

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 161 of 2010

Tuesday, this the 18th day of October, 2011

CORAM:

Hon'ble Mr. Justice P.R. Raman, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

T.R. Sivakumar, aged 49 years, S/o. T.A. Raman,
 Working as Private Secretary, Central Administrative
 Tribunal, Ernakulam Bench, Sastha Temple,
 Kaloor, Kochi-682 017, (Residing at : Karthika,
 II/341-A, Near Nava Nirman Public School, Vazhakkala,
 Kochi-682 021).

Applicant

(By Advocate – Mr. TCG Swamy)

V e r s u s

1. Union of India, represented by the Secretary to Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel, North Block, New Delhi.
2. The Principal Registrar, Central Administrative Tribunal, Principal Bench, Copernicus Marg, New Delhi-110 001.
3. The Deputy Registrar (Estt.), Central Administrative Tribunal, Principal Bench, Copernicus Marg, New Delhi-110 001.
4. Deputy Registrar, Central Administrative Tribunal, Ernakulam Bench, Sastha Temple, Kaloor, Kochi- 682 017.

Respondents

(By Advocate – Mr. Sunil Jacob Jose, SCGSC)

This application having been heard on 22.9.2011, the Tribunal on
18-10-2011 delivered the following:

/b/

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

The applicant in this Original Application was initially appointed as Stenographer Grade-D in the Ministry of Water Resources, New Delhi on 22.03.1982. He was appointed on deputation basis in the Ernakulam Bench of the Central Administrative Tribunal with effect from 28.12.1987 as Stenographer Grade-D. While on deputation he was appointed as Court Master/Stenographer Grade-C with effect from 30.3.1989. While working as Court Master in Central Administrative Tribunal, the Central Administrative Tribunal Stenographer's Services (Group-B & C posts) Recruitment Rules, 1989 were promulgated. In terms of Rule 5(1) of the said recruitment rules the applicant showed his willingness to be absorbed in the Central Administrative Tribunal as Court Master/Stenographer Grade-C. He also gave another option of being absorbed as Stenographer Grade-D. Notwithstanding the fact that he was working as Court Master he was absorbed as Stenographer Grade-D in the Central Administrative Tribunal on 1.1.1989. He was promoted as Court Master with effect from 8.5.1991. On his representations he was regularized as Court Master/Stenographer Grade-C with effect from 2.11.1989 and was granted the consequential benefits thereof. Certain persons who were similarly situated as the applicant, were absorbed as Court Master/Stenographer Grade-C with effect from 1.11.1989 itself. They became entitled for grant of the second financial up-gradation under the MACP scheme with effect from 1.11.2009 whereas the applicant was treated to have been granted two promotions-one on 2.11.1989 as Court Master and later on 1.1.1999 as

Private Secretary and was deprived of the second financial up-gradation to the pay band-3 with grade pay of Rs. 6600/- . The applicant submitted a representation dated 2.6.2009 to the second respondent for absorption as Court Master with effect from 1.11.1989 relying on the ratio of the decision of the Principal Bench in OA No. 1935 of 2003. Aggrieved by the rejection of his request vide letter dated 14.9.2009 at Annexure A-1, the applicant has filed this Original Application for the following reliefs:-

“(i) Call for the records leading to the issue of Annexure A-1 and quash the same,

(ii) Declare that the applicant is entitled to be regularized as Court Master/Stenographer Grade-C with effect from 1.11.1989 in the scale of Rs. 1400-2600 in terms of Rule 5(1) of Annexure A-3 Recruitment Rules,

(iii) Direct the respondents to grant the applicant the benefit of absorption as Court Master/Stenographer Grade-C with effect from 1.11.1989 with all consequential benefits emanating therefrom,

(iv) Award costs of and incidental to this application,

(v) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.”

2. The applicant contended that Annexure A-1 order does not state why he is not eligible for absorption with effect from 1.11.1989 as per Rule 5(1) of the RR. The ratio laid down in OA No. 1935 of 2003 that the respondents cannot impose any conditions other than what is provided for in Rule 5(1) for the purpose of absorption squarely applies to the case of the applicant. In so far as he was absorbed with effect from 2.11.1989 there is no case that there were no vacancies as on 1.11.1989. The rejection of the regular absorption with effect from 1.11.1989 has resulted in the denial of the benefit of pay band 3 with grade pay of Rs. 6,600/- with effect from



1.11.2009 to the applicant.

