

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No. 160/2000

WEDNESDAY, THIS THE 18th DAY OF APRIL, 2001.

C O R A M

HON'BLE MR. A. M. SIVADAS, JUDICIAL MEMBER
HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

M.K. Balachandran Pillai
s/o late K. Krishna Panicker
Assistant (Ad hoc)
Central Administrastive Tribunal
Ernakulam Bench
residing at No. 28/2903
Ponneth South Road,
Kadavanthara
Kochi-20

Applicant

By Advocate Mr. T.C Govindaswamy

Vs.

1. The Registrar
Central Administrative Tribunal
Principal Bench,
New Delhi.
2. The Registrar
Central Administrative Tribunal
Eranakulam Bench.
Ernakulam
3. M. K. Balachandran
Assistant
Central Administrative Tribunal
Ernakulam Bench
Ernakulam.
4. P.T. Johnson
Assistant
Central Administrative Tribunal
Ernakulam Bench
Ernakulam.
5. Union of India representeds by
the Secretary , Government of India
Ministry of Personnel, Public Grievance & Pensions,
New Delhi.

By Advocate Mr. Govindh K. Bharathan, SCGSC for R-1, 2 & 5

The application having been heard on 27.3.2001, the Tribunal
delivered the following on 18.4.2001.

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

The applicant, an Assistant working on adhoc basis in the Central Administrative Tribunal, Ernakulam Bench has filed this application aggrieved by the alleged erroneous assignment of his seniority in the cadre of Upper Division Clerk seeking the following reliefs:

- (a) To call for the records leading to the issue of Annexure A-6 and quash the same.
- (b) Call for the records leading to the issue of Annexure A-7 and quash the same to the extent it denies the applicant the benefit of the whole of his service in the parent department in an analogous post.
- (c) Declare that the applicant is entitled to be placed between Serial Nos. 3 and 4 in Annexure A7 and direct the respondents accordingly.
- (d) Direct the respondents to grant the applicant the consequential benefits of the declaration in para 8(c) above forthwith.
- (e) Award costs of and incidental to this application.
- (f) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

2. According to the applicant he was initially appointed on 4.8.76 as a Routine Grade Assistant in the High Court of Allahabad which was equivalent to the post of Lower Division Clerk in the Central Government. He was promoted on 1.2.83 as a Lower Division Assistant in the same High Court which was analogous to the post of Upper Division Clerk in the Central Government. On his request he went on deputation to the Central Administrative Tribunal on 7.8.86 as Lower Division Clerk. While working on deputation basis in the Central Administrative Tribunal he was appointed as Upper Division Clerk on deputation basis on 18.11.87. He was regularly absorbed in the Central Administrative Tribunal as Upper Division Clerk on 1.11.89. The scale of pay of Lower Division Assistant in the High Court of Allahabad was Rs.



ORDER

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

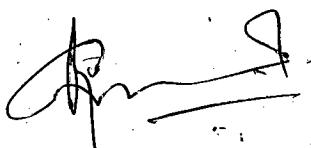
The applicant, an Assistant working on adhoc basis in the Central Administrative Tribunal, Ernakulam Bench has filed this application aggrieved by the alleged erroneous assignment of his seniority in the cadre of Upper Division Clerk seeking the following reliefs:

- (a) To call for the records leading to the issue of Annexure A-6 and quash the same.
- (b) Call for the records leading to the issue of Annexure A-7 and quash the same to the extent it denies the applicant the benefit of the whole of his service in the parent department in an analogous post.
- (c) Declare that the applicant is entitled to be placed between Serial Nos. 3 and 4 in Annexure A7 and direct the respondents accordingly.
- (d) Direct the respondents to grant the applicant the consequential benefits of the declaration in para 8(c) above forthwith.
- (e) Award costs of and incidental to this application.
- (f) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

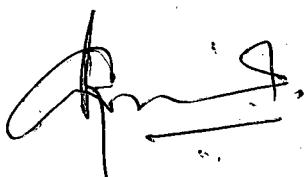
2. According to the applicant he was initially appointed on 4.8.76 as a Routine Grade Assistant in the High Court of Allahabad which was equivalent to the post of Lower Division Clerk in the Central Government. He was promoted on 1.2.83 as a Lower Division Assistant in the same High Court which was analogous to the post of Upper Division Clerk in the Central Government. On his request he went on deputation to the Central Administrative Tribunal on 7.8.86 as Lower Division Clerk. While working on deputation basis in the Central Administrative Tribunal he was appointed as Upper Division Clerk on deputation basis on 18.11.87. He was regularly absorbed in the Central Administrative Tribunal as Upper Division Clerk on 1.11.89. The scale of pay of Lower Division Assistant in the High Court of Allahabad was Rs.



1350-2200 w.e.f. 1.1.1986. He was appointed on regular basis in the Central Administrative Tribunal in terms of Rule 5 of Central Administrative Tribunal (Group B & C Miscellaneous Posts) Recruitment Rules, 1989. According to the applicant, during the material time there was some controversy regarding the method of assignment of seniority of those staff who were working in the Central Administrative Tribunal on deputation basis and later absorbed in the new service which came into existence on and w.e.f. 1.11.1989 and that it was generally believed that it was to be determined taking into consideration the date of joining the Central Administrative Tribunal on deputation basis and in view of the controversy the applicant filed O.A. No. 900/93 before this Tribunal inter alia praying for a declaration that he was entitled to be appointed as Upper Division Clerk w.e.f. 7.8.86 in the Ernakulam Bench of the Tribunal and for a direction to the first respondent to ante-date the appointment of the applicant as Upper Division Clerk with all consequential benefits including seniority, fixation of pay etc. While the said O.A. was pending A-1 order was issued granting the applicant the benefit of higher scale of pay than that of the Lower Division Clerk as well as that of the Upper Division Clerk not only in his parent department but also in the Central Administrative Tribunal. Applicant claimed that A-1 would show that the service rendered by him in the parent department in the scale of Rs. 1320-2200 was taken into consideration for the purpose of drawal of increment in the Central Administrative Tribunal. However, O.A. 900/93 was dismissed by this Tribunal by order dated 28.6.94. Thereafter, respondent No. 2 published the seniority list dated 27.12.95 after rejecting the applicant's representation by memorandum dated 26.12.95. In the said seniority list according to the applicant in the case of

