

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 600 of 2012

MONDAY, this the 21st day of January, 2013

CORAM:

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

P. Ulaganathan, S/o. V.V. Perumal (Late),
Registrar, Central Administrative Tribunal,
Presently working as Chief Vigilance Officer,
Cochin Shipyard Limited, Cochin – 682 015
(on deputation basis).
Permanent Address : No. 144, Alex Street,
Panneer Nagar, Mogappair,
Chennai – 600 037.

... Applicant.

(By Advocate Mr. T.C. Govindaswamy)

Versus

1. Union of India represented by
The Secretary to the Government of India,
Ministry of Personnel, Public Grievances & Pensions,
Department of Personnel & Training,
North Block, New Delhi – 110 001.
 2. The Principal Registrar,
Central Administrative Tribunal,
Principal Bench, No. 61/35,
Copernicus Marg, New Delhi – 110 001.
 3. Smt T. Padma, Registrar,
Central Administrative Tribunal,
Principal Bench, No. 61/35,
Copernicus Marg, New Delhi – 110 001.
- ... Respondents.

(By Advocate Mr. Thomas Mathew Nellimoottil for R1&2
Mr. R. Sreeraj for R3)

The application having been heard on 07.01.2013, the Tribunal on
21-01-2013 delivered the following:



ORDER**HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

The applicant who is a Registrar in the C.A.T, is presently working as Chief Vigilance Officer, Cochin Shipyard Limited, Cochin, on deputation basis. He is aggrieved by the fixation of his seniority vis-a-vis the 3rd respondent in this O.A with retrospective effect from 01.11.1989, unsettling the settled seniority for the past 23 years, vide impugned order dated 04.10.2011 at Annexure A-8.

2. The applicant joined the Ministry of Home Affairs as Assistant on 14.10.1981. He came on deputation to the Madras Bench of this Tribunal on 09.12.1985. He was promoted as Section Officer (SO) in the Central Secretariat Service (CSS) under the Next Below Rule on 30.11.1987. He was taken on continued deputation as SO in the C.A.T with effect from 06.04.1988. He was absorbed in the C.A.T on 01.11.1989 as SO with the seniority counted from 30.11.1987. He was promoted as Deputy Registrar (adhoc) on 21.03.1996, as Deputy Registrar (regular) on 01.05.1996, as Joint Registrar in January, 2009 and as Registrar on 15.04.2009.

3. The 3rd respondent joined the Ministry of Power and Irrigation as Stenographer Grade-C on 13.12.1979. She came on deputation to the Madras Bench of this Tribunal with effect from 20.09.1985 from the Ministry of Water Resources. Consequent on promotion as Private Secretary (PS) in the Central Secretariat Stenographers Service (CSSS) on 18.04.1988, she was repatriated on the same day, but came back on deputation as Private



Secretary in C.A.T with effect from the next day i.e., on 19.04.1988. She was absorbed in the C.A.T as PS with seniority from 18.04.1988. She was promoted as Deputy Registrar on 01.01.2000, as Joint registrar after January, 2009 and as Registrar on 27.10.2010.

4. The posts of Section Officer and Private Secretary are having the same pay scales and are in the feeder category for promotion to the cadre of Deputy Registrar. The applicant was ranked senior to the 3rd respondent when they were absorbed in the C.A.T on 01.11.1989. In the revised final combined seniority list of SO/CO/PS in the C.A.T as on 01.11.1989 issued on 04.10.2011, the applicant is shown junior to the 3rd respondent. Hence the applicant has filed this OA praying for the following reliefs:

“(i) Declare that the 3rd respondent is not liable to be placed above the applicant in A8 seniority list and that the placement of the said respondent above the applicant in A8 seniority list is totally arbitrary, discriminatory, contrary to law and hence, unconstitutional;

(ii) Call for the records leading to the issue of A8 and quash the same to the extent it places the 3rd respondent above the applicant;

(iii) Direct the respondents to restore the applicant's seniority vis-a-vis the 3rd respondent as it stood prior to A8 and direct further to grant all the consequential benefits arising therefrom;

(iv) Award costs of an incidental to this application;

(v) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.”

