CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A.Nos.1315/96,1469/96,1347/96,286/97,579/97 & 1346/96

CORAM: Dated this the 3rd day of December,1999.

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE SHRI G.RAMAKRISHNAN, MEMBER(A)

O.A.1315/96

V.K.Nandakumar, Lower Division Clerk,
Naval Armament Depot,
Alwaye. ... Applicant

(By Advocate Mr.M.Girijavallabhan)

vs.

1. The Chief of the Naval Staff(Directorate of Naval Armament, New Delhi.

2. The Flag Officer Commanding-in-Chief, Headquarters Southern Naval Command, Cochin-682004.

3. The General Manager, Naval Armament Depot, Alwaye.

4. Shri C.H.Subramanyam, Lower Division Clerk, Naval Armament Depot, Vishakhapatnam.

5. Sri A.Appala Naidu, Lower Division Clerk, Naval Armament Depot, Vishakhapatnam.

6. Sri A.Ramagopala Rao, Lower Division Clerk, Naval Armament Depot, Vishakhapatnam.

7. Shri P.Nageswara Rao, Lower Division Clerk, Naval Armament Depot, Vishakhapatnam.

8. Sri O.S.N.Ethiraju, Lower Division Clerk, Naval Armament Depot, Vishakhapatnam.

9. Sri C.H.Sanyani Rao, Lower Division Clerk, Naval Armament Depot, Vishakhapatnam. ..Respondents

(By Advocate Mr. Govindh K.Bharathan, SCGSC R1-3)
Mr. P.K.Madhusoodhanan
Mr. S.Radhakrishnan

O.A.1469/96

T.A.George, Lower Division Clerk,
Naval Armament Depot, Alwaye. ..Applicant

(By Advocate Mr.M.Girijavallabhan)

vs.

1. The Chief of the Naval Staff(Directorate of Naval Armament) Naval Headquarters, New Delhi.

2. The Flag Officer Commanding-in-Chief,
Headquarters Southern Naval Command,
Cochin-682 004.

3. The General Manager, Naval Armament Depot, Alwaye.
...Respondents

(By Advocate Shri Govindh K.Bharathan,SCGSC)

O.A.1347/96

Smt.N.Bhadra Kumari, Lower Division Clerk,
Naval Armament Depot, Alwaye. ..Applicant

(By Advocate Shri M.Girijavallabhan)

vs.

1. The Chief of the Naval Staff(Directorate of Naval Armament, New Delhi.

2. The Flag Officer Commanding-in-Chief, Headquarters Southern Naval Command, Cochin-682004.

3. The General Manager, Naval Armament Depot, Alwaye.

4. Sri C.H.Subramanyam, Lower Division Clerk,
Naval Armament Depot, Vishakhapatnam.

5. Sri P.Appala Naidu, Lower Division Clerk,
Naval Armament Depot, Vishakhapatnam.

6. Sri A.Ramagopala Rao, Lower Division Clerk,
Naval Armament Depot, Vishakhapatnam.

7. Sri P.Nageswara Rao, Lower Division Clerk,
Naval Armament Depot, Vishakhapatnam.

8. Sri D.S.V.Ethiraju, Lower Division Clerk,
Naval Armament Depot, Vishakhapatnam.

9. Sri C.H.Sanyani Rao, Lower Division Clerk,
Naval Armament Depot, Vishakhapatnam. ..Respondents

(By Advocate Shri Govindh K. Bharathan, SCGSC)

O.A.286/97

Smt. A.V.Sarojini,
Lower Division Clerk,
Naval Armament Depot, Aluva. .. Applicant

(By Advocate Mr. N.N.Sugunapalan)

vs.

1. Union of India represented by
Secretary to Government,
Ministry of Defence,
New Delhi.

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2. The Chief of Naval Staff,
Naval Head Quarters,
New Delhi.

