CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.Nos.43/11, 68/11 & 86/11

Friday this the 8th day of April 2011

C O R A M :

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER

O.A.NO.43/11

1. Pankaja O.K.,
W/o.Sajith P.,
Assistant, Passport Office, Kozhikode.
Residing at B18, Passport Office Qtrs.,
Eranjipalam, Kozhikode.

2. Shobhana V.,
W/o.Santhosh Kumar T.A.,
Assistant, Passport Office, Kozhikode.
Residing at C32, Passport Office Qtrs.,
Eranjipalam, Kozhikode.

3. Reena P.,
W/o.Venugopalan P.,
Assistant, Passport Office, Kozhikode.
Residing at Kollambath House,
Panniyankara, Kallai, Kozhikode.

4. Sreelatha K.,
W/o.Krishnadas,
Assistant, Passport Office, Kozhikode.
Residing at Elayedath House,
Vengeri PO, Kozhikode.

5. Mini P.,
W/o.Sivadasan K.,
Assistant, Passport Office, Kozhikode.
Residing at Qtrs. No.C33, Passport Office Qtrs.,
Eranjipalam, Kozhikode.

6. Vijayan K.,
S/o.K.Raghavan Nair,
Assistant, Passport Office, Kozhikode.
Residing at Kandiyoth House,
Nanminda Post, Kozhikode.

7. Geethamani T.P.,
W/o.Krishnanunni,
Assistant, Passport Office, Kozhikode.
Residing at Vignesh, Pilassery,
Edakkadu Post, Kozhikode.

8. Venugopal E.M.,
S/o.E.M.Narayanan Nair,
Assistant, Passport Office, Kozhikode.
Residing at Edavanameethal House,
Nut Street Post, Vadakara, Kozhikode.

9. Suhasini K.,
D/o.Balakrishnan Nair,
Assistant, Passport Office, Kozhikode.
Residing at Bhagavath Kripa,
Edakkadu, Kozhikode. ...Applicants

(By Advocate Mr.M.R.Hariraj)

Versus

1. Union of India represented by the Secretary
to Ministry of External Affairs, New Delhi.

2. The Joint Secretary (C.P.V.) and Chief Passport Officer,
Ministry of External Affairs, New Delhi.

3. The Regional Passport Officer,
Regional Passport Office, Thiruvananthapuram.

4. The Passport Officer,
Passport Office, Kozhikode.

5. Unnikrishnan K.,
UDC, Passport Office, Kozhikode.

6. Girija N.,
UDC, Passport Office, Kozhikode.

7. Vinodini P.,
UDC, Passport Office, Kozhikode.

8. Sivarani P.,
UDC, Passport Office, Kozhikode.

9. Remadevi P.,
UDC, Passport Office, Kozhikode.

10. Rajagopal P.T.,
UDC, Passport Office, Kozhikode.

11. Lalitha T.,
UDC, Passport Office, Kozhikode.

12. V.Vijayakumar,
UDC, Passport Office, Kochi.

13. Kundan Singh,
UDC, Passport Office, CGO Complex I,
Kamla Nehru Nagar, Hapur Chungi,
Ghaziabad – 201 001.

14. Bertin M.M.,
UDC, Passport Office, Thiruvananthapuram.

15. Remadevi P.A.,
UDC, Passport Office, Kozhikode.

16. Jayachandran V.D.,
UDC, Passport Office, Kozhikode.

17. Geethakumari C.S.,
UDC, Passport Office, Trivandrum.

18. V.Surulirajan,
UDC, Passport Office, First Floor,
Water Tank Building, West Buliward Road,
Tiruchirappalli – 620 008.

19. Sandeep Shukla,
UDC, Regional Passport Office,
Behind RBI, Vipin Khand,
Gomit Nagar, Lucknow – 226 010.

20. Rajeev Saxena,
UDC, Regional Passport Office,
Behind RBI, Vipin Khand,
Gomit Nagar, Lucknow – 226 010.

21. Sanjeev Saxena,
UDC, Regional Passport Office,
Behind RBI, Vipin Khand,
Gomit Nagar, Lucknow – 226 010.

22. Shamser Bahadur Singh,
UDC, Passport Office, Ambika Towers,
2nd - 3rd Floor, 14 – Police Line Road,
Jalandhar – 144 001.

23. Pratibha Verma,
UDC, Passport Office,
Vikas Jyoti Commercial Complex,
II & III Floor, BDA Building,
Priyadarshini Nagar, Bareilly – 243 122.

24. Parthasarathy N.,
UDC, Passport Office, First Floor,
Water Tank Building, West Buliward Road,
Tiruchirappalli – 620 008.

