

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NOs. 297/2008, 299/2008 and 300/2008

Tuesday, this the 9th day of December, 2008.

CORAM:

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

1. OA 297/2008 :

Smt.V.Anitha
Upper Division Clerk
Passport Office, Trivandrum
Residing at "Rohini" (Kunnil),
Kizhakumbagam, Kazhakoottam
Trivandrum

... Applicant

(By Advocate Mr.Shafik M.A.)

Versus

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 Passport Office
Passport Officer,
Trivandrum

... Respondents

(By Advocate Mr.M.V.S.Nampoothiry)

2. OA 299/08 :

Smt. Indu S Nair
Upper Division Clerk
Passport Office, Trivandrum
Residing at House No.30 (Resmi)
TC 28/530, Kaithamukku
Trivandrum

... Applicant

(By Advocate Mr.Shafik M.A.)

versus

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 Passport Office
Passport Officer
Trivandrum ... Respondents

(By Advocate Mr.Sunil Jose, ACGSC)

3. OA 300/08 :

P.Sudhabai
Upper Division Clerk
Passport Office, Trivandrum
Residing at 'Chittezhath House'
Kadakkavur, Trivandrum ... Applicant

(By Advocate Mr.Shafik M.A)

versus

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 Passport Office
Passport Officer, Trivandrum ... Respondents

(By Advocate Mr.M.M.Saidu Muhammed, ACGSC)

The applications having been heard on 19.11.2008, the Tribunal on 09.12.2008 delivered the following:

ORDER

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

As the issue involved in the above three O.As is one and the same, this common order is passed in respect of the said O.As. For reference purpose, OA No. 300 of 2008 has been considered.

2. Briefly, the facts of the case are as under: -

(a) All the applicants are presently working as Upper Division Clerks in the office of the third Respondents. Earlier, they were first engaged on daily wages as L.D.Cs and later on, regularized in the said post. The details are as under: -

O.A.No.	Name	Daily rated from	Regularized w.e.f.
297/08	Smt. V. Anitha	03-08-92	26-12-94
299/08	Smt. Indu. S. Nair	02-09-83	17-06-85
300/08	Smt. P. Sudhabai	19-03-82	12-06-85

(b) Upto 1989, there were no regular appointments by the Ministry or through Staff Selection Commission. Till end 1989, the Passport Offices were engaging casual labourers only on daily wages, recruited through Employment Exchanges and on need basis. As and when regular vacancies were created by the Ministries, on their qualifying in the examination, these daily rated LDCs were regularized from the date of result of the examination.

(c) During 1989 to 92, in view of adequate work load, the Passport Offices at Cochin had engaged 215 casual labourers in different spells and out of them, 49 casual labourers of Passport Office Cochin and Kozhikode filed various Original applications before this Tribunal praying for their services to be regularized as LDCs from the date of their initial engagement as casual labourer by conducting a simple Departmental Examination, similar to one conducted earlier by

the department in 1985 to regularize 299 casual labourers. These were regularized w.e.f. 01-06-1995 as per orders in various O.As filed in 1991. The rest filed O.As in 1992 and 1993, praying for an identical relief. As per the judgment dated 06-09-1993, in OA Nos. 795/93, 922/93, 52/93 and 781/93, this Tribunal directed that those casual labourers having one-year continuous service are eligible to be considered for regularization of their service through exam/test duly conducted by the competent authority, viz SSC or any other agencies in accordance with the decision of the Respondents.

(d) The exams were conducted and those who qualified were all regularized but from the date of declaration of their results. This led to filing of OA No. 1558/97 for reckoning their date of appointment w.e.f. the date of initial engagement. The Tribunal has allowed the same and directed the respondents to reckon the date of regularization of all such officials with effect from the date of initial engagement with all consequential benefits other than seniority, like eligibility to participate in promotