

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH**

Original Application No. 153 of 2009

MONDAY, this the 15th day of November, 2010

CORAM:

**Hon'ble Mr. Justice K. Thankappan, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member**

K.R. Manohran,
S/o. K.A. Raman,
Kattookkaran House,
Kuzhupilly, Ayyampilly P.O.,
Ernakulam District,
Now working as UDC in CAT,
Ernakulam Bench.

... **Applicant.**

(By Advocate Mr. U. Balagangadharan)

v e r s u s

1. The Principal Registrar,
CAT, Principal Bench, New Delhi.
2. The Registrar,
CAT, Ernakulam Bench.
3. Shri Khaja Kalemullah, UDC,
CAT, Hyderabad Bench.
4. Shri Sheo Kumar, UDC,
CAT, Allahabad Bench.
5. Shri S. Shanker Rao, UDC,
CAT, Bangalore Bench.
6. Shri V. Swaminatha, UDC,
CAT, Madras Bench.
7. Shri V.R. Sreenivasan, UDC,
CAT, Madras Bench.
8. Shri G. Raju, UDC,
CAT, Bangalore Bench.
9. Shri D. Vijayakrishnan,
CAT, Chennai Bench.



10. Shri B.P. Ray, Assistant, CAT, Patna Bench.
11. Shri Solomon Kavu, UDC, CAT, Ernakulam Bench.
12. Shri K.K. Vijayan, UDC, CAT, Ernakulam Bench.
13. Shri C. Sreekantan, UDC, CAT, Ernakulam Bench.
14. Shri Shibu Joseph, UDC, CAT, Ernakulam Bench.
15. Shri V. Jayakumar, LDC, CAT, Madras Bench.
16. Shri P. Krishnaswami, LDC, CAT, Madras Bench.

... Respondents.

(By Advocate Mrs. Mini R. Menon, ACGSC, for R1-2)

This application having been heard on 29.10.2010, the Tribunal on 15.11.2010 delivered the following:

ORDER

By Hon'ble Mr. K. George Joseph, Administrative Member -

The applicant was initially appointed as Lower Division Clerk (LDC) on 18.04.1981 in the Delhi Administration on qualifying the examination conducted by the Staff Selection Commission (SSC) in the year 1979. He joined the Armed Forces Headquarters (AFHQ) as LDC on 12.11.1982 on qualifying again the examination conducted by SSC in the year 1980. The service rendered in the Delhi Administration was reckoned for every purpose other than seniority in the AFHQ. From the AFHQ, the applicant went on deputation to the Central Administrative Tribunal (CAT), Bangalore



Bench on 15.11.1985. Initially the seniority of the employees was determined treating the Benches as separate units. As his service in the Delhi Administration was not reckoned for determining the seniority, the applicant represented to the Hon'ble Chairman, CAT, and he was assigned seniority position taking into account the service rendered by him in the Delhi Administration and the AFHQ. Later, he was promoted to the post of Upper Division Clerk (ad hoc) in May, 1998, in the Ernakulam Bench. In pursuance of the judgement against the bench-wise seniority list, a provisional seniority list on all India basis was drawn on 04.07.2000 with the cut off date as 31.03.2000. The applicant alongwith others filed O.A. No. 995/2001 against the cut off date of 31.03.2000 for determination of seniority of LDCs/UDCs, which was disposed of on 18.06.2004 with a direction to issue final seniority list of LDCs/UDCs of all Benches of the CAT on a centralised basis as on 01.11.1989. A draft seniority list of LDCs on centralised basis was circulated on 05.10.2004 wherein the applicant was given seniority position at Sl. No. 18 reckoning his past services rendered in the Delhi Administration, and the date of holding the regular post of LDC was shown as 18.04.1981. But in the final seniority, the applicant was placed at Sl. No. 33, showing the date of holding the post of LDC in the parent department on regular basis as 12.11.1982. The representation made by the applicant in this regard was rejected on the ground that the service rendered in the Delhi Administration was not counted for seniority in the AFHQ. Aggrieved, the applicant has filed this O.A.

2. The applicant contended that the CAT was a new establishment where there were no permanent incumbents when he was absorbed.