5. The applicant submitted that in all the seniority lists since 01.11.1989, including the draft seniority list dated 21.12.2010 at Annexure A-6, the applicant's position was above that of the 3rd respondent. The unexpected



● placement of the 3rd respondent above the applicant without giving him an opportunity to show cause is opposed to the principles of natural justice. It is settled law that the seniority settled over a long period of time cannot be upset at the instance of one party or the other. In terms of Rule 5(2) of the Central Administrative Tribunal (Group 'B' and 'C' Miscellaneous Posts) Recruitment Rules, 1989 at Annexure A-3 read with identical rule contained in the Central Administrative Tribunal Stenographer's Services (Group 'B' and 'C' Posts) Recruitment Rules, 1989, the seniority of the officers absorbed/regularized in terms of Rule 5(1) shall be determined with reference to the dates of their regular appointment to the post concerned. The date of regular appointment of the applicant to the post of SO is 30.11.1987, that of the 3rd respondent is 18.04.1988; therefore, he is entitled to be placed above the 3rd respondent, as informed by the DOP&T in the letter dated 13.06.2012 placed at Annexure A-11. As per the clarification given by the DOP&T, the 2nd respondent ought to have revised the impugned seniority list at Annexure A-8 and restored the seniority position of the applicant as it existed prior to Annexure A-8. Nonfeasance on the part of the respondents to do so is arbitrary, discriminatory and contrary to law. The decision of the Principal Bench of this Tribunal dated 31.05.2010 in O.A. No. 337/07 as regards Shri V.K. Bawa, is only a judgement in personam and not a judgement in rem. The said decision also appears to be a judgement per incurium so far it is contrary to the statutory provisions contained in Rule 5(2) of the Recruitment Rules and, therefore, the decision of the Principal Bench in Annexure A-7 does not have a precedential value. The applicant is the seniormost among the Registrars at present to be considered for promotion as Principal Registrar against the vacancy to arise on 01.03.2013. His entire service is likely to be upset by conducting a



review DPC from the stage of his promotion to the post of Deputy Registrar after 01.11.1989. Therefore, Annexure A-8 to the extent it places the 3rd respondent above the applicant is opposed to the doctrine of legitimate expectation also. The decision in Annexure A-7 would at best be applicable only to those who were in the CSS and not to those who were in the CSSS since the rule under consideration was only with reference to CSS. More so, the principle in Annexure A-7 determines the inter se seniority as between those who have come from the same source of CSS or from the CSSS, as the case may be. The ratio of the decision of the Principal Bench in Annexure A-7 cannot be applied in the matter determination of inter se seniority as between those who have come CSS and CSSS or from other sources because in such cases, the seniority is to be determined only with reference to Rule 5 (2) of the Recruitment Rules and not otherwise. Annexure A-8, therefore, is arbitrary, contrary to law and ultra vires the statutory rules. The applicant and the 3rd respondent together had participated in the combined limited departmental competitive examination for preparation of the select lists of SO/Stenographer Grade-B. While the applicant came out meritorious and got placed at Sl. No. 11 in the select list for promotion to the post of SO, the 3rd respondent did not come out meritorious to be placed in the select list for promotion to the post SO and on the contrary, she was placed only in the select list of Stenographer Grade-B. As on 01.07.1986, the date from which the so called approved service of the applicant and the 3rd respondent were said to have begun, de-facto, the SO had the pay scale of Rs. 650-1200, whereas the Stenographer Grade-B had the pay scale of Rs. 650-1040 only. Consequent upon the implementation of recommendations of IV Central Pay Commission (CPC), Stenographer Grade-B and Stenographer Grade-A were



given identical replacement pay scale of Rs. 2000-3500. Nevertheless, the independent identities of Stenographers Grade-B and Grade-A were continued till the new Recruitment Rules came into force in the year 2010. In fine, in the CSS/CSSS, SOs and Stenographers Grade-B cannot be equated as at par. Notwithstanding Annexure A-7 order of the Principal Bench, the 3rd respondent cannot claim any seniority over the applicant nor can the 3rd respondent be assigned seniority accordingly. The 3rd respondent who did not even qualify to be placed in the select list for promotion to the post of SO cannot be placed above the applicant who has, in fact, secured the 11th position in the order of merit. By the passage of time, the seniority of the applicant over the 3rd respondent got settled and the said right cannot be taken away by an order like Annexure A-8, disregarding the order of the DOP&T at Annexure A-11.