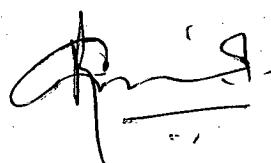


others the date of entry in the equivalent or higher grade in the parent department was taken as a criteria for determination of their interse seniority whereas in the applicant's case the date of entry on deputation basis in the Central Administrative Tribunal as Upper Division Clerk namely 18.11.87 was taken in to consideration. Aggrieved by that applicant filed O.A. No. 1471/96 in this Tribunal which after having transferred to Hyderabad Bench, Principal Bench etc. was later transferred back to the Ernakulam Bench and heard as O.A. No. 633/99. In the said O.A. the applicant had inter alia prayed for a declaration that he was entitled to be granted benefit of his past service in his parent department rendered w.e.f. 1.2.83 for the purpose of assignment of his seniority in the cadre of Upper Division Clerk in the Central Administrative Tribunal of Ernakulam Bench. He had also prayed for a declaration that he was entitled to be placed above the respondents 3 & 4 in this O.A. During the pendency of the O.A. the principle of determination of seniority of those who were absorbed in the Central Administrative Tribunal on and w.e.f. 1.11.89, which was a subject matter of controversy pending before the Apex Court in Civil Appeal No. 2704 of 1997 viz. M. Ramachandran Vs. Govind Ballabh and Others. was finally decided by judgment dated 21.9.99 (A-2). When the O.A. came up for final hearing on 18.12.99 recording the statement of the counsel for the applicant, this Tribunal closed the said O.A by A-5 order dated 8.12.99. Thereafter, applicant received A-6 memorandum dated 17.12.99 rejecting his contentions in his A-4 representation. The final seniority list was communicated under A-7 dated 20.12.99. By A-6 the applicant's A-4 representation dated 22.11.99 was rejected and in the final seniority list he was placed at Sl. No. 6 though his appointment in the parent department in the



analogous post was w.e.f. 1.2.83. According to him he was entitled to be placed between Serial Nos. 3 and 4 i.e. above respondents 3 and 4 in this O.A. A-6 on the face of it and A-7 to the extent it related to him were highly arbitrary, discriminatory, contrary to law and hence unconstitutional. Annexure A-6 was violative of the constitutional guarantees enshrined under Articles 14 and 16. A-6 was not based on relevant considerations but based on irrelevant considerations. According to him consideration of relevant materials for determination of the inter-se seniority in the light of A-2 judgment were (a) one should have been absorbed in the Central Administrative Tribunal and w.e.f. 1.11.89 (b) he should have been appointed in the Central Administrative Tribunal on deputation basis on any date prior to 1.11.89. If these two conditions were satisfied then the seniority in the new service in the Tribunal on and w.e.f. 1.11.89 would be determined with reference to the length of service in the parent department in the equivalent grade. The date of joining any post in the Tribunal on deputation basis on any date prior to 1.11.89 would be irrelevant. The contention in A-6 that the issue involved was barred by principle of resjudicata was without any substance and merit. The principle adopted in the case of the applicant to determine his seniority in A-7 with reference to the date of appointment as UDC w.e.f. 1.18.11.87 was clearly barred by the Hon'ble Apex Court and hence he filed this Original Application seeking the above reliefs.

3. Official respondents 1, 2 & 5 filed reply statement resisting the claim of the applicant. It was submitted that the applicant had filed O.A. 900/93 seeking mainly to quash Memorandum No. F4/13(3)/86-Admn dated 13.4.93 issued by the

A handwritten signature in black ink, appearing to read 'A. S.' or a similar initials.

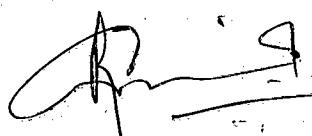
Deputy Registrar, Central Administrative Tribunal (CAT for short) Ernakulam Bench conveying the decision of the Hon'ble Chairman rejecting his request for ante-dating of his appointment as UDC in the CAT, Ernakulam Bench from 18.11.87 to 7.8.86 and to declare that he was entitled to be appointed as UDC w.e.f. 7.8.86 in the CAT, Ernakulam Bench and to direct the first respondent therein to ante-date the appointment of the applicant as UDC w.e.f. 7.8.86 with all consequential benefits, including seniority fixation of pay etc. That O.A. was dismissed by this Bench of the Tribunal by R-1(a) order dated 28.6.94. The applicant's claim for seniority prior to 18.11.87 in the grade of UDC was a result that would naturally flow from his claim of ante dating of his appointment as UDC if he had succeeded. However, the applicant having failed in his attempt once before the Hon'ble Tribunal was reagitating that issue once again the guise of a claim of seniority purportedly taking refuge in the judgment of the Hon'ble Supreme Court in C.A. 2704/97. The applicant could have challenged Annexure R-1(a) order if he was aggrieved by that order. Having failed to do so he could not be allowed to reagitate the correctness of that decision by filing the present O.A. The issue having thus been finally settled in 1994 itself by Annexure R1(a) order and the applicant having reconciled to the position by not filing any RA or SLP against it, the decision in the said O.A. became final and binding on him and he was estopped from agitating the same issue albeit in another guise, by the principles of resjudicata. There was no error in the fixation of his seniority in the grade of UDC as alleged by him. He was given seniority in that grade from the date of his initial appointment to that grade and therefore his allegation that his seniority was fixed in a most arbitrary and discriminatory manner was absolutely baseless. The



