

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO. 159 OF 2008

Tuesday, this the 30th day of September, 2008.

CORAM:

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Dr. K.S.SUGATHAN, ADMINISTRATIVE MEMBER**

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|----|---|------------|
| 1. | Kumari Bosco
Assistant (Grade V)
Regional Passport Office, Kochi | |
| 2. | K.K.Ambujakshy
Assistant (Grade V)
Regional Passport Office, Kochi. | |
| 3. | C.S.Sulabha
Assistant (Grade V)
Regional Passport Office, Kochi | Applicants |

(By Advocate Mr. N.Nagaresh)

v.

- | | | |
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| 1. | Union of India represented by Secretary,
M/o External Affairs, CPV Division,
Government of India, New Delhi | |
| 2. | Joint Secretary (CPV) & CPO
M/o External Affairs,
Government of India, New Delhi | |
| 3. | Regional Passport Officer
Regional Passport Office, Kochi | |
| 4. | Departmental Promotions Committee
represented by its Chairman
M/o External Affairs,
CPV Division (Cadre Cell II), New Delhi | |
| 5. | P.Lathikumari
Assistant (Grade V);
Regional Passport Office, Kochi | |
| 6. | K.A.Sulabha
Assistant (Grade V)
Regional Passport Office, Kochi | Respondents |

(By Advocate Mr. M.V.S.Nampoothiry, ACGSC (R1-4)
Advocate Mr.P.Ramakrishnan, (R5&6)

The application having been heard on 11.08.2008, the Tribunal
on 30-09-08 delivered the following:

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The three applicants in this OA whose career profile alongwith that of Respondents .5 & 6 are given below in the tabular column have filed this OA challenging the seniority position afforded to them in the post of Assistant and also assailed promotion granted to Respondent No . 5 & 6 on the basis of the seniority position in the grade of Assistant. Annexure A-4 (seniority of Assistants as on 01.01.2007), Annexure A-6 (seniority of Assistants as on 01.04.2007) and Annexure A-9 (promotion order dated 12.03.2008) are the impugned orders.

Date	Events
21/03/77	Applicants appointed as DRC
01/07/77	R5 & R6 appointed as DRC
08/12/78	Applicants appointed as LDC
03/07/80	R5 & R6 appointed as LDC
22/05/85	Applicants granted ad-hoc promotion as UDC
17/10/88	Applicants appointed as UDC
25/09/92	R5 & R6 promoted as UDC
15/11/94	Annexure A-1 seniority list of UDC- Applicants placed above R5 & R6.
01/11/99	Applicants, R5 & R6 promoted as Assistants as per Ann.2
03/08/05	Ann.A3 seniority list of Group C - Applicants placed above R 5 & R6.
09/01/07	Ann.A4 provisional list of Assistants- R5 & R6 placed above applicants
31/01/07	Applicants submitted objections, Ann.A5
01/04/07	Ann.A5 seniority of Assistants - R5 & R6 placed above applicants
04/07/08	Applicants filed objections, Ann.A7
18/10/07	R 2 directs R 3 to examine the position in order to review seniority, as per Ann.A8
12/03/07	R3 recommends R5 & R for promotion as Superintendents

2. The reason for the upward seniority position of Respondent No.5 & 6 is not fair from comprehension. The said respondents approached the Tribunal in OA No. 41/99 claiming antedating of their promotion to the post of UDC from the date their juniors were granted, consequent to which their promotion to the grade of UDC was made effective from 23.05.1985. This decision was challenged before the Hon'ble High Court in O.P.No.7461/02 by the Union of India when Respondents 5 & 6 to this OA filed O.P 18268/02 in respect of non payment of back wages. The Writ Petition filed by the official respondents was dismissed and in so far as claim of Respondent 5 & 6 herein relating to payment of back wages, the matter was remitted back to this Tribunal for adjudication with which we are not concerned in this OA.

3. With the antedating of the promotion to the post of UDC, the said private respondent 5 & 6 were re-considered for promotion to the post of Assistant from a date prior to their initial dates of promotion viz., 01.11.1999. Vide impugned Annexure A-4 Office Memorandum dated 09.01.2007 their seniority position was rescheduled placing them at Sl.Nos. 56 & 57 respectively while the applicants seniority which hitherto fore was above the private respondents had been pushed down to seniority No. 69,70 & 73. On revising the seniority vide O.M dated 04.04.2007 (Annexure A-6), the position of Respondent No.5 & 6 improved to Sl.No.15 & 16 and that the applicants, Sl.No.28,29 & 30.

