

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 609 of 2012
Original Application No. 92 of 2013
Original Application No. 718 of 2013
Original Application No. 721 of 2013
Original Application No. 790 of 2013
Original Application No. 180/00038/2014
Original Application No. 180/00104/2014
Original Application No. 180/00311/2014

THURSDAY, this the 21st day of AUGUST, 2014

CORAM:

Hon'ble Mr. U. Sarathchandran, Judicial Member
 Hon'ble Mr. P.K. Pradhan, Administrative Member

1. Original Application No. 609 of 2012 -

1. M.C. Das, aged 57 years, S/o. Manuel,
 Passport Granting Officer, Passport Office, Malappuram,
 Residing at SISIRAM, N.P. Road,
 Chevarambalam PO, Calicut.
2. K.M. Chandran, aged 53 years, S/o. Madhavan Nair,
 Passport Granting Officer, Regional Passport Office,
 Kochi - 682 035, Permanent address at : TC No. 29/1695
 (MRA.28), Plancherry North Plancherry Lane, Punnappuram,
 Valakkadavu PO, Trivandrum.
3. G. Maria Sebastian, aged 57 years, S/o. Gnanaprakasam,
 Passport Granting Officer, Passport Office, Trivandrum,
 Residing at : No. 5-38-B, North Street, Neyyore PO,
 Kanyakumari District, Tamil Nadu.

..... Applicants

(By Advocate - Mr. T.C. Govindaswamy)

V e r s u s

1. Smt. A.G. Geetha, W/o. P.N. Jagadeesan,
 Superintendent, Regional Passport Office,
 Kochi - 682 035.
2. Smt. K. Susheela Devi, W/o. Late B. Mohandas,
 Superintendent, Regional Passport Office,
 Kochi - 682 035.

3. Kumari T. Omana, D/o. Late C.P. Raghavan,
(Retd. Superintendent, Regional Passport Office,
Kochi – 682 035), Residing at : Chennanattu Chira,
CMC VIII, Cherthala.
4. Union of India, represented by the Secretary to Government of
India, Ministry of External Affairs, New Delhi.
5. The Chief Passport Officer & Joint Secretary (CPV),
Ministry of External Affairs, New Delhi.
6. The Under Secretary (PV),
Ministry of External Affairs, New Delhi. Respondents

[By Advocates - Mr. Shafik M.A. (R1-3) &
Mr. Sunil Jacob Jose, SCGSC (R4-6)]

2. Original Application No. 92 of 2013 -

V. Pankajakshan, aged 56 years, S/o. C.K. Vasu,
Passport Granting Officer, Passport Office,
Bye-Pass Road, Calicut, Residing at Chethana,
House No. 33/551, A.R. Camp Road, Marykundu PO,
Calicut – 673 012. Applicant

(By Advocate – Mr. T.C. Govindaswamy)

V e r s u s

1. Smt. A.G. Geetha, W/o. P.N. Jagadeesan,
Superintendent, Regional Passport Office,
Kochi – 682 035.
2. Smt. K. Susheela Devi, W/o. Late B. Mohandas,
Superintendent, Regional Passport Office,
Kochi – 682 035.
3. Kumari T. Omana, D/o. Late C.P. Raghavan,
(Retd. Superintendent, Regional Passport Office,
Kochi – 682 035), Residing at : Chennanattu Chira,
CMC VIII, Cherthala – 688 524.
4. Union of India, represented by the Secretary to Government of
India, Ministry of External Affairs, New Delhi – 110 001.
5. The Chief Passport Officer & Joint Secretary (CPV),
Ministry of External Affairs, New Delhi – 110 001.

6. The Under Secretary (PV),
Ministry of External Affairs, New Delhi
- 110 001.

..... Respondents

[By Advocates - Mr. Shafik M.A. (R1-3) &
Mr. Sunil Jacob Jose, SCGSC (R4-6)]

3. Original Application No. 718 of 2013 -

1. K.P. Alavi, S/o. Ali, aged 59 years, Passport Granting Officer (Retired), residing at 12/505, Ajmal Mahal, Konote Road, Cheruvatta, PO Parambil, Kozhikode - 673 012.
2. P.K. Sudha, W/o. P. Pavithran, aged 60 years, Passport Granting Officer, Now working in Passport Officer, Malappuram, residing at Sithara, Florican Road, PO Karaparamba, Kozhikode - 673 010.
3. Anniamma Mani, W/o. Mathew Varghese Vaidyan, aged 60 years, Passport Granting Officer (Retired), residing at NIT Quarters, No. D Elven A., PO NIT Campus, Calicut - 673 601.
4. M. Radha, W/o. K.P. Alavi, aged 61 years, Passport Granting Officer, (Retired), residing at Ashique, PO Poovattu Paramba, via-Medical College, Kozhikode - 673 008.
5. K. Seethala, W/o. P. Gopinath, aged 60 years, Passport Granting Office (Retired), residing at Sarang, PO Marikkunnu, Kozhikode - 673 012.
6. E. Sarojini, W/o. P. Kesavan, aged 60 years, Passport Granting Officer (Retired), residing at Saritha, PO Beypore, Kozhikode - 673 015.

..... Applicants

(By Advocate - Mr. P. Ramakrishnan)

V e r s u s

1. Union of India, represented by Secretary,
Ministry of External Affairs, New Delhi - 110 011.
2. The Joint Secretary (CPV) & Chief Passport Officer,
Ministry of External Affairs, New Delhi - 110 011.
3. The Regional Passport Officer, Kozhikode.
4. The Regional Passport Officer, Malappuram.

