that whatever has been recommended in para 3.1.9 is to be applied mutatis mutandis to the employees of the CAT on the condition precedent being fulfilled, which is establishment of historical parity with CSS/CSSS. The recommendations contained in para 3.1.14 of 6th CPC Report where the field organizations and non-secretariat organizations have been recommended the pay scale are not at all applicable to the employees of the CAT, as a specific recommendation made in paragraph 7.32.15 Commission having recommended parity between the similarly placed posts in field offices and secretariat the instant demand has been fulfilled. It is trite that when there is a specific recommendation made as transpired from para 3.1.9 as to parity with pay scale of CSS/CSSS structure the asterisk (*) clearly shows that even to the non-secretariat offices and organizations being carved out as an exception to the recommendations contained in para 3.1.14 is that those organizations which are not exhaustive but includes departments and organization which have had a historical parity the pay scale would be at par with CSS/CSSS. It is trite that under the principle of interpretation that in case of interpretation of a service rule, if two views are possible then the rule has to be interpreted with the practice followed in the department for long



time as held in *Shailendra Dania & Ors. vs. S.P. Dubey & Ors.*, 2007 (2) SCC (L&S) 202, a marginal note with a provision is an integral part of it and being an exception in the instant case as an asterisk (*) to para 3.1.9, the same has applicability to all field offices and non-secretariat organizations, all departments where there has been historical parity with the pay scale of their counterparts in CSS/CSSS. We cannot read para 3.1.14 in isolation of para 3.1.9 and 7.32.15 where both the recommendations having been accepted by the Government, only applying para 3.1.14 to the exclusion of 3.1.9 would amount to approbating and reprobating simultaneously, as a conscious and well taken decision when transformed into an affidavit of the Government before the Ernakulam Bench, an admission to acceptance of parity and acceptance also of established parity as a historical background leaves no doubt in our mind that there has been a historical parity of SOs/PSs in CAT with their counterparts in CSS/CSSS. They cannot now, as a contradictory stand, deny the same as it would not only be unfair but also is a misuse of their discretionary power which is to be exercised by an administrative authority judiciously after balancing all the relevant factors as ruled by the Apex Court in *Union of India vs. Kuldip Singh*, 2004 (2) SCC 590. A discretion vested in the administrative authority is neither unfettered nor absolute. It is to be exercised in consonance with the rights of a government employee and Constitution of India. A consideration worth in law is one, which thinks over on active application of mind all the relevant consideration and factors as ruled by the Apex Court in *Bhikubhai Patel (supra)*. As a model employer just to deprive the applicants their rights and legitimate dues without any justifiable reasons and on misreading of their CSSS Revised Pay Rules, 2008, irrelevant considerations have been grounded to deprive the applicants the requisite pay scales on established historical parity with those of their counterparts in CSS/CSSS. Learned counsel for the respondents relied upon the decision of High Court in *Mohinder Pal Singh (supra)* and in *M.V.R. Rao (supra)* by a Larger Bench of this Tribunal. In this regard it is pertinent to note that this issue of parity of CAT employees with CSS/CSSS has been dealt with by this Tribunal in *S.K. Sareen's case (supra)* which, on affirmation from the High Court, and also rejection of SLP, on implementation by the respondents not only attained finality but also is an admission to the effect by the respondents that the SOs/PSs of CAT are maintaining historical parity with those of their counterparts in CSS/CSSS. It

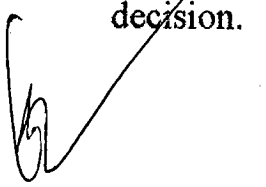


is worthwhile to note that there is even a finding recorded that the duties and functional requirements of the CAT employees are more onerous than their counterparts in CSS/CSSS, which has not been overturned by any dicta. A judicial dicta when holds the field and the arena in which it operates, it is impermissible in law to the administrative authorities to infiltrate it as ruled by the Apex Court in Anil Rattan Sarkar v. State of West Bengal, 2001 (5) SCC 327. The Apex Court has also ruled in Dhampur Sugar Mill v. State of Uttaranchal, 2007 (11) SCALE 374 that when a public authority acts with oblique motive, bad faith or takes into account extraneous or irrelevant consideration, the exercise has to be held as not in accordance with law.

52. *In the above view of the matter the contention that the Government has not accepted the claim of the applicants as to the parity with CSS/CSSS is founded on a ground and justification, which has been misconceived by them and wrongly applied. Such a consideration cannot be a consideration worth in law."*

23. In view of the fact that earlier vide Annexure A-2, commensurate with the number of Vice Chairmen, sixteen number of PPS had been made available by upgrading corresponding number of PS to PPS; similarly, the situation as at present does warrant such an upgradation to enable each of the Member of the Tribunal to have the services of PPS.

