CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A. 1600/95, O.A. 64/96 and O.A.122/96.

Wednesday this the 20th day of March, 1996.

CORAM:

HON'BLE MR. JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

HON'BLE MR. S.P. BISWAS, ADMINISTRATIVE MEMBER

O.A.1600/95

C.I. Chacko,
Assistant,
Passport Office, Calicut, .. Applicant

(By Advocate M/S. P. Ramakrishnan and Preethi Ramakrishnan)

Vs.

1. Union of India represented by
the Secretary to Government,
Ministry of External Affairs,
Patiala House, Tilak Marg,
New Delhi.

2. The Joint Secretary (CPV) &
The Chief Passport Officer,
Ministry of External Affairs,
Patiala House, Tilak Marg,
New Delhi.

3. The Under Secretary (CPV),
Ministry of External Affairs,
Patiala House, Tilak Marg,
New Delhi.

4. The Regional Passport Officer,
Office of the Regional Passport
Officer, Calicut.

5. Kumari Vidyawathi Chauhan,
Assistant, C/o Under Secretary(PVA)
Ministry of External Affairs,
Patiala House, Tilak Marg,
New Delhi.

6. Kumari Santha Kumari, Assistant,
C/o Under Secretary(PVA),
Ministry of External Affairs,
Patiala House, Tilak Marg,
New Delhi. .. Respondents

...2/-

7. Sri Jagdish Jal, Assistant,
C/o Under Secretary (PVA),
Ministry of External Affairs,
Patiala House, Tilak Marg,
New Delhi.

8. Shri Shiv Sankar,Misra, Assistant,
C/o Under Secretary (PVA)
Ministry of External Affairs,
Patiala House, Tilak Marg,
New Delhi.

9. Shri Tej Ram, Assistant,
C/o Under Secretary (PVA)
Ministry of External Affairs,
Patiala House, Tilak Marg,
New Delhi.

10. Shri Rohtash Singh, Assistant,
C/o Under Secretary (PVA),
Ministry of External Affairs,
Patiala House, Tilak Marg,
New Delhi.

11. Smt. Gurmit Kaur, Assistant,
C/o Under Secretary (PVA)
Ministry of External Affairs,
Patiala House, Tilak Marg,
New Delhi.

12. Smt. P. Sreekumari, Assistant,
Office of the Regional Passport
Officer, Tiruchirappally.

13. Smt. Vijayalakshmi Amma,
Assistant, Office of the
Regional Passport Officer, Cochin.

14. Smt. Jainubunnisha, Assistant,
Office of the Regional Passport
Officer, Cochin.

15. Smt. M.V. Geetha, Assistant,
Office of the Regional Passport
Officer, Cochin.

16. Shri L.R. Sasikumar, Assistant,
Office of the Regioanl Passport
Officer, Cochin. .. Respondents.

(By Advocate Shri T.R. Ramachandran Nair, ACGSC (R.1-4).
By Advocate Shri M.R. Rajendran Nair (R.13,14,15 and 16)

O.A. 64/96

1. K.S. Ravindran, Assistant,
Passport Office, Trivandrum.

2. T. Jalaja Kumari, Assistant,
Passport Office, Trivandrum. .. Applicants

(By Advocate Shri Poly Mathai)

....3/-

Vs.

1. Union of India, represented by the Secretary to Government, Ministry of External Affairs, Patiala House, Tilak Marg, New Delhi.

2. The Joint Secretary (CPV), & The Chief Passport Officer, Ministry of External Affairs, Patiala House, Tilak Marg, New Delhi.

3. The Under Secretary,(CPV), Ministry of External Affairs, Patiala House, Tilak Marg, New Delhi.

4. The Passport Officer, Passport Office, Trivandrum. .. Respondents

(By Advocate Shri TR Ramachandran Nair, ACGSC)

O.A. 122/96.

Vasantha Gopalakrishnan, W/o Gopalakrishnan P.P., resident of Dubai, United Arab Emirates,

represented by Power of Attorney Holder, C.I. Chacko, S/o Yohannan, Assistant, Passport Office, Calicut. .. Applicant

(By Advocate M/s. P. Ramakrishnan and Preethi Ramakrishnan)

Vs.

1. Union of India represented by the Secretary to Government, Ministry of External Affairs, Patiala House, Tilak Marg, New Delhi.

2. The Joint Secretary & The Chief Passport Officer, Ministry of External Affairs, Patiala House, Tilak Marg, New Delhi.

3. The Under Secretary, Ministry of External Affairs, Patiala House, Tilak Marg, New Delhi. .. Respondents

....4/-

4. The Regional Passport Officer,
Office of the Regional Passport Officer,
Calicut.

5. Kumari Vidyawathi Chauhan,
Assistant, C/o Under Secretary,
Ministry of External Affairs,
Patiala House, Tilak Marg,
New Delhi.

6. Kumari Savitha Kumari, Assistant,
C/o Under Secretary, Ministry of
External Affairs, Patiala House,
Tilak Marg, New Delhi.

7. Shri Jagdish Jal, Assistant,
C/o Under Secretary, Ministry
of External Affairs,
Patiala House, Tilak Marg,
New Delhi.

8. Shri Shiv Sankar Misra, Assistant,
C/o Under Secretary, Ministry of
External Affairs, Patiala House,
Tilak Marg, New Delhi.

9. Shri Tej Ram, Assistant,
C/o Under Secretary, Ministry of
External Affairs, Patiala House,
Tilak Marg, New Delhi.

10. Shri Rohtash Singh, Assistant,
C/o Under Secretary, Ministry
of External Affairs, Patiala
House, Tilak Marg, New Delhi.