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Therefore, the entire past regular service has to be taken into account for reckoning seniority in the CAT as per rules. The word 'regular post' in Rule 5(2) of The Central Administrative Tribunal (Group 'B' and 'C' Miscellaneous Posts) Recruitment Rules, 1989, means to include entire service rendered by the incumbent in the post held in the parent department. After admitting the O.A., the applicant alongwith others were promoted as Assistant vide order No. PB/1/3/2007-Estt dated 16.04.2009, and he was posted as Assistant in the CAT, Jaipur Bench. It was contended that the applicant would be placed above the party respondents in the event of allowing the O.A., reckoning the service rendered in the Delhi Administration for seniority. In M.A. No. 282/2009, this Tribunal while permitting the applicant to submit a representation in respect his transfer directed the Registry of Ernakulam Bench to inform the Principal Registrar not to resort to cancellation of promotion till disposal of the representation. The 1st respondent rejected the representation of the applicant and cancelled the order of promotion. The applicant contends that the cancellation of promotion without giving an opportunity to accept the offer of promotion as Assistant at Jaipur is against the interim order dated 22.04.2009 of this Tribunal. He, therefore, prays for allowing the O.A.

3. The respondents contested the O.A. It was submitted on their behalf that the seniority of the applicant has been fixed keeping in view the Government of India, Department of personnel and Training O.M. No.28034/25/87-Estt(A) dated 11th February, 1988, wherein it has been mentioned that the past service rendered by an individual in a particular grade, cadre or department is not to be counted if the individual has joined

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a new post after tendering resignation/technical resignation. Further, it was contended that there was a delay of more than 3 years in filing this O.A. as the seniority list was issued on 28.03.2005. Sub rule (2) of Rule 5 of The Central Administrative Tribunal (Group 'B' and 'C' Miscellaneous Posts) Recruitment Rules, 1989, which came into force on 20.09.1989 clearly states that the seniority of officers mentioned in sub rule (1) shall be determined with reference to the dates of their regular appointment to the posts concerned. The date of regular appointment of the applicant is 12.11.1982. The word 'dates' does not mean the date(s) of appointment in different offices/organisations even after tendering resignation. It refers to the dates of officers who have been appointed on regular basis. The regular service of the applicant in his parent department, i.e. the AFHQ, from where the applicant came on deputation to the CAT, started with effect from 12.11.1982 and not with effect from 18.04.1981, the date on which he joined the Delhi Administration. In terms of the instructions of Government of India contained in DoP&T O.M. Dated 11.02.1998, the past service rendered by the applicant in Delhi Administration has to be counted for the purpose of pension and fixation of pay alone but not for the purpose of seniority. It was further submitted that in the final seniority list one cannot claim the benefit of placement based on the draft seniority list, which may undergo changes after receipt of objections from all concerned and orders from Courts and on taking corrective measures. When the service rendered in the Delhi Administration has not been counted for seniority in the AFHQ, it cannot be counted in the CAT after his absorption. The impugned order dated 25.02.2008 and the final seniority list of LDCs in the CAT circulated vide Principal Bench's letter dated 28.03.2008 is as per the

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rules and law. The O.A., therefore, deserves to be dismissed.

4. In the rejoinder filed by the applicant, it was submitted that clause 9 of the O.M. dated 11.02.1988 provides for protection of benefit of past service. The said O.M. is to be read alongwith the Recruitment Rules. The O.A. is not hit by limitation as it is filed within the limitation period stipulated in the Administrative Tribunals Act, because the issue arose with the order dated 25.02.2008 and this O.A. Has been filed on 24.02.2009 and is within time limit. The Rule 5(2) of The Central Administrative Tribunal (Group 'B' and 'C' Miscellaneous Posts) Recruitment Rules, 1989, do not specify that the date of regular appointment to the post is limited to immediate parent department only for reckoning seniority. It clearly says that the seniority is determined with reference to their regular appointment to the post concerned. What is foregone while tendering the technical resignation at Delhi Administration is only right of seniority in respect of the post held by him in Delhi Administration for the service in the AFHQ. What is relevant is only the date of joining in the post concerned in the parent department or departments as per rule 5 (2) of The Central Administrative Tribunal (Group 'B' and 'C' Miscellaneous Posts) Recruitment Rules, 1989. The applicant relied on the judgements of Apex Court in ***M. Ramachandran vs. Govind Ballabh and Others***, JT 1999 (7) SC 271, ***S.I. Rooplal vs. Lt. Governor through Chief Secretary, Delhi***, 2000 (1) SCC 644 and ***K. Madhavan and Another. vs. Union of India and Others***, 1987 SCC (L&S) 496, to support his stand. Any order which causes civil consequences need to be issued only after affording an opportunity of being heard. The respondents should

