

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

**ORIGINAL APPLICATION NO.27/2009.
DATED THE 28TH DAY OF OCTOBER,, 2009.**

CORAM:

**HON'BLE Mr GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Ms K NOORJEHAN, ADMINISTRATIVE MEMBER**

- 1 A G Geetha
Assistant Passport Office, Malappuram,
Residing at 'Panath House' Panath Road,
Kaloor, Cochin-682 017.
- 2 Smt K Susheela Devi,
Assistant Passport Office, Malappuram,
Residing at 'Balavihar'.East Kodungalloor,
Alwaye-2.
- 3 Kumari T Omana,
Assistant, Regional Passport Office,
Cochin, Residing at 'Chennanattu Chira',
CMC VIII, Cherthala. ... Applicants

By Advocate Mr Shafik M A

V/s

- 1 Union of India Represented by Secretary to the
Government of India, Ministry of External Affairs,
New Delhi.
- 2 The Chief Passport Officer & Joint Secretary(CPV),
Ministry of External Affairs, New Delhi.
- 3 The Under Secretary(PV),
Ministry of External Affairs, New Delhi. ... Respondents.

By Advocate Mr Sunil Jacob Jose SCGSC



This application having been heard on 28.10.2009 the Tribunal on the same day:delivered the following

(ORDER)

HON'BLE Mr GEORGE PARACKEN, JUDICIAL MEMBER

1 The applicants in this OA are aggrieved by Annexure A-1 order rejecting their claim for seniority with effect from the date of regularisation of their casual service in 1978. In all their cases, they were initially appointed as Daily Rated Clerks and subsequently appointed as Lower Division Clerk as shown below:-

	<u>Date of appointment as Daily Rated Clerk</u>	<u>Date of appointment as Lower Division Clerk</u>
1 st Applicant	15.5.1978	13.6.1985
2 nd Applicant	15.5.1978	13.6.1985
3 rd Applicant	10.7.1978	13.6.1985

2 Later on, the respondents vide Annexure A-3 order dated 8.5.2006, declared that the first applicant, Smt A G Geetha was appointed as a Lower Division Clerk w.e.f. 15.5.1978 i.e. from the date of her initial engagement as casual labour. She was also made entitled to all consequential benefits such as 'notional' fixation of pay, eligibility to appear in any test or examination if held for her promotion to the next higher grade, counting of qualifying service for terminal benefits from 15.5.1978 except seniority in the Grade of LDC which will be counted from 13.6.1985 only. Similar orders have been passed in respect of the other applicants also. Thereafter, similarly placed persons have approached this Tribunal by various OAs for granting them seniority from the respective dates of their



appointment as daily rated clerks. OA 49/08 decided on 27.8.2008 and OA 657/07 decided on 16.6.2008 were two such OAs. Subsequently, another group of similarly placed persons approached this Tribunal vide OA 82/08 seeking a declaration that they are also entitled to be regularised as Lower Division Clerks from the respective dates of their appointment as daily rated Clerks with all consequential benefits including seniority, promotion, actual pay fixation and arrears of pay.

The said OA was allowed vide order dated 23.10.2008 and its operative part is as under:-

"7. Arguments were heard and documents perused.

8. In so far as reliance placed on order dated 29-02-2008 in OA No. 675/2007 by the respondents is concerned, the same has to be held as unsustainable as the said order underwent review and the claim of the applicant of Leelamani allowed vide order dated 16th June, 2008 relied upon by the applicant.

9. Admittedly the case of the applicants is identical to those of Shri Reghu Prasad and Leelamani. In the said case the decision is as under: -

"Arguments were heard and the case in RA 12/2008 had also been gone through. The decision in that OA, vide order dated 16th June 2008 (as slightly modified by a subsequent order correcting some errors in respect of certain dates) squarely applies to this case as well. Similarly situated persons are all to be granted regularization from the date of their initial appointment on daily rated basis."

The Apex Court as early as in 1975 in the case of *Amrit Lal Berry v. CCE, (1975) 4 SCC 714*, held 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."

10. The V Central Pay Commission in its recommendation, in regard to extension of benefit of court judgment to similarly situated, held as under: -

"126.5 – Extending judicial decisions in matters of a general nature to all

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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.

In view of the above, the OA is allowed. It is declared that regularization of the applicant's service in the grade of LDC shall be with effect from 01-07-1977 i.e. the date of his initial engagement and he is entitled to consequential seniority. However, as in the other case, he would be entitled to notional fixation of pay without any monetary benefits. On the basis of his revised seniority, if the applicant is entitled to higher promotion, the same be considered and granted from the date his immediate junior was promoted and the seniority in respective posts (UDC and Assistant as the case may be) rescheduled. His entitlement to monetary benefit on account of the advancement of the seniority would be reckoned only prospectively after the review DPC takes place and his promotion date altered. In so far as promotion to the higher grade of Superintendent is concerned, his seniority in the grade of assistant as arrived at now would be considered. As the drill involves review of seniority right from LDC and also review of promotion to the post of UDC and Assistants, sufficient time would be required for the same, as the revised seniority has to be prepared after due notice to the affected parties. Hence, a period of 8 months is granted to implement this order. Again, it is made clear that in case the time granted falls short, respondents may move the Tribunal for further extension, before the expiry of the time allowed, by way of a Misc. Application, reflecting therein the extent of action taken, by narrating chronological sequence of events and justifying the extent of further time sought. Any inordinate delay in initiation of action etc. would not be a justification in seeking further extension of time.

No cost."

11. The case of the applicant is also covered in the above case. In fact, as early as in 1985, referring to such a situation where one set of individuals approached the court and obtained an order, while the other set could not, in Inder Pal Yadav v. Union of India, (1985) 2 SCC 648, the Apex Court has held as under: -



"... those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment, if not by anyone else at the hands of this Court.

Thus, consistently, the law is that when a law point is decided by the Court applicability of the same is not only confined to the parties before the court but also to similarly situated persons.

12. Hence the OA is allowed to the same extent as in the case of Reghu Prasad and Leelamani and respondents are directed to accordingly take suitable action to pass necessary orders. Time limit granted is as in the above case 8 months in addition to the latitude provided to the respondents in the above O.A.

13 No costs."

3 Admittedly, the applicants in this OA are also similarly placed as the applicants in OA 49/08(supra), OA 657/07 (supra) and OA 82/08 (supra).

4 In view of the above position, we allow this OA. The directions given in the aforesaid operative part of OA 82/08 dated 23.10.2008 (supra) shall squarely apply in this case also. In other words, the applicants are entitled to be granted regularisation from the initial date of their engagement as Daily Rated Clerks i.e. with effect from 15.5.1978 in the case of 1st and 2nd applicant and with effect from 10.7.1978 in the case of 3rd applicant on par with similarly situated persons. The other service benefits emanating thereof shall also be granted to applicants within a period of three months from the date of receipt of copy of this order.

There shall be no orders as to costs.


K NOORJEHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

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