6. In their reply statement, the official respondents submitted that a seniority list as on 01.11.1989 was finalized on 04.04.2000 showing the date of regular service of the applicant and the 3rd respondent as 30.11.1987 and 18.04.1988 respectively. Since the length of regular service rendered in the parent department was the criterion, the applicant ranked senior to the 3rd respondent. This seniority list was in force for almost 10 years. However, a Division Bench of the Principal Bench in the case of Shri V.K. Bawa vs. Union of India and Others (O.A. No. 337/2007) directed that his regular service as SO in CSS though commenced in 1986, should be deemed to have commenced on 01.07.1983, the date from which regular service would have been counted, had he continued in the CSS, which became final as no appeal was preferred. Before coming on deputation to the C.A.T in 1986, Shri V.K.



Bawa had appeared in the Limited Departmental Competitive Examination (LDCE) for the post of SO in 1983. The applicant and the 3rd respondent had also appeared had also in the LDCE in 1986. As per the final order in Bawa's case, their inter se seniority has to be decided before a seniority list was issued. As opined by the DOP&T, for determination of the inter se seniority in the service, the previous service which is in the same scales/grades must be considered. By considering the service in the previous grades of Stenographer Grade-C and Assistant, as the case may be, the 3rd respondent is senior to the applicant as she had held the next lower post for longer duration. Therefore, the applicant was shown junior to the 3rd respondent in the impugned seniority list. The respondents further submitted that there are no instructions to determine seniority of officers belonging to different streams who join an organisation on deputation basis and are subsequently absorbed where the date from which officers have been holding the equivalent grade/post in the parent cadre is the same.

7. The 3rd respondent in her reply submitted that though the applicant came to be promoted as Section Officer with effect from 30.11.1987 under Next Below Rule and she came to be promoted to the post of Stenographer Grade-B with effect from 19.04.1988, by virtue of a common examination combined LDCE conducted by UPSC for the 1986 vacancies, the same shall not have any effect on determination of inter se seniority of the parties herein since both are entitled to count the length of service rendered by them in their parent departments. The applicant was wrongly granted promotion under Next Below Rule by his parent department. Once an appointment is made on the basis of merit position in the examination no promotion could be ordered



on the basis of Next Below Rule. Since the benefit of service rendered in the Government prior to deputation followed by absorption is admissible to the applicant and herself, no line can be drawn in the matter of seniority on the ground that during the period of deputation one got promoted to a post carrying higher scale than the post which other gets on simultaneous promotion. The 3rd respondent has also been representing for assignment of correct seniority to her. By the impugned seniority list, she has been placed at her right seniority position. It is no gain saying that the settled seniority position has been unsettled. Though the judgement in V.K. Bawa's case may not be strictly construed to be a judgement in rem, however, the 'ratio decidendi' of the said case cannot be ignored. There is no bar that the seniority position if settled, cannot be unsettled in any event. Both the applicant and the 3rd respondent had submitted their representations for giving seniority from the date of their inclusion in the select list, i.e., from 01.07.1986 in response to the revised seniority list of SO/CO/PS, after the order in Bawa's case. Since both belonged to the same select year and hence by taking the feeder cadre seniority it was finally decided to place the 3rd respondent above the applicant. So it is not correct to say that he was not given an opportunity. The period of holding equivalent post in feeder grade in the parent department would be relevant for the purpose of determining the seniority under Rule 5 (2) of the Recruitment Rules and its proviso. The 3rd respondent was placed senior to the applicant for the reason that she had qualified in the 1978 examination whereas the applicant qualified in the 1980 examination and that she joined the post of PS in her parent department whereas the applicant never joined his parent department, but claims seniority in the post of SO based on the examination.



