

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 134 of 2002

Tuesday, this the 20th day of April, 2004

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER

1. M.N. Vijayan,
S/o M. Narayana Bhattathiri,
Court Officer, Central Administrative Tribunal,
Ernakulam Bench, Ernakulam,
Residing at 'C-32', CPWD Quarters,
Kakkanad, Ernakulam.Applicant

[By Advocate Mr. Shafik M.A.]

Versus

1. Union of India represented by the
Secretary, Department of Personnel & Training,
Ministry of Personnel, Public Grievances and
Pensions, North Block, New Delhi.

2. The Registrar,
Central Administrative Tribunal,
Principal Bench, Faridkot House,
Copernicus Marg, New Delhi - 110 001

3. The Registrar,
Central Administrative Tribunal,
Ernakulam Bench, Kaloor, Ernakulam.Respondents

[By Advocate Mr. C. Rajendran, SCGSC]

The application having been heard on 20-4-2004, the
Tribunal on the same day delivered the following:

O R D E R

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

The short question that calls for us to answer in this OA is whether an officer who was initially appointed on deputation to a post and later got absorbed in accordance with the Recruitment Rules would count his seniority in the grade only with effect from the date of commencement of deputation or with effect from the date on which he got appointed to that grade in his parent department on regular basis if that is earlier. The facts are as follows.

2. The applicant, Shri M.N.Vijayan, while regularly working as a Section Officer in the Department of Expenditure of Ministry of Finance with effect from 31-5-1990, joined the Bangalore Bench of the Central Administrative Tribunal on deputation as a Section Officer with effect from 28-12-1992. Although he applied for getting absorbed in the Central Administrative Tribunal as a Section Officer in the year 1993, he was absorbed by order dated 19-6-1997 (Annexure A5). A draft seniority list of Section Officers/Court Officers was circulated as per Annexure A7 on 28-7-2000 showing him at Sl.No.67 to which the applicant submitted a representation on 2-8-2000 (Annexure A8). Considering his representation, Annexure A1 seniority list was issued giving him placement at Sl.No.58. The applicant is dissatisfied with the seniority position assigned to him. According to the applicant, in view of the dictum of the Apex Court in S.I.Rooplal & Another vs. Lt.Governor through Chief Secretary, Delhi & Others [JT 1999 (9) SC 597] as also the Govt.of India, Department of Personnel & Training O.M.No.20011/1/2000-Estt.(D) dated 27-3-2001, he should have been assigned seniority reckoning his regular services as Section Officer in his parent department, viz. 31-5-1990, and the action of the respondents in assigning him seniority only with effect from 19-6-1997, the date of absorption, is irrational, unjust and unsustainable. Therefore, the applicant has filed this application seeking to set aside Annexure A1 seniority list to the extent a lower seniority than deserving is assigned to him, declaring that he is entitled to be placed in the seniority list of Section Officers/Court Officers at the appropriate place by reckoning the service he has rendered in the parent department in a regular analogous post with effect from 31-5-1990 and for a direction to the respondents to assign correct seniority to the

applicant pursuant to Annexure A6 and to grant all the consequential promotions to the applicant based on such seniority with consequential benefits.

3. Respondents resist the claim of the applicant. They contend that the applicant's seniority has been rightly assigned giving him seniority with effect from the date on which he joined the Central Administrative Tribunal on deputation, since Annexure A6 Office Memorandum, which has been issued in the year 2001, has only prospective operation and would apply only to those who have come on deputation after 14th December, 1999.

4. We have carefully gone through the entire materials placed on record and have heard Shri Shafik M.A, learned counsel of the applicant and Shri C.Rajendran, learned SCGSC.

5. It is an undisputed fact that the applicant was a regular Section Officer in his parent department with effect from 31-5-1990 when he came to the Central Administrative Tribunal on deputation to the analogous post of Section Officer carrying identical pay scale on 28-12-1992. According to the OM.No. 20020/7/80-Estt.(D) dated 29-5-1986, the seniority of an officer joining on deputation is to be fixed either with effect from the date of deputation or with effect from the date on which he attained the grade in his parent department, whichever is later. If the above principle is to be applied, the applicant's seniority can be fixed only with effect from the date on which he joined the Central Administrative Tribunal on deputation. But, on the basis of the ruling of the Apex Court in S.I.Rooplal's case, the Govt. of India, Department of Personnel & Training has issued OM.No. 20011/1/2000-Estt.(D) dated 27-3-2001 (Annexure A6) by which the words "whichever is

later" have been substituted by "whichever is earlier". This substituted OM is to take effect, according to paragraph 4 of Annexure A6, with effect from 14th December, 1999. The draft seniority list of Section Officers/Court Officers of the Central Administrative Tribunal was prepared and circulated only in the year 2000. While doing so, the respondents were obliged to give the applicant placement in the seniority list reckoning his services in the analogous post of Section Officer which he was holding in his parent department with effect from 31-5-1990. The contention that grant of higher seniority to the applicant would affect as many as 28 persons whose names are in the seniority list is not a justifiable reason to suppress the seniority of the applicant to which he is otherwise entitled. Thus, we do not find any merit in the contention of the respondents that the applicant is not entitled to get the seniority list quashed to the extent of giving him only lower seniority than what he actually deserves. Therefore, we find that the applicant is entitled to have his seniority as Section Officer reckoned with effect from 31-5-1990.

6. Having found that the applicant is entitled to have a declaration that he is entitled to be fixed in the seniority list of Section Officers/Court Officers with effect from 31-5-1990, we have to decide what other reliefs the applicant would be entitled to. It goes without saying that revision of the seniority list of Section Officers/Court Officers would consequently confer on the applicant a right to be considered for promotion to the next higher grade with effect from the date on which the person immediately below him in the corrected seniority has been considered for such promotion. If he is

promoted to a higher post on this basis, he will have the right to have his pay fixed notionally and not for arrears of pay and allowances.

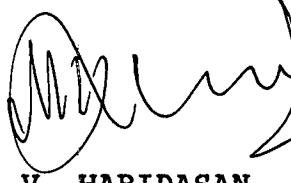
7. In the light of what is stated above, the Original Application is allowed. The impugned seniority list Annexure A1 to the extent it placed the applicant at Sl.No.58 only is set aside, declaring that the applicant is entitled to have his seniority as Section Officer fixed with effect from 31-5-1990. We direct the respondents to give the applicant appropriate placement in the seniority of Section Officers/Court Officers reckoning his seniority in the grade with effect from 31-5-1990, to consider the applicant for promotion to the next higher grade of Deputy Registrar with effect from the date on which any person junior to him in such seniority has been considered for promotion and if he is so promoted, to have his pay fixed notionally in the promoted post. The above directions shall be complied with and resultant orders be issued within a period of three months from the date of receipt of a copy of this order. No order as to costs.

Tuesday, this the 20th day of April, 2004

H.P. DAS

ADMINISTRATIVE MEMBER

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A.V. HARIDASAN
VICE CHAIRMAN