

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.82/2008

Thursday, this the *23rd* day of *October*, 2008.

CORAM:

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

1. P.Lathi Kumari,
W/o L.R.Sasikumar
working as Assistant, Regional Passport Office,
Panampilly Nagar, Kochi.
2. K.A.Sulabha,
W/o V.V.Omana Kuttan
working as Assistant, -do-
3. S.Sadananda Bhat,
S/o K.Sreenivasa Bhat,
working as Superintendent, -do-
4. M.Rajappan,
S/o E.S.Madhavan Nair,
working as Superintendent, -do-
5. V.P.Joy,
S/o Philipose
working as Superintendent, -do-
6. N.Sathiamma,
S/o Muraleedharan Unnithan,
working as Assistant, -do-
7. Kumari Bosco,
W/o R.J.Bosco,
working as Assistant, -do-
8. K.K.Ambujakshy,
W/o V.Mohanan Pillai,
working as Assistant, -do-
9. B.Sathyabhama,
W/o Sreenivas Sharma,
working as Assistant, -do-
10. M.A.Sudarsana Babu,
S/o Kelan Ayyappan,
working as Assistant, -do-
11. Mary Kurian,
W/o M.K.Thomman,

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|-----|---|------|
| | working as Assistant, | -do- |
| 12. | A.N.Mohanan,
S/o A.K.Narayanan,
working as Assistant, | -do- |
| 13. | N.J.Mary,
D/o N.M.Joseph,
working as Superintendent, | -do- |
| 14. | K.Micle,
S/o M.P.Augustin
working as Assistant, | -do- |
| 15. | Eliamma Julius,
W/o S.Julius,
working as Superintendent, | -do- |
| 16. | U.K.Santha,
W/o K.V.Sukumaran,
working as Superintendent, | -do- |
| 17. | C.S.Sulabha,
W/o K.Raveendran,
working as Assistant, | -do- |
| 18. | E.K.Sreeranjini,
W/o V.P.Raman,
working as Assistant, | -do- |
| 19. | Elsy Thomas,
W/o K.K.Thomas,
working as Assistant, | -do- |
| 20. | V.Santha,
W/o Chandrasekharan N,
working as Assistant, | -do- |
| 21. | D.Rajamani,
W/o T.S.Muraleedhara Pai,
working as Assistant, | -do- |
| 22. | M.G.Suma,
W/o T.S.Prethvi Raj
working as Assistant, | -do- |
| 23. | T.J.Sebastian,
S/o T.C.Joseph,
working as Assistant, | -do- |
| 24. | V.Leela,
W/o V.S.Sasidharan,
working as Assistant, | -do- |



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|-----|---|-----------|------------|
| 25. | P.S.Valsamma,
W/o B.Hari Krishnan,
working as Assistant, | -do- | |
| 26. | A.S.Valsala Kumari,
W/o T.R.Rajagopalan Nair,
working as Assistant, | -do- | |
| 27. | P.J.Darly,
W/o C.R.Sebastian,
working as Assistant, | -do- | |
| 28. | Melvin Mendez,
S/o Manuel Mendez,
working as Assistant, | -do- | |
| 29. | V.Girija,
W/o Raveendranathan,
working as Assistant, | -do- | |
| 30. | Basis Alexander K,
S/o K.M. Alexander,
working as Assistant, | -do-..... | Applicants |

(By Advocate Shri P.Ramakrishnan)

Vs.

- | | | |
|----|--|-------------|
| 1. | Union of India, represented by the Secretary
to Government,
Ministry of External Affairs, New Delhi. | |
| 2. | The Joint Secretary (CPV) and Chief Passport Officer,
Ministry of External Affairs, New Delhi. | |
| 3. | Regional Passport Officer, Regional Passport Office,
Panampilly Nagar, Kochi.-682 036. | Respondents |

(By Advocate Shri TPM Ibrahim Khan, SCGSC)

The application having been heard on 17.10.2008,
the Tribunal on 23.10.08. delivered the following:

ORDER

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

This case is squarely covered by earlier two decisions – (a) Order dated 27th August 2008 in OA No. 49/2008 and (b) order dated 16th June 2008 in R.A. No. 12/2008 in OA No. 657/2007.

2. In all there are 30 applicants and they were all initially appointed as Daily Rated Clerks on various dates and were later on appointed as L.D.Cs as detailed hereunder: -

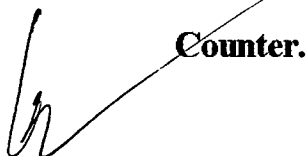
	Date of appointment as Daily Rated Clerk	Date of appointment as Lower Division Clerks
Ist Applicant	1/7/1977	8/12/1978
2nd Applicant	1/7/1977	8/12/1978
3rd Applicant	21/3/1977	8/12/1978
4th Applicant	21/3/1977	8/12/1978
5th Applicant	21/3/1977	8/12/1978
6th Applicant	21/3/1978	8/12/1978
7th Applicant	21/3/1977	8/12/1978
8th Applicant	21/3/1978	8/12/1978
9th Applicant	21/3/1977	8/12/1978
10th Applicant	21/3/1977	8/12/1978
11th Applicant	21/3/1977	8/12/1978
12th Applicant	21/3/1977	8/12/1978
13th Applicant	1/4/1977	8/12/1978
14th Applicant	1/4/1977	8/12/1978
15th Applicant	15/4/1977	8/12/1978
16th Applicant	2/5/1977	8/12/1978
17th Applicant	2/5/1977	8/12/1978
18th Applicant	1/7/1977	8/12/1978
19th Applicant	1/7/1977	8/12/1978
20th Applicant	1/7/1977	8/12/1978
21st Applicant	1/7/1977	8/12/1978
22nd Applicant	1/7/1977	8/12/1978
23rd Applicant	4/7/1977	8/12/1978
24th Applicant	3/10/1977	8/12/1978
25th Applicant	31/10/1977	8/12/1978
26th Applicant	7/11/1977	8/12/1978
27th Applicant	21/3/1978	3/7/1980
28th Applicant	21/3/1978	3/7/1980
29th Applicant	21/3/1978	3/7/1980
30th Applicant	3/4/1978	26/6/1980