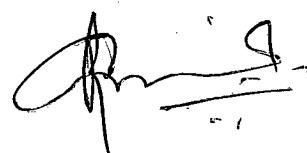
applicant was not granted the scale of pay of Rs. 1350-2200 in the CAT during the period of his deputation w.e.f. 7.8.86 to 31.10.89. On the other hand what was granted was that being a deputationist he was permitted to draw his pay of the cadre post in the parent department plus deputation duty allowance since, he being a deputationist had the right to opt for getting the pay so fixed. However, the applicant was holding the post of LDC in the scale of Rs. 950-1500 from 7.8.86 to 17.11.87 and the post of UDC in the scale of Rs. 1200-2040 from 18.11.87 to 31.10.89 on deputation basis in the Ernakulam Bench of the Tribunal. A1 order could not be allowed to be interpreted by the applicant to mean that the pay of the post held by him on deputation in the Tribunal was 1350-2200. In support of this they submitted R-1(b) and R-1(c) copies of the order appointing the applicant as LDC and UDC respectively. The applicant was absorbed as UDC in the Tribunal w.e.f. 1.11.89 in terms of Rule 5 of Central Administrative Tribunal (Group 'B' and 'C' Misc. Posts) Recruitment Rules 1989 and he was granted his due seniority in that grade from the earliest date that could have been granted to him under those rules viz. 18.11.87. the date from which he was appointed as UDC on continued deputation basis. The seniority of those staff who were working in the Tribunal on deputation basis and were absorbed in the new service w.e.f. 1.11.89 was determined strictly in accordance with Rule 5 of the Recruitment Rules taking into account the service rendered in the same or analogous post in their parent department as held by the Hon'ble Supreme Court in the order dated 21.9.99 in C.A. No. 2704/97 (JT 1999(7)SC 271. It was based on the above principle that the first draft seniority list of UDCs as on 1.11.89 was published on 24.9.91 (Annexure R-1(d)). The applicant was shown at Sl. No. 6 giving the due seniority w.e.f. 18.11.87 as he was appointed



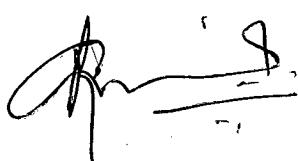
as UDC in the Tribunal only from that date and from 7.8.86 to 17.11.87 he was holding the lower post of LDC on deputation. The interse seniority of the UDCs then working in the Tribunal on their absorption as on 1.11.89 was fixed taking into account the date of their regular appointment to the grade of UDC in the parent department. The fact that the applicant was holding the post of LDA w.e.f. 1.2.83 in his parent department was also shown below column No. 5 of Annexure R-1(d) to indicate that position. When one more official Shri V. Raveendran was absorbed as UDC with retrospective effect from 1.11.89 a revised draft seniority list of UDCs absorbed w.e.f. 1.11.89 was again published by R-1(e) OM dated 2.7.92. R-1(e) draft seniority list was finalised and published under R-1 (f) office order dated 27.12.95. There was no difference in the interse seniority position of UDCs in R-1(d) to R-1(f). There was no controversy regarding the method of assignment of seniority of those working in the Tribunal on deputation basis and later absorbed in the new service w.e.f. 1.11.89. The submission of the applicant that it was generally believed that the seniority was determined taking into consideration the date of joining of the Tribunal was also equally baseless as could be seen from R-1(d) in which seniority of UDCs was fixed taking into account the regular service rendered by the official in the same or analogous post in their parent department and not from the date of deputation. In the case of the applicant his seniority could be fixed only w.e.f. 18.11.87 the earliest date from which he was holding the post of UDC in the Tribunal and taking into account the fact that admittedly he was functioning in a lower post of LDC from 7.8.86 to 17.11.87 which period could not be reckoned for determination of seniority in the higher post of UDC. Immediately on his appointment as UDC on 18.11.87 on



continued deputation basis the applicant sent repeated representations to the Hon'ble Chairman for ante-dating his appointment as UDC w.e.f. 7.8.86 i.e. the date of his initial deputation to the Tribunal. This was done realising the fact that service rendered by him in a lower post would not be counted for fixing seniority in the higher post of UDC. Hon'ble Chairman after taking into consideration all the relevant facts and materials furnished by the applicant had finally rejected his claim as it was not found possible to appoint him as UDC from a back date when no justification for such appointment existed. It was challenging that decision that the applicant had filed O.A. No. 900/93 before the Ernakulam Bench of the Tribunal. That O.A. was dismissed by the Tribunal both on the grounds of limitation and also on merits. As the applicant did not challenge the decision in O.A. 900/93 the same became final and he could not be allowed to re-open that decision by filing the present O.A. The seniority list of UDC dated 27.12.95 was finalised by reckoning the continuous regular service in the same or analogous post held by the officials in their parent department and the Tribunal and not based on any dual principle as alleged by the applicant. In the case of all other officials included in the seniority list there was no break in continuous service in the grade of UDC after their regular appointment to that grade in their respective parent departments whereas in the case of the applicant he was holding the lower post of LDC for the period from 7.8.86 to 17.11.87. It was suppressing this factual position that the applicant had alleged that he was differently treated while fixing the interse seniority in Annexure R-1(f) seniority list. Challenging the draft seniority list of UDCs of Ernakulam Bench of the Tribunal by R-1(f) order dated 27.10.95 he filed O.A. 1471/96 before the Ernakulam Bench.