25. Neena Jose,
UDC, Regional Passport Office,
8th Block, 80 Feet Road, Koramangala,
Bangalore – 560 095.

26. Sridharan R.,
UDC, Passport Office,
Bharathi Ula Veethi, Race Course Road,
Madurai – 625 002.

27. Mini O.K.,
UDC, Passport Office, Trivandrum.

28. S.Rajeshwari,
UDC, Regional Passport Office,
IInd Floor, Shasthri Bhavan 26,
Haddows Road, Chennai – 600 006. ...Respondents

(By Advocates Mr.Sunil Jacob Jose,SCGSC [R1-4],
Mr.P.Santhosh Kumar [R15 & 25], Mr.Gilbert George Correya
& Mr.Nishil P.S. [R18. 24 & 26] & Mr.Shafik M.A. [R27])

O.A.No.68/11

1. Jiji Roby,
Assistant,
Regional Passport Office,
Kochi – 682 036.

2. Omana Pradeep,
Assistant,
Regional Passport Office,
Kochi – 682 036.

3. K.R.Sheeba,
Assistant,
Regional Passport Office,
Kochi – 682 036.

4. Sunu K Paul,
Assistant,
Regional Passport Office,
Kochi – 682 036.

5. K.C.Bindu,
Assistant,
Regional Passport Office,
Kochi – 682 036.

6. K.V.Kocurani,
Assistant,
Regional Passport Office,
Kochi – 682 036.

7. Sheeba Reghu,
Assistant,
Regional Passport Office,
Kochi – 682 036.

8. Beena Somasekharan,
Assistant,
Regional Passport Office,
Kochi – 682 036.

9. Rema Babu,
Assistant,
Regional Passport Office,
Kochi – 682 036.

10. Sobhana Varghese,
Assistant,
Regional Passport Office,
Kochi – 682 036.

11. V.S.Jyothirmayi,
Assistant,
Regional Passport Office,
Kochi – 682 036. ...Applicants

(By Advocate Mr.P.Ramakrishnan)

Versus

1. Union of India represented by Secretary,
Ministry of External Affairs, New Delhi – 110 011.

2. The Joint Secretary (C.P.V.) & Chief Passport
Officer, Ministry of External Affairs,
New Delhi – 110 011.

3. The Regional Passport Officer,
Kochi – 682 036.

4. P.T.Rajagopal,
Upper Division Clerk,
Passport Office, Kozhikode – 673 006.

5. K.Unnikrishnan,
Upper Division Clerk,
Passport Office, Kozhikode – 673 006.

6. N.Girija,
Upper Division Clerk,
Passport Office, Kozhikode – 673 006.

7. P.V.Vinodini,
Upper Division Clerk,
Passport Office, Kozhikode – 673 006.

8. P.Sivarani,
Upper Division Clerk,
Passport Office, Kozhikode – 673 006.

9. P.Remadevi,
Upper Division Clerk,
Passport Office, Kozhikode – 673 006.

10. T.Lalitha,
Upper Division Clerk,
Passport Office, Kozhikode – 673 006.

11. V.Vijayakumar,
Upper Division Clerk,
Passport Office, Kochi – 682 036.

12. V.B.Jayachandran,
Upper Division Clerk,
Passport Office, Kochi – 682 036. ...Respondents

(By Advocate Mr.A.D.Raveendra Prasad,ACGSC [R1-3])

O.A.No.86/11

K.Muraleedharan Pillai,
Assistant, Regional Passport Office,
Cochin – 682 036. ...Applicant

(By Advocate Mr.N.Nagaresh)

Versus

1. Under Secretary (PV),
Govt. of India, Ministry of External Affairs,
CPV Division, New Delhi – 110 001.

2. Regional Passport Officer,
Regional Passport Office,
Cochin – 682 036.

3. Unnikrishnan K.,
UDC, Passport Office,
Kozhikode – 673 001. ...Respondents

(By Advocate Mr.Millu Dandapani,ACGSC)

These applications having been heard on 8th April 2011 this Tribunal on the same day delivered the following :-

