

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

Original Application No. 18 of 2006

*wednesday*, this the 20<sup>th</sup> day of June, 2007.

**CORAM:**

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

1. N.K. Shanmughan,  
S/o. Kannan, Messenger (Gr. III),  
CMFRI, Kochi,  
Residing at : Nikathuthara,  
Edavanakkad Post, Kochi.
2. T.V. Shaji,  
S/o. Vellon, Messenger,  
CMFRI, Kochi,  
Resident of Mallipuram P.O.,  
Karthedam, Kochi.
3. K. Kunhiraman,  
S/o. Kochu Kunhu, Watchman Gr. II,  
CMFRI, Kochi,  
Resident of Charuvilla Puthen Veedu,  
Kunnicode Post, Avaneeswaram, Kollam.
4. K. Thankappan,  
S/o. Kesavan, Fieldman (Gr. II),  
CMFRI, Kochi,  
Residing at Palissery House,  
North Kalamassery Post,  
Vadekke Puram, Kdava Road,  
Ernakulam.
5. M.D. Suresh Babu,  
S/o. Divakaran, Fieldman (Gr. II),  
CMFRI, Kochi,  
Residing at : Mundathummel House,  
Narackal Post, Kochi.

... Applicants.

(By Advocate Mr. T C G Swamy)

v e r s u s

1. Indian Council of Agricultural Research,  
Through Its Secretary, Krishi Bhawan,  
New Delhi.

2. Director General,  
Indian Council of Agricultural Research,  
Krishi Bhawan, New Delhi.
3. Director,  
Central Marine Fisheries Research Institute,  
Post Box No. 1603, North Post Office,  
Kochi. ... Respondents.

(By Advocate Mr. P. Jacob Varghese)

**O R D E R**  
**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

The applicants originally were appointed by the Central Marine Fisheries Research Institute (CMFRI for short) as Supporting Grade Staff on various dates from 1978 to 1985 and were, at the material point of time posted at Marine Prawn Hatchery Laboratory (one of the laboratories of CMFRI). By an order dated 06-10-1988, the applicants were deemed to have been transferred along with their posts from CMFRI to the Central Institute of Brackish water Aquaculture, Chennai (CIBA), w.e.f. 01-04-1987. While working in the CIBA, applicant No. 1 was promoted as Grade III, while others as Grade II. During the period of their service at CIBA, there was a change in the Administration inasmuch as the applicants' services had been shifted to come under the administrative control of Respondent No.3, i.e. the CMFRI. Vide Annexure A-2, the applicants were transferred to Kochi and had severed all their connections with CIBA. However, the respondents have treated this transfer back to CMFRI as one under 'surplus' stated that the those who have been transferred back to CMFRI 'will be ranked junior to the existing staff of KVK/CMFRI in the respective grades.' The claim of the applicants for their original seniority and attendant benefits having been rejected, vide Annexure A-4 order dated 06-05-2002, this application has been filed. The relief sought for includes the following:-

- (a) Annexure A-2 order be quashed and set aside in so far as the same recites, 'will be ranked junior to the existing staff of KVK/CMFRI in the respective grades';
- (b) Annexure A-4 order be also quashed;
- (c) It be declared that the applicants are entitled to all the service benefits including seniority and promotion vis-a-vis their juniors as if the applicants had continued in CMFRI under the 3rd respondent from their initial appointment;
- (d) It be directed that the respondents shall grant all the benefits to the applicants vis--vis their juniors as if the applicants had continued in CMFRI from the date of their initial appointment with all consequential benefits, including arrears of pay and allowances arising therefrom.

2. Respondents have contested the OA. It has been contended that all non-scientific posts under the ICAR are Institute based posts and all the service benefits for these posts including maintenance of seniority etc, are determined independently by different institutions for its employees. Consequent upon transfer of the applicants to CIBA, they had severed all their connections with the CMFRI. Thereafter, as CIBA had rendered the applicants surplus the applicants have now been transferred to Cochin. Surpluses are not entitled to count their past services and hence their claims are not sustainable. According to the respondents, the posting back of the applicants to CMFRI is of the nature of redeployment. Again, as per Annexure R-6 rule 5.1.5 which relates to Transfer on Inter Institutional basis, the staff so transferred will be ranked junior to all the existing regular staff of the new Institute in that grade.

3. In their rejoinder, the applicants contended that the case of the applicant cannot fall under the category of redeployment, but one of merger, for Annexure R-2 dated 12-04-2001 states that the surplus staff of CIBA, after adjustment in the KVK of CMFRI may be 'merged with the staff strength of

CMFRI, Cochin along with the posts and their salary may henceforth be drawn from the CMFRI budget." Again, Annexure R-6 which is mainly in respect of direct recruitment, is not applicable in the case of the applicants.

4. Additional reply to the rejoinder has also been filed.

5. Counsel for the applicants argued that the entire period spent at CIBA should be treated only temporary and the applicants should be allowed to take their original seniority position.

6. Counsel for the respondents, however, contended that the applicants were granted their promotion in CIBA and hence they cannot be allowed the relief they claim.

