

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 30 of 2012

Today, this Wednesday the 11th day of March 2015

CORAM: HON'BLE MR. NARESH GUPTA, MEMBER (A)
HON'BLE MR. U.SARATHCHANDRAN, MEMBER (J)

T. Sukumaran, aged 47 years S/o late Ramunnikutty Nair, LDC (Adhoc),
Central Administrative Tribunal, Ernakulam Bench

..... **Applicant**

[By Advocate: Mr. P. Nandakumar)

Vs.

1. Union of India, represented by Secretary to Government, Department of Personnel & Training, South Block, New Delhi-1
2. The Principal Registrar, Central Administrative Tribunal, Principal Bench, 61/35, Copernicus Marg, New Delhi.1
3. The Registrar, Central Administrative Tribunal, Ernakulam Bench, Indira Nagar, Sastha Temple Road, Kaloore, Kochi-682017
4. Sri T. Karunakaran, Dafttry, Central Administrative Tribunal, Ernakulam Bench, Indira Nagar, Sastha Temple Road, Kaloore, Kochi-682017
5. Sri P.V. Ajayan, Jamadar, Central Administrative Tribunal, Ernakulam Bench, Indira Nagar, Sastha Temple Road, Kaloore, Kochi-682017

.....**Respondents**

[By Advocate: Mr. Sunil Jacob Jose, SCGSC for R 1 to 3 & Mr. OV.
Radhakrishnan (Sr) for R 4-5]

ORDER

Per: Naresh Gupta, M(A):

This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

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(i) to call for the records leading to Annexure A13 and A17 and quash the same to the extent it places Respondent Nos. 4 and 5 above the Applicant;

(ii) to direct Respondents 1 to 3 to regularly promote the Applicant to the post of Lower Division Clerk in accordance with the seniority in Annexure A/5 eligibility list;

(iii) to declare that the Applicant is entitled to be regularly promoted as Lower Division Clerk towards the vacancies which existed from 2008 onwards in preference to Respondents 4 and 5; and

(iv) to issue such other orders or directions as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

2. The case of the Applicant is that he has been working as Lower Division Clerk (LDC, in short) adhoc in the Ernakulam Bench of Central Administrative Tribunal (CAT). He commenced his service as Peon in the same office on 24.10.1989 and was promoted as Jamadar w.e.f. 24.10.1997 on adhoc basis and later regularly promoted w.e.f. 13.11.1998. A copy of the Seniority List of Group D employees of Ernakulam Bench of CAT as on 01.01.1988 has been marked as Annexure A/1. Thereafter the Applicant was promoted as LDC on ad hoc basis as per Office Order dated 19.05.2005 issued by the 2nd Respondent (Annexure A/3). While so an Office Order dated 31.08.2005 was issued by the 2nd Respondent promoting Sl. No. 8 in Seniority List (Annexure A/1) one P.K. Shaji, Daftry as LDC on adhoc basis for a period of three months w.e.f. from the date of his taking charge of the post or till the post was filled up on regular basis, whichever was earlier. The ad hoc promotion of the Applicant was not extended and he was reverted to the post of Jamadar as per OO dated 06.09.2005. The ad hoc promotion of PK Shaji as LDC was extended for a further period from 01.12.2005 to 31.12.2005 as per OO of the 2nd Respondent dated 22.02.2006 and he was also exempted from passing typing test. This OO was challenged by the Applicant in OA No. 278/2006 contending that on the date of occurrence of vacancy PK Shaji was not qualified whereas the Applicant was, and therefore, he was entitled for exemption. This Tribunal while allowing the OA on 07.03.2008 directed the case of the Applicant to be considered for ad hoc promotion to the post of LDC till such time the vacancy was filled up on regular basis (Annexure A/4). However, even after a lapse of 4 months since the direction in the order in Annexure A/4 was not complied with and that

two of his juniors in the seniority list (Annexure A/1), K.K. Rajendran and C.P. Kunhikuttan were promoted as LDCs, the Applicant filed MA No 572/2008 seeking to implement the Annexure A/4 order. The official Respondents filed a reply stating that the centralized eligibility list in the cadre of Group D had been prepared to facilitate the promotion of Group D employees to the post of LDC wherein the name of the Applicant figured at Sl. No. 49 in the eligibility list and that employees up to Sl. No. 47 had been promoted on the basis of availability of vacancies (Annexure A/5). In the meantime the 2nd Respondent issued order dated 14.11.2008 (Annexure A/6) promoting the Applicant as LDC on ad hoc basis for a period of one year along with Sl. No. 48, K. Ramakrishnan and Sl. No. 50, PR Rajesh in the eligibility list. PK Shaji whose adhoc appointment was challenged by the Applicant in OA No. 278/2006 was placed below the Applicant at Sl. No. 51 in the eligibility list. Consequently the said MA was closed recording the order of promotion (Annexure A/7). The ad hoc promotion of the Applicant was extended for a further period of one year as per OO dated 29.10.2009. However, the Applicant was not given any regular promotion in the cadre of LDC.