3. The Director General of Armament Supply,
Naval Head Quarters,
West Block No.5,
R.K.Puram,
New Delhi-66.

4. The Flag Officer Commanding-in-Chief,
Southern Naval Command,
Naval Base,
Kochi-4.

5. The General Manager,
Naval Armament Depot,
Aluva-63. ..Respondents

(By Advocate Mr. S.Radhakrishnan, ACGSC)

O.A.579/97

Smt.O.Sumalatha,
Lower Division Clerk, Naval Armament Depot,
Alwaye. ..Applicant

(By Advocate Mr.M.Girijavallabhan)

vs.

1. The Chief of Naval Staff(Directorate of Naval Armament)
Naval Headquarters, New Delhi.

2. The Flag Officer Commanding-in-Chief, Headquarters
Southern Naval Command, Cochin-682 004.

3. The General Manager, Naval Armament Depot, Alwaye.

4. Sri S.Sanyani Naidu, Lower Division Clerk, Naval Armament
Depot, Vishakhapatnam.

5. Smt. Neena M.Koli, Lower Division Clerk, Naval Armament
Depot, Bombay.

6. Sri S.D.Kamble, Lower Division Clerk,
Naval Armament Depot, Alwaye.

7. Sri Balakrishnan, Nair, Lower Division Clerk,
Naval Armament Depot, Alwaye.

8. Smt. Rachana M.Pitale, Lower Division Clerk,
Naval Armament Depot, Bombay.

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9. Smt. Alice Varghese, Lower Division Clerk,
Naval Armament Depot, Bombay.

10. Sri G.Somasekhara Prasad, Lower Division Clerk,
Director General of Naval Armament Supply,
Naval Headquarters, New Delhi.

11. Smt.Jayalakshmi, Lower Division Clerk,
Naval Armament Depot, Vishakhapatnam.

12. Sri C.H.Subramanyan, Lower Division Clerk,
Naval Armament Depot, Vishakhapatnam.

13. Sri G.K.Kadam, Lower Division Clerk,
Naval Armament Depot, Bombay.

14. Sri. Appalanaidu, Lower Division Clerk,
Naval Armament Depot, Vishakhapatnam.

15. Sri Ramagopala Rao, Lower Division Clerk,
Naval Armament Depot, Vishakhapatnam.

16. Nageswara Rao, Lower Division Clerk,
Naval Armament Depot, Vishakhapatnam.

17. BHLN Murthy, L.D.Clerk -do-

18. Sri S.G.Upadhyaya,
L.D.C. Naval Armament Depot,
Bombay.

19. Smt.B.Savithri, Lower Division Clerk
Naval Armament Depot, Vishakhapatnam. ..Respondents

(By Advocate Mr. Sunil Jose,ACGSC)
Mr.P.K.Madhusoodhanan
Mr. S.Radhakrishnan

O.A.1346/96

P.K.Venugopalan, Lower Division Clerk
Naval Armament Depot, Alwaye. ..Applicant

(By Advocate Mr.M.Girijavallabhan)

vs.

1. The Chief of the Naval Staff(Directorate of Naval Armament),New Delhi.

2. The Flag Officer Commanding-in-Chief, Headquarters Southern Naval Command, Cochin-682004.

3. The General Manager, Naval Armament Depot, Alwaye.

4. Sri C.H.Subramanyam, Lower Division Clerk, Naval Armament Depot, Vishakhapatnam.

5. Sri P.Appalanaidu,Lower Division Clerk, Naval Armament Dept, Vishakhapatnam.

6. Sri A.Ramagopala Rao, Lower Division Clerk, Naval Armament Depot, Vishakhapatnam.

7. Sri P.Nageswara Rao, L.D.C.,Naval Armament Depot,Vishakhapatnam.

(By Advocate Mr.Govindh K.Bharathan, SCGSC)
Mr.P.K.Madhusoodhanan
Mr.S.Radhakrishnan

ORDER

HON'BLE SHRI A.V.HARIDASAN,VICE CHAIRMAN:

All these O.As have been consolidated for joint hearing by order in M.A.No.928/97 as the issue involved in all these cases are identical. The applicants in O.As. 1315/96, 1469/96,1347/96,286/97 and 579/97 were all applicants in O.A.613/92. The applicant in O.A.1346/96 was not an applicant in O.A.613/92,but the issue in this O.A. is also identical to the issue in the other O.As. For the benefit of understanding the dispute involved, the facts in each case are stated below:

