

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 58/97

Friday, this the 24th day of September, 1999.

CORAM:

HON'BLE MR AM SIVADAS, JUDICIAL MEMBER

HON'BLE MR JL NEGI, ADMINISTRATIVE MEMBER

1. B. Sasikumar	Lower Division Clerk, Canteen Stores Department Depot, Gandhi Nagar, Kochi - 20.
2. Elsy Sunny	- do -
3. Prasanna H. Pillai	- do -
4. Vanaja Nair	- do -
5. Thresiamma Thomas	- do -
6. T. Mohandas	- do -
7. N. Anilkumar	- do -
8. Maniyan Pillai	- do -
9. Sabu Joseph	- do -
10. C.G. Thomas	- do -
11. Saramma Joseph	- do -
12. Wills Varghese /	- do -
13. Smt. Kavita B.P. Singh	- do -

...Applicants

By Advocate M/s. Santhosh & Rajan

Vs.

1. Union of India represented by Secretary,
Ministry of Defence, New Delhi.
2. The General Manager,
Canteen Stores Department,
Head Office, Adelphi,
119 M.K. Road, Bombay.
3. The Regional Manager (South),
Canteen Stores Department,
Area Depot Complex,
Mandalay Lines Range Hills,
Khadaki, Pune 411 020.
4. The Area Manager,
Canteen Stores Department Area Depot,
Gandhi Nagar, Kochi - 20.

...Respondent

By Advocate Mr. Govindh K. Bharathan, SCGSC

The application having been heard on 24.9.99, the Tribunal on the same day delivered the following:

ORDER

HON'BLE MR AM SIVADAS, JUDICIAL MEMBER

Applicants seek to quash A-9 and to direct the respondents to regularise them from the date of their initial appointment as daily rated Lower Division Clerks with all consequential benefits and to declare that they are entitled for regularisation in service from the date of their initial appointment in the light of A-1 judgement.

2. Applicants were initially appointed under the 2nd respondent as daily rated Lower Division Clerks. They entered into service on various spells from 1.11.79 to 13.5.85. They were paid on daily rates. They appeared for the Departmental Examination and came out successful. They were regularised in service with effect from 1.3.89. Subsequently, applicants were transferred to Cochin and they are continuing there. As far as the Department of Canteen Stores Depot is concerned, seniority list is maintained on all India basis. One Mr. Lachit Hazarika aggrieved by the order of termination filed O.A. 169/90 before the Guwahati Bench of this Tribunal and as per A-1 judgement, that Bench of the Tribunal directed the respondents to allow the applicant therein to continue in service as Lower Division Clerk and to regularise him in that service with effect from 26.11.86, if he is found qualified/suitable in the fresh typing test. In O.A.169/90, the applicant entered into service on 26.11.86. The direction contained in A-1 judgement was implemented by the respondents as per A-2 and A-3. The applicants submitted representations to the respondents. A-6 is the order issued by the respondents. A-6 was challenged in O.A. 1425/94 before this Bench of the Tribunal. This Bench of the Tribunal permitted the applicants to make

representations and the 2nd respondent was directed to take a decision in the matter. Consequently, A-9 impugned order was issued.

3. Respondents resist the O.A. contending that the Ministry of Defence has permitted to regularise the service of all the 410 daily rated Clerks on the following conditions:

- " (a) Written departmental examination-cum-typewriting test be conducted by the Ministry of Defence and personnel regularised strictly on the basis of their qualifying the written examination and typewriting test.
- (b) The services of those who do not qualify in the examination are liable to be terminated.
- (c) This should not be quoted as a precedence for any future cases.
- (d) Further vacancies should be filled up through the Staff Selection Commission only."

A Departmental test was conducted and the services of all candidates qualified were regularised immediately. It was made clear in the appointment order of the regularised daily rated Clerks that their earlier service on the basis of daily wages will not be counted for the purpose of pay fixation, seniority, promotion, etc. and granting seniority to the applicants as claimed by them at this stage will totally disturb the present seniority position of the employees already promoted.

4. The impugned order A-9 reads thus:

" Please inform Sri.B. Sasikumar and the 10 other applicants that the Competent Authority has not agreed their seniority as LDC

in this Department from their initial date of engagement as daily rated LDC."

5. One is entitled to know on what ground his request has been turned down by the authority. The right to know the reason for rejection cannot be taken away by the department. Non-mentioning of the grounds for rejection of the request of the applicants by the respondents has prevented the Tribunal also from knowing on what ground the request has been rejected. The order should be a reasoned order and not a mechanical one.

6. Applicants are relying on A-1 for the reliefs sought by them. As per A-1 judgement, the Tribunal directed the respondents to regularise the applicant therein in service with effect from the date of his initial appointment, if he is found qualified and suitable.

7. According to the respondents, the Ministry of Defence has permitted to regularise the services of all the 410 daily rated Clerks subject to the fulfilment of the conditions. There is absolutely no case for the respondents that the applicants do not satisfy the conditions. The applicants have specifically stated in the O.A. that they have come out successful in the departmental test conducted. This is not denied. The position therefore, is that the applicants fully satisfy all the conditions stated in their reply statement for regularisation.

8. The contention of the respondents that antidating the seniority of the applicants at this stage will totally disturb the present seniority status of the employees was very well available for the respondents to raise in O.A. 169/90. No such contention was raised in O.A. 169/90.

No reason is also stated for non-raising this contention in O.A. 169/90 before the Guwahati Bench of the Tribunal. A-1 judgement has become final. In that situation, the respondents now cannot successfully raise the plea that antidating of seniority at this stage will disturb the seniority of the employees.

9. Though the applicants have specifically stated that A-1 judgement applies to the applicants also and relief has to be granted based on A-1, not even a syllable is stated in the reply statement to the effect that A-1 judgement cannot be applied to the facts of the case at hand.

10. The judgement in O.A.169/90 (A-1) applies to the facts of the case at hand and following the same, applicants are entitled to the reliefs claimed.

11. Accordingly, the O.A. is allowed. A-9 is quashed. It is declared that the applicants are entitled for regularisation in service from the date of their initial appointment. Respondents are directed to regularise the services of the applicants from the date of their initial appointment as daily rated Lower Division Clerks under the Department with all consequential benefits. This exercise shall be completed within three months from the date of receipt of a copy of this order. No costs.

Dated this the 24th day of September, 1999.

J.L. NEGI
ADMINISTRATIVE MEMBER

A.M. SIVADAS
JUDICIAL MEMBER

LIST OF ANNEXURES REFERRED TO IN THIS ORDER

1. Annexure A-1:

True copy of the judgement in O.A. No.169/90 dated 3.8.93 of the Hon'ble Central Administrative Tribunal, Guwahati Bench.

2. Annexure A-2:

True copy of the order No.3/Pers/A-1/CL-3396/812 dated 7.2.1994 of the 2nd respondent.

3. Annexure A-3:

True copy of the order No.3/Pers/A-1/CL-3396/976 dated 9.2.1994 of the 2nd respondent.

4. Annexure A-6:

True copy of the letter No.RMS/EST/063/767 dated 25.7.94 of the 3rd respondent.

5. Annexure A-9:

True copy of the order No.CHD/Court case/O.A.1425/95/3693 dated 17.1.1996 issued by the 4th respondent.