3. In the reply statement the respondents submitted that the order in OA No. 1935 of 2003 is dated 11.8.2004. The applicant has filed this OA at a very belated stage without explaining the delay and filing application for condonation of delay. The applicant has not arrayed the necessary parties who are vitally affected. There is no rule/law that a person on deputation is promoted. The promotion of the applicant who was on deputation in the CAT to the post of Court Master on ad hoc basis with effect from 30.3.1989 was wrong and illegal on the part of the authorities. Any appointment made de hors the rules is no appointment. Since he was holding the substantive post of Stenographer Grade-D on deputation to the CAT as on 1.1.1989 he was rightly absorbed as Stenographer Grade-D as on 1.1.1989. The applicant in the OA No. 1935 of 2003 joined the Tribunal on a higher post and was absorbed on the same whereas the applicant in this OA joined the CAT on an analogous post as Stenographer Grade-D and had been absorbed on the same. The representation of the applicant for the relief sought has been dismissed in the year 1993 itself and his case is hit by the principle of acquiescence. Therefore, the OA is liable to be dismissed.

4. In the rejoinder filed by the applicant it was submitted that the representation of the applicant was rejected only by order dated 14.9.2009. The denial of the benefit claimed in the OA results in continued injustice by denying the second financial up-gradation and as a result recurring monthly loss. The applicant is not claiming seniority in the OA and as such arraying of necessary parties is not required. The applicant continued on deputation

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basis as Court Master with effect from 30.3.1989 as was in the cases of Shri K. Muraleedharan Nair and Shri K. Subramanian. Against the dismissal of the relief sought in 1993 the applicant's regularization as Court Master was advanced from 8.5.1991 to 2.11.1989 subsequently. Those who were working in the higher grade or continued on deputation basis except the applicant were absorbed in the higher grade. The ad hoc appointment of the applicant while on deputation is not de hors the RRs as there were no RRs in existence prior to 20.4.1989. The respondents are unable to point out how the applicant came to be regularized with effect from 2.11.1989 if the appointment as Court Master prior to that date was wrong.

5. We have heard the learned counsel for the applicant and learned counsel for the respondents and perused the records.

6. We may first consider whether the OA is within the period of limitation or not. The order of Principal Bench in OA No. 1935 of 2003 was pronounced on 11.8.2004. Therefore, the respondents contend that this OA is filed in a very belated stage without explaining the delay and without filing an application for condonation of delay. Further the representation of the applicant on the same issue as in this OA was rejected in the year 1993 itself. The applicant's representation vide letter dated 12.6.2009 in the light of the introduction of the MACP scheme in respect of the substantial prejudice and loss was rejected by the respondents vide order dated 14.9.2009 only. The denial of the request of the applicant results in the denial of the second financial up-gradation and in the result recurring monthly loss. The rejection of the claim of the applicant for

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regularization/absorption as Court Master in 1993 was subsequently followed by regularization with effect from 2.11.1989, meeting the grievance of the applicant to a great extent. The present OA is filed challenging the order dated 14.9.2009 for ante-dating the regularization to 1.11.1989 just by one day in view of the substantial loss to the applicant in the wake of the introduction of the MACP scheme. Therefore, we hold that cause of action for this OA arose only on 14.9.2009 and that the OA is filed within the period of limitation. At any rate the delay if any is excusable as it is occasioned not due to any latches or negligence on the part of the applicant.

7. As to the non-arraying of necessary parties in the OA we find that there are no necessary parties to be arrayed. For, the applicant is not claiming seniority; his claim is limited to ante-dating the regularization as Court Master by one day so as only to get the benefit of second financial up-gradation under the MACP scheme. None other than the applicant is benefited by this OA. Further the department is already arrayed as party and so it cannot be said that the application is not maintainable. [See 1974 (3) SCR 207]

8. Going to the merits of the case, the applicant while on deputation with the CAT as Stenographer Grade-D was appointed as Court Master/Stenographer Grade-C on ad hoc basis with effect from 30.3.1989. The respondents aver that it was wrong on their part to have promoted the applicant as Court Master while on deputation as there are no rules or law to promote a person on deputation. But they have not shown that they have



violated any rule or law in appointing the applicant as Court Master. They further submitted that the ad hoc promotion/appointment of the applicant as Court Master while on deputation is illegal since the appointment is made de hors the RRs. The relevant RR i.e. Central Administrative Tribunal Stenographers Service (Group-B & C posts) Recruitment Rules, 1989 came into force only on 20.4.1989. There were no RRs for the post of Court Master on 30.3.1989 when the applicant was appointed as Court Master. Therefore, the appointment of the applicant as Court Master cannot be held as illegal on the ground that it was done de hors RR as there were no RRs existing at the time of appointment. The appointment of the applicant as Court Master was done by the competent authority after getting approval from the parent department of the applicant. If the order of appointment as Court Master was wrong or illegal as claimed by the respondents, the question arises why it was not cancelled. In fact, we find that others were appointed as Court Masters just like the applicant.