That O.A. was transferred to Hyderabad Bench and subsequently from there to Principal Bench, again to Hyderabad Bench and from there to Ernakulam Bench. On such retransfer to Ernakulam Bench the OA was renumbered as O.A. 633/99. In that O.A. the applicant had sought to count his service in his parent department as LDA w.e.f. 1.2.83 for reckoning his seniority in the grade of UDC in the Tribunal deliberately suppressing the fact that during the period he was admittedly holding a lower post of LDC in the Tribunal which period even according to his own admission in his representations would not be counted for fixing his seniority as UDC in the Tribunal. It was with a view to get over the plea of resjudicata that he deliberately suppressed the above facts. Subsequent to the publication of R-1(f) seniority list wherein inter-se seniority of UDCs was fixed taking into account their regular service in the same or analogous post in their parent department, instructions were received from the Principal Bench based on the decision dated 10.7.96 in Govind Bhallabh's case (O.A. No. 1067/95 on the file of the Principal Bench of the Tribunal) to revise the seniority list of all categories of staff in the Ernakulam Bench subject to the outcome of the court cases as the appeal filed against the decision in Govindh Bhallabh's case was then pending before the Hon'ble Supreme Court as C.A. 2704/97. Accordingly, a revised seniority list of UDCs of Ernakulam Bench as on 1.11.89 was circulated on 6.3.98. In that list, seniority was fixed taking into account the date of appointment to the grade in the Tribunal on deputation basis instead of the date of regular appointment to the same or analogous post in the parent department. It was this seniority list that had become non-est consequent upon the decision rendered by the Hon'ble Supreme Court in C.A. 2704/97 (A-2). In other words when the seniority list of



UDCs was revised following the dictum laid down by the Supreme Court in A-2 judgment, the ultimate result would be to revive the seniority list of UDCs published on 27.12.95 (R-1(f)) which was prepared taking into account the regular service rendered by each official in the same or equivalent post in his parent department. In the case of the applicant, though the date of his holding the post of LDA in the parent department was 1.2.83 that date could not be taken into account for counting his seniority in the grade of UDC in the Tribunal for the reason that he did not continue in that post till his appointment as UDC on deputation basis in the Tribunal on 18.11.87 and that during the period from 7.8.86 to 17.11.87 he was holding the lower post of LDC on his own volition on deputation basis in the Tribunal. In compliance with the directions contained in the judgment of the Hon'ble Supreme Court in C.A. No. 2704/97 A-3 revised draft seniority list of UDCs in the Ernakulam Bench of the Tribunal as on 1.11.89 was prepared and circulated inviting objections if any, from the officials concerned. The averment made by the applicant that he ought to have been placed between Sl. Nos. 3 and 4 in the said draft seniority list was against the general principles of fixation of seniority and the dictum laid down by the Hon'ble Supreme Court. Based on the submissions made by the learned counsel appearing for the applicant in O.A. 633/99, the said O.A. was closed. The allegation that there was no objection on the part of the counsel for the respondents for closing the O.A. was unwarranted in the light of the contents of A-5 order. The representation of the applicant for counting the service in the parent department for the purpose of fixation of seniority in the grade of UDC in the Tribunal was duly considered by the competent authority in the light of the dictum laid down by the Hon'ble Supreme Court in A-2 judgment

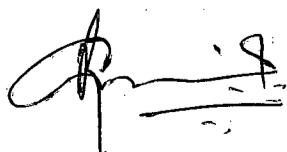


in the light of the provision contained in Rule 5 of the Recruitment Rules, 1989 and the decision of the competent authority rejecting applicant's objections was duly communicated to him as per A-6 memorandum. The revised draft seniority list of UDCs in the Ernakulam Bench of the Tribunal was finalised and circulated vide A-7 OM dated 20.12.99. In A-7 seniority list the seniority of the applicant in the grade of UDC was reckoned with effect from 18.11.97, the date of his continuous officiation in the post of UDC in the Tribunal. Since he was holding a lower post of LDC in the Tribunal w.e.f. 7.8.86 to 17.11.87 he was not granted seniority in the grade of UDC from the date of his appointment as LDA in his parent department. They also referred to the portions of A-2 judgment in support of their arguments.

4. The third respondent filed reply statement resisting the claim of the applicant. It was submitted that the O.A. was barred by principles of resjudicata as the applicant had filed O.A. No. 900/93 for quashing the decision of the Hon'ble Chairman, rejecting his representation for ante-dating his appointment to the post of UDC in the Tribunal w.e.f. 7.8.86 and to declare that he was entitled to be appointed as UDC w.e.f. 7.8.86 with all consequential benefits including seniority fixation of pay etc. and the said O.A. was dismissed both on merit and on the point of limitation. According to the third respondent he was promoted as UDC on adhoc basis w.e.f. 7.9.82 in the Health Ministry and on regular basis w.e.f. 12.4.84. While holding the post of UDC on regular basis he was appointed on deputation in the Tribunal as UDC w.e.f. 14.4.87 and had opted to draw the pay of the parent post plus deputation duty allowance during the period of deputation as admissible under

