

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.283/93

Tuesday, this the 28th day of June, 1994.

CORAM:

HON'BLE SHRI JP SHARMA(J)

HON'BLE SHRI S KASIPANDIAN(A)

1. PG Sadanandan,
S/o PN Gopalan, Aged 42 years,
LDC of Central Excise,
Cochin.
 2. PT Chacko,
Aged 40 years, LDC of Central Excise,
Kottayam Division.
 3. CN Mohanan,
S/o late K Narayanan,
Aged 37 years, LDC of Central Excise,
Kottayam Division.
 4. AK Sivaraman,
S/o late AK Kumaran, Aged 41 years,
LDC of Central Excise,
Kottayam Division.
 5. D Devasia,
S/o KJ Devasia, Aged 42 years,
LDC of Central Excise,
Kottayam Division.
 6. A Abdul Majeed,
S/o Abdulla Kunju, Aged 41 years,
LDC of Central Excise,
Trivandrum.
 7. AV Joseph,
S/o AL Varkey, Aged 41 years,
LDC of Central Excise, Head Office,
Cochin-18.
 8. KV Rajan,
S/o Chirukandan,
LDC of Central Excise,
Ernakulam Division, Cochin-18.
 9. TK Dayanandan,
S/o TA Karuppan,
LDC of Central Excise Headquarters,
Cochin-18.
 10. KK Prakasan,
S/o MK Narayanan, Aged 38 years,
LDC of Central Excise,
Central Excise Divisional office,
Kannur.
 11. M Ramachandran,
S/o late V Kuttykrishnan Nair, Aged 38 years,
LDC of Central Excise,
Central Excise Divisional Office,
Kannur-1.
- Applicants

12. TK Raveendranathan,
S/o late M Gopalan Nair, Aged 39 years,
LDC, Special Customs Preventive
Division, Kozhikode. - Applicants

By Advocate Mr MR Rajendran Nair

Vs.

1. Collector of Central Excise & Customs,
Central Revenue Building,
IS Press Road, Kochi-18.
2. KA Lalithakumari, UDC,
Central Excise, Ernakulam II Division,
Tharakandom Centre,
Cochin-18.
3. V Muraleedharan, UDC,
Ernakulam I Division,
Tharakandom Centre, Cochin-18.
4. Sreekumar, LDC, Central Excise HQ Office,
IS Press Road, Cochin-18.
5. PK Pran, LDC -do-
6. Roy Jose, UDC -do-
7. TN Radha, LDC -do-
8. SK Chitra, LDC -do-
9. PO Antony, LDC -do- - Respondents

By Advocate Mr S Krishnamoorthy, ACGSC(for R-10

By R Rajasekharan Pillai(for R-2 to 5)

By Advocate Mrs VP Seemanthini(for R.6 to 9)

O R D E R

JP SHARMA(J)

All these applicants jointly filed this application assailing the similar grievance against the order dated 21.12.1992 placed as Annexure-I whereby applicants who made representations, were informed that their case of regularisation has been dealt with in accordance with the decision and direction given by the judgement of Central Administrative Tribunal, Ernakulam Bench and they have been

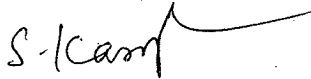
regularised from the date of judgement i.e. 24.1.1992 and such earlier service rendered by them cannot be considered for counting or reckoning their service in the grade of Lower Division Clerk(L.D.C.) The applicant has therefore prayed for the grant of the reliefs that their service be fixed in the category of L.D.C. reckoning their adhoc service and to direct the respondents to grant the appropriate seniority with all consequential benefits.

2. Notices were issued to the respondents who contested the application by filing a reply, taking the shelter granted by the Tribunal in its order annexed by the applicant, which is at Annexure-III to the application. We have also gone through the judgement and heard the learned counsel for the applicants at considerable length. Firstly, we find that the applicants though outnumbered the applicants in OA-952/91 should have filed a contempt petition, if they found that the judgement of the Tribunal has not been fully complied with. It is more so in view of the fact that the respondents, by the impugned order have categorically and clearly conveyed to the applicants that they have implemented the judgement of OA-952/91 and they have been regularised with effect from the date of the judgement i.e. 24.1.1992 and as such their working on temporary/stop gap post earlier to the becoming of the member of the service cannot be counted for counting seniority in the grade of L.D.C. The learned counsel for the applicants at greater length argued that in view of the authority of Rajbir Singh and others Vs. Union of India and others, (1992) 19 ATC,315 which lays down that if adhoc service is followed by regular service, that should be counted as actual service for giving benefit, is totally on a different point. The issue in this case is that all these applicants were initially engaged in Group'D' post in Central Excise. Under the Recruitment Rules, a copy of which has not been placed by either of the parties on record, but revealed during the course of the arguments that 10% of the Group'C' posts are filled from Group'D', 5% Limited Departmental Examination and remaining 5% on

the basis of seniority-cum-fitness. These applicants do not fall in either of the categories. In fact it is on record that the applicants did not take Clerks grade examination for their regularisation in Group 'C' post. The matter has been exhaustively discussed in the decision of the OA-952/91 where five petitioners joined as applicants and the Tribunal gave its judgement and in para-7 whereby it is said in the form of direction to the respondents that the respondents to regularise the applicants with immediate effect as L.D.C. by appropriate relaxation of the Recruitment Rules under Rule 6 thereof without subjecting them to any test or selection. This by itself goes to show that the applicants entered the service purely on such a basis which was dehors the Rules. In the case of Direct Recruitment Class-II Engineering Association Vs. State of Maharashtra and others, (1990) 13 ATC, 348 which has also been referred to in the case of State of West Bengal Vs. AN Dey and others, (1993) 24 ATC, 932 it has been held that where initial appointment is only adhoc and not according to rules, made is stop gap arrangement, the officiation of such post cannot be taken into account for considering the seniority. The Hon'ble Supreme Court in an off shoot in AK Jain's case in MA Haque (Dr) Vs. Union of India and others, (1993) 24 ATC, 117 held that those who are regularised on the direction of the Court cannot be made senior over those who are regularly appointed by a process of selection. In the case of Dr AK Jain, those who have put in more than four years of service and has been working in Railways since 1964 to 1984 were ordered to be regularised but by this process during this interim period many others have been inducted into the service through the normal channel had a complaint that those who have not come according to the Rules have been made senior. The Supreme Court in Dr Haque's case ordered that Dr AK Jain and others were given concession for regularisation and they will be placed at the bottom and those who have come according to Rules will be placed above them. The same view has been held in SK Saha Vs. Prem Prakash Agarwal and others (1994) 26 ATC, 607 where service rendered prior to regular appointment did not count for seniority. In the case of the applicant,

we are afraid that even the order of regularisation has been made by relaxation of the provisions of the Rules and yet they aspire to beat down those who have come according to the rules and wants to steal a march over them. In fact had there been no relaxation of Rules, they would have to serve in the Group'D' post. After serving for a decade and after taking a humanitarian view, the Tribunal in its earlier judgement referred to above ordered their regularisation in relaxation of the Rules. They should be satisfied with that. They should have no grudge against those who come according to the Rules in the open merit. In view of the above facts and circumstances, we find no merit in this application and the same is dismissed. Parties will bear their costs.

Dated, this the 28th day of June, 1994.



(S KASIPANDIAN)
MEMBER(A)



(JP SHARMA)
MEMBER(J)

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