..... Respondents

(By Advocate - Mr. George Joseph, ACGSC)

4. Original Application No. 721 of 2013 -

V.V. Thilothama, aged 65 years, W/o. K.V. Chandran,
Superintendent (Retired), Passport Office, Kozhikode,
residing at Konay House PO Edakkulam, Arippalam,
Thrissur.

..... Applicant

(By Advocate – Mr. P. Ramakrishnan)

V e r s u s

1. Union of India, represented by the Secretary to Government of India,
Ministry of External Affairs, New Delhi – 110 011.
2. The Joint Secretary (CPV) and Chief Passport Officer,
Ministry of External Affairs, New Delhi.
3. The Regional Passport Officer, Regional Passport Office,
Eranielipalam, Kozhikode-673 006. Respondents

(By Advocate – Mr. Varghese P. Thomas, ACGSC)

5. Original Application No. 790 of 2013 -

C.P. Ambujam, aged 61 years, W/o. T.K. Gopalakrishnan,
Passport Granting Officer (Retired), residing at Thaiparambil
House, Cherupilly Road, Kaloore PO, Kochi-17.

..... Applicant

(By Advocate – Mr. P. Ramakrishnan)

V e r s u s

1. Union of India, represented by Secretary,
Ministry of External Affairs, New Delhi – 110 011.
2. The Joint Secretary (CPV) & Chief Passport Officer,
Ministry of External Affairs, New Delhi – 110 011.
3. The Regional Passport Officer, Regional Passport Office,
Kochi-682 036. Respondents

(By Advocate – Mr. M.K. Aboobacker, ACGSC)

6. Original Application No. 180/00038/2014 -

1. C.G. Rajan, aged 63 years, S/o. C.K. Velayudhan, residing at

CRH 79, Haritha Road, Vennala PO, Kochi – 28, (retired from Passport Office, Avinashi Road, Coimbatore, Tamil Nadu as Assistant Passport Officer).

2. B. Prasannakumari, aged 61 years, W/o. G. Rajasekharan Nair, residing at Pranavam, Kunnumpuram, Kakkanad PO, Kochi – 30 (Retired from Regional Passport Office, Kochi as Assistant Passport Officer).
3. Uma Devi S., aged 62 years, W/o. E. Radhakrishnan, residing at Uma Sree, Perandoor, Elamakkara, Kochi – 26, (Retired from Passport Office, Malappuram as Superintendent).
4. P. Narayanan, aged 63 years, W/o. P. Narayanan Nair, Siva Padam, Sree Rama Temple West Road, Tripunithura-682 301, (Retired from Regional Passport Office, Kochi as Assistant Passport Officer).

..... Applicants

(By Advocate – Mr. P. Ramakrishnan)

V e r s u s

1. Union of India, represented by Secretary, Ministry of External Affairs, New Delhi – 110 011.
2. The Joint Secretary (CPV) & Chief Passport Officer, Ministry of External Affairs, New Delhi – 110 011.
3. The Passport Officer, Passport Office, Avinashi Road, Coimbatore, Tamil Nadu – 641 018.
4. The Regional Passport Officer, Kochi – 682 036.
5. The Regional Passport Officer, Malappuram- 676 505.

..... Respondents

(By Advocate - Mr. Sunil Jacob Jose, SCGSC)

7. Original Application No. 180/00104/2014 -

1. L.R. Sasikumar, aged 59 years, S/o. Raghava Menon, Assistant Passport Officer, Passport Office, Regional Passport Office, Kochi – 682 036, residing at Peramana, Boat Jetty Road, Vaduthala PO, Kochi 23.
2. K. Radha, aged 59 years, W/o. P. Sreedharan Nair, Assistant Passport Officer, Passport Office, PO Eranhipalam, Kozhikode – 673 006, residing at 33/4251,

Rajasree, PO Malaparamba, Kozhikode-673 009. Applicants

(By Advocate – Mr. P. Ramakrishnan)

V e r s u s

1. Union of India, represented by Secretary,
Ministry of External Affairs, New Delhi – 110 011.
2. The Joint Secretary (CPV) & Chief Passport Officer,
Ministry of External Affairs, New Delhi – 110 011.
3. The Regional Passport Officer, Kochi, Office of the
Regional Passport Office, Passport Office, Kochi-682 036.
4. The Regional Passport Officer, Kozhikode,
Office of the Passport Officer, Passport Office,
PO Eranhipalam, Kozhikode-673 006. Respondents

(By Advocate - Mr. A.D. Raveendra Prasad, ACGSC)

8. Original Application No. 180/00311/2014 -

P.V. Sivashanmugham Pillai, aged 61 years,
S/o. P.N. Velayudhan Pillai, Thrikkarithika, Opp.
DIET, Chirayinkil Road, Attingal PO,
Thiruvananthapuram (Passport Granting Officer, retd.
Passport Office, Trivandrum). Applicant

(By Advocate – Mr. P. Ramakrishnan)

V e r s u s

1. Union of India, represented by Secretary,
Ministry of External Affairs, New Delhi – 110 011.
2. The Joint Secretary (CPV) & Chief Passport Officer,
Ministry of External Affairs, New Delhi – 110 011.
3. The Regional Passport Officer,
Thiruvananthapuram - 695 001. Respondents

(By Advocate - Mr. Sunil Jacob Jose, SCGSC)

These applications having been heard on 08.07.2013, the Tribunal on

21-08-2014 delivered the following:

ORDER

By Hon'ble Mr. U. Sarathchandran, Judicial Member-

These Original Applications were taken up together for consideration in view of the situation that the controversy involved in these applications are identical in nature i.e. the seniority of the individual applicants and their co-employees with reference to their date of initial engagement/regularization.

2. We feel that it would be appropriate to state the contentions of the parties in each of these OAs briefly before we enter into adjudication of these matters.

