

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION NO. 280 OF 2007

Dated the 23rd October, 2008

CORAM:-

**HON'BLE Mr. GEORGE PARACKEN, MEMBER (JUDICIAL)
HON'BLE Dr. K.S.SUGATHAN, MEMBER (ADMINISTRATIVE)**

G. Remanikumari Pillai,
W/o C Padmachandra Babu,
Billing Clerk, NCC Unit Run Canteen,
Thevally Palace, Kollam,
Residing at Thayyil, Behind Kunnummangal Temple,
Maruthady, Kollam.

....Applicant

[By Advocate: Mr TA Rajan]

-Versus-

1. Union of India, represented by the Secretary
Government of India, Ministry of Defence,
New Delhi.
2. The Deputy Director General,
NCC Directorate (K & L),
Thiruvananthapuram.
3. The Chairman,
Unit Run Canteen, Headquarters,
NCC Group Kolam, Thevally Palance, Kollam-9.

...Respondents

[By Advocates: Mrs Jisha for Mr TPM Ibrahim Khan, SCGSC)

This application having been heard on 30th September, 2008 the Tribunal delivered the following -

ORDER


(Hon'ble Dr. KS Sugathan, AM)

The applicant commenced service as a Sales Assistant in the Unit Run Canteen (URC) of the NCC Headquarters Quilon in the year 1986. Subsequently she was promoted to the post of Saleswoman in the year 1989 and Billing clerk in the year 1991. By order dated 14.3.2002 (A/1) she was re-designated and appointed as UDC-cum- Cashier in the pay scale of Rs.4000-6000. The applicant successfully completed her probation and was confirmed as UDC by order dated 29.1.2003 (A/2). By judgment dated 4.1.2001 in Union of India vs. M.Asam and others the Hon'ble Supreme Court held that the employees of the Unit Run Canteen are employees under Government and directed the Ministry of Defence to determine the service conditions of such employees. Pursuant to the directions of the apex Court the Defence Ministry issued the terms and conditions of service of URC employees on 14.9.2001(A/3). The Army Headquarters subsequently issued certain clarifications on 10.12.2001 (A/4). Subsequent to the aforesaid clarification, by order dated 14.3.2002 the applicant was re-designated and appointed as UDC cum cashier in the pay scale of Rs.4000-6000. The applicant was confirmed in the post of UDC by order dated 29.1.2003. However, in August 2003 the pay of the applicant was re-fixed in the previous scale of Rs.3050-4590 by the Chairman of the URC. Aggrieved by the downward revision of her pay scale the applicant filed OA No. 757 of 2003 which was disposed of by this Tribunal on 13.9.2006 by directing the respondents to consider the representation of the applicant and pass a speaking order considering all the relevant rules. Pursuance to the aforesaid directions of the Tribunal the applicant submitted a detailed representation on 4.10.2006 (A/9) which was considered and rejected by the respondents by order 1.11.2006 (A/11). An appeal filed against the order dated 1.11.2006 before the superior authority was also rejected by order dated 21.2.2007 (A/14). The applicant has challenged the order

dated 4.8.2003 refixing her pay in the lower scale (A/5), the order rejecting her representation dated 1.11.2006 (A/11) and the order dated 21.2.2007 rejecting her appeal (Annexure-A/14).

[2] It is contended by the applicant that the order re-designating her as UDC was issued on the basis of the decision taken by the Board of Officers. The said decision has not been reversed by the Board of Officers. The third respondent i.e. The Chairman of the URC has no authority to cancel the decision of the Board of Officers. S/Shri Ravindran Pillai and Shamsudeen who joined the URC after the applicant have been promoted to the pay scale of UDC. It was after considering the pay drawn by the applicant prior to March 2002 that the Board of Officers recommended her appointment in the scale of UDC. She was drawing more than the maximum pay of the Billing clerk at the time of her re-designation. There was no illegality in her re-designation as UDC. As a result of the downward revision the applicant is now drawing lesser pay than her junior. Shri Ravindran Pillai who is junior to the applicant was further promoted as Asst. Manager ignoring the claim of the applicant.

[3] The respondents have filed a reply statement. It is contended in the reply that there was no change in the basic nature and content of the work of the applicant. The Board of officers committed an error in re-designating and appointing the applicant to the pay scale of the UDC. As per the clarification issued by the Army Headquarters at A/4 further classification of the URC employees into A, B and C categories is not permissible. In reply to the grounds at para 5 of the OA the respondents have stated that the URC is run primarily run for the large section of ex-servicemen. Preference is given to ex-servicemen as they retire at comparatively younger age. The applicant was paid in excess of emoluments. Financial propriety demands the excess should be recovered.



We have heard the learned counsel for the applicant Shri T.A.Rajan and the learned counsel for the respondent Ms. Jisha for Shri TPM Ibrahim Khan. We have also carefully studied all the pleadings and documents made available to us.

[4] The issue for consideration is whether the order by which the applicant's pay scale was down-graded suffers any infirmities from the angle of legality, arbitrariness or the principle of non-discrimination. The respondents have tried to justify their decision on the ground that the decision to appoint the applicant in the UDC pay scale was a mistake committed by the Board of Officers. Other grounds cited them such as the ban on further classification of URC employees do not appear to be relevant at all. There is no clear evidence to show that the re-designation was against any specific provision of the terms and conditions of service issued by the Ministry of Defence. The respondents have not spelt out what is the specific nature of the error committed by the Board of Officers in appointing the applicant as UDC i.e. whether it was a clerical error or whether any senior employee has been overlooked. There is also no specific answer to the contention of the applicant that her juniors have been given higher pay scale. In response to the specific contention regarding promotions given to the juniors, the respondents have given the following general reply:

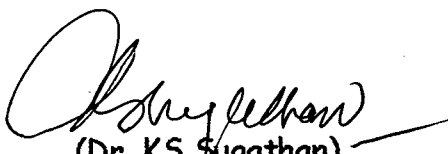
"7. With regard to paragraph 5 and 6 of the Original Application it is submitted that the URC is run primarily for the large section of ex-servicemen. The appointment to various post are preferred for ex-service men candidates as they are aware of the ex-service men problems in a manner so as to assist them in services. More over since these ex-service men retire comparatively at a younger age most find it difficult to get a new job due to lack of requisite qualifications. It is therefore preferred that ex-service men continue to be appointed as Manager/Assistant Manager. As the




applicant was paid in excess of emoluments it is in financial propriety to recover the excess amount."

[5] It is no nobody's case that ex-servicemen deserve special consideration for their re-settlement. But such consideration should be in accordance with a set of rules and procedures. The respondents have not produced any rule to show that in the matter of promotion among URC employees non-ex-servicemen can be superseded by ex-servicemen. There is also no answer to the contention that the decision of the Board of Officers have not been reversed. Viewed from all these angles, we are of the considered opinion that the action of the respondents is illegal, arbitrary and discriminatory.

[6] For the reasons stated above, the OA is allowed. The orders dated 04.8.2003 (Annexure-A/5), 01.11.2006 (Annexure-A/11) and 21.2.2007 (Annexure-A/14) are hereby quashed and set aside. It is declared that the applicant is entitled to be continued in the pay scale of UDC as per the orders dated 14.3.2002 and 29.1.2003 issued by the respondents. The interim order is made absolute. No costs.


(Dr. KS Sugathan)
Member (Administrative)


(George Paracken)
(Member (Judicial))