8. We have heard Mr. T.C. Govindaswamy, learned counsel for the applicant, Mr. Thomas Mathew Nellimoottil, learned counsel appearing for the respondents No. 1 and 2 and Mr. R. Sreeraj, learned counsel for the respondent No.3 and perused the records.

9. The issue for determination in this O.A is whether the impugned revised final combined seniority list of SO/CO/PS in the CAT as on 01.11.1989 as at Annexure A-8 dated 04.10.2011 is sustainable in law and facts or not. The respondents themselves have stated that the seniority list of SO/CO/PS as on 01.11.1989 was finalised on 04.04.2000 showing the date of regular service of the applicant and the 3rd respondent as SO on 30.11.1987 and 18.04.1988 respectively and that since the length of regular service rendered in the parent department was the criterion, the applicant ranked senior to the 3rd respondent. The seniority of the applicant over the 3rd respondent settled for about 23 years is unsettled by the respondents by issuing Annexure A-8. The declared law of the land is that the settled seniority should not be disturbed.

In the case of Malcom Lawrence Cecil D'Souza v. Union of India (1976) 1 SCC 599, the Apex Court held as under :-

"9..... matters like one's position in the seniority list after having been settled for once should not be liable to be reopened after lapse of many years at the instance of a party who has during the intervening period chosen to keep quiet. Raking up old matters like seniority after a long time is likely to result in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of sometime" (emphasis supplied).

In Direct Recruitment Class II Engineering Officers' Assn. vs. State of Maharashtra, (1990) 2 SCC 715, the Apex



Court held that "The decision dealing with important questions concerning a particular service given after careful consideration should be respected rather than scrutinized for finding out any possible error. It is not in the interest of Service to unsettle a settled position." (emphasis supplied)

In the case of **H.S Vankani v. State of Gujarat (2010) 1 SCC (L&S)**, the Hon'ble Supreme Court observed as under:

"37. The 1969, 1974 and 1979 Rules clearly stipulate how the seniority has to be reckoned. Rule 14 of the 1969 Rules and Rule 22 of the 1974 Rules are in pari materia which state that seniority of the Rangers shall be governed by their respective ranks in the final examination at the Rangers College irrespective of their joining the service and on successful completion of the training course the candidates shall be appointed as Rangers if they pass with higher standard certificate. Both the groups are governed by these Rules in the matter of their intra-seniority and the Government had rightly settled the seniority vide Orders dated 12-10-1982 and 5-3-1987 and the gradation lists were also rightly published. The Government in our view has committed a grave error in unsettling the settled seniority vide its proceedings dated 29-9-1993.

38. Seniority is a civil right which has an important and vital role to play in one's service career. Future promotion of a government servant depends either on strict seniority or on the basis of seniority-cum-merit or merit-cum-seniority, etc. Seniority once settled is decisive in the upward march in one's chosen work or calling and gives certainty and assurance and boosts the morale to do quality work. It instils confidence, spreads harmony and commands respect among colleagues which is a paramount factor for good and sound administration. If the settled seniority at the instance of one's junior in service is unsettled, it may generate bitterness, resentment, hostility among the government servants and the enthusiasm to do quality work might be lost. Such a situation may drive the parties to approach the administration for resolution of that acrimonious and poignant situation, which may consume a lot of time and energy. The decision either way may drive the parties to litigative wilderness to the advantage of legal professionals both private and government, driving the parties to acute penury. It is well known that the salary they earn, may not match the litigation expenses and professional fees and may at times drive the parties to other sources of money-making, including corruption. Public money is also being spent by the Government to defend their otherwise untenable stand. Further, it also consumes a lot of judicial time from the lowest court to the highest resulting in constant bitterness among the parties at the cost of sound administration affecting public interest." (emphasis supplied)



The respondents have violated the declared law of the land in issuing Annexure A-8.