3. OA/609/2012 -

3.1. We allow the joint application MA No. 685 of 2012 in this matter.

3.2. Here the applicants, three in number, are seeking a declaration that the party respondents Nos. 1 to 3 are not entitled to seniority from the date of their casual engagement but only with effect from the dates they were regularly absorbed. According to applicants they were directly recruited to the post of Lower Division Clerk through the Staff Selection Commission on 28.8.1982, 16.6.1982 and 25.9.1982 respectively. They were promoted as Upper Division Clerks, Assistants, Superintendents and later as Passport Granting Officers earlier than respondents 1 to 3. However, by an order from this Tribunal in OA No. 27 of 2009, respondents Nos. 1 & 2 who were appointed on 15.5.1978 and respondent No. 3 on 10.7.1978 have obtained a

direction to the official respondents to re-fix their seniority from the dates of their initial engagement on casual basis. Applicants contend that by the said order of this Tribunal the clock has been set back by 30 years affecting the seniority of the directly recruited applicants to their chagrin and heart burn on account of the prospects of loosing their seniority. Applicants had approached this Tribunal challenging Annexure A6 order of the official respondents herein who decided to implement an identical order obtained by this Tribunal by Smt. V. Anita, Smt. Indu S. Nair and Smt. P. Sudhabai for fixing their seniority from the date of their initial engagement on daily rated basis vide orders in OAs Nos. 297 of 2008, 299 of 2008 and 300 of 2008. OA No. 196 of 2010 filed by the applicants was referred to a Full Bench and it was finally decided by the Full Bench on 12.8.2011 holding that the persons like respondents 1 to 3 herein would be entitled to seniority only with effect from the date of their regular appointments and not from the date of their initial appointment on casual basis. Annexure A7 is the aforesaid order of the Full Bench of this Tribunal. The applicants, therefore, seek the following reliefs:-

- “(a) Declare that the respondents 1 to 3 are not entitled to seniority from the date of their initial casual engagement, but only with effect from the dates from which they were regularly absorbed i.e. 1.6.1985 in the case of the 1st and the 2nd respondents and 13.6.1985 in the case of the 3rd respondent and direct the respondents accordingly;
- (b) Award costs of and incidental thereto;
- (c) Pass such other orders or directions as deemed just and fit by this Hon'ble Tribunal.”

3.3. The respondents 1 to 3 contended that their seniority was granted as per the Annexure A1 order of this Tribunal which is based on the Apex Court decision in *Amrit Lal Berry v. CC E* – (1975) 4 SCC 714 and *Inderpal Yadav*

v. *Union of India* – (1985) 2 SCC 648 and also based on the Vth Central Pay Commission recommendations. According to respondent Nos. 1 to 3 if the applicants are liable to be adversely affected while implementing Annexure A1 order it is for the official respondents to take appropriate remedial action. Since the respondents did not anticipate that the applicants would be adversely affected, hence, they did not implead the applicants in OA 27 of 2009 which led to Annexure A1 order. The applicants herein had approached the Hon'ble High Court challenging Annexure A1 order in WP(C) No. 13949 of 2010 but it was turned down by the Hon'ble High Court relying on the Apex Court decision in *Rajeev Kumar v. Hemraj Singh Chauhan* – AIR 2010 SC 1679. It was also pointed out that similar Writ Petitions Nos. 36648 of 2008, 7134 of 2009 and 36648 of 2008 also have been dismissed by the Hon'ble High Court stating that the issue pertaining to seniority with reference to date of entry in service was covered by the judgment of the High Court in WP(C) 5521 of 2009. The respondents further contend that the contentions of the applicants based on Annexure A7 order of the Full Bench of this Tribunal is not well founded and is mischievous. Annexure A1 order is dated 28.10.2009 whereas Annexure A7 is ordered on 12.8.2011 only and by no stretch of imagination Annexure A1 can be assailed on the basis of Annexure A7 order of the year 2011. According to the respondents 1 to 3 as the orders inter-parties have already been finalised by disposal of the appeals and by efflux of time Annexure A1 decision is not affected by a subsequent order of the Full Bench of this Tribunal.

3.4. In the reply filed by the official respondents 4 to 6 it is contended in

paragraphs 4 to 7 as follows:-

"4. The respondents submits that subsequent to passing the order dated 28/10/09, a Larger Bench of this Hon'ble Tribunal reviewed some of its earlier orders in similar cases and passed the following order on 12/8/11.

"The casual employees are entitled to be regularized with effect from their initial engagement and will be entitled for all other consequential benefits other than seniority and monetary benefit."

5. The Larger Bench's decision has been accepted by the Ministry and all Passport Offices have been directed to take necessary administrative actions in order to implement the same. Copy of Ministry's Order No. V.IV/441/13/2011 dated 11/5/12 is produced and marked as Annexure R1.

6. It is submitted that the order dated 28/10/09 in OA No. 27/09, where the applicants have been granted seniority and all monetary benefits from the dates of their initial engagement, is in contradiction with the larger Bench's order dated 12/8/11, where the applicants have been granted all consequential benefits except seniority and monetary benefits.

7. However, in view of the larger benches decision the respondents are in process of completing the administrative formalities in granting notional fixation of pay in the scale of LDC to all daily rated Clerks from the date of their initial engagement and arrears from the date of their regularization as LDCs in CPO cadre. Direction to issue necessary pay fixation order in respect of such officials has also been issued by the Ministry vide Annexure R1.

In view of the above contentions, the OA is devoid of merit and liable to be dismissed with costs to the respondents."