3. The Applicant has submitted that the 3rd Respondent issued a Notification dated 03.12.2009 stating that the departmental qualifying examination would be conducted at Principal Bench on 30.12.2009 for filling up the post of LDC on regular basis. Thereafter an order was issued on 14.12.2009 regularly promoting Sl. No. 45 T.P. Anilkumar and Sl. No. 50 PK Shaji. The Applicant immediately submitted a representation dated 30.12.2009 to the 2nd Respondent informing that he had passed the qualifying test and requesting to promote him on regular basis (Annexure A/8). However, the 2nd Respondent rejected his request vide memorandum dated 13.01.2010 (Annexure A/9).

4. The Applicant has contended that despite his working in regular vacancy of LDC on ad hoc basis continuously from 14.11.2008 he was not given regular promotion. His term of ad hoc promotion was extended for another year as per office order dated 13.10.2010 (Annexure A/10), thereafter he was reverted to his substantive post of Jamadar w.e.f. 20.01.2011 as per office order dated 15.11.2011 and reappointed as LDC on ad hoc basis w.e.f. 22.11.2011 for another period of six months. The Applicant has submitted that the 2nd Respondent issued a letter dated

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04.08.2011 circulating the draft eligibility list of Group D officials as on 01.01.2011 calling for objections (Annexure A/13) by which the eligibility list produced before the Tribunal with Annexure A/5 was given a go by and persons who had qualified subsequently were placed above the Applicant. The Applicant filed his objections on 19.08.2011 (Annexure A/14) and also filed a representation dated 11.11.2011 requesting to promote him as LDC on regular basis (Annexure A/15) to which he got a reply stating that the process of regularization in the grade of LDC would commence on the basis of final centralized eligibility list of Group D officials in CAT (Annexure A/16). The final eligibility list has subsequently been published by the 2nd Respondent on 22.11.2011 (Annexure A/17) without considering any of the objections raised by the Applicant and placing Respondents 4 & 5 above him. As there were only 2 regular vacancies and one ad hoc vacancy of LDC in Ernakulam Bench of CAT, the Applicant's claim for regular promotion would get superseded by the promotion of Respondents 4 & 5 who were qualified only in 2010 though the Applicant who was qualified was continuing in a regular vacancy from 2008.

5. In their reply, the official Respondents (Nos. 1-3) have submitted that the Applicant along with 33 other Group D officials were appointed as LDC on adhoc basis for a period of one year or till the vacancies are filled up on regular basis against vacancies which as per the Recruitment Rules (RRs in short) were required to be filled up by direct recruitment (DR, in short). According to the notified orders, 90% of vacancies in grade of LDC are required to be filled up by direct recruitment, 5% of the vacancies from among Group D staff who possess Matriculation or equivalent and have rendered 5 years service in Group D, on the basis of a departmental qualifying examination and the remaining 5% of vacancies on seniority cum fitness from Group D employees who possess Matriculation or equivalent qualification and proficiency in Typewriting. The Hon'ble Chairman as a special case, in relaxation of the RRs, had ordered filling up of some vacancies of DR quota on regular basis from the eligible Group D officials by holding a departmental examination. The departmental qualifying examination for filling up vacant posts of LDCs was held on 12.01.2010 in different Benches of the Tribunal wherein the Applicant along with seven other eligible officials also participated in the Examination, but he could not qualify in the Examination and 40 employees who qualified were appointed as LDC on regular basis w.e.f 11.03.2010, vide Office Order dated

15.03.2010. Some of the Group D officials who were holding the post of LDC on adhoc basis for 4-5 years were promoted on regular basis in the grade of LDC vide Office Order dated 14.12.2009 ensuring reservation rules etc.

6. The officials Respondents have submitted that in the case of the Applicant who was promoted as LDC on adhoc basis w.e.f 21.11.2008, the period of adhoc appointment was extended from time to time up to 3 years with the approval of the Hon'ble Chairman against vacancies meant to be filled up by direct recruits and as the extension of adhoc term beyond three years was not within the powers of the Hon'ble Chairman, the Applicant was reverted to his substantive post and then appointed afresh as LDC on adhoc basis vide office order dated 23.11.2011.