O.A.1315/96

2. The applicant and respondents 4 to 9 belong to common All India Seniority List of Lower Division Clerks published by the first respondent(Annexure A3). The applicant commenced service as a casual Lower Division Clerk with effect from 28.1.80. However, in implementation of the order of this Tribunal dated 22.7.1993 in O.A.613/92 filed by the applicant and others, the service of the applicant was regularised with effect from 28.1.80 condoning the artificial break as per Civil Establishment List No.103/93 dated 23.12.93(Annexure A2). As the respondents 4 to 9 commenced their service and were regularised long after the date of regularisation of the applicant under Annexure A2, they should have been placed junior to the applicant in the

seniority list (Annexure A3). But as a matter of fact, the applicant was placed junior to respondents 4 to 9. The applicant therefore made a representation(Annexure A4) dated 12.3.96 requesting that he may be assigned seniority with effect from 28.1.80. In response to this representation, the applicant was served with the impugned order dated 2nd September 1996(Annexure A5) wherein he was informed that the applicant's seniority has been fixed with reference to the original date of regularisation as there was no direction to revise the seniority in the order of the Tribunal in O.A.613/92.It is aggrieved by this order rejecting the claim of the applicant for seniority with effect from 28.1.80 that the applicant has filed this application for quashing the impugned order and directing the respondents 1 to 3 to treat the applicant as senior to respondents 4 to 9 giving him seniority with effect from 28.1.80.

O.A.No.1469/96

3. The applicant an ex-serviceman was reemployed as Lower Division Clerk under the second respondent on casual basis with effect from 16.11.79, but was regularised with effect from 4.10.82. He was one of the applicants in O.A.613/92 and on tbe basis of the order of the Tribunal in that case, the third respondent issued an order regularising the applicant as Lower Division Clerk with effect 16.11.79 condoning the artificial breaks by order dated 23.1.93 (Annexure A2). Finding that the applicant was not given seniority with effect from 16.11.79 he submitted a representation on 30.4.96 (Annexure A4) claiming for

revision of seniority. In reply to this representation, the applicant was given Annexure A5 reply dated 7th September 96 in which the applicant was told that in view of the ruling of the Ernakulam Bench of the Tribunal in O.A.No.967/90, 873/90, 30/91, 383/91, 572/91 and 1579/91 by the Larger Bench wherein it was ordered to grant seniority from the date of regularisation against sanctioned posts to those employees who have been regularised after issue of the corrigendum dated 27th May, 1980 the applicant was entitled to get seniority only from 18th October, 1982. Aggrieved by this the applicant has filed this application seeking to set aside this order declaring that he is entitled to count seniority either from 16.11.79 or at least from 8.5.1980 in the light of Annexure A3.

O.A.No.1347/96

4. The applicant who commenced casual service as Lower Division Clerk under the third respondent with effect from 18.10.73 but initially regularised with effect from a later date but was pursuant to the order in O.A.613/92 filed by her alongwith others granted regularisaation with effect from 18.10.73 by Annexure A2 order. Respondents 4 to 9 commenced service and were regularised long after the commencement of the service of the applicant and her regularisation under Annexure A2. However in the seniority list(Annexure A3) , the respondents 4 to 9 are placed higher than the applicant .The applicant, therefore, made a representation on 26.3.96(Annexure A4), in reply to which the applicant was served with the order of 2nd September

1996(Annexure A5) turning down the request of the applicant for revision of seniority reckoning the date of regularisation by Annexure A2 on the ground that the Tribunal in its order in O.A.613/92 did not order revision of seniority. Aggrieved by this,the applicant has filed this application for setting aside the Annexure A5 order and for a direction to respondents 1 to 3 to treat the applicant in the matter of seniority on par with respondents 4 to 9 by revising and refixing the seniority of the applicant in Annexure A3 seniority list according to the revised date of regularisation.