4. The applicants preferred representations against the dislocation of their seniority position mainly on the ground that the private respondents were initially engaged as Daily Rated Clerks much alter the engagement in such capacity of the applicants and their regular appointment as LDC, UDC

etc. were also in the same order (applicants getting promotion earlier than the respondents). It is purely on account of the decision by this Tribunal which was passed on a law point that the respondents were given antedated promotion to the post of UDC with effect from 22.05.1985. According to the applicants such a revision of date of promotion should have been made even in respect of the applicants as they are similarly situated as the private respondents except that they did not move the matter before the Court. The respondents did not heed to the request of the applicants but acted on the basis of Annexure A-4 / A-6 seniority of Assistants and effected Annexure A-9 promotion order promoting respondents 5 & 6 to the post of Office Superintendents. The applicants have annexed a copy of letter dated 18.10.2007 issued by the Ministry of External Affairs to the Regional Passport Office, Cochin which inter-alia reads as under :-

"2. It is to state that as per available records in Ministry, the Seniority of Smt.Kumari Bosco, Smt.K.K.Ambujakshy and Smt.C.S.Sulabha, Assistants have been fixed according to Rules and there is no discrepancy.

3. However, you may examine the facts mentioned by these officials in their representations to check their correctness with reference to records available with you. Your comments on the claims to higher/correct seniority made by them would also be useful in examining their representation further. Kindly designate a gazetted officer in your office who can meet and go through the claims of all the affected officials and let us have a clear picture as to which official should get what seniority on the basis of various court judgments and our administrative orders."

5. The applicants have come before this Tribunal praying for the following reliefs:-

i. Call for the records relating to Ann.A4,A6 and A9 and set aside the same;

ii. declare that the applicants are seniors to the respondents 5 and 6 and hence promotions to the cadre of Superintendents, cannot be granted to respondents 5 and 6 overlooking seniority of the applicants;

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iii, direct the respondents 1 to 4 to promote the applicants as Superintendents (Grade IV) in preference to respondents 5 & 6 against the vacancies for which Ann.A9 memorandum is issued.

6. The official respondents have filed their reply stating that it is pursuant to Courts order that respondents have been granted regularization in the post of LDC from 08.12.1978 and also their promotion to the post of UDC was rescheduled from 22.05.1985. According to the respondents as per available records in the Ministry the seniority of the applicants has been fixed according to the rules and there is no discrepancy.
7. Private Respondent No. 5 have also filed reply stating that as regards 2nd respondent even though she was issued a promotion order as UDC with effect from 17.10.1988 she had foregone the promotion granted to her on the ground that she could not carry out the promotion order which was coupled with an order transferring her to Tiruchirappally. Thereafter, she has been promoted as UDC only on 26.07.1989. The said applicant cannot turn around to say that she has not been promoted in advance when she had, of her own volition, sought for postponement of her promotion.
8. Applicants have filed rejoinder reiterating their contention that they being senior at every stage their seniority position should have been always kept above the respondents. Whatever benefit on account of Court cases was accrued to the private respondents, according to the applicants, the same should have been extended to them also since the decision of the Tribunal was on legal issues.

9. In their additional reply by R 5 & 6 it has been averred that where as there are a number of persons promoted to the post of Assistants, the applicants have impleaded respondents only 5 & 6, despite the fact that they are seniors.

10. Counsel for applicant submitted that it is a settled law that when a person gets an order from the Court on a particular law point, others similarly situated should be able to rely the sense of responsibility of the department and expect that they will also be given the benefit of this declaration without the need to take their grievances to the Court. Counsel for applicant invited our attention to Para 126.5 of Vth Central Pay Commission report which reads as under :-

"126.5 – Extending judicial decisions in matters of a general nature to all similarly placed employees. -
We have observed that frequently, in cases of service litigation involving many similarly placed employees, the benefit of judgment is only extended to those employees who had agitated the matter before the Tribunal/Court. This generates a lot of needless litigation. It also runs contrary to the judgment given by the Full Bench of Central Administrative Tribunal, Bangalore in the case of C.S. Elias Ahmed and others v. UOI & others (O.A. Nos. 451 and 541 of 1991), wherein it was held that the entire class of employees who are similarly situated are required to be given the benefit of the decision whether or not they were parties to the original writ. Incidentally, this principle has been upheld by the Supreme Court in this case as well as in numerous other judgments like G.C. Ghosh v. UOI, [(1992) 19 ATC 94 (SC)], dated 20-7-1998; K.I. Shepherd v. UOI [(JT 1987 (3) SC 600)]; Abid Hussain v. UOI [(JT 1987 (1) SC 147)], etc. Accordingly, we recommend that decisions taken in one specific case either by the judiciary or the Government should be applied to all other identical cases without forcing the other employees to approach the court of law for an identical remedy or relief. We clarify that this decision will apply only in cases where a principle or common issue of general nature applicable to a group or category of Government employees is concerned and not to matters relating to a specific grievance or anomaly of an individual employee."