O R D E R

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER

The applicants are Upper Division Clerks working in the Passport Offices located in Kerala. They were subsequently promoted provisionally as Assistants. 25% of the vacancies of the posts of Assistants is to be filled up by limited departmental examination. 113 vacancies were notified. Applicants had appeared for the examination held on 23.11.2008 and they figured in the rank list published on 31.12.2010. As a matter of fact they were originally recruited as daily rated casual employees in the Passport Offices and thereafter they have raised a claim that their casual service should also be reckoned and they are entitled for regularization with effect from the date on which they are so engaged. Because the official respondents did not treat the casual service for the purpose of reckoning the eligibility condition of 16 years combined service as LDC and UDC together, they approached this court by filing OAs Nos. 739, 754 of 2008 and 45 of 2009. There were other Original Applications filed raising similar

issues which were heard together and disposed of by this Tribunal vide judgment dated 1.4.2009, a copy of which is produced as Annexure A-2. It was held that the persons like the applicants are entitled to be regularized with effect from the date on which they were engaged as casual employees and hence they are entitled to count the casual service for the purpose of deciding the eligibility criteria of 16 years required for appearing for the test for promotion to the post of Assistant. During the pendency of the OA by an interim order they were all permitted to appear in the examination. Based on the rank list published, applicants were promoted to the posts of Assistants. But in respect of Annexure A-2 judgment a few of the applicants viz. applicants in OA No. 739, 754 of 2008 and 45 of 2009 who were not favoured with any interim order, could not appear in the examination. Hence, this Tribunal directed to conduct a supplementary examination so as to enable them also to appear in the examination. Accordingly, a supplementary examination was conducted on 21.3.2010. Pursuant to the judgment of this Tribunal in Exhibit A-2 the official respondents had issued a circular notifying the proposed supplementary examination and extending the benefit of judgment to similarly situated personnel. Paragraph 2 of the notification Annexure A-5 is extracted here as under:-

> "2. You are requested to circulate the information in your office and forward names of the interested UDCs who wish to appear for the proposed LDE, in the enclosed format after checking their eligibility and educational qualification. The duly filled in applications forwarded to the Ministry, in duplicate to reach the undersigned latest by 22nd January, 2010 by speed/registered post.

2. Though there was a challenge to the said notification by filing a Writ Petition No. 5031 and 5131 of 2010, the same was dismissed by the Hon'ble High Court by Annexure A-6 judgment. Subsequently the SLP filed was also dismissed. Thus, the fact that similarly situated persons who satisfy the eligibility conditions as on the cut off date viz. 26.9.2008 though had not applied against the first notification have also became eligible to appear for the supplementary examination. Subsequent to the supplementary examination the combined rank list was published as Annexure A-8. The grievance of the applicant is that their names are not shown in the combined list (A-8). It is the contention of the applicant that Annexure A-8 list contains the names of ineligible candidates. The respondents 5 to 11 are not even UDCs even on the cut off date on 26.9.2008. Likewise respondents Nos. 12, 13 and 17 did not have the required 16 years of combined service as on the cut off date. They have a further contention that respondent No. 14 to 16, 18 to 28 are also not eligible to be included in the rank list for the reason that they were not applicants in the earlier batch of cases and they have not approached the Court and in view of the subsequent directions issued in Annexure A-2 to conduct the examination for the applicants in those cases only, these respondents are not entitled to appear in the examination. There is yet another contention that in the meantime a few of the candidates who were in the combined rank list were promoted against the 75% seniority quota and as a result, these posts were also available to be

filled up by the examination against 25% quota as per rules. If this is taken into account, necessarily a few more persons in the waiting list will be entitled to be appointed against the 25% quota based on the examination so held.

3. We have heard the arguments of the learned counsel for the applicants in OA No. 43 of 2011 Mr. M.R. Hariraj, Ms. Preethi Ramakrishna representing Mr. P. Ramakrishnan in OA No. 68 of 2011 and Mr. Vinu representing Mr. N. Nagaresh in OA No. 86 of 2011. We have also heard Mr. P. Santhosh Kumar for R5 to 11, 15, 17 and 25 in OA No. 43 of 2011, for R4 to 10 in OA No. 68 of 2011 and R3 in OA No. 86 of 2011, Mr. Sunil Jacob Jose, SCGSC for R1-4 in OA 43 of 2011, Mr. A.D. Raveendra Prasad, ACGSC for R1-3 in OA No. 68 of 2011, Mr. Millu Dandapani (R1&2) in OA No. 86 of 2011, Mr. Gilbert George Correya for R18, 24 and 26 in OA No. 43 of 2011 and Mr. Shafik M.A. for R27 in OA No. 43 of 2011, and perused the pleadings and records.

4. On behalf of respondents 5 to 11 and 17 in OA No. 43 of 2011 it is contended that they were not UDCs on the cut of date namely 26.9.2008 but they were permitted to appear for the examination. On behalf of the respondents 15 & 25 it was contended by Mr. Santhosh Kr. that in the light of paragraph 2 of the notification inviting the supplementary examination

and in view of the dismissal of the Writ Petition challenging the same and subsequently the SLP having been dismissed, it is not open to contend that they are not entitled to sit for the examination. According to them all though they satisfy the eligibility criteria as on the cut of date namely 26.9.2008 and the mere fact that they did not file any application before this Tribunal will not dis-entitle them to appear in the supplementary examination as the Department itself on the benefit of earlier judgment in OA NO. 867 of 2008 extended the similar benefits to them. Similar contentions are also raised by the counsel for respondents 27.