7. The Respondents have further submitted that as the eligibility list in respect of Group D officials (upgraded now as Group C) was prepared as on 01.01.2011, the name of all officials who had acquired eligibility on that date were included in the said List. The final eligibility list who fulfill the criteria for the post of LDC in the CAT was circulated on 22.07.2011 after considering the representations received, wherein the 4th & 5th (private) Respondents were given their due position on the basis of the length of service in Group D. They were not included earlier in the Annexure A/5 seniority List as they have not fulfilled the eligibility criteria at that time. The name of the Applicant who was not a regular LDC as on 01.01.2011 has been included in Annexure A/9 assigning his due position on the basis of the length of his service in Group D. The final eligibility list was prepared and issued vide office letter dated 22.12.2011 after considering the objections to the draft eligibility list and incorporating the necessary corrections/modifications. The Applicant along with 36 other regular Group D employees were promoted as LDC on regular basis w.e.f. 01.03.2012. The Applicant was regularized and posted at Ernakulam Bench itself vide order dated 02.03.2012 (Annexure R/I). He has been promoted along with Respondents Nos. 4 & 5 w.e.f. 01.03.2012. In view of his promotion as LDC on regular basis and posting at Ernakulam Bench the reliefs sought by the Applicant has become inconsequential, and therefore, the OA has to be dismissed as infructuous.

8. In his reply statement, Respondent No.4, while making the same submissions as in the reply of the official Respondents, has stated that he entered service as Peon on 15.02.1988 in the Ernakulam Bench of the Tribunal and was promoted as Daftry on regular basis as per order dated

21.08.1991[Annexure R-4(a)]. He passed standard 10 equivalency examination in August 2010 and was recommended for inclusion in the panel for appointment against a regular vacancy of LDC by the DPC and the panel was approved by the Hon'ble Chairman and accordingly order dated 02.03.2012 was issued appointing along with 35 others. It was not correct to aver that the promotions were ordered against the vacancies of 2008. There was no vacancy for effecting promotion to the post of LDC and the Hon'ble Chairman ordered to fill up certain vacancies on DR quota on regular basis in relaxation of RRs as a special case by holding a Departmental Qualifying Examination in which the Applicant also participated but could not qualify. 40 employees who qualified in the examination were appointed as LDC on regular basis w.e.f. 11.03.2010 vide order dated 15.03.2010. Further promotion was effected vide [Annexure R-4(b)] against vacancies falling under promotion quota in which the Respondent No. 4 was promoted as LDC against the vacancy that arose subsequent to August, 2010.

9. In his rejoinder, the Applicant has submitted that that there were only 2 regular vacancies and 1 ad hoc vacancy of LDC in Ernakulam Bench of CAT and as the Applicant was continuing in the post from 21.11.2008, Respondent Nos. 4 and 5 who became qualified only in 2010 cannot supersede the Applicant. It is settled law that a vacancy has to be filled up by a candidate who was qualified as on the date of occurrence of vacancy. Respondents Nos. 4 & 5 were eligible to be considered for appointment as LDC only on 01.01.2011. Although the Applicant has been promoted as LDC on regular basis w.e.f. 01.03.2012 as per Annexure R/1 order dated 02.03.2012, Respondent No. 4 has been placed at Sl. No. 19 and the 5th Respondent at Sl. No. 24 whereas the Applicant has been placed only at Sl. No. 25, which has affected his seniority position and further promotional prospects. Further, the 4th Respondent has admitted that he passed Standard X equivalency examination only in August 2010 and therefore, he could be considered only for a vacancy occurring subsequent to August 2010, whereas the Applicant has been continuing in the post of L D Clerk since 2008.

10. In his additional reply statement, Respondent No. 4 has submitted that he was qualified as and when the vacancy arose in the cadre of LDC against promotee quota and accordingly he was promoted to the cadre of LDC in preference to the Applicant as he was senior to the Applicant in the combined seniority list of Group D employees of Ernakulam Bench published as per

Memorandum dated 16.04.2008 marked as Annexure R-4©, wherein the 4th Respondent is shown at serial No. 3 and the Applicant at serial No. 6. Annexure A/5 eligibility list was prepared for adhoc appointment only and not for regular appointment. The adhoc appointment outside the quota would not entitle the Applicant to claim seniority in the cadre of LDC. The 4th Respondent was qualified for appointment as LDC in August 2010 itself. The Applicant was not entitled to seniority over and above the 4th Respondent as he was junior to the 4th Respondent in the feeder category and the promotion is effected against 5% vacancies based on running seniority in accordance with the Recruitment Rules. Admittedly the Applicant was junior to the 4th Respondent in the feeder category of Group D.