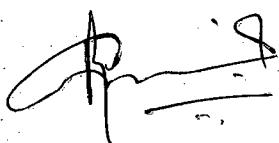


Rules. During the period from 14.4.87 to 17.11.87 while he was working as UDC on deputation basis in the Tribunal, the applicant was working as LDC on deputation basis and was appointed as UDC in the Tribunal only w.e.f. 18.11.87. Both the posts of LDC/UDC constituted two separate rungs in the hierarchy with distinct duties and responsibilities hence the service rendered in the lower post of LDC could not be counted for the determination of seniority in the higher post of UDC. The seniority list published on 6.3.98 became non-est consequent upon the decision rendered by the Hon'ble Supreme Court in CA 2704/97 and the A-7 revised seniority list was published reckoning the services rendered by various officials in the grade of UDC in their parent department for the purpose of determination of their inter-se seniority in the grade of UDC in the Tribunal. In the case of the applicant he was working in the post of LDC in the Tribunal and he was not having continuous service as UDC and hence the seniority of the applicant was correctly determined from the date of his continuous appointment as UDC in the Tribunal. As the applicant was holding a lower post of in the Tribunal for the period from 7.8.86 to 17.11.87 he could not legitimately claim that the service rendered in the lower grade of LDC should also be counted for determining the seniority in the grade of UDC. As the applicant did not have any uninterrupted service in the grade of LDA/UDC in the parent department as well as in the Tribunal like the third respondent, he could not claim that he may be assigned seniority above the respondent No.3. Hence the seniority of the applicant had been correctly fixed in the grade of UDC taking into account his earlier appointment to the grade in the Tribunal. Settled rules of service jurisprudence did not make it mandatory that the service rendered in a lower post of LDC be counted for the purpose of seniority in the higher



grade. Annexure A-9 had no relevance of determination of the seniority. The Department of Personnel & Training vide order dated 24.9.92 had further simplified the confirmation procedure in Govt. service and persons already confirmed in their parent department need not be confirmed again. Hence, the applicant was not confirmed in the Tribunal. The applicant is entitled to get seniority in the grade of UDC w.e.f. 18.11.87 from the date of his appointment to the post UDC in the Tribunal. Hence the relief sought for by the applicant for fixation of his seniority w.e.f. 1.2.83 was only to be rejected.

5. The fourth respondent filed separate reply statement resisting the claim of the applicant. According to him the O.A. was hit by the principles of res judicata as the applicant has filed earlier O.A. 900/93 against the official respondents herein with more or less identical reliefs which was dismissed on merits. Had the earlier O.A. been allowed granting the earlier date of appointment as UDC as claimed, the applicant would not have filed the present OA seeking better placement in the seniority list of UDC. Therefore his substantial grievance had been well adjudicated by a competent court of jurisdiction on merit and found not legally tenable. The order of the Tribunal in O.A. 900/93 was neither set aside nor stayed by any higher Court on appeal or revision and it had become final and binding. Mere addition of a couple of individual respondents in the present litigation would not help the applicant to seek re-adjudication of the case which was finally settled once for all. The issue which was sought to be adjudicated in this OA was directly and substantially the subject matter in the earlier OA and the said similarity is not incidental in nature. The fourth respondent claimed that he was holding



the post of UDC with effect from 12.9.86 while on deputation to the CAT from the Ministry of Defence. The applicant joined Ernakulam Bench of the Tribunal on deputation as LDC on 7.8.86 and was appointed as UDC with effect from 18.11.87 during the period of deputation. Therefore the applicant could not steal a march over the fourth respondent in the seniority list of UDCs. No dual principle had been adopted by the official respondents in determination of seniority as alleged. The applicant in this OA sought to tag his service rendered as LDC for the period from 7.8.86 to 17.11.87 for the determination of seniority of UDCs. He was officiating as regular LDC during the aforesaid period and his claim for ante-dating his appointment as UDC from 7.8.86 was rejected by the Tribunal in a reasoned order. He was regularly appointed as UDC w.e.f. 18.11.87. That being the factual position, his claim for seniority as UDC for the period he officiated as regular LDC was highly misconceived, untenable and liable to be rejected as devoid of any substance. The decision of the Hon'ble Supreme Court in Ramachandran's case did not envisage a situation identical to the fact in issue in the present O.A. While referring to the decision of the Supreme Court the applicant forgot the fact that the length of service referred to in the judgment was to be understood as continuous length of service and not broken period of service. It was submitted that his appointment as UDC with effect from 18.11.87 itself was a concession at the hands of official respondents. Having obtained the concession, the applicant could not bring up his claim afresh for its retroactivity as a matter of right. Thus the applicant was not holding the post of UDC when the fourth respondent was appointed as UDC on regular basis. Applicant's claim for seniority over the fourth respondent were cutting inroads into the fundamental rights of the fourth respondent and it



would result in civil consequences. The O.A. was devoid of any merits and was liable to be dismissed with costs to the fourth respondent.

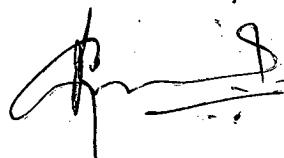
6. The Applicant filed rejoinder and the Official respondents filed additional reply statement.

7. Heard learned counsel for the parties. The third and fourth respondents were not represented by counsel and did not put in appearance at the time of hearing. The learned counsel for the applicant Shri T. C. Govindaswamy took us through the pleadings and argued the matter extensively. He submitted that this O.A. could not be considered as barred by the principles of res judicata and the Original Application was liable to be allowed as the seniority of the applicant was not determined by the respondents in accordance with the law laid down by the Hon'ble Supreme Court in C.A. No. 2704/97. He relied on the following judgments in support of his submissions:

i) S. Jamaldeen & Others V. High Court of Madras & Others (1997 SCC L&S 918)

ii) Sub Inspector Roopal & Another Vs. Lt. Governor through Chief Secretary, Delhi & Others (2000 SCC L&S 213)

8. The learned counsel for the official respondents Shri Govindh K. Bharathan took us through the pleadings and stressed that the O.A. was apart from having no merit was barred by the principles of resjudicata. He quoted extensively from the judgment in O.A. 900/93 in support of his submission that the present O.A. is hit by resjudicata.