7. Arguments were heard and documents perused. The move of the applicants to CIBA was not with any option exercised by the applicants. Along with the posts the applicants were shifted to CIBA and again, they have been posted back to CMFRI. Thus, during the intermediate period, i.e. from the date the applicants were shifted to CIBA till their return to CMFRI, they were branched out from the main stream of CMFRI and then brought back. This resembles bifurcation and re-union. In the case of **Om Prakash Sharma v. Union of India, 1985 Supp SCC 218**, there were three independent divisions called the departments under the control of Divisional Electrical Engineer, Jhansi. However, the clerical staff such as clerk, senior clerk, head clerk and chief clerk of all the three departments were borne on a common seniority list till August 31, 1956. Effective from September 1, 1956, these three departments under the control of the Divisional Electrical Engineer, Jhansi were

separated from each other on the introduction of the divisionalization in the Railways. These three departments became three independent units, and in the matter of staff each devised its separate seniority list. Later on, all the three original departments trifurcated on August 31, 1956 were re-amalgamated in the matter of staff and a common seniority list was introduced. Pursuant to the amalgamation common seniority list was drawn up. In this seniority list erstwhile juniors were shown as seniors. The appellants contend that when the three departments had a common seniority list, the appellants were senior to Respondents 3 to 6, but after trifurcation and re-amalgamation Respondents 3 to 6 who belonged to erstwhile workshop staff and who were amalgamated with the staff of the Chief Electrical Engineer, Bombay, obtained accelerated promotion because of easy availability of vacancies. Consequently, when re-amalgamation was introduced from August 1, 1979 when Respondents 3 to 6 reverted to the common seniority list with appellants and other similarly situated persons, they scored a march over the appellants because of a fortuitous event. The contention in terms is that where staff employed in different units under the administrative control of one higher officer are borne on a common seniority list, when because of trifurcation/re-amalgamation all are brought back on the common seniority list, their position ante must be reflected in the seniority list. Original seniority it is said must prevail otherwise any other view would be denial of equality of opportunity in the matter of public employment guaranteed under Article 16 of the Constitution. Obviously when the amalgamation took place, Respondents 3 to 6 could not score a march over erstwhile seniors on any valid principle of seniority. This would unquestionably be denial of equality under Article 16 of the Constitution. It may be that they might have enjoyed some accelerated promotion when workshop staff was amalgamated with the Bombay office. But when they were repatriated and re-



amalgamated with original two offices and brought back on the common seniority list, they must find their original place qua the appellants. This is not a case where appellants were passed over at the time of selection or denied promotion on the ground of unsuitability. In such a situation status quo ante has to be restored. These three departments had three separate offices. The Apex Court has, in this case held as under:-

3. The appellants have an iron-clad case. The facts, not disputed, to summarise briefly are that under the Divisional Electrical Engineer there were three separate departments under his administrative control. Members of the staff of the three departments were borne on a common seniority list. In other words they were deemed to belong to one office in the matter of seniority and promotion. This is not only not disputed but the averment to that effect in para 6 of the petition has been admitted in the counter-affidavit filed on behalf of the Railway Administration. It is again admitted that the three appellants since their entry into service were senior to Respondents 3 to 6. For the administrative convenience the Railway Administration trifurcated the cadres. In other words, three units were separated from each other which resulted in each unit having its own seniority list and the common seniority list became irrelevant from the date of the trifurcation. The Unit No. 2 called the workshop was amalgamated with the office of the Chief Electrical Engineer, Bombay. That is not controverted. Respondents 3 to 6 belonged to the administrative staff in the department styled as the workshop. The result of the trifurcation and amalgamation of the workshop with the Bombay office was that the workshop staff including Respondents 3 to 6 were taken over on the seniority list maintained by the Bombay office. It is admitted that on account of availability of vacancies in the Bombay office Respondents 3 to 6 got some accelerated promotions in the cadre of head clerks. Surprisingly after a span of 23 years, Railway Administration reconsidered its earlier decision and detached the workshop staff from the office of the Chief Electrical Engineer, Bombay and brought it back to Jhansi and three former departments under Divisional Electrical Engineer were amalgamated. In other words situation ante as on August 31, 1956 was restored, and members of the staff were brought on common seniority list cadre-wise. This factual averment is unambiguously admitted. Consequent upon amalgamation in 1979 a fresh common seniority list was drawn up in which cadre-wise Respondent 3 was shown senior to Appellants 1 and 2 and Respondents 5, 6 and 9 were shown senior to Appellant 3. Obviously Respondents 3 to 6 will be below the appellants and any other view to the contrary would be violative of Article 16 as it would constitute denial of equality in the matter of promotion. Therefore, the seniority list drawn up on a principle contrary to what is discussed herein would be bad in law and

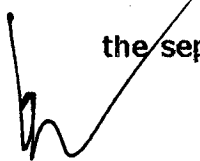
deserves to be quashed.