O.A.No.286/97

5. The applicant was one of the applicants in O.A.613/92. Pursuant to the order of the Tribunal in O.A.613/92, the applicant's service as Lower Division Clerk was antedated to 4.10.78. However in the seniority list of Lower Division Clerks(Annexure A1), the date of applicant's entry in the grade was shown as 5.7.79 and she has been given seniority only with effect from that date. The applicant therefore made a representation on 19.3.96 (Annexure A2) claiming seniority with effect from 4.10.78. The request of the applicant was turned down by order dated 2.9.1996(Annexure A3) wherein it was stated that as the Tribunal in O.A.613/92 has not ordered revision of seniority her seniority would continue to be based on the original date of regularisation. Aggrieved by that the applicant has

filed this application impugning Annexure A4 order declaring that the applicant is entitled to count her seniority from the date of initial appointment on the post of Lower Division Clerk .

O.A.579/97

6. The applicant who commenced casual service as a Lower Division Clerk on 8.11.1978 was regularised initially with effect from 4.10.82. Pursuant to the order of the Tribunal in O.A.613/92 in which the applicant herein was also one of the applicants by order dated 22.12.92(Annexure A2) the applicant was regularised with effect from 8.11.78. But in the seniority list of Lower Division Clerks as on 31st January 1996(Annexure A3), the respondents 4 to 19 who commenced service and were regularised in service as Lower Division Clerks long after the applicant joined service and was regularised, have been placed above her. Taking the date of regularisation of the applicant as 10.8.81, the applicant has been shown junior to respondents 4 to 19. The applicant, therefore, made a representation to which she received a reply stating that as the Tribunal in O.A.613/92 did not order revision of seniority, her seniority would continue to be counted from the date of original regularisation. The applicant has filed this application aggrieved by this for a declaration that the denial of seniority to the applicant either on the basis of her revised order of regularisation or atleast on the basis of her date of joining in the Naval Armament Organisation from 10.8.81, is arbitrary and discriminatory, violative of

Articles 14 and 16 of the Constitution and for a direction to respondents 1 to 3 to reckon the seniority of the applicant from the date of revised regularisation given in Annexure A2 order or atleast from the date of her joining in Naval Armament Organisation with effect from 10.8.81.

O.A.1346/96

7. The applicant who commenced service as casual Lower Division Clerk and was regularised subsequently was by an order dated 20th September 1995 regularised with effect from 5.2.79 . His grievance is that the respondents 4 to 9 who commenced service later and were regularised later have been shown senior to him in the seniority list of Lower Division Clerks. To his representation against this applicant was by the impugned order dated 2nd September,1996 informed that the respondents 4 to 9 have been given seniority above him in terms of the judgment of the Hyderabad Bench of the Central Administrative Tribunal whereas the seniority granted to him with respect to his original date of regularisation could not be changed. The applicant aggrieved by this has filed this application seeking to have the impugned order Annexure A4 set aside and for a direction to respondents 1 to 3 to treat the applicant in the matter of seniority on par with that of respondents 4 to 7 and to revise and refix his seniority reckoning the date of his regularisation according to Annexure A2.

8. The official respondents have filed a reply statement in O.A.1315/96 and obtained permission of the

Tribunal to treat the reply statement in that case as the replies in the connected cases also. Though notices were issued to the party respondents in all these cases, they did not turn up to contest the case.

9. The official respondents in the reply statement admit that the date of regularisation of the applicants were revised pursuant to the order of the Tribunal in O.A.613/92, but would contend that in view of the direction in the judgment of the Tribunal in O.A. 434/89 and connected cases, while the benefit of regularisation was given with effect from the initial date of engagement, condoning the artificial breaks, they were not given seniority. It has been further contended that the Larger Bench of the Tribunal in its order dated 29th September 1990 in O.A. Nos. 434/89 and 609/89 held that the applicants therein would be entitled to get the benefit of seniority from the date of initial appointment on casual basis as the corrigendum issued on 27th May 1980 would not apply to those who were regularised prior to the date of its issue and that as the applicants in these cases were regularised after 27th May 1980 would be entitled only to the benefits other than seniority.