4. OA/92/2013 -

4.1. Applicant in this case is currently working as a Passport Granting Officer who had been working in the respondents' Department with his seniority maintained over respondents 1 to 3 (who are respondents 1 to 3 in OA No. 609 of 2012 also). He contends that he is now subjected to a humiliating situation of being placed below his erstwhile juniors in view of the implementation of the order of this Tribunal in OA No. 27 of 2009. The applicant challenges the action of the official respondents in taking a decision to implement the order of this Tribunal in OA No. 27 of 2009 and hence has come up with the following prayers:-

"(a) Call for the records leading to the issue of Annexure A6 and quash the same.

(b) Declare that the respondents 1 to 3 are not entitled to seniority over

the applicant and to be precise from the date of their initial casual engagement, but only with effect from the dates from which they were regularly absorbed i.e. 01.06.1985 in the case of the 1st and the 2nd respondents and 13.6.1985 in the case of the 3rd respondent and direct the respondents accordingly;

(c) Award costs of and incidental thereto;

(d) Pass such other orders or directions as deemed just and fit by this Hon'ble Tribunal."

4.2. The party respondents 1 to 3 filed a reply which is almost identical to the reply filed by them in OA No. 609 of 2012.

4.3. In their reply the official respondents 4 to 6 contends that Annexure A6 order which is impugned in this OA was issued subject to the outcome of OA No. 609 of 2012.

5. OA/718/2013 -

5.1. MA No. 819 of 2013 for joining applicants together stands allowed.

5.2. The first applicant and applicants Nos. 3 to 6 have retired from service while working as Passport Granting Officers. 2nd applicant is presently working as Passport Granting Officer. They entered service as daily rated clerks on 11.10.1977, 3.10.1977, 3.10.1977, 21.3.1977, 2.5.1977 and 4.10.1977 respectively. They were regularized as Lower Division Clerks on 8.12.1978. Applicants contend that similarly situated officials had filed RA No. 12/2008 in OA No. 675 of 2007, OA Nos. 49 of 2008 and OA No. 82 of 2008 before this Tribunal wherein they were granted orders regularizing their services with effect from the date of their engagement as Daily Rated Clerks with consequential seniority and fixation of pay. Hon'ble High Court of

Kerala had confirmed the said orders of this Tribunal in WP(C) Nos. 30864 of 2009, 36648 of 2008 and 7134 of 2009 respectively. As the present applicants are identically situated as the applicants in the aforementioned OAs they sent Annexures A4 to A9 representations to the respondents stating that even though the respondents 1 to 3 in OA No. 609 of 2012 who are juniors to the applicants herein, they were extended the benefit of reckoning their service from the dates of their initial engagement as daily rated clerks with consequential seniority and fixation of pay. Now respondent No. 1 has issued Annexure A10 circular whereby notional promotion is to be given to seniors from the dates the next junior got such promotion. As the respondents have not taken any steps to extend the benefits obtained by similarly situated applicants they approached this Tribunal with this OA seeking the following

reliefs:-

- "A) To declare that the applicants herein are entitled to be regularized as LDC w.e.f. their respective dates of engagement as daily rated clerks with consequential seniority, pay fixation and arrears of pay,
- B) declare that the applicants herein are entitled to the same benefits as have been afforded to the applicants in Annexure A1 to A3 orders of this Honourable Tribunal,
- C) Declare that the applicants are entitled to be granted appropriate placement in the seniority list of UDC, Assistants, Superintendents and further promotion as are legitimately due to them, and
- D) to direct the respondents to pass orders on Annexure A4 to A9 representations submitted by the applicants herein, and
- E) such other orders and directions as are deemed fit in the facts and circumstances of the case."

5.3. In the reply filed by the respondents it is stated that seniority has been revised in compliance of the order in OA No. 82 of 2008 vide Annexure R1 order. In respect of the respondents 1 to 3 in OA No. 609 of 2012, their service has been counted from the date of their initial engagement as daily

rated clerks vide Annexure R2 order subject to the outcome of OA No. 609 of 2012. The respondents pray for dismissing the OA with costs.

6. OA/721/2013 -

6.1. Applicant in this OA is a retired Superintendent who had worked in the office of the 3rd respondent. She commenced her service from 21.3.1977 as a Daily Rated Clerk in the same office and was regularized as Lower Division Clerk with effect from 8.12.1978. Respondents 1 to 3 in OA No. 609 of 2012 were granted regularization from the date of their initial engagement with consequential seniority. Applicant had been appointed as daily rated clerk much before the aforesaid three officials had entered service. However, they had been given an earlier date of appointment as Lower Division Clerk i.e. 15.5.1978, whereas the applicants date of appointment as Lower Division Clerk remains unchanged i.e. on 8.12.1978. Based on the benefits extended to similarly placed officials this Tribunal had allowed the OA of Smt. Leelamany, the applicant in RA No. 12 of 2008 in OA No. 675 of 2007, ordering to count the date of her initial engagement for all purposes including seniority. The said order was followed by this Tribunal in OAs Nos. 49/2008, 82/2008 and other cases. The judgment in Leelamany's case was confirmed by the Hon'ble High Court in WP(C) No. 30864 of 2009. The Hon'ble High Court has confirmed the orders in OA No. 49/2008 & 82/2009 of this Tribunal in WP(C) No. 36648 of 2008 and 7134 of 2009 respectively. The respondent Ministry has extended the benefit of the orders so obtained to

the respondents 1-3 in OA No. 609 of 2012. As no action was taken the applicant herein filed OA No. 843 of 2009 claiming the benefit of the aforesaid judgements. Vide order dated 15.3.2011 this Tribunal directed the respondents to give the same benefit as has been given in the earlier cases. Yet no steps are taken by the respondents. Hence, the applicant herein filed contempt petition No. 126 of 2012. The said contempt petition was closed by the Tribunal observing that there was substantial compliance of the order. Applicant states that till date she was not granted the benefit of the order in OA No. 843 of 2009 and hence she has approached this Tribunal with the present OA with the following reliefs:-

- "A) issue an order quashing and setting aside Annexure A3 order dated 3.8.2012 to the extent that it denies the applicant the benefit of the order in RA No. 12/2008 in OA No. 675/2007.
- B) Declare that the applicant is entitled to be regularized as LDC w.e.f. 21.3.1977 including seniority, pay fixation and arrears of pay;
- C) declare that the applicant is liable to be granted appropriate placement in the seniority list of UDC, Assistants, Superintendents and further promotion as are legitimately due to her, and
- D) such other orders and directions as are deemed fit in the facts and circumstances of the case."

