

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH AT ERNAKULAM

ORIGINAL APPLICATION NO.116 OF 2001

CORAM Friday this the 21st day of March, 2003

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

Jayaram Menon,
Store Keeper,
Naval Armament Depot,
Aluva PO,
Ernakulam District.Applicant

(By Advocate Mr.N.N. Sugunapalan)

V.

1. The Union of India represented by the Secretary, Ministry of Defence, New Delhi.
2. The Chief of Naval Staff, Naval Headquarters, South Block, New Delhi-110 001.
3. The Director General of Armaments Supply Naval Headquarters, West Block No.5, R.K.Puram, New Delhi-110 066.
4. The Flag Officer-Commanding-in Chief Southern Naval Command, Naval Base, Kochi.4.
5. The General Manager, Naval Armament Depot, Aluva, Ernakulam District.
6. P.Sanyasi Rao, Store Keeper Naval Armament Depot, Visakhapatnam-530009.
7. S.P.Pednekar, Store Keeper Naval Armament Depot Chikalim PO, Vascodagama, Goa.
8. P.P.Mukadam, Store Keeper NAD, Karanja, URAN Raigad District, Maharashtra.
9. N.K.Agale, Store Keeper NAD, Karanja, Uran Raigad Dist. Maharashtra.

10. K.V.S. JK Prasad,
Storekeeper, NAD
Visakhapatnam, Andhra Pradesh.
11. K.V. Narasimha Rao
Store Keeper, NAD, Visakhapatnam,
Andhra Pradesh.

(By Advocate Mr.C.Rajendran, SCGSC (for R.1to5)

The application having been heard on 17.2.2003, the Tribunal on 21.3.2003 delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant was initially appointed as Assistant Store Keeper on 4.6.1980 at Naval Armament Depot, Aluva on a casual basis and was absorbed on regularization with effect from 14.9.81 and seniority in the grade of Assistant Store Keeper was reckoned with effect from 14.9.81. The applicant had filed OA 463/91 claiming regularization and consequential benefits with effect from 4.6.80 the date of his initial engagement, except seniority. The OA was allowed. Therefore the applicant was treated as regular with effect from 4.6.1980 but seniority was reckoned only from 14.9.81. The applicant did not seek seniority from the date of initial engagement in OA 463/91 because a Larger Bench of the Tribunal had already held that persons regularized after 27.5.80 would reckon their seniority only with effect from the date of absorption. He was transferred on promotion to NAD, Bombay as Store Keeper with effect from 10.1.92. While so the applicant came across the revision of seniority of Assistant Store Keepers pursuant to the orders of the Hyderabad Bench of the Tribunal in OA 510/89 by which

Mr. KVS JK Prasad who was appointed as Assistant Store Keeper on 1.6.81 and absorbed on regularization with effect from 10.11.83 was granted seniority in the grade of Assistant Store Keeper with effect from the date of his initial appointment namely 1.6.81. Shri Prasad was promoted as Store Keeper with effect from 12.11.90. The applicant was regularized with effect from 4.6.80 pursuant to the orders of the Tribunal in OA 463/91 but Prasad who was junior to the applicant by 424 days as Assistant Store Keeper on the basis of the orders of the Hyderabad Bench of the Tribunal became senior to him. The applicant made representations claiming seniority with effect from the date of his initial engagement. Various Benches of this Tribunal like New Bombay Bench, Hyderabad Bench and Cuttack Benches granted relief to the applicants before it as a result they were all granted seniority with effect from the date of their initial appointment. The claim of the applicant for similar benefits of seniority with effect from the date of his regularization was turned down by orders at Annexure A19(1) and A19(2) dated 31.1.2000 and 20.12.99 respectively. Alleging that the action on the part of the respondents in adopting different standard in the case of the applicant is arbitrary, discriminatory and unsustainable, the applicant has filed this application for the following reliefs:

- (a) Call for the records leading upto Annexure A19 and quash the same.
- (b) Grant the applicant with seniority to the grade of Assistant Store Keeper based on the date of appointment w.e.f. 4.6.1980.

✓

(c) Direct the respondents 1 to 5 to carry out the consequent revision of the seniority of Assistant Store Keepers from 1988 onwards.

(d) Hold review DPC and consider the name of the applicant for promotion to the grade of Store Keeper in the Select List of 1989 and place his name immediately after Mr. N.K.AGale and just ahead of the 6th respondent in the select list/seniority list of Store Keepers.

(e) Grant the applicant his promotion to the grade of Store Keeper w.e.f. 16.10.1989 on the basis of the revised select list.

(f) Grant the applicant all other privileges on consequence to the revised seniority/promotion such as refixation of pay, exercise of option whatever necessary and all other benefits arising therefrom.

(g) Call for the records leading upto Annexure.A21 and quash the same.

2. The respondents in their reply statement contend that the applicant has been given seniority with effect from the date of his absorption on a regular basis in terms of the Larger Bench ruling of the Tribunal which has been affirmed by the Apex Court in Civil Appeal No.9922/95 in the case of Union of India Vs. Dharani and that the applicant is not entitled to get seniority before he regularly entered the cadre. They further contend that the representation made by the applicant has been initially disposed of by an order dated 12.4.01 (Annexure.R.4A) wherein clear and cogent reasons have been given for not accepting the request made by the applicant.

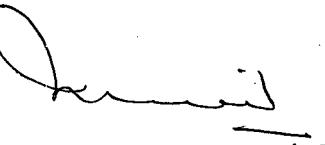
3. We have gone through the pleadings and materials placed on record and have heard the learned counsel on

either side. The applicant has been granted seniority with effect from the date on which he was regularly absorbed on the post with effect from 14.9.81. However, pursuant to the orders of the Tribunal in OA 463/91 filed by the applicant he has been granted regularization with effect from the date of his original appointment as casual employee excepting seniority. The applicant is bound by Annexure.A1 order of the Tribunal by which he has been granted regularization excepting seniority with effect from 4.6.1980. The applicant has in OA 463/91 specifically prayed for a direction to grant all benefits like leave, increment and other benefits except seniority in accordance with the findings in OA 434/89 and 609/89 and that has been granted to him. In the application itself the applicant has stated that in terms of the Larger Bench decision those who were regularized after 27.5.80 would be entitled to seniority only with effect from the date of their regularization. The fact that pursuant to various decisions of the New Bombay Bench and Cuttack Bench of the Central Administrative Tribunal some persons although regularized after 27.5.80 had given seniority with effect from the date of their initial engagement the applicant is not entitled to claim that benefit in view of the fact that Annexure.A1 order of the Tribunal declaring his right for regularization with effect from 4.6.80 excepting seniority became final and binding on him. The Hon'ble Supreme court has in Union of India and others Vs. M.Dharani and others CA No.9922/95 held that service rendered on casual basis prior to appointment on

regular basis shall not count for seniority. The applicant cannot compare himself with the applicants before the Hyderabad Bench, New Bombay Bench and Cuttack Bench of the Tribunal because absorption in their case were made against regular vacancies. In any case as the applicant did not bargain for seniority with effect from the date of regularization ignoring artificial breaks in casual service, he cannot now turn round and claim that he is entitled to seniority for his casual service though subsequently regularized.

5. In the light of what is stated above, we find no merit in this application which is dismissed leaving the parties to bear their own costs.

Dated this the 21st day of March, 2003


T.N.T. NAYAR
ADMINISTRATIVE MEMBER

(S)


A.V. HARIDASAN
VICE CHAIRMAN