10. We have heard the learned counsel on either side and have purused the pleadings and materials available on record as also the judgment of the Tribunal in O.A.434/89 and 609/89 by a Division Bench, of which one of us(Hon'ble Shri A.V.Haridasan, Vice Chairman) was a party as also of the Larger Bench of the Tribunal. The Division Bench in its

order dated 20.8.90 noting that the New Bombay Bench of the Tribunal had in O.A.Nos.516 and 732 of 1988 held that the applicants in those cases would be entitled to the benefit under the Ministry of Defence letter dated 24.11.1967 as amended first by corrigendum dated 27.5.80 only granted relief of regularisation from the date of their original appointment on casual basis to the applicants except seniority and referred the following question to a Larger Bench:

> "Whether the benefit of seniority to casual employes who are regularised in accordance with the Ministry of Defence letter dated 24.11.67 as amended by the corrigendum dated 27.5.80 can be given from the date of initial appointment on a casual basis,if the breaks in service are condoned, irrespective of the availability of a regular vacancy, especially in respect of those casual employees who were regularised prior to 27.5.80."

10. The Larger Bench of the Tribunal in its order dated 29.11.1990 observed as follows:

> "In the absence of any rule to the contrary,the very concept of regularisation dating back to the initial appointment coupled with condonation of breaks in service , necessarily implies that seniority should be reckoned from the date of initial appointment and not from the date of regularisation as such."

Accordingly, the Larger Bench answered the reference thus:

(i)The benefit of seniority to casual employees who were regularised in accordance with the Ministry of Defence letter dated 24.11.1967, can be given from the date of initial appointment on a casual basis, if the breaks in service are condoned , irrespective of the availability of a regular vacancy. The corrigendum issued on 27.5.1980 will not apply to regularisation from dates prior to the date of its issue, as in the present case.

(ii) The judgment of the New Bombay Bench dated 24/25.8.1989 in O.A.Nos.516 and 732 of 1988, is distinguishable as the applicants in those cases were absorbed after the issue of the corrigendum dated 27.5.1980. In view of this, we see no conflict betwen the judgment delivered by the various Benches of the Tribunal.

(iii) The applicants before us as well as those before the other Benches of the Tribunal similarly situated are borne on an All India seniority list. The judgment of the New Bombay Bench results in

determination of the seniority of such persons who were before that Bench in a different manner. We leave upon the question whether such determination is legally sustainable, as the same is not germane to the issue raised for our consideration."

(emphasis supplied)

12. It can be seen from the orders of regularisation in all these cases that the regularisation of the services of all the applicants were made from dates prior to 27.5.80 and therefore according to the ruling of the Larger Bench, the corrigendum dated 27.5.80 could not apply to any of these cases.The contention taken by the respondents that the applicants therefore would not be entitled to seniority with effect from the date of their regularisation as there was no direction from the Tribunal in O .A.613/92 to revise the seniority, is baseless and unjustified. We therefore hold that all the applicants in these cases are entitled to count their seniority as LDCs from the dates of their revised regularisation. In the result, the original applications are allowed with the following declarations and directions:

O.A.1315/96

The impugned order Annexure A1 is set aside and the respondents 1 to 3 are directed to refix the seniority of the applicant giving him seniority as Lower Division Clerk with effect from 28.1.80.

O.A.1469/96

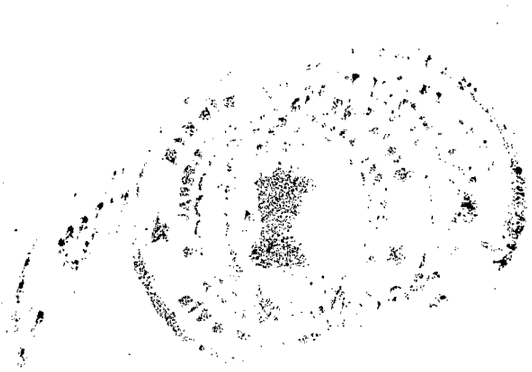
The impugned order Annexure A5 is set aside declaring that the transfer of the applicant by the second respondent against his will and wish by Annexure A3 from Naval Armament Organisation at Alwaye to base supply office Naval Base, Cochin for a period of 12 days from 6.10.82 to 17.10.82 being in public interest would not affect his seniority. We direct the respondents to refix the seniority of the applicant as Lower Division Clerk reckoning his seniority with effect from 16.11.79 with consequential benefits.