11. Smt. Gurmit Kaur, Assistant,
C/o Under Secretary, Ministry
of External Affairs, Patiala
House, Tilak Marg, New Delhi.

12. Smt. N.V. Geetha, Assistant,
Office of the Regional Passport
Officer, Cochin.

13. Shri L.R. Sasikumar, Assistant,
Office of the Regional Passport
Officer, Cochin. .. Respondents

(By Advocate Shri TR Ramachandran Nair, ACGSC(R-1 to 4)

(By Advocate Shri MR Rajendran Nair(R.12 & 13)(represented)

The applications having been heard on 20th March,

1996, the Tribunal on the same day delivered the following:

....5/-

O R D E R

CHETTUR SANKARAN NAIR(J), VICE CHAIRMAN

The reliefs sought in these cases are similar,- substantially the prayer is to quash the seniority list (A4 in O.A. 1600/95).

2. Applicants are employees in the Passport Office. Their seniority was reflected in A1 and A2 seniority lists (O.A. 1600/95). While matters stood so, 16th respondent in O.A. 1600/95 filed O.A. 2323/93 challenging the seniority position reflected in A1 and A2. After hearing the matter a Bench of this Tribunal observed:

> " Respondents have stated that the seniority of the applicants was fixed from the date of regularisation.. Recruitment Rules have not been produced ... But taking into account such service (service prior to regularisation) for purpose of inter se seniority would be more reasonable and relevant... said respondent shall consider such representation and examine the matter comprehensively in the light of various decisions."
>
> (Emphasis added)

Reading this as a direction to vary the seniority list A4 revised seniority list was issued. This is challenged as uncalled for, as misconceived, and as violative of the principles of natural justice. Counsel for applicants submitted:

a) that the Tribunal had not issued a direction to review the seniority list;

...6/-

(b) that the seniority list or the principle upon which seniority was determined cannot be reviewed, as the principle to fix seniority is enunciated by statutory rules referable to Article 309 of the Constitution, and as A1 and A2 are in strict conformity with the rules ; and

(c) that A4 was brought about in total violation of principles of natural justice.

3. Learned counsel for Union of India admitted that seniority was revised, without notice to affected parties. Further, he agreed that the order of this Tribunal in O.A. 2323/93 did not contain a direction to review the seniority list. However, according to him on a reading of the order, the department honestly believed that a revision was called for because, the Tribunal expressed the opinion that:

> " Taking into account such service (casual service) for purpose of inter se seniority would be more reasonable and relevant."
>
> (Emphasis added.)

4. As pointed out by learned counsel for applicant in O.A. 1600/95, there is no question of looking for any principle to determine seniority because, the principle had already been enunciated in a statutory rule framed under Article 309 of the Constitution, namely, Central Passport and Emigration Organisation (Initial Constitution & Maintenance) Rules, 1959. Rule 11 thereof reads:

....7/-

"Seniority in a grade shall count:

i) In respect of Grade III and IV with effect from the date from which the officer has continuously held a post in that grade or an equivalent grade otherwise than on a purely temporary basis as a local arrangement or has continuously draw pay exceeding the maximum of the time scale of pay of Grade which-ever is earlier.

ii) In respect of the other grades, with effect from the date the officer has continuously held a post in that grade or an equivalent post otherwise than on a purely temporary basis as a local arrangement...."

5. When the competent authority taking power under a constitutional provision like Article 309 has made rules, such rules cannot be varied even on the assumption that another principle would be 'more reasonable and relevant'. The Tribunal cannot be faulted for making the observation upon which A4 is sought to be justified because, as observed by the Bench the relevant rule had not been produced before it. The Bench was mislead by not placing the rules before it.

6. On the larger question whether casual service would count for seniority, authority is legion. But, we think it is unnecessary to load this judgment with such, when the rule itself indicates the principle. The supposition of the department that a direction was issued to revise seniority is not correct. There is no such direction. All that the Bench said was that:

"The respondents shall consider such representations and examine the matter comprehensively."

We do not even know whether anything could be done to a seniority list in long use, if the sit back rule enunciated in Rabindra Nath Bose and others Vs. Union of India and others (AIR 1970 SC 470) applies. We do not have to pronounce on this. Even assuming that for arguments sake that seniority can be revised in a given case, it cannot be done in violation of the principles of natural justice.

7. We declare that there was no direction in O.A.2323/93 and O.A. 74/94 (A3 in OA 1600/95) to revise the seniority list, the direction being only to consider the representations. We declare further that when a statutory rule referable to a constitutional provision prescribes a mode of doing a thing, no direction to the contra can be issued. Policy behind the rule is not justiciable and mandamus can be issued to exercise a legislative power in a particular manner. Interference with a rule will be justified only, if it violates a constitutional provision like example Article 14 or 16 or if it suffers from the vice of lack of jurisdiction. A4 is quashed.

8. Applications are allowed and parties will suffer their costs.

Wednesday this the 20th day of March, 1996.

S.P. BISWAS
ADMINISTRATIVE MEMBER

CHETTUR SANKARAN NAIR(J)
VICE CHAIRMAN

rv21/3

List of Annexures:in OA 1600/95

1. Annexure A1: True copy of relevant extract from the seniority list of Upper Division Clerks of Central Passport Organisation as on 1-6-90 published by the 3rd Respondent.

2. Annexure A2: True copy of the relevant extracts from seniority list of Upper Division Clerks as on 1/7/92, published by the 3rd Respondent.

3. Annexure A3: True copy of order dated 22/11/94 of this Hon'ble Tribunal in OA 2323/93.

4. Annexure A4: True copy of seniority list of Grade V (Assistant)Officers of Central Passport Organisation published by the 3rd Respondent along with Office Memorandum No.V/IV/582/1/95 dated 7/12/1995.