11. Heard the learned counsel for the Applicant and Respondents on 05.02.2015. It is seen that the Applicant along with other Group D officials was appointed on promotion as LDC on temporary and adhoc basis for a specified period or till the vacancies are filled up on regular basis as per Office Order dated 04.03.2005 subject to their passing the Typing Test. It was specified that the appointment would not bestow on them any right to regular appointment and that the period of service rendered on ad hoc basis would not count for the purpose of seniority/ confirmation or eligibility for promotion/ appointment to the next higher grade. The ad hoc promotion of the Applicant was not extended and he was reverted to the post of Jamadar as per OO dated 06.09.2005. Meanwhile when one PK Shaji was given ad hoc promotion as LDC which was extended for a further period from 01.12.2005 to 31.12.2005 as per OO dated 22.02.2006, the OO was challenged by the Applicant in OA No. 278/2006 contending that on the date of occurrence of vacancy PK Shaji was not qualified whereas the Applicant was, and therefore, he was entitled for exemption. This Tribunal while allowing the OA on 07.03.2008 directed the case of the Applicant to be considered for ad hoc promotion to the post of LDC till such time the vacancy was filled up on regular basis. Accordingly the Applicant again served on ad hoc basis as LDC vide order issued on 14.11.2008 whereby he was promoted as LDC (on ad hoc basis) for a period on 1 year along with some others. The ad hoc promotion of the Applicant was extended for a further period of one year as per OO dated 29.10.2009. However, the Applicant was not given any regular promotion in the cadre of LDC.

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12. However, the aforesaid appointment of the Applicant which was along with 33 other Group D officials, as LDC on adhoc basis is said to be against vacancies which as per the Recruitment Rules (RRs in short) were required to be filled up by DR. According to the notified orders, 90% of vacancies in grade of LDC are required to be filled up by direct recruitment, 5% from among Group D staff who possess Matriculation or equivalent and have rendered 5 years service in Group D, on the basis of a departmental qualifying examination and the remaining 5% on seniority cum fitness from Group D employees who possess Matriculation or equivalent qualification and proficiency in Typewriting. The Hon'ble Chairman as a special case, in relaxation of the RRs, had ordered filling up of some vacancies of DR quota on regular basis from the eligible Group D officials by holding a departmental examination. In the departmental qualifying examination held for filling up vacant posts of LDCs on 12.01.2010 in different Benches of the Tribunal, the Applicant along with seven other eligible officials participated in the Examination but failed to qualify 40 employees who qualified were appointed as LDC on regular basis w.e.f 11.03.2010, vide Office Order dated 15.03.2010.

13. It may be seen that the appointment/ promotion of the Applicant as LDC was just fortuitous. It was in DR vacancies and he cannot, therefore, claim any benefit by virtue of such officiation on ad hoc basis when the order placing him as LDC clearly specified that appointment would not bestow any right to regular appointment and that the period of service rendered on ad hoc basis would not count for the purpose of seniority/ confirmation or eligibility for promotion/ appointment to the next higher grade.

14. It may be worthwhile to refer here to the judgment in the case of *Direct Recruit Class II Engineering Officers' Association... vs State Of Maharashtra and Ors*¹, wherein the Hon'ble Supreme Court held on 2 May, 1990 as follows:

13. When the cases were taken up for hearing before us, it was faintly suggested that the principle laid down in *Patwardhan's* case was unsound and fit to be over-ruled, but no attempt was made to substantiate the plea. We were taken through the judgment by the learned counsel for the parties more than once and we are in complete agreement with the