24. It has been submitted by the counsel for the respondents that a sub committee had been formed to consider the issue. It is seen that the committee which was formed long back and no tangible proposal had been brought out since one by one, the members constituting the Committee kept on demitting the charges as Members. And, here again, what kind of proposal could they make over the entitlement of PPS to Members? They cannot say that the status of a Member does not call for a PPS for assistance. Nor can they say that the PPS/PS/stenographers in CAT cannot be equated with their counterparts in the CSSS cadre as such a parity has already been established through a judicial decision. Thus, the excuse the respondents seek that the sub committee is



examining is purely to justify the delay in their action.

25. Attempt was made to refer to the case of one Unnimenon in which the Supreme Court has held that he does not belong to an organized Accounts cadre. That case has no bearing to the facts of this case.

26. In view of the above discussion, the claim of the applicant deserves to be allowed. We accordingly allow the OA. In fact the respondents have to keep in mind the provision for making available the services of a PPS to each member in future also as in the case of CSSS cadre as contained in para 4 of Annexure A-4 order dated 18th November, 2005. Since there is no such prayer, we do not pass any order in that regard. However, in so far as the implementation of this order is concerned, the claim is not personal to the three applicants only but equally applies to all those who are similarly situated. For it is one of the cardinal principles of jurisprudence that a judgment in rem is to be made applicable to all those similarly situated without driving such similarly situated persons to knock at the doors of the Tribunal. In this regard, the following decisions of the Apex Court and also the Pay Commission Recommendations are relevant to be reflected:-

(a) The Apex Court as early as in 1975 in the case of **Amrit Lal Berry**

v. CCE, (1975) 4 SCC 714, held as under:-

We may, however, observe that when a citizen aggrieved by the action of a government department has approached the Court and obtained a declaration of law in his favour, others, in like circumstances, should be able to rely on the sense of responsibility of the department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to court.

(b) **In Inder Pal Yadav v. Union of India, (1985) 2 SCC**

648, the Apex Court has held as under:-

"... those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If



they are otherwise similarly situated, they are entitled to similar treatment, if not by anyone else at the hands of this Court.

(c) The V Central Pay Commission in its recommendation, in regard to extension of benefit of court judgment to similarly situated, held as under:-

“126.5 – Extending judicial decisions in matters of a general nature to all similarly placed employees. - We have observed that frequently, in cases of service litigation involving many similarly placed employees, the benefit of judgment is only extended to those employees who had agitated the matter before the Tribunal/Court. This generates a lot of needless litigation. It also runs contrary to the judgment given by the Full Bench of Central Administrative Tribunal, Bangalore in the case of C.S. Elias Ahmed and others v. UOI & others (O.A. Nos. 451 and 541 of 1991), wherein it was held that the entire class of employees who are similarly situated are required to be given the benefit of the decision whether or not they were parties to the original writ. Incidentally, this principle has been upheld by the Supreme Court in this case as well as in numerous other judgments like G.C. Ghosh v. UOI, [(1992) 19 ATC 94 (SC)], dated 20-7-1998; K.I. Shepherd v. UOI [(JT 1987 (3) SC 600)]; Abid Hussain v. UOI [(JT 1987 (1) SC 147)], etc. Accordingly, we recommend that decisions taken in one specific case either by the judiciary or the Government should be applied to all other identical cases without forcing the other employees to approach the court of law for an identical remedy or relief. We clarify that this decision will apply only in cases where a principle or common issue of general nature applicable to a group or category of Government employees is concerned and not to matters relating to a specific grievance or anomaly of an individual employee.”

(d) In a latter case of *Uttaranchal Forest Rangers' Assn. (Direct Recruit) v. State of U.P.*, (2006) 10 SCC 346, , the Apex Court has referred to the decision in the case of *State of Karnataka vs C Lalitha* (2006) 2 SCC 747 as under:

“29. Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one

person has approached the court that would not mean that persons similarly situated should be treated differently.

28. A pragmatic situation involved here is how to implement the same. In the case of CSSS, there is a proper pyramidal structure of the entire hierarchy as could be seen from Annexure A-8 order dated 25th February, 2011. The ratio of PPS to PS is approximately 5:13 (773:2041). In the case of CAT, after catering for each of the Member one PPS which would account for as many as approximately 60 in number, hardly there would be any PS available. The up-gradation could well be possible with the existing Private Secretaries, but as and when the post of PPS become vacant, these may not be able to be filled up by promoting the PS as adequate number of PS may not be available. The Recruitment Rules provide only for promotion. Thus, there would be a need to suitably amend the Recruitment rules, to pave way for filling up of the future vacancies in the PPS grade. It is for the Government to consider and modify the Recruitment Rules.

29. Thus, the **OA stands allowed**. It is declared that each of the Members of the Central Administrative Tribunal shall be provided with the services of a Principal Private Secretary. For this purpose, respondents shall upgrade the requisite number of the post of Private Secretaries to that of PPS. For such an up-gradation which is identical to that in the CSSS grade, vide Annexure A-8, the normal rule of matching saving etc., shall not be insisted for the purpose of up-gradation.

30. This order shall be complied with, within a period of four months from the date of communication of this order. No costs.


K.NOORJEHAN
ADMINISTRATIVE MEMBER


Dr K.B.S.RAJAN
JUDICIAL MEMBER