10. The respondents contended that as per the final order in O.A. No. 337/2007 dated 31.05.2010, the inter se seniority of the applicant and the 3rd respondent had to be revised. The operative part of the said order is reproduced as under :

"48 In the result, for the foregoing reasons, O.A is allowed, without disturbing the promotion of both working and retirees on the posts of Joint Registrar, we accordingly set aside order dated 17.10.2006. As a result, order dated 26.3.2002 is restored in respect of promotion of applicant as Joint Registrar, now Registrar (OB) with all consequences and continuity for all purposes.

49. We also direct the respondents to re-determine the seniority of the applicant pursuant upon the decision of the Apex Court in M. Ramachandran (supra) in the cadre of Section Officer by taking the date of regular promotion as 1.7.1983 and thereafter as a consequence consider by an apt methodology in law preponing the promotion of applicant on the post of Deputy Registrar/Joint Registrar (OB) by reckoning this seniority. They shall also necessitate consideration of the claim of applicant for being considered for the post of Principal Registrar, if eligible, as per drawl of seniority, in accordance with law. These directions shall have to be complied with, within a period of three months from the date of receipt of a copy of this order.

50. Before we part with, as disclosed from the perusal of the record produced by the official respondents that applicant has not only been victimized but also suffered prejudice on account of personal bias of certain officers in the Tribunal for their individual gains and as such has been put to a disadvantage position. Keeping in light our observations, we impose a cost of Rs. 10,000/- (Rupees ten thousand only) to be paid to the applicant. However, the official respondents are at liberty on fixing responsibility after probe, to recover the cost from the concerned."

The direction of the Principal Bench of this Tribunal is to redetermine the seniority of the applicant therein pursuant upon the decision of the Apex Court



in M. Ramachandran's case in the cadre of SO. It is limited to the applicant only. There is no declaration of law in the said order based on which the settled seniority of the applicant needs to be unsettled. The respondents have carefully refrained from quoting the relevant part of the order in support of their stand to revise the settled seniority of the applicant. The decision of this Tribunal in the aforesaid case is only a judgement in personam and not a judgement in rem, as rightly contended by the applicant. Even the 3rd respondent admitted the same when she stated that ".....though the judgement in V.K. Bawa's case may not be strictly construed to be a judgement in rem....." The Central Government vide its order dated 30.10.2012 rightly limited the recommendations of the review DPC only to the extent of promotion of Shri V.K. Bawa as Deputy Registrar with effect from 01.04.1992. Therefore, we hold that the reliance of the respondents on the decision of Tribunal in Bawa's case to alter the seniority position of the applicant vis-a-vis the 3rd respondent is misplaced.

11. Apart from the fact that the official respondents traversed beyond the judgements in M. Ramachandran's case and Bawa's case, they violated principles of natural justice in altering the seniority of the applicant in the cadre of SO which was settled 23 years ago, without giving him a reasonable opportunity of being heard and without considering his objection, if any. Both the applicant and the 3rd respondent had submitted representations for giving seniority from 01.07.1986 on the basis of inclusion in the select list of 1986. That the applicant got an opportunity to do so cannot be interpreted to mean, by any stretch of imagination, as show cause notice to the applicant in the matter of giving seniority to the 3rd respondent over to him in the cadre of



SO in the C.A.T on the basis of length of service of the 3rd respondent in the cadre of Stenographer Grade-C in the CSSS.