5. We may first consider the contention as to whether some of the respondents who appeared in the supplementary examination could be held as ineligible to be included in the rank list though they did not file applications before this Tribunal. According to us this Tribunal in Annexure A-2 judgment no doubt directed to conduct supplementary examination since some of the applicants who could not get any interim order were found qualified as on the cut off date by counting their casual service as regular service and having more than 16 years of combined service. The department in such circumstances found that those who are similarly situated having the requisite qualifications as on the cut of date should also be enabled to appear in the examination and Paragraph 2 of Annexure A-5 in this regard is very clear that supplementary examination was not confined

to the three applicants, mentioned in Annexure A-2 judgment. Further the challenge to paragraph 2 of the circular extending the benefit to similarly situated persons enabling them to also appear in the examination was dismissed by the Hon'ble High Court in Writ Petition No. 5031 of 2010 and the SLP was also dismissed.

6. We do not find that the decision of the Department in extending the benefit to similarly situated persons by enabling them to appear in the examination provided they had the requisite qualification as on 26.9.2008 is in any way arbitrary or illegal and in view of what is stated above we find that their inclusion in the rank list based on the marks obtained in the supplementary examination cannot be faulted.

7. Further in the case of respondents 5 to 13 in OA NO. 43 of 2011 they had approached this Court by filing OA No. 737 of 2008 and this Tribunal dismissed their case vide exhibit A-2 holding that they were not UDCs as on the cut of date namely 26.9.2008. The mere fact that they appeared in the examination by way of an interim order in no way improves their case because their entitlement to appear in the examination was not decided at the time when the interim order was passed. The fact remains that they do not have the requisite qualification as on the cut of date. As such they cannot participate in the examination held on 23.1.2010. In this regard we

have already taken a similar view in OA NO. 204 and 208 of 2010. Likewise respondents 12 and 13 in OA NO. 43 of 2011 also do not have the requisite qualification and their OA filed before this Tribunal in OA No. 185 of 2010 was also dismissed. As such they are not entitled to be included in the rank list. Accordingly, we direct their names to be deleted from the rank list. Likewise respondent No. 17 in OA No. 43 of 2011 also does not fulfill the requisite qualification and the OA filed by him namely OA 204 of 2010 was already dismissed by this Tribunal by a separate order. The other respondents namely respondents 18 to 28 and 14 to 16 were un-disputedly qualified as on the cut of date. They had appeared for the examination. In such circumstances for the reasons already stated above we do not find that there is anything wrong in including their names based on the rank obtained by them in the examination.

8. Going by the rules, appointment to the posts of Assistants by way of promotion is to be made in the ratio of 75:25 based on seniority and competitive examination respectively. Some of the candidates who had earlier figured in the rank list based on the examination held have been subsequently promoted against the 75% quota with retrospective date i.e. prior to the date of the examination. Necessarily they have to be deleted from the rank list and in their place an equal number of persons in the waiting list have to be included based on the combined rank list.

9. In the result we hold:-

i) All those persons who had requisite qualification as on cut of date viz. 26.9.2008 and who have appeared in the competitive examination are entitled to be included in the combined rank list based on the marks obtained by them in the examination.

ii) Those who did not satisfy the service eligibility conditions as on the cut off date cannot be included in the rank list merely for the reason that they have appeared in the examination on the basis of an interim order or otherwise.

iii) Since some of the candidates who have been included in the combined rank list having been promoted retrospectively within the 75% quota they cannot be included again in the combined rank list to fill up the 25% quota based on the examination. In such circumstances these vacancies will also be available to be filled up from the 25% quota.

10. We make it clear that those who have obtained final judgment in their favour regarding their eligibility to appear in the examination or to be included in the rank list will not be affected by this order.

11. In view of what is stated above, we direct that the Annexure A-8 rank list is to be revised based on the above principles and to facilitate the respondents to do so we set aside the same. The revised combined rank list and the promotions thereafter shall be effected by the respondents within two months from the date of receipt of a copy of this order. It will be open to the respondents to revert anybody in case he is found to be ineligible to be promoted based on the combined rank list.

(Dated this the 8th day of April 2011)

Sd/-
K.NOORJEHAN
ADMINISTRATIVE MEMBER

Sd/-
JUSTICE P.R.RAMAN
JUDICIAL MEMBER