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not have changed the position of the applicant in the final seniority without giving him an opportunity as he was maintaining legitimate expectation that his seniority is as has been determined in the draft seniority list. Therefore, the final seniority list at Annexure A2 is vitiated on that ground also. What is relevant for determination of seniority in the CAT is not the seniority of the incumbents in the post concerned held by them in the parent department(s) but the length of regular service in the post held by them in the parent department(s) as it is a new department.

5. We have heard Mr. U. Balagangadharan, learned counsel for the applicant and Ms. Mini R. Menon, ACGSC, learned counsel for the respondents No. 1 and 2 and have perused the records.

6. The question to be decided is whether the date of joining the Delhi Administration has to be reckoned for fixing the seniority of the applicant in the CAT as per Rule 5 (2) of The Central Administrative Tribunal (Group 'B' and 'C' Miscellaneous Posts) Recruitment Rules, 1989, or not. The said Rule is reproduced as under :

"5. Absorption / regularisation of existing employees.
(1) Notwithstanding anything contained in the provisions of these rules, the persons holding the posts of Court Officers/Section Officers, Hindi Translator, Assistant, Junior Librarian, Care Taker, Upper Division/Receptionist/Store Keeper and Lower Division Clerk on the date of commencement of the rules either on transfer or on deputation basis or, as the case may be, on direct recruitment basis and who fulfil the qualifications and experience laid down in these rules and who are considered suitable by Departmental Promotion Committee shall be eligible for absorption/regularisation in the respective

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grade subject to condition that such persons exercise their option for the absorption and that their parent Departments do not have any objection to their being absorbed in the Tribunal.

(2) The seniority of officers mentioned in sub rule (1) shall be determined with reference to the dates of their regular appointment to the posts concerned :

Provided that the seniority of officers recruited from the same source and in the posts held by in the parent Department shall not be disturbed."

7. The contention of the applicant is that sub-rule (2) of Rule 5 of The Central Administrative Tribunal (Group 'B' and 'C' Miscellaneous Posts) Recruitment Rules, 1989, contemplates determination of seniority with reference to the length of regular service in the post held by the official in the parent department(s) as the CAT is a new department.

8. In ***K. Madhavan and Another. vs. Union of India and Others***, 1987 SCC (L&S) 496, it was held by the Apex Court as follows :

"21. We may examine the question from a different point of view. There is not much difference between deputation and transfer. Indeed, when a deputationist is permanently absorbed in the CBI, he is under the rules appointed on transfer. In other words, deputation may be regarded as a transfer from one government department to another. It will be against all rules of service jurisprudence, if a government servant holding a particular post is transferred to the same or an equivalent post in another government department, the period of his service in the post before his transfer is not taken into consideration in computing his seniority in the transferred post. The transfer cannot wipe out his length of service in the post from which he has been transferred. It has been observed by this Court that it is a just and wholesome principle commonly applied where



persons from different sources are drafted to serve in a new service that their pre-existing total length of service in the parent department should be respected and presented by taking the same into account in determining their ranking in the new service cadre. See R.S. Mokashi & Ors. v. I.M. Menon & Ors. [1982] 1 SCC 379; Wing Commander J. Kumar v. Union of India & Ors.. [1982]3 SCR 453."

9. Further, in ***M. Ramachandran vs. Govind Ballabh and Others***, JT 1999 (7) SC 271, it was held by the Apex Court as follows:

"We are of the view that all the employees recruited in the service under Rule 5(1) are entitled to the benefit of the service on equivalent post in their parent departments."