¹ Equivalent citations: 1990 AIR 1607, 1990 SCR (2) 900

ratio decidendi, that the period of continuous officiation by a government servant, after his appointment by following the rules applicable for substantive appointments, has to be taken into account for determining his seniority, and seniority cannot be determined on the sole test of confirmation, for, as was pointed out, confirmation is one of the inglorious uncertainties of government service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies. The principle for deciding inter se seniority has to conform to the principles of equality spelt out by Articles 14 and 16. If an appointment is made by way of stop-gap arrangement, without considering the claims of all the eligible available persons and without following the rules of appointment, the experience on such appointment cannot be equated with the experience of a regular appointee, because of the qualitative difference in the appointment. To equate the two would be to treat two unequals as equal which would violate the equality clause. But if the appointment is made after considering the claims of all eligible candidates and the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules made for regular substantive appointments, there is no reason to exclude the officiating service for purpose of seniority. Same will be the position if the initial appointment itself is made in accordance with the rules applicable to substantive appointments as in the present case. To hold otherwise will be discriminatory and arbitrary. This principle has been followed in innumerable cases and has been further elaborated by this Court in several judgments including those in *Baleshwar Dass v. State of U.P. and Others*, [1981] 1 SCR 449, and *Delhi Water Supply and Sewage Disposal Committee and others v. R.K. Kashyap and others*, [1989] Supp. 1 SCC 194, with which we are in agreement. In *Narender Chadha and others v. Union of India and others*, [1986] 1 SCR 211, the officers were promoted although without following the procedure prescribed under the rules, but they continuously worked for long periods of nearly 15-20 years on the posts without being reverted. The period of their continuous officiation was directed to be counted for seniority as it was held that any other view would be arbitrary and violative of Articles 14 and 16. There is considerable force in this view also. We, therefore, confirm the principle of counting towards seniority the period of continuous officiation following an appointment made in accordance with the rules prescribed for regular substantive appointments in the service.

...

44. To sum up, we hold that:

(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule

is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.

(C) When appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources, and if rules are framed in this regard they must ordinarily be followed strictly.

(D) If it becomes impossible to adhere to the existing quota rule, it should be substituted by an appropriate rule to meet the needs of the situation. In case, however, the quota rule is not followed continuously for a number of years because it was impossible to do so the inference is irresistible that the quota rule had broken down.

(E) Where the quota rule has broken down and the appointments are made from one source in excess of the quota, but are made after following the procedure prescribed by the rules for the appointment, the appointees should not be pushed down below the appointees from the other source inducted in the service at a later date.

(F) Where the rules permit the authorities to relax the provisions relating to the quota, ordinarily a presumption should be raised that there was such relaxation when there is a deviation from the quota rule.

(G) The quota for recruitment from the different sources may be prescribed by executive instructions, if the rules are silent on the subject.

(H) If the quota rule is prescribed by an executive instruction, and is not followed continuously for a number of years, the inference is that the executive instruction has ceased to remain operative.

(I) The posts held by the permanent Deputy Engineers as well as the officiating Deputy Engineers under the State of Maharashtra belonged to the single cadre of Deputy Engineers.

(J) The decision dealing with important questions concerning a particular service given after careful consideration should be respected rather than scrutinised for finding out any possible error. It is not in the interest of Service to unsettle a settled position.

15. The above decision was in the context of fixation of seniority of those who were officiating in the higher post for considerable period of time prior to their regular appointment in those posts, vis-à-vis those appointed by direct recruitment. The view taken by the Hon'ble Supreme Court was that the


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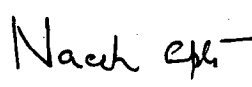
period of officiation ought not, for the purpose of fixation of seniority, be disregarded if the employee concerned was eligible for, and the officiation was continuous till, regular appointment. In the instant case, the Applicant was appointed/ promoted as LDC on ad hoc basis in a vacancy meant to be filled up by direct recruitment and, therefore, cannot have the benefit of service put in on ad hoc basis for the purpose of seniority etc. ^{when} ~~Also~~ he did not serve on a continuous basis till this Tribunal vide order dated 07.03.2008 gave a direction in the OA filed by the Applicant that the Applicant be considered for ad hoc promotion to the post of LDC till such time the vacancy was filled up on regular basis. The Applicant had failed to qualify in the departmental qualifying examination held for filling up vacant posts of LDCs on 12.01.2010 in different Benches of the Tribunal in which the Applicant along with seven other eligible officials participated. 40 employees who qualified were appointed as LDC on regular basis w.e.f 11.03.2010, vide Office Order dated 15.03.2010. Subsequently, the Applicant along with 36 other regular Group D employees have been promoted as LDC on regular basis w.e.f. 01.03.2012 and the Applicant was accommodated in Ernakulam Bench itself vide order dated 02.03.2012 (Annexure R/I). He was promoted along with Respondent Nos. 4 & 5 w.e.f. 01.03.2012. Thus his grievance has substantially been redressed after the filing of the instant OA. To this extent at least the OA has become infructuous.

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16. The Applicant has failed to establish his case for grant of the other reliefs sought by him, that is refixation of seniority vis-à-vis Respondent Nos. 4 & 5 and promotion on regular basis as LDC in vacancies existing in 2008 and other related benefits.

17. The OA is disposed of accordingly with the above observations.


[U. Sarathchandran, M(J)]


[Naresh Gupta, M(A)]