12. A brief factual matrix of Bawa's case is as follows. While working as SO on ad hoc basis from 02.05.1983, he appeared in the LDCE for Section Officer's grade in the year 1983. On being declared qualified, he was appointed as SO on regular basis with effect from 01.01.1986. As per the instructions of the Government of India, the relative seniority of the direct recruits is determined by the order of merit in which they are selected on the recommendations of the Union Public service Commission (UPSC). He joined as SO in the Chandigarh Bench of this Tribunal on deputation basis on 03.03.1986 and was absorbed as SO on 01.11.1989. In terms of the instructions of DOP&T dated 03.07.1986, a person appointed on deputation on absorption is entitled to the seniority from the date of holding the post on deputation basis or the date from which he has been appointed on regular basis to the same or equivalent grade in the parent department, whichever is earlier. The seniority of the applicant in the cadre of SO in the C.A.T was taken as 03.03.1986. The DOP&T had confirmed that as he belongs to the select list of Section Officers for the year 1983 (LDCE), he is entitled to seniority from 01.07.1983, vide letter dated 11.08.2003. But the C.A.T did not pay any heed to it. Aggrieved he had filed O.A. No. 337/2007 for redressal of his grievance for grant of seniority with effect from 01.07.1983, which was allowed as quoted earlier.

13. The ratio decidendi of Bawa's case is not applicable to the case of the 3rd respondent as the facts of her case is different from the facts of Bawa's case.



Shri Bawa was holding the post of Section Officer on ad hoc basis with effect from 02.05.1983 onwards and on regular basis from 01.07.1983 on being qualified as SO on the basis of the LDCE in 1983. The 3rd respondent was not qualified for selection as SO on the basis of LDCE in 1986, but only as Stenographer Grade-B, which was not equivalent to the post of Section Officer. The DOP&T has determined that Shri Bawa was entitled to seniority as SO with effect from 01.07.1983 and the same was communicated to him. There was no such determination in the case of the 3rd respondent by the DOP&T to give her seniority as PS with effect from 01.07.1986. In the facts and circumstances of the case of Shri Bawa, the Tribunal had "no option but to construe as grant of seniority to the applicant from 01.07.1983 is deemed regularisation of the period of ad hoc service and in such an event, the appointment in the SO on regular basis would relate back to 01.07.1983". In the case of the 3rd respondent, there was no ad hoc service as PS or decision of the DOP&T notwithstanding the opinion otherwise or a direction by the Tribunal to grant seniority with effect from 01.07.1986 relying on her long service in the cadre of Stenographer Grade-C. The Bawa's case did not deal with recruitment from different sources, but only the source of SO. Shri Bawa had approached this Tribunal whereas the 3rd respondent did not approach this Tribunal in time if she had any grievance against the promotion of the applicant under Next Below Rule. In O.A. No. 337/2007, the Principal Bench had observed that Shri V.K. Bawa was victimized, prejudiced and put to disadvantageous position. In other words, he was denied what was due to him, which is not the case in respect of the 3rd respondent. The submission of the applicant in this O.A that he was



meritorious and ranked higher to the 3rd respondent in the select list in the LDCE, 1986, is not disputed. In view of the above, there is no ground for applying the ratio decidendi of Bawa's case to the case of the 3rd respondent vis-a-vis the applicant.

14. The direction to the respondents in O.A.No. 337/2007 was to redetermine the seniority of Shri V.K. Bawa in accordance with the decision of the Apex Court in M. Ramachandran's case in the cadre of SO by taking the date of regular promotion as 01.07.1983. In **M. Ramachandran v. Govind Ballabh, 1999 (5) SLR SC 318**, the Apex Court had observed as under:-

"9.Length of service is a recognized method of determining the seniority. Such length of service shall have reference to the class, category or grade which the parties were holding at the relevant time. It, therefore, follows that the total length of service is not relevant for determining the seniority but length of service to a particular class, category or grade is relevant consideration for the purposes of counting the period with respect to length of service for the purposes of determining the seniority. In other words, the period of holding of the equivalent post in the parent department would be the relevant period to be taken note of for the purposes of determining the seniority under Rule 5(2) and its proviso. Any other interpretation would be against the settled rules of service jurisprudence and is likely to create many anomalies resulting in failure of justice and defeating the acquired rights of the civil servants based upon their length of service. A perusal of the Rules does not, in any way, show and rightly so that the rule making authority had ever intended to take away the benefit of the length of service of a person in his parent department before his deputation and absorption in the service."