A handwritten signature in black ink, appearing to read "A. S. J."

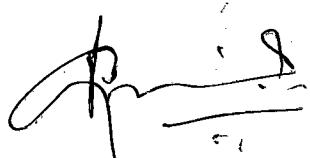
9. We have given careful consideration to the submissions made by the learned counsel for the parties and the pleadings of the parties and have also perused the documents brought on record.

10. The issues involved in this O.A. for our consideration are (i) whether this O.A. is barred by the principles of resjudicata in view of the earlier OA filed by the applicant viz. O.A. No. 900/93 decided on 28.6.94 and (ii) whether the seniority given to the applicant as UDC in the impugned seniority list published by the second respondent under A-7 letter dated 20.12.99 is in accordance with the principles laid down by the Hon'ble Supreme Court in the judgment in Civil Appeal No. 2704/97, M. Ramachandran Vs. Govind Ballabh & Others.

11. The learned counsel for the respondents quoting extensively from the judgment of this Tribunal in O.A. No. 900/93 argued vehemently that the present O.A. was barred by the principles of resjudicata. According to him had O.A. No. 900/93 been allowed by this Tribunal the result that the applicant was seeking through this O.A. would have followed and therefore O.A. No. 900/93 having been dismissed by this Tribunal the applicant could not approach this Tribunal through the present O.A. for the reliefs just because of the law laid down by the Hon'ble Supreme Court in its judgment in Civil Appeal No. 2704/97. The learned counsel for the applicant submitted that in O.A. 900/93 the applicant's main prayer was for quashing the order dated 14.9.93 rejecting his representation dated 23.4.92 for a direction to the first respondent to ante-date his date of appointment on deputation basis in UDC grade w.e.f. 7.8.86 instead of 18.11.87. The



other reliefs sought were the consequential benefits which included seniority. As against the above, in the present O.A. the applicant's prayer was to assign him seniority in accordance with the principles laid down by the Hon'ble Supreme Court in its judgment Civil Appeal No. 2704/97. He submitted that in such a situation this O.A. was not barred by this principles of res judicata. He cited the ratio of the judgment of the Hon'ble Supreme Court in S. Jamaldeen & Others Vs. High Court of Madras and Others (1997 SCC (L&S) 918) in support of his submissions. We have carefully gone through the order of this Tribunal dated 28.6.94 in O.A. 900/93 which has been annexed as Annexure R-1(a) by the official respondents along with their reply statement. On a careful consideration of the said order we find that this Tribunal has not considered the matter of assignment of seniority of the applicant at all. This Tribunal had only considered whether the applicant's prayer for ante-dating his appointment on deputation basis in the UDC w.e.f. 7.8.86 was tenable or not. This is evident from paragraphs 4 and 7 of R-1(a) order of the Tribunal. In para 4 of R-1(a) order it is stated thus "....The only short issue arising in this case is whether a person who came on deputation well aware of the conditions of service for years together and subsequently when absorbed in the service which was earlier a foreign service can raise the foundation of his absorption alleging that his initial appointment on deputation was to a lower grade post?" Again in para 7 of R-1(a) order it is stated thus "However, we have heard learned counsel on merits also. Our repeated query at the start of the hearing is whether there is any legal sanction that a person who has already joined a post on deputation can subsequently assail the same order of deputation when he continues to work on deputation drawing deputation duty allowance basides the emoluments he



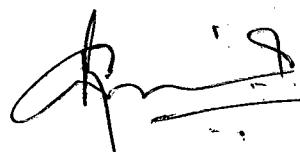
was drawing in the parent department..." As against the above, in the present O.A., the applicant is seeking to quash A-6 reply given to him rejecting his representation and modify his position in A-7 seniority list. It may be true that had the said O.A. 900/93 been allowed the applicant would have got the seniority because of the principles of determination of seniority followed by the department at that time. But for that reason it cannot be held that the present O.A. is barred by principles of Res judicata. The learned counsel for the applicant also submitted that in the earlier O.A. no relief against any private respondents were sought and on this score also the present OA was not barred by Res judicata. As already observed by us in the earlier O.A. 900/93, no seniority list was under challenge. Moreover the impugned A-6 memorandum was issued on 17.12.99 and A-7 OM was issued on 20.12.99. These were not in existence when O.A. 900/93 was filed. For all the above reasons we hold that the present O.A. is not barred by the principles of resjudicata. We also find support for our view in the ratio of the judgment of the Hon'ble Supreme Court in Jamaldeen's case wherein it was held in paras 23, 24 and 29 as follows (Head note in 1997 SCC (L&S) 918):

The principal issue in the earlier writ petition before the High Court was validity of the third proviso to Rule 20 whereas the dispute in the present case is whether the rules were correctly understood and implemented while finalising the seniority list. Any other observation which was not germane to the dispute raised before the High Court could not be treated as res judicata between the parties. Moreover, the earlier writ petition was by a few persons. All affected persons were not parties to that writ petition. That apart these writ petitions were filed before fixation of the seniority list. What is now under challenge is the final seniority list. The question of validity of this seniority list could not have been an issue in the earlier writ petitions.



