

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.293/2007
Tuesday, June 19, 2007

**CORAM :HON'BLE MR.GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE DR.K.S.SUGATHAN, ADMINISTRATIVE MEMBER**

R.Reghuvaran Pillai,
Upper Division Clerk,
O/o. The Assistant Garrison Engineer(Independent),
(R&D), Kochi – 21. ... Applicant

By Advocate Mr.R.Sreeraj

V/s.

- 1 Union of India represented by
its Secretary to Government of India,
Ministry of Defence, New Delhi.
- 2 The Engineer-in-Chief,
Military Engineer Services,
Army Head Quarters, Kashmir House,
New Delhi.
- 3 The Chief Engineer,
Military Engineer Services,
Head Quarters, Southern Command,
Pune.
- 4 The Assistant Garrison Engineer(Independent),
(R&D), Kochi-21. ... Respondents

By Advocate Mr.S.Abhilash ACGSC

The application having been heard on 19.6.2007 the Tribunal on the same day, delivered the following:

(ORDER)

Hon'ble Mr.George Paracken, Judicial Member

This case was listed first on 3/5/2007. On the request of counsel for applicant, it was adjourned to 31/5/2007. On 31/5/2007, neither

the applicant nor his counsel was present. There was again a request for adjournment by the proxy counsel for the Applicant's counsel. Accordingly the case was adjourned for today. None is present for the applicant today also. It is presumed that the applicant is not interested in pursuing with the original application.

OA is therefore dismissed for non prosecution.



(DR.K.S.SUGATHAN)
ADMINISTRATIVE MEMBER



(GEORGE PARACKEN)
JUDICIAL MEMBER

abp

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION NO.293/2007

DATED, THE 12th DAY OF DECEMBER, 2008.

CORAM:

Hon'ble Dr.K.B.S.RAJAN, JUDICIAL MEMBER

Hon'ble Dr.K.S.SUGATHAN, ADMINISTRATIVE MEMBER

R.Raghavar Pillai,
Upper Division Clerk,
O/o.The Assistant Garrison Engineer(Independent),
(R&D) Kochi-21
residing at Muthiramprambil House,
Vennala PO, Kochi-28.

... Applicant

By Advocate Mr. R.Sreeraj

V/s

1 Union of India represented by its
Secretary to Government of India,
Ministry of Defence, New Delhi.

2 The Engineer-in-Chief,
Military Engineer Services,
Army Headquarters, Kashmir House,
New Delhi.

3 The Chief Engineer,
Military Engineer Services, Head Quarters,
Southern Command, Pune.

4 The Assistant Garrison Engineer(Independent),
(R&D) Kochi-21.

... Respondents

By Advocate Mr. S.Abhilash, ACGSC

The application having been heard on 03.12.2008,
the Tribunal on 12.12.2008 delivered the following:



ORDER
HON'BLE Dr. K.B.S.RAJAN, JUDICIAL MEMBER

The case of the applicant is as hereinafter narrated. The applicant commenced his services as Lower Division Clerk on 23rd July 1983. One Shri K. Philip commenced his services in that capacity on 01-04-1985. Thus, the latter is junior to the former. Provision exists for becoming Upper Division Clerk by qualifying in a Departmental Examination under the 25% quota subject to certain age limit. The last such exam was held in 1973. Subsequently, for reasons best known to the applicant, all the vacancies were filled up only on the basis of seniority, ignoring the statutory mandate. However, in 2001, respondents invited applications for appearing in the Departmental examination and the applicant was one of the aspirants for the same. His application was, however, not considered as by that time, he had crossed the age limit prescribed. The applicant, however, got his promotion as UDC on the basis of seniority in 2004. Later on, the applicant came to know that the aforesaid Shri K. Phillip was allowed to participate in the departmental examination (he being within age limit) and on his qualifying in the same he was promoted as Upper Division Clerk in 2002. Thus, the junior was promoted prior to the applicant. The claim of the applicant is that his seniority in the grade of UDC should be advanced to that of his junior.

[Handwritten signature]

2 Respondents have contested the OA. According to them, the departmental examination under the 25% quota had been kept in abeyance under the orders dated 2nd March, 1968 of the Ministry of Defence, as stated in Army Headquarters letter vide order dated 31st August, 2001, at Annexure R-2. However, as it was opined that a statutory provision couldn't be superseded by an administrative instruction, departmental examination was again introduced from 2001. Since the applicant had become by that time over aged, he could not be accommodated in the examination.

3 Counsel for the applicant submitted that non adherence by the Department to the statutory mandate has resulted in the applicant's losing a valuable right of participating in the departmental examination. To right this wrong, the respondent should be directed to advance the seniority of the applicant.

4 Counsel for the respondents submitted that it was not only the applicant but also a number of other similarly situated individuals that would have been aggrieved. If every one should be given the seniority, it would result in undue benefit of seniority to such persons even without writing the examination, above those who were promoted on seniority basis.

b/a

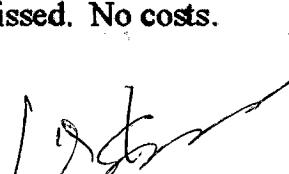
5 Arguments were heard and documents perused. True, deviating from the statutory provisions, by virtue of departmental instructions, the examination could not be held since 1973 to 2000 i.e. for 18 years. Thereafter in 2001 the examination was conducted. In this examination, none of those, who had become over-aged (and who would have lost their opportunity of taking up the examination due to non conducting of the examination in the past) had been permitted. Thus, among the similarly situated individuals, the applicant has not been discriminated.

6 Had the applicant been aggrieved in the statutory provision not being followed during the years from 1983 to 2000, he should have taken up the matter with the authorities at that time. He having not questioned the same at the appropriate time, he cannot be permitted to agitate against the same at this distance of time.

7 The OA lacks merit and hence, is dismissed. No costs.



Dr. K.S.SUGATHAN
ADMINISTRATIVE MEMBER



Dr.K.B.S.RAJAN
JUDICIAL MEMBER