Ch

11. Counsel for private respondents submitted that it is not exactly known why the private respondents who are comparatively senior among those who were promoted to the post of Office Superintendents have been impleaded. If, the applicants too should be considered for antedating of their promotion to the post of UDC and telescopically to other course, then again in the event of their becoming Office Superintendents, the axe would fall not upon the junior most amongst the promotees vide Annexure A-9 order and not the applicants who are comparatively senior.

12. Counsel for official respondents submitted that the applicants have kept silent all through and they cannot be permitted to agitate against alleged wrong fixation of seniority at this distance of time. According to them seniority position afforded to the applicants is strictly in accordance with the rules.

13. Arguments were heard and documents perused. Admittedly, the entry of all the applicants into the Organisation, be it in the capacity as Daily Rated Clerks or regular LDC anterior to the entry of the private respondents. True, private respondents moved the matter before the judicial forum and got the date of their regularisation allowed from the date of their initial engagement. This particular decision was arrived at by the Tribunals not on the basis of any criteria exclusively available with the private respondents but clearly on the basis of a legal point. Thus, be it the date of regularisation from the date of initial appointment or date of promotion as UDC, both of them have been based on proper interpretation of rules and declaration on law points. Under the circumstances, the respondents while implementing the order of the Tribunal/High Court should have extended the benefits to others similarly situated. This is

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what has been precisely emphasised by the Apex Court in the case of **Amrit Lal Berry v. Collector of Central Excise, New Delhi & Ors. 1975**

(4) SCC 714 which reads as under :-

"We may, however, observe that when a citizen aggrieved by the action of a government department has approached the Court and obtained a declaration of law in his favour, others, in like circumstances, should be able to rely on the sense of responsibility of the department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to court."

14. Para 126.5 of the Vth Pay Commission report is based on the above law laid down by the Apex Court and in the said para the aforesaid decision has also been cited alongwith certain other decisions matching with the above law. In one of the representations, the applicant No.3 has pointedly emphasised the above vide para 4 of Annexure A-7 which reads as under :-

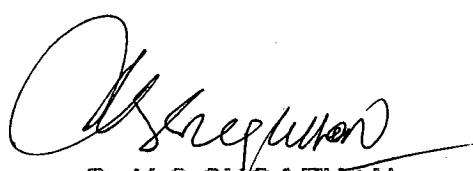
"Sir, I am sorry to say that only the persons who obtained decree from Court are given justice by denying justice to those who are not moved to the Court. I feel that it is not at all necessary when there is a Head of Department to undress the grievances of subordinates. I also used to make representation in this regard whenever seniority lists are published, but to my unluck not even a reply is received so far.

15. It is seen from Annexure A-8, the communication from the Ministry of External Affairs that the Regional Passport Officer has been advised to examine the facts mentioned by the officials in their representations but check their correctness with reference to records available with him. In fact, the Ministry of External Affairs have asked the Regional Passport Officer to designate a Gazetted Officer in this regard. This does not seem to have done by the Department.

16. In view of the fact that the Vth Central Pay Commission on the basis of Apex Court decision has strongly recommended for extension of the benefit of all similarly situated this case is a fit case to refer to the Ministry of External Affairs as contained in their letter dated 18.10.2007 (Annexure A-8) bringing out the facts. The decision thereof should be implemented in letter and spirit. This Tribunal does not ~~have~~ ^{see} any reason as to why the same be not extended to the applicants and their seniority as well as date of promotion rescheduled. If on dispassionate consideration, the Ministry of External Affairs come to the conclusion that the applicants should have been extended the benefit as given to private respondents, in the event of their promotion to the grade of Office Superintendents, the respondents may create a supernumerary post and appoint the applicant instead of pushing down the junior most to the promotees vide Annexure A-9 order.

17. O.A is disposed of on the above terms. The drill of conducting this exercise as stated above, may be completed within a period of five months and the decision implemented / intimated to the applicants accordingly. No costs.

Dated, the 30th September, 2008.


 Dr. K.S. SUGATHAN
 ADMINISTRATIVE MEMBER


 Dr. K.B.S. RAJAN
 JUDICIAL MEMBER