3. The applicants came to know that certain daily rated clerks who were engaged posterior to the date of engagement of the applicants were absorbed as LDCs initially on the same dates as of the applicants, but later on their date of absorption as LDCs were advanced to the date of their initial engagement as Daily Rated Clerks. Annexure A-1 order dated 8th May 2006 is one such order advancing the date of absorption to the date of

initial engagement as daily rated clerk. In fact the above order seems to have been passed in the wake of an Order of the Tribunal dated 14th July, 2003 in OA No. 1557/1998 (Annexure A-2) though the individuals gained through the Annexure A-1 order were not parties in the said O.A. As such, the applicants penned representations of which one such application has been annexed to the OA, vide Annexure A-3. As no information was forthcoming, the applicant sought information through RTI and the same has been given vide Annexure A-4 wherein it was stated that the case of the applicants could not be processed in view of the decision by the Apex Court in the case of State of Karnataka vs Uma Devi (2004(4) SCC 1). Though this stand had been taken in the case of two other individuals V.A. Reghu Prasad and Smt. K. Leelamani, on their taking up the matter before the Tribunal, their claims were allowed, vide the orders referred to in para 1 above. As such, according to the applicants, they have been meted with hostile discrimination and hence this OA with the following reliefs claimed:

- A) an order quashing and setting aside Annexure A-4 Order issued by the 1st respondent,
- B) a declaration that the applicants are entitled to be regularised as Lower Division Clerks from the respective dates of their appointment as daily rated Clerks on par with similarly situated officials,
- C) a declaration to the respondents to regularise the applicants as Lower Division Clerks from the respective dates of their appointment as daily rated Clerks with all consequential benefits including seniority, promotion, actual pay fixation and arrears of pay;

4. Respondents have contested the O.A. According to them in the case of K.S. Leelamani, the Tribunal had rejected the claim vide order dated 29-02-2008. Contentions as in Annexure A-4 have also been maintained in the Counter.



5. Counsel for the applicant argued that there cannot be a discriminatory treatment and the applicants are entitled to the same benefits as afforded to Reghu Prasad and Leelamani.

6. Counsel for the respondents has reiterated the contentions as in the counter.

7. Arguments were heard and documents perused.

8. In so far as reliance placed on order dated 29-02-2008 in OA No. 675/2007 by the respondents is concerned, the same has to be held as unsustainable as the said order underwent review and the claim of the applicant of Leelamani allowed vide order dated 16th June, 2008 relied upon by the applicant.

9. Admittedly the case of the applicants is identical to those of Shri Reghu Prasad and Leelamani. In the said case the decision is as under: -

"Arguments were heard and the case in RA 12/2008 had also been gone through. The decision in that OA, vide order dated 16th June 2008 (as slightly modified by a subsequent order correcting some errors in respect of certain dates) squarely applies to this case as well. Similarly situated persons are all to be granted regularization from the date of their initial appointment on daily rated basis."

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."

10. 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.

In view of the above, the OA is allowed. It is declared that regularization of the applicant's service in the grade of LDC shall be with effect from 01-07-1977 i.e. the date of his initial engagement and he is entitled to consequential seniority. However, as in the other case, he would be entitled to notional fixation of pay without any monetary benefits. On the basis of his revised seniority, if the applicant is entitled to higher promotion, the same be considered and granted from the date his immediate junior was promoted and the seniority in respective posts (UDC and Assistant as the case may be) rescheduled. His entitlement to monetary benefit on account of the advancement of the seniority would be reckoned only prospectively after the review DPC takes place and his promotion date altered. In so far as promotion to the higher grade of Superintendent is concerned, his seniority in the grade of assistant as arrived at now would be considered. As the drill involves review of seniority right from LDC and also review of promotion to the post of UDC and Assistants, sufficient time would be required for the same, as the revised seniority has to be prepared after due notice to the affected parties. Hence, a period of 8 months is granted to implement this order. Again, it is made clear that in case the time granted falls short, respondents may move the Tribunal for further extension, before the expiry of the time allowed, by way of a Misc. Application, reflecting therein the extent of action taken, by

narrating chronological sequence of events and justifying the extent of further time sought. Any inordinate delay in initiation of action etc. would not be a justification in seeking further extension of time.
No cost."

11. The case of the applicant is also covered in the above case. In fact, as early as in 1985, referring to such a situation where one set of individuals approached the court and obtained an order, while the other set could not, 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.

Thus, consistently, the law is that when a law point is decided by the Court applicability of the same is not only confined to the parties before the court but also to similarly situated persons.

12. Hence the OA is allowed to the same extent as in the case of Reghu Prasad and Leelamani and respondents are directed to accordingly take suitable action to pass necessary orders. Time limit granted is as in the above case 8 months in addition to the latitude provided to the respondents in the above O.A.

13. No cost.

Dated the.....23rd.....October, 2008.


Ms. K. NOORJEHAN
ADMINISTRATIVE MEMBER


Dr. K. B. S. RAJAN
JUDICIAL MEMBER