4. Accordingly, we quash and set aside the seniority list produced at Annexure-6 and direct that the appellants shall be shown senior to Respondents 3 to 6 in the cadre of head clerks and future promotions shall be dealt with according to their places in the seniority list. It is not for a moment suggested that promotion to the post of chief clerk has to be given by mere seniority. But if and to the extent seniority is considered relevant it shall be given due weight. We consider it unnecessary to call upon the Railway Administration to re-draw the seniority list. Let an order in the nature of mandamus be issued directing the Railway Administration to assign seniority to the appellants over Respondents 3 to 6. Seniority list shall stand re-drawn as herein indicated.

5. Mr G.D. Gupta, learned counsel made some grievance about the communication produced at Exhibit P-5. That communication consists of a letter inviting certain persons to appear at a test to consider their suitability for further promotion. If for the post of chief clerk invitation to appear at a test is dependent upon the place in the seniority list, invitations shall be readjusted and reissued consistent with the directions given herein and test shall be held thereafter.

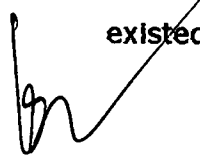
6. If any promotions are given since this appeal was admitted these shall be readjusted in accordance with the directions herein given. The appeal is allowed to that extent with costs quantified at Rs 2000.

8. The above dictum of the Apex Court was applied in the case of **Kerala State Electricity Board v. N. Sukesen, (1996) 9 SCC 397**, wherein, the facts are that the Kerala State Electricity Board, had one common establishment prior to 1964. A need having been felt to have a separate and distinct establishment, named as Secretariat Establishment, the same came to be formed with effect from 1-4-1964. It was specified that the inter se seniority of all categories of persons so appointed initially to the Secretariat will be determined and finalised with reference to the relative general seniority they held in the parent department and their services in the parent department will count for all purposes in the Secretariat Service also. It was, however, felt that the separate service was not conducive to the smooth and efficient discharge of



the administrative functions of the Board; and so, by order dated 14-1-1981 the separate and independent status of the Secretariat Service was brought to an end. Disputes arose about the placement of the seniority of those who were shifted to the Secretariat Establishment on their being brought back to the Electricity Board. The orders issued contained that *the relative seniority of persons drawn from the Secretariat Establishment and the General Establishment including the Accounts Wing shall be determined based on their ranking in the advice list of the Kerala Public Service Commission or the Board, as the case may be, at the time of initial recruitment by the Kerala Public Service Commission or the Board to the respective establishments under the Board subject to the application of rules regarding obligatory departmental tests.* This tallied with the original seniority list. When this was challenged, the Apex Court has held that the decision in *Om Prakash* case has to be applied in the instant appeals as well, because there the accelerated promotion which some of the respondents got in the cadre of Head Clerks because of the trifurcation was not required to be given weight after the different services/departments were amalgamated again. Here too, the principle of inter se seniority in the order of 1985 has basically sought to do the same by requiring the inter se seniority to be determined on the basis of the length of service in the cadre/category at the time of integration, and not by taking note of promotions earned in the Secretariat Service.

9. The case in hand is also analogous to the above two cases. Once from the main stream for a certain period, a bifurcation had been made and later on the same had been brought back to the original stream, the effect of bifurcation may affect the career prospects of the individuals only so long as the bifurcation existed. Once the merger takes place, the original seniority has to be






maintained. In this process, perhaps, some among the applicants would have got accelerated promotions while in CIBA. However, if in the combined seniority they were to lose the same, it is inevitable. Similarly, some of the individuals who were juniors to the applicants but not transferred to CIBA would have some accelerated promotions in CMFRI and on the applicants having staged a come back, their position may have to undergo a change. On the basis of Om Prakash's case (supra) this is also inevitable.

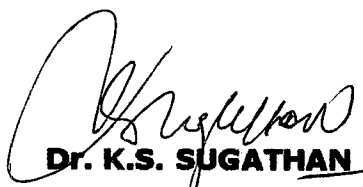
10. The respondents have filed written arguments reiterating the contentions raised in the reply. However, the stand that it was an adjustment of the applicant in the establishment of CMFRI consequent upon closure of Narakkal Research Centre of Central Brackishwater Aquaculture (CIBA) does not appeal to logic since the applicant was transferred along with the post from CMFRI and now having brought back to CMFRI and as such, the facts of this case match with those two cases of Hon'ble Supreme Court referred to above.

11. Thus, the **O.A. is allowed**. It is declared that on the applicants being back to the CMFRI, the seniority position as available prior to the shifting of the applicants to CIBA should be restored and the consequential position as regards promotion etc., shall be granted to the applicants. The seniority in the promoted post shall also undergo revision accordingly. However, in case the applicants are entitled to the benefits of any promotion, the same shall be only notional till they actually assume higher responsibilities. Respondents are directed to undertake the exercise of revising the seniority and pass suitable orders. Time calendared to undertake this task is eight months from the date of communication of this order.



12. No costs.

(Dated, the 20<sup>th</sup> June, 2007)

  
**Dr. K.S. SUGATHAN**  
**ADMINISTRATIVE MEMBER**

  
**Dr. K B S RAJAN**  
**JUDICIAL MEMBER**

Cvr.