6.2. The respondents filed the reply stating that in OA No. 843 of 2009 the applicant was allowed notional fixation of pay from the date of her initial engagement as daily rated clerk and that the order specifically states that she is not entitled to any other benefits. According to the respondents the seniority of the applicant herein along with other similarly placed officials would be decided on the basis of the outcome of OA No. 609 of 2012.

7. OA/790/2013 -

7.1. The applicant herein is a retired Passport Granting Officer. She entered

the services as Daily Rated Clerk on 21.3.1977 and she was regularized as LDC on 8.12.1978. She states that she is identically situated as the applicants in RA No. 12 of 2008 in OA No. 675 of 2007, OA No. 49 of 2008 and OA No. 82 of 2008. Applicants in those cases had been found entitled to be regularized in service from the date of their initial engagement as daily rated clerk with consequential seniority and fixation of pay. Therefore, she sent Annexure A4 representation dated 8.7.2013 claiming identical benefits. Now the Ministry has issued Annexure A5 circular granting notional promotion to seniors from the dates the next junior has got such promotion. Applicant alleges that no steps were taken by respondents in granting similar benefits to her. Hence, she prays for the following reliefs:

- "A) To declare that the applicant herein is entitled to be regularized as LDC w.e.f. her respective date of engagement as daily rated clerk with consequential seniority, pay fixation and arrears of pay,
- B) declare that the applicant herein is entitled to the same benefit as has been afforded to the applicants in Annexure A1 to A3 orders of this Honourable Tribunal,
- C) Declare that the applicant is entitled to be granted appropriate placement in the seniority list of UDC, Assistant, Superintendent and further promotions as are legitimately due to her, and
- D) to direct the respondents to pass orders on Annexure A-4 representation submitted by the applicant herein, and
- E) such other orders and directions as are deemed fit in the facts and circumstances of the case."

7.2. Respondents filed reply stating that the respondents Nos. 1 to 3 in OA No. 609 of 2012 were given the benefit of counting their services from the date of initial engagement as daily rated clerk. Further the seniority of the applicant along with other similarly placed officials would be decided on the basis of the outcome of OA No. 609 of 2012. The respondents also states that the applicant cannot claim regularization as a matter of right from the date of

her entry into service in view of the dictum laid down in *Umadevi's* case by the Hon'ble Apex Court.

8. OA/180/00038/2014 -

8.1. MA No. 180/00046/2014 for joining together of the applicants is allowed.

8.2 The 1st, 2nd and 4th applicants have retired while working as Assistant Passport Officers. The 3rd applicant retired from service on 30.4.2007 while working as Superintendent under the 5th respondent. All of them entered service as daily rated clerks on 1.10.1975 and they had been regularized as Lower Division Clerks on 29.6.1977. They are seeking parity with the similarly situated officials in RA No. 12 of 2008 in OA No. 675 of 2007, OA No. 49 of 2008 and in OA No. 82 of 2008, who were granted regularization of service with effect from their respective dates as daily rated clerks with consequential seniority and fixation of pay. The 1st respondent Ministry issued Annexure A8 circular granting notional promotion to seniors from the date the junior has got such promotion. In spite of submitting Annexures A4 to A7 representations no steps were taken by the respondents to extend the similar benefits to the applicants. Hence, they have approached this Tribunal with this OA seeking the following reliefs:-

"A) To declare that the applicants herein are entitled to be regularized as LDC w.e.f. their respective dates of engagement as daily rated clerks with consequential seniority, pay fixation and arrears of pay,

B) declare that the applicants herein are entitled to the same benefits as have been afforded to the applicants in Annexures A1 to A3 orders of this Hon'ble Tribunal,

C) Declare that the applicants are entitled to be granted appropriate placement in the seniority list of UDC, Assistants, Superintendents and

further promotions as are legitimately due to them, and

D) to direct the respondents to pass orders on Annexure A-4 to A-7 representations submitted by the applicants herein, and

E) such other orders and directions as are deemed fit in the facts and circumstances of the case."

8.3. Respondents filed their reply stating that the date of regularization of the applicants as Lower Division Clerk with effect from 29.6.1977 is incorrect as per Annexure R1 seniority list of Grade-III Assistant Passport Officers. As per Annexure R1 seniority list as on 1.1.2011 their appointment as Lower Division Clerk is with effect from 30.4.1976. The respondents state that seniority of respondents 1 to 3 in OA No. 609 of 2012 was granted vide Annexure R2 order subject to the outcome of OA No. 609 of 2012. The 1st respondent Ministry has issued orders vide Annexure R3 to grant notional fixation of pay in the scale of Lower Division Clerk to daily rated clerks from the date of their initial engagement and payment of arrears only from the date of their regularization as Lower Division Clerk. Respondents pray for dismissing the OA with costs.