10. The settled law that emerges from the pronouncements of the Apex Court is that the employees of the CAT under Rule 5(1) and (2) are entitled to the benefit of service of the equivalent post in their parent department. An employee can have only one parent department from which he can come to the CAT. In the case of the applicant, he came from the AFHQ wherein he joined the service as LDC on 12.11.1982 on qualifying the examination conducted by the SSC in the year 1980. The service rendered in the Delhi Administration prior to joining the AFHQ based on the examination conducted by SSC in the year 1979 was counted for all purposes other than seniority when the applicant joined the AFHQ. The regular appointment to the post of LDC for the purpose of Rule 5 (2) is the service he rendered from 12.11.1982 on qualifying the examination conducted by the SSC in the year 1980 for the purpose of counting seniority



in the CAT. The word 'dates' refers to the dates of officers who have been appointed on regular basis in their parent departments and not the date of appointment of a particular officer in different organisations as rightly contended by the respondents. If the service rendered by the applicant in Delhi Administration is not counted for seniority in respect of the post held in the AFHQ, it cannot be counted in accordance with Rule 5(2) in the CAT also. The Delhi Administration is not the parent department from which the applicant moved to the CAT.

11. The applicant had qualified in the examination held in the year 1979 and in the year 1980 also. After joining service in the AFHQ on 12.11.1981 based on the examination held in 1980, it is not open to the applicant to claim seniority in service from 18.04.1981, the date on which he joined service in the Delhi Administration based on the examination held in 1979. He had to resign from the Delhi Administration to join the AFHQ. Clause 9 of O.M. dated 11.02.1998 is quoted as under :

"9. When resignation a technical formality. In cases where Government servants apply for posts in the same or other departments through proper channel and on selection, they are asked to resign the previous posts for administrative reasons, the benefit of past service may, if otherwise admissible under rules, be given for purposes of fixation of pay in the new post treating the resignation as a 'technical formality'.

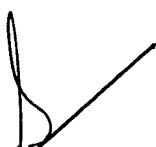
The benefit of past service is given for the purpose of fixation of pay only, not for seniority, in the new post in the AFHQ, the parent department of the applicant from which moved to the CAT. His claim to seniority in the cadre of LDC with effect from 18.04.1981 got extinguished when he joined

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the AFHQ on 12.11.1982 as a recruit of the year 1982. In *M. Subha Reddy vs. A.P. SRTC*, (2004) 6 SCC 729, the Apex Court held "32. It is trite that a direct recruit is considered to be borne in the cadre from the date of his recruitment." The applicant is in service today as a recruit of the year 1982, with the AFHQ as his parent department from which moved to the CAT. The fact that the CAT was a new establishment when he was absorbed, does not confer on him any right to revive his claim to seniority as a recruit of the year 1981 which he had relinquished in 1982 to join the AFHQ.

12. The draft seniority list does not confer any right on the applicant. Hence the question of any civil consequence arising on account of his position in the draft seniority list or having any legitimate expectation based on that does not arise. The fact that there were no permanent incumbents in the CAT when he was absorbed in the CAT does not make any difference to the length of service held by him in the parent department, i.e. the AFHQ.

13. Therefore, the respondent No. 1 was right in not reckoning the applicant's service in the Delhi Administration for the purpose of fixing his seniority in the CAT. The date of regular appointment to the post of LDC for the purpose of reckoning the seniority of the applicant in the cadre of LDC in accordance with the Rule 5(2) of The Central Administrative Tribunal (Group 'B' and 'C' Miscellaneous Posts) Recruitment Rules, 1989, is the date of 12 11.1982, the date of his joining the post of LDC as a

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recruit of 1982 in the AFHQ.

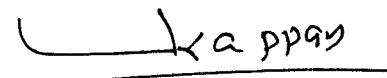
14. Permitting the applicant to submit a representation within one week in which event the Registry shall inform the Principal Registrar, CAT, New Delhi, not to resort to cancellation of promotion of the applicant till disposal of representation, not being a direction to the respondents, does not entitle him to hold on to his promotion till the disposal of the representation. Therefore, there is no question of giving an opportunity to accept the offer of promotion and posting in Jaipur. Seniority and transfer cannot be linked together. The Administration is at liberty to deploy a senior in outside Bench in preference to a junior. It cannot be held that the cancellation of promotion order is against the interim order dated 22.04.2009.

15. In the light of the above, we are of the considered view that the applicant does not have a legitimate ground to count seniority in the CAT from the date of his appointment in the Delhi Administration which is not his parent department. Accordingly, the O.A. fails and it is dismissed. No order as to costs.

(Dated, the 15th November, 2010)



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE K. THANKAPPAN)
JUDICIAL MEMBER

cvr.