(emphasis supplied)

Neither the decision in Ramachandran's case nor Bawa's case can be a legal basis for reckoning the length of service in the feeder grade for determining the seniority in the cadre of SO on absorption in the C.A.T. Rule 5(2) of the Central Administrative Tribunal (Group 'B' and 'C' Miscellaneous Posts)



Recruitment Rules, 1989, determines the seniority as SO in the CAT and in the case of the 3rd respondent, Rule 5(2) of Central Administrative Tribunal Stenographer's Services (Group 'B' and 'C' Posts) Recruitment Rules, 1989, is applicable. Accordingly, they were given seniority in the cadre of SO in C.A.T. With effect from 30.11.1987 and 18.04.1988 respectively, which is in accordance with the decision of the Apex Court in Ramachandran's case.

15. In the reply statement, the official respondents refer to the opinion of the DOP&T to consider the previous service which is in the same scales/grades must be considered, but failed to produce any document to prove it. The so called opinion of the DOP&T is not in consonance with Rule 5(2) or the decision of the Apex Court in Ramachandran's case as it goes beyond the date of regular appointment to the post from which deputation to the C.A.T took place. Further, in Annexure A-11, the respondents have categorically stated that the date from which the officers were holding equivalent post on regular basis will be the crucial date for determining the inter se seniority. Annexure A-11 letter is reproduced as under :

"CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench, New Delhi

61/35, Copernicus Marg,
New Delhi – 110 001.

No. PB/15/4/2010-Estt.I/4641/A

Dated : 13.06.2012

To

Shri P. Ulaganathan,
Chief Vigilance Officer in Cochin Shipyard Ltd.,
Perumanoor, M.G. Road,
Kochi – 682 015.



Sub:- Representation on the Revised Final Combined Seniority List of SO/CO/PS in CAT as on 01.11.1989, in implementation of directions of the Hon'ble CAT, Principal Bench dated 31.05.2010 in O.A 337/2007 in the matter of Shri V.K. Bawa Vs. UOI & Ors. - regarding.

Sir,

I am directed to refer to your representation dated 22.12.2011 on the above mentioned subject and to say that the said representation was forwarded to the DOP&T for consideration vide this office letter of even number dated 05.01.2012 with the approval of the Hon'ble Chairman. DOP&T has informed that Rule 5(2) provides that seniority of officers is to be determined with reference to the date of Regular appointment to the post. It is further stated that the provision of approved service/select list as contained in the CSS/CSSS Rules will not apply in the instant case. It is further informed that the date from which the officers were holding equivalent post on regular basis will be the crucial date for determining inter-se seniority.

Furtherance to the final combined seniority list of SO/CO/PS, recommendations of the Review DPC have already been sent to the DOP&T with the approval of the Hon'ble Chairman before receipt of your another representation dated 16.05.2012 wherein it is requested not to proceed with Review DPC until a decision is taken on your earlier representation. However, the said representation dated 16.05.2012 has already been forwarded to DOP&T as the recommendations of the Review DPC as stated supra are still pending consideration with the Govt.

(emphasis supplied)

Yours faithfully,
Sd/-
(L.R. Sharda)
Deputy Registrar (Estt.)"

The official respondents have not responded to the contention of the applicant that they should have revised the impugned seniority list at Annexure A-8 as per the letter of DOP&T at Annexure A-11 for which an adverse inference is drawn against the official respondents.

16. In the result, we hold that Annexure A-8 seniority list dated 04.10.2011 in respect of the applicant and respondent No. 3 is not sustainable in law and facts. The O.A. succeeds. Accordingly, it is ordered as under.



17. The impugned Annexure A/8 seniority list dated 04.10.2011 is quashed qua the applicant and respondent No.3. The respondents are directed to restore the applicant's seniority vis-a-vis the 3rd respondent as it stood prior to Annexure A-8 and to grant him all consequential benefits arising therefrom within a period of two months from the date of receipt of a copy of this order.

No costs.

(Dated, the 21st January, 2013)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R. RAMAN
JUDICIAL MEMBER

cvr.