9. OA/180/104/2014 -

9.1. MA No. 180/144/2014 for joining together is allowed.

9.2. The applicants are Passport Granting Officers working under the respondents. They had entered service as daily rated clerks on 25.11.1976 and 21.1.1977 respectively and were regularized as Lower Division Clerks on 1.6.1977. They have retired from service on 31.5.2014 and 30.6.2014 respectively. The applicants seek the benefit of the orders in RA No. 12/2008

in OA No. 675 of 2007, OA No. 49 of 2008 and OA No. 82 of 2008 where the applicants therein were granted regularization of service with consequential seniority and fixation of pay from the date of their engagement as daily rated clerks. The applicants moved the respondents by filing Annexure A4 and A5 representations seeking identical benefits. But no steps have been taken by respondents to grant benefits to applicants. Hence applicants seek the following reliefs:-

- “A) To declare that the applicants herein are entitled to be regularized as LDC w.e.f. their respective dates of engagement as daily rated clerks with consequential seniority, pay fixation and arrears of pay,
- B) declare that the applicants herein are entitled to the same benefits as have been afforded to the applicants in Annexures A-1 to A-3 orders of this Hon'ble Tribunal,
- C) Declare that the applicants are entitled to be granted appropriate placement in the seniority list of UDC, Assistants, Superintendents and further promotions as are legitimately due to them, and
- D) to direct the respondents to pass orders on Annexure A-4 and A-5 representations submitted by the applicants herein, and
- E) such other orders and directions as are deemed fit in the facts and circumstances of the case.”

9.3. In the reply statement, respondents contend that all the employees in the Central Passport Organization were given seniority from the date of appointment/regularization except in the case of applicants in RA No. 12 of 2008 in OA No. 675 of 2007 (K.S. Leelamani) and in the case of V.A. Raghuprasad in OA No. 49 of 2008 and P. Lathikumari & Ors. in OA No. 82 of 2008 and they were given seniority from the date of initial engagement as per the orders of this Tribunal. Similar benefits were also extended to the applicants in OA No. 29 of 2009 (respondents 1 to 3 in OA No. 609 of 2012) with a rider i.e. subject to the outcome of OA No. 609 of 2012. Now a Larger Bench of this Tribunal vide its common order dated 12.8.2011 in OAs Nos.

75 of 2010, 82 of 2010 and 196 of 2010 has rejected the prayer for revising the seniority in the category of Lower Division Clerk from the date of initial engagement and has granted other consequential benefits other than seniority and monetary benefits. Respondents further state that the counting of casual services for consequential benefits including seniority were given only to certain officials who were the applicants in the OA and where orders were issued prior to 12.8.2011. Respondents state that daily rated clerks are not entitled to seniority for their casual service, prior to regularization as Lower Division Clerks and are entitled to seniority only from the date of their regularization.

10. OA/180/311/2014 -

10.1. OA No. 180/311/2014 was also taken up with the aforementioned OAs as the issue involved is identical to the other above OAs taken in this common order.

10.2. The applicant in this case had retired from service while working as Passport Granting Officer. He had entered service as daily rated clerk on 1.7.1977 and was regularized as Lower Division Clerk on 8.12.1978. Therefore, he prays for the benefits received by similarly situated persons who had filed RA No. 12 of 2008 in OA No. 675 of 2007, OA No. 49 of 2008 and OA No. 82 of 2008. Annexure A4 representation dated 22.3.2013 was submitted by him to the respondents claiming identical benefits. Respondents issued Annexure A5 circular granting notional promotion to seniors from the dates the immediate junior got such promotion. In spite of

submitting representation no action was taken by the respondents granting similar benefits to the applicant as had been extended to a large number of similarly situated officials. The applicant has approached this Tribunal with the OA seeking the following reliefs:-

- "A) To declare that the applicant herein is entitled to be regularized as LDC w.e.f. his date of engagement as daily rated clerks with consequential seniority, pay fixation and arrears of pay,
- B) declare that the applicant herein is entitled to the same benefits as have been afforded to the applicants in Annexures A-1 to A-3 orders of this Hon'ble Tribunal,
- C) Declare that the applicants is entitled to be granted appropriate placement in the seniority list of UDC, Assistants, Superintendents and further promotions as are legitimately due to them, and
- D) to direct the respondents to pass orders on Annexure A-4 representation submitted by the applicant herein, and
- E) such other orders and directions as are deemed fit in the facts and circumstances of the case."

11. In the OAs under consideration in this common order we find two sets of applicants. One set seek the benefits granted by this Tribunal in RA No. 12 of 2008 in OA No. 675 of 2007, OA No. 49 of 2008 and OA No. 82 of 2008, thereby this Tribunal had granted order in favour of the applicants in those cases regularizing their services with respective dates of regularization as daily rated clerks with consequential benefits of seniority and fixation of pay. The other set of applicants are directly recruited officials (as Lower Division Clerks) who entered the regular service much prior to the regularization of the Lower Division Clerks who were originally engaged as daily rated clerks, in the aforementioned OAs. Applicants in the former category contend that the orders granting regularization of the employees from the date of their initial engagement as daily rated clerks with consequential seniority and other benefits have been obtained by them from

this Tribunal and those orders have been confirmed by the Hon'ble High Court in WP(C) Nos. 36648 of 2008 and WP(C) No. 30864 of 2009.

12. Shri T.C. Govindaswamy learned counsel for the applicants in OA No. 609 of 2012 submitted that in the aforesaid Writ Petitions Hon'ble High Court had not entered into the merits and no law was laid down. We have perused the aforesaid orders of the Hon'ble High Court. In WP(C) No. 36648 of 2008 the judgment of the Hon'ble High Court reads as follows:-

"Counsel for the respondents produced a copy of the judgment of this Court in WP(C) No. 30864 of 2009 dated 20.11.2009 wherein writ petition filed against the order in RA 12/2008 in OA No. 675/2007 by the Central Administrative Tribunal is dismissed by this Court holding that the issue pertaining to seniority with reference to the date of entry in service was covered by the Division Bench judgment of this Court in WP(C) No. 5521 of 2009. It is also stated in the said judgment that SLP filed against the judgment was also dismissed. Consequently, following the above judgment, we dismiss this writ petition also filed by the department."