9. Shri K. Muraleedharan Nair and Shri K. Subramanian were Grade-D Stenographers like the applicant on deputation with the CAT. They were appointed as Court Master on 19.10.1987 long before the appointment of the applicant as Court Master on 30.3.1989. There are other similar cases too, as the CAT was a nascent organization run with employees on deputation. The recruitment rules were yet to be framed. In the absence of law, practice rules the field. Normally a deputationist is to return to the parent department on the expiry of the term of deputation. If he goes back with promotion that might create problems for the parent department where



his lien lies. All those who were on deputation with CAT, willing and found eligible were absorbed in the CAT. In this hindsight we do not find that the promotions/appointments granted while on deputation with the CAT to fill up vacancies is wrong or illegal as they were justified in the exigency of the time to get the organization going and such appointment did not violate any rule. The respondents had no better alternative to run the organization.

10. Shri K. Muraleedharan Nair and Shri K. Subramanian were absorbed as Court Masters with effect from 1.11.1989 by applying rule 5(1) of the RRs whereas, as of now, the applicant is absorbed as Stenographer grade-D with effect from 1.11.1989 and further promoted as Court Master on 2.11.1989. It would appear that the applicant has been discriminated, resulting in substantial recurring financial loss. The respondents have not shown any reason why his promotion as Court Master is made effective from 2.11.1989 and not from 1.11.1989 as requested for by the applicant.

11. There is no case that there were no vacancies as on 1.11.1989 and that there were vacancies as on 2.11.1989. The impugned Annexure A-1 does not give any reason for denying the benefit of absorption from 1.11.1989 as was given to similarly placed persons like Shri K. Muraleedharan Nair and Shri K. Subramanian in accordance with Rule 5(1) of the Recruitment Rules. As per letter No. 1/37/86-Estt., Central Administrative Tribunal, Principal Bench, dated 17.3.1989 the appointment of the applicant "is not a case of promotion but a fresh appointment to another post". It is not the case of the respondents that they were not competent to make appointment to the



post of Court Master or not competent in respect of the applicant only. As per Note-II of F. No. 1/55/90 Estt., dated 11.7.1991 of the Principal Bench "the service rendered in the Tribunal prior to the promulgation of the RRs will be deemed to be regular service in that grade even if the appointment was made on ad hoc basis" for the purpose of fixation of the seniority of staff. If that is so, there is good reason to consider the ad hoc service of the applicant in the cadre of Court Master prior to the RRs for the purpose of regularization also. The applicant in this OA is not seeking regularization as Court Master/Stenographer Grade-C with effect from 30.3.1989. His prayer is limited to regularization as Court Master/Stenographer Grade-C with effect from 1.11.1989 only for the purpose of being eligible to get the second financial up-gradation under the MACP scheme. Granting the same would have the effect of getting absorbed as Court Master in terms of Rule 5(1) of the RRs for the above limited purpose only.

12. For the purpose of absorption, the respondents cannot go beyond what is provided for in Rule 5(1) of the RR. In OA No. 1935 of 2003 the Principal Bench was pleased to direct that in the light of the statutory provisions contained in the Rule 5(1) of the RRs the applicant therein shall be considered for absorption as UDC with effect from 1.11.1989. The ratio of the decision squarely applies to the applicant who was holding the post of Court Master. There is no reason to deprive the applicant to the benefit of absorption as Court Master with effect from 1.11.1989 in the light of the provisions of the RRs.



13. In the facts and circumstances of this case the balance of convenience lies clearly in favour of the applicant. The respondents have not raised any tenable ground against granting the relief sought by the applicant as discussed above. Justice would be done if the applicant is regularized and absorbed in the CAT as Court Master with effect from 1.11.1989 without the benefit of seniority and consequential financial benefits other than the second financial up-gradation under the MACP scheme. Ordered accordingly. Appropriate orders in this regard shall be issued by the respondents within a period of three months from the date of receipt of a copy of this order. Annexure A-1 order dated 14.09.2009 is set aside.

14. Original Application stands allowed to the extent as above. No order as to costs.



**(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER**



**(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER**

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