12. Coming to the second issue, the undisputed facts in this O.A. are that the applicant was working as Lower Division Assistant in the High Court of Allahabad on regular basis w.e.f.1.2.83. On his request he came on deputation to the Central Administrative Tribunal, Ernakulam Bench as Lower Division Clerk on 7.8.86. He was appointed as Upper Division Clerk in the Tribunal on deputation basis w.e.f. 18.11.87. He was absorbed in the Tribunal as UDC w.e.f. 1.11.89. The pay of the post of Lower Division Assistant in the parent department i.e. Allahabad High Court w.e.f. 1.1.86 was Rs. 1350-2200. The scale of pay of UDC in the Central Services was Rs. 1200-2040. Thus, admittedly the applicant was holding a post whose scale of pay was higher than that of UDC on regular basis from 1.2.83. According to the applicant in the case of all others the date of entry in the equivalent or higher grade in the parent department was taken as criteria for determination of inter-se seniority whereas in his case the date of his appointment on deputation basis in the Tribunal as UDC viz. 18.11.87 was taken into consideration. According to him the law laid down by the Hon'ble Supreme Court has not been applied in his case. The official respondents justified their action relying on the same Supreme Court judgment. They referred to para 10 of A-2 judgment in support of their case. Paragraphs 10, 11 and 12 of the said judgment in full are as following:

"We are of the considered opinion that Sub rule (2) of Rule 5 is the relevant rule relating to the determination of the seniority of the officers recruited to the service under Sub rule (1) of Rule 5. The seniority of such recruited officers is required to be determined with reference to the dates of their regular appointment to the posts. The proviso to Sub rule (2) shall cover the case of such officers whose seniority cannot be determined under Sub rule (2) as is the present case of the persons appointed/recruited on the same date. In such a case the seniority of the officers recruited from the same source has to be determined by giving them the



benefit of the equivalent post held by them in their parent departments. Sub rule (2) and its proviso is based upon the general principle of service jurisprudence. It is not correct to say that the rules do not provide any method of determining the seniority of the persons recruited to the service and that in the absence of there being specific rule, resort be had to the Official Memorandum relied on by the respondents. Seniority is a relevant term having reference to the class, category and the grade to which the reference is made. Length of service is a recognised method of determining the seniority. Such length of service shall have reference to the class, category or grades which the parties were holding at the relevant time. It, therefore, follows that total length of service is not relevant for determining the seniority but length of service to a particular class, category or grade is relevant consideration for the purposes of counting the period with respect to length of service for the purposes of determining the seniority. In other words the period of holding of the equivalent post in the parent department would be relevant period to be taken note of for the purposes of determining the seniority under Rule 5(2) and its proviso. Any other interpretation would be against the settled rules of service jurisprudence and is likely to create many anomalies resulting in failure of justice and defeating the acquired rights of the civil servants based upon their length of service. A perusal of the Rules does not, in any way, show and rightly so that the rule making authority had ever intended to take away the benefit of the length of service of a person in his parent department before his deputation and absorption in the service.

We are of the opinion that the Tribunal has taken a very casual approach while passing the order impugned in this appeal and completely ignored the basic principles of service jurisprudence as confirmed and applied by this Court by way of pronouncements in various cases, some of which have been noted hereinabove. 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.

Under the circumstances, the appeal is allowed and the order impugned is set aside. The official respondents are directed to finalise the seniority list of all the employees recruited in the service under Rule 5(1) of the Rules strictly applying the provisions of Sub rule (2) and its proviso keeping in mind the observations made hereinabove. All orders passed consequent upon the order of the Tribunal impugned herein shall be deemed to be non-est and not given effect to. Fresh seniority list be finalised at the earliest and if possible within a period of three months from today. Till the finalisation of the seniority list, the parties shall be permitted to hold the posts presently held by them.

A handwritten signature in black ink, appearing to read 'A. S. J.' followed by a stylized surname.

The portion underlined by us in the above extract is relied on by the respondents to support their action of taking the date of appointment of the applicant as UDC on deputation basis in the Tribunal for the purpose of assignment of his seniority as against the date of holding of the post of UDC on regular basis in the parent department adopted for all others.

13. A complete reading of the judgment of the Hon'ble Supreme Court in the above mentioned case clearly brings out that the Hon'ble Apex Court had held the principle followed by the CAT in determining the seniority of deputationists following the O.M. dated 3.7.86 was not in accordance with the rules. It has squarely held that the absorption / regularisation of the existing employees is to be governed as per Rule 5(2) and its proviso and the inter-se seniority of all those who were absorbed on the same date viz. 1.11.89 is to be determined as clarified in the judgment. When such is the position, in our view the action of the respondents, referring to the date of appointment as UDC on deputation basis of the applicant in the Tribunal for determining his inter-se seniority in the Tribunal, is not in line with the law laid down by the Hon'ble Supreme Court. In the principle for determination of seniority laid down by the Hon'ble Supreme Court in the above judgment, the date of deputation has no relevance for the purpose of determining the inter-se seniority of the employees who were absorbed on the same date under Rule 5(1) viz. 1.11.89 in this case. This would be evident from para 6 of the judgment in which the Hon'ble Apex Court held:

Referring to the Official Memorandum dated 3rd July, 1986, it has been contended on behalf of the contesting parties that the relative seniority of all the direct recruits has to be determined in terms of para 3.4.1 of the said Memorandum. The aforesaid para prescribed:



3.4.1 In the case of a person who is initially taken on deputation and absorbed later i.e. where the relevant recruitment rules provide for "Transfer on deputation/transfer") his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. If he has, however, been holding already (on the date of absorption) the same or equivalent grade on regular basis in his parent department, such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he will be given seniority from-

the date he has been holding the post on deputation

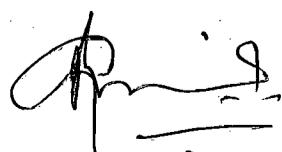
or

the date from which he has been appointed on a regular basis to the same or equivalent grade in his parent department,

whichever is later."