O.A.1347/97

The impugned order Annexure A5 is set aside and the respondents 1 to 3 are directed to refix the seniority of the applicant as Lower Division Clerk giving her seniority with effect from 18.10.73.

O.A.286/97

Declaring that the applicant is entitled her seniority as Lower Division Clerk counted from the date of her initial appointment on the post of Lower Division Clerk, we set aside the impugned order and direct the respondents to grant the applicant seniority as Lower Division Clerk with effect from 4.10.78.



O.A.579/97

We set aside Annexure A5 declaring that the denial of seniority to the applicant in accordance with the revised date of regularisation as per Annexure A2 or at least from 10.8.81 the date of her joining the Naval Armament Organisation,is arbitrary, discriminatory and violative of Article 14 and 16 of the Constitution, we direct the respondents 1 to 3 to reckon the seniority of the applicant as Lower Division Clerk with effect from 10.8.81 and to refix her seniority in the cadre accordingly.

O.A.1346/96

We set aside the impugned order Annexure A4 and direct respondents 1 to 3 to refix the seniority of the applicant as Lower Division Clerk reckoning his seniority with effect from 5.2.79 for the purpose of seniority.

13. The directions as aforementioned in these cases shall be complied with and orders issued by the concerned respondents as expeditiously as possible, at any rate, not later than two months from the date of receipt of a copy of this order. There is no order as to costs.

Sd/-
G.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

Sd/-
A.V. HARIDASAN
VICE CHAIRMAN

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List of Annexures referred to in the Order:

O.A.1315/96

1.	Annexue A2	True extract of civilian establishment list No.103/93 dt. 23.12.93.
2.	Annexure A3	True extract of seniority list of Lower Division Clerks of Naval Armament Organisation as on 1.1.96.
3.	Annexure A4	True copy of representation dated 12.3.96 of applicant to 3rd respondent.
4.	Annexure A5	True copy of reply of 3rd respondent bearing No.AAE/1159(ii) dt.2.9.96.

O.A.1469/96

1.	Annexure A2	True extract of civilian establishment list No.103/93 dt. 23.12.93.
2.	Annexure A3	True copy of representation of the applicant dt. 5.10.82 addressed to the 3rd respondent.
3.	Annexure A4	True copy of representation of the applicant dt. 30.4.96 to the 3rd respondent.
4.	Annexure A5	True copy of order No.AAE/1159 dt. 7.9.96 of the 3rd respondent to applicant.

O.A.1347/96

1.	Annexure A2	True extract of Sl.No.1 of civilian establishment list No.103/93 dt. 23.12.93 of 3rd respondent.
2.	Annexure A3	True extract of seniority list of Lower Division Clerks of Naval Armament Organisation as on 1.1.96 published by 1st respondent.
3.	Annexure A4	True copy of representation dated 26.3.96 of the applicant to 3rd respondent.
4.	Annexure A5	True copy of reply bearing No. AAE 1159/(iv) dt. 2.9.96 of the 3rd respondent.

O.A.286/97

1.	Annexure A1	True copy of the seniority list of Lower Division Clerks as on 31.1.1996.
2.	Annexure A2	True copy of the representation dt. 19.3.1996 submitted by the applicant ot the 5th respondent.

CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM

3.	Annexure A3	True copy of the reply dt. 2.9.96 issued by 5th respondent to the applicant vide No.AEE 1159(v),

O.A.579/97

1.	Annexure A2	True extract of civilian establishment list No.103/93(Sl.No.6) dated 23.12.93 of 3rd respondent.
2.	Annexure A3	True extract of seniority list of Lower Division Clerks published by 1st respondent as on 31.1.96.
3.	Annexure A5	True copy of reply No.AAE/1159(v) dt. 2.9.96 of the 3rd respondent.

O.A.1346/96

1.	Annexure A2	True copy of seniority list Lower Division Clerks as on 1.1.96 of 1st respondent.
2.	Annexure A4	True copy of order No.AAE 1159 (iii)dt,2.9.96 of the 3rd respondent.

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CERTIFIED TRUE COPY
Date 10.12.99

Deputy Registrar