13. In WP(C) No. 30864 of 2009 judgment dated 20.11.2009 of Hon'ble High Court reads as under:-

"Challenge is against Exts.P1 and P2 orders passed by the Central Administrative Tribunal, Ernakulam in R.P. No. 12/2008 in OA No. 675/2007. The issue pertains to the counting of seniority from the date of entry in service. That issue is covered against the petitioner as per Ext. R1 (b) judgment of the Division Bench in WP.C. 5521/2009. It is brought to our notice that the Special Leave Petition filed by Department against Ext. R1(b) judgment was also dismissed. Hence, the Writ Petition is dismissed."

14. In both the aforesaid judgements of the Hon'ble High Court refers to another Writ Petition i.e. WP(C) No. 5521 of 2009 as the identical matter which was dealt with by that Court. We thought it appropriate to peruse the judgment dated 24.2.2009 in WP(C) No. 5521 of 2009. The short judgment reads as follows:-

"The writ petitioners are the respondents, in O.A.No.300/2008, before the Central Administrative Tribunal, Ernakulam Bench. The respondent herein was the applicant. Ext.P1 is the copy of the Original Application. The applicant was initially appointed as casual labourer in the Regional Passport Office, Kochin, on 19.3.1982 on being sponsored by the Employment Exchange. She was regularised in service with effect from 12.6.1985. The said regularisation was based on the order of the Central Administrative Tribunal, which has become final. The petitioner moved the competent authority, seeking regularisation in service from the initial date of entry, that is, with effect from 5.5.1982 and also seeking consequential benefits. Her claim in this regard has been rejected by Annexure A1 order by the competent authority. Therefore, challenging that order and seeking consequential reliefs, this Original Application was filed. The respondents resisted the application only on one ground, that is, her claim is not permissible in view of the decision of the Apex Court in Secretary, State of Karnataka v. Umadevi (3) [2006(4) SCC 1]. The Tribunal overruled the objection and granted all the reliefs sought by her, except arrears of salary. The respondents have preferred this writ petition, challenging the said order of the C.A.T., a copy of which is produced as Ext.P3, raising the very same contention built up based on Umadevi's decision (supra).

2. We notice that the decision in Umadevi's case (supra) has no application to the facts of this case. The applicant was regularised in service as early as on 12.6.1985, based on the order of the C.A.T. Therefore, the present attempt of the writ petitioners to rely on the decision of the Umadevi's case to deny benefits to her is plainly untenable. We find nothing wrong with the decision of the C.A.T. in having rejected that contention.

In the result, the writ petition fails and it is dismissed."

15. So far as we could perceive, the above Writ Petitions were dismissed by Hon'ble High Court *in limine* without laying down any law. There was no adjudication on the seniority of the subsequently regularized casual rated employees over and above the directly recruited employees prior to such regularization. Nevertheless, ^{Hon'ble High Court} having visited the aforesaid orders of this Tribunal in exercise of the power of judicial review under Articles 226/227 of the Constitution of India, we honour the above judgements of the Hon'ble High Court as confirming the orders of this Tribunal.

16. Mr. Shafik, learned counsel for the respondents 1-3 in OA No. 609 of

2012 and OA No. 92 of 2013 referring to the Apex Court decisions in *Rajeev Kumar v. Hemraj Singh Chandra (supra)* and *L. Chandrakumar v. Union of India & Ors* - (1997) 3 SCC 261 submitted that the orders of this Tribunal are to be treated as the orders of the court of first instance which are subject to the power of judicial review of the High Court under Article 226 of the Constitution of India. Replying to the contention of the applicant in OA No. 609 of 2012 that the order obtained by the applicants 1 to 3 in the said OA in OA No. 27/2009 was obtained without impleading the applicants in OA No. 609 of 2012, Shri Shafik submitted that the applicants in OA No. 27/2009 were challenging the inaction on the part of the official respondents and therefore there was no need for them to implead the applicants in OA No. 609 of 2012 in that case. In this connection he referred to *A. Janardhana v. Union of India* - (1983) 3 SCC 601 wherein it was observed by the Apex Court as under:-


“.....
The proceedings are analogous to those in which the constitutionality of a statutory rule regulating to seniority of government servants is assailed. In such proceedings, the necessary parties to be impleaded are those against whom the relief is sought, and in whose absence no effective decision can be rendered by the Court. Approaching the matter from this angle, it may be noticed that relief is sought only against the Union of India and the concerned Ministry and not against any individual nor any seniority is claimed by anyone individual against another particular individual and, therefore, even if technically the direct recruits were not before the Court, the petition is not likely to fail on that ground. The contention of the respondents for this additional reason must also be negatived.”

17. Mr. Shafik argued that the order obtained by the respondents 1 to 3 in OA No. 609 of 2012 in OA No. 27 of 2009 having been confirmed by the Hon'ble High Court, they have obtained finalised rights which cannot be assailed on the basis of a subsequent Full Bench decision of this Tribunal,

dated 12.8.2011.

18. The line of argument by Mrs. Preethi on behalf of the applicants in OAs Nos. 718 of 2013, 721 of 2013, 790 of 2013, 180/104/2014 and 180/311/2014 also was similar to those of Mr. Shafik. She submitted that the applicants in those cases rely on the orders of this Tribunal in RA No. 12 of 2008 in OA No. 675 of 2007, OA No. 49 of 2008 and OA No. 82 of 2008 which have been confirmed by the Hon'ble High Court in the aforementioned Writ Petitions.

19. The official respondents in these Original Applications under consideration contend that after confirmation of the orders of this Tribunal in the aforesaid cases by the Hon'ble High Court they have issued orders in favour of the respondents 1 to 3 in OA No. 609 of 2012. But, as in the mean time OA No. 609 of 2012 was filed, the order issued in favour of the aforesaid respondents was made subject to the result of OA No. 609 of 2012. The official respondents further submit that subsequent to the passing of the order dated 12.8.2011 by a larger bench of this Tribunal which held that casual employees are not entitled to be regularised with effect from their initial engagement and that they will be entitled to consequential benefits other than seniority and monetary benefits, the 1st respondent Ministry has accepted the said decision of the Larger Bench and all Passport Offices have been directed to take necessary administrative action in order to implement the same vide Annexure R1 (in OA No. 609 of 2012). The same reads as under:-



"In compliance of the Order of Hon'ble Central Administrative Tribunal, Ernakulam Bench in OA Nos. 75/2010, 82/2010 & 196/2010 dated 12.8.2011, it has been decided by the competent authority to grant the following benefits to all officials of the Central Passport Organization who initially joined as Daily Rated Clerks and were subsequently regularized as Lower Division Clerks:

(i) To grant notional fixation of pay in the scale of LDC to all Daily Rated Clerks from the date of their initial engagement, and payment of arrears (monetary benefits) only from the date of their regularization as LDCs in CPO cadre.

(ii) Daily Rated Clerks are also entitled for counting of casual service for the purpose of terminal benefits, subject to existing Government norms.

2. Revised pay fixation orders in respect of such officials may be prepared by the Passport Offices and Due and Drawn Statements may be prepared/obtained from all the offices where an official has worked in the past as per service records. Arrears will be paid subject to availability of funds in the respective Passport Offices. No interest on arrears will be paid.

3. This issues with the approval of Joint Secretary (PSP) and Chief Passport Officer.

Sd/-
(K. Raghu Ram)
Deputy Secretary (PVA)"

20. We take note that in the initial stages the Central Passport Organization under the Ministry of External Affairs had engaged daily rated clerks on the basis of selection from the lists furnished by the Employment Exchanges. Recruitment of Lower Division Clerks through the Staff Selection Commission came into vogue only at a later stage. Even then also the daily rated casual clerks already engaged continued in service. Such daily rated persons were subsequently regularized in service. According to the respondents there are over 1,000 such daily rated clerks all over the country who were working on casual basis and got regularized subsequently. We further note that apart from the orders relied on by the respondents 1 to 3 in OA No. 609 of 2012 a few other orders also were passed by this Tribunal

granting seniority and other service benefits retrospectively to those employees who were initially engaged on casual basis, dating back to their initial engagement. Some of those orders were subjected to judicial review by Hon'ble High Court without success. As conflicting decisions have been rendered by this Tribunal in different cases relating to the seniority of persons who were initially engaged as daily rated clerks, three OAs viz. OA Nos. 75 of 2010, 82 of 2010 and 196 of 2010 were referred to the Full Bench of this Tribunal. Those cases were jointly heard and a common order dated 12.8.2011 was passed by the Full Bench holding that the persons who were initially appointed on daily rated basis cannot claim seniority from the date of such initial engagement. Nevertheless, the full bench of this Tribunal granted other service benefits with retrospective effect from the date of their initial engagement.

21. Respondents Nos. 1 to 3 in OAs Nos. 609 of 2012 and 92 of 2013 and the applicants in OAs Nos. 718/2013, 721/2013, 790/2013, 180/38/2014, 180/104/2014 and 180/311/2014 bank heavily on the earlier orders of this Tribunal conferring seniority of the applicants therein from the date of their initial employment and further on the strength of the orders of Hon'ble High Court dismissing the Writ Petitions challenging those orders.

22. We note that applicants in many of the OAs under consideration before us have already retired from service. Some are on the verge of retirement. Meanwhile most of the genera of officials who were initially appointed as daily rated clerks after their regularization have earned promotions, reaching

up to the rank of Passport Granting Officers/Assistant Passport Officers and some could reach only up to the level of Superintendents. So is the case of the direct recruits. No doubt, upsetting the long enjoyed seniority of such officials will cause heart burn and humiliation to many of them. Therefore, it is high time that the controversy has to be brought to a quietus which requires a broad consensus and sense of equity, justice and over and above, the willingness to accept realities.

23. It appears from the reply filed by the official respondents 4 to 6 in OA No. 609 of 2012 that the Ministry of External Affairs has accepted the Full Bench decision of this Tribunal and has decided to implement the said decision. It further appears that none of the aggrieved parties to the common order of the Full Bench have challenged it before any forum.

24. In the circumstances and in order to bring quietus to the controversy we are inclined to accept the stand taken by the 1st respondent Ministry which we consider as their policy decision to give effect to the Full Bench decision dated 12.8.2011 in OAs Nos. 75 of 2010, 82 of 2010 and 196 of 2010 rendered by this Tribunal. However, we direct the 1st respondent that while doing so not to disturb the rights of those employees who have secured orders of this Tribunal which have been confirmed by the High Court, and attained finality, prior the date of the full bench's order.

25. Accordingly, we are inclined to dispose of these OAs with the above direction to the 1st respondent Ministry. We hope that the 1st respondent

Ministry will implement the decision at the earliest, reckoning the rights accrued to the different persons who will be affected in the process. The OAs are disposed of accordingly. No order as to costs.

(P.K. PRADHAN)
ADMINISTRATIVE MEMBER

(U. SARATHCHANDRAN)
JUDICIAL MEMBER

"SA"