The interpretation put on the said para centres around the words "whichever is later" occurring at its end. It is contended that the seniority must be determined from the date a person is holding the post on deputation or the date from which he had been appointed on a regular basis to the same or equivalent grade in its parent department "whichever is later", meaning thereby if a person gets himself deputed earlier to the service, he would be entitled to seniority notwithstanding the length of service or earlier holding of the equivalent post or grade by a person who incidentally happens to be sent on deputation at a later date. Such a contention, if accepted, would be against the settled principles of service jurisprudence. We also feel that, as the rules hold the field, the Official Memorandum has to give way in the matter of determination of inter se seniority of the persons recruited to the service on the same date.

14. Let us examine the case of the applicant keeping in view the observations of the Hon'ble Supreme Court extracted above. For this purpose let us see the effect on the applicant had he gone back to his parent department without getting absorbed in the Tribunal. Obviously, he would not have suffered any adverse effect because of he coming on deputation as LDC and working in the Tribunal as LDC for the period from 7.8.86 to 17.11.87. We come to this conclusion because from A-1 order dated 10.12.1993 we find that even



though the applicant was working as LDC in the Tribunal on deputation basis-a lower grade- he was being granted the increments in the pay scale of LDA as he was entitled to in his parent department viz. High Court of Allahabad. Moreover, the official respondents had repeatedly averred that the applicant had been given his seniority in the grade of UDC w.e.f. from the date of his initial appointment to that grade in the Central Administrative Tribunal, Ernakulam Bench on deputation basis i.e. from 18.11.87. They went on to say that but for his appointment as LDC in the Tribunal on deputation for the period from 7.8.86 to 17.11.87 the applicant could have been given seniority in the grade of UDC in the Tribunal taking into account the service rendered by him in the grade of Lower Division Assistant in the parent department. In support of their action they have not quoted any rule or instructions. In the face of the dictum laid down by the Hon'ble Supreme Court that the interse seniority of the employees of the Tribunal absorbed on 1.11.89 is to be decided on the basis of the period of holding equivalent post in the parent department and that would be the relevant period for being taken into account for the purpose of seniority in the case of employees absorbed under Rule 5(2) and its proviso, the action of the respondents have to be held as without any authority of law. The applicant had been admittedly recruited under Rule 5(1) of the Rules. The interse seniority of all the employees absorbed on 1.11.89 has to be decided strictly applying sub Rule 5(2) and its proviso. This has not been done in the case of the applicant. Therefore, we hold that taking the date of his appointment on deputation basis in the CAT as UDC viz. 18.11.87 as the date for determining his interse seniority, the respondents have acted without any authority of law. Further, if the interpretation given by the official

A handwritten signature in black ink, appearing to read 'J. S.' or a similar initials.

respondents is accepted it would mean that the applicant's regular service prior to 18.11.87 as UDC or an equivalent post in his parent department would get wiped out just because he had initially came on deputation as LDC. This is not supported by any rule or instructions. Hence Annexure A-6 order dated 17.12.99 rejecting the applicant's representation cannot be sustained and is liable to be quashed and set aside. Accordingly we set aside and quash A-6 memorandum dated 17.12.99 issued by the second respondent. We also quash and set aside A-7 seniority list to the extent it denied the applicant the benefit of his past service in his parent department in an analogous post. We direct the official respondents to correctly assign seniority to the applicant taking into account the period of holding an equivalent or higher post by the applicant in his parent department under Rule 5(2) and its proviso and give all consequential benefits to which he would become entitled to by this revision of seniority. The monetary benefits if any shall be given within a period of three months from the date of receipt of a copy of this order.

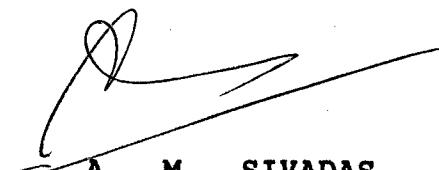
15. In the result the Original Application stands allowed as above with no order as to costs.

Dated the 18th April, 2001.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

kmn



A. M. SIVADAS
JUDICIAL MEMBER

List of Annexures referred to in this Order

A1 A true copy of the order bearing No. 4/13(3)/86-Admn dated 10.12.93 issued by the 2nd respondent.

A2 A true copy of the judgment in Civil Appeal No. 2704 of 1997 dated 21.9.99 passed by the Hon'ble Supreme Court.

A3 A true copy of OM bearing No. 1/55/90-Admn dated 16.11.99 issued by the 2nd respondent.

A4 A true copy of the letter dated 22.11.99 submitted by the applicant to the 2nd respondent.

A5 A true copy of the order in O.A. No. 633/99 dated 8.12.99 rendered by this Tribunal.

A6 A true copy of the Memorandum No. 2/3/98-Admn dated 17.12.99 issued by the second respondent.

A7 A true copy of the OM No. 2/3/98-Admn dated 20.12.99 issued by the 2nd respondent.

R1(a) True copy of the order of the CAT, Ekm Bench in O.A. 900/93 dated 28.6.94

R-1(b) True copy of the order No. 1/37/86-Estt./5452 dated 21.8.86 issued by the deputy Registrar, CAT, PB, New Delhi.

R-1(c) True copy of the order No. 4/13(3)/86 Admn/41 dated 7.1.88 issued by the DR, CAT, Ekm Bench.

R-1(d) True copy of the OM NO.1/50/90-Admn dated 24.9.91 issued by the SO (A-1) CAT, Ekm Bench.

R-1(e) True copy of the OM NO.1/50/90-Admn dated 2.7.92 issued by the DR, CAT, Ekm Bench.

Ra-1(f) True copy of the OM No.1/50/90-Admn dated 27.12.95 issued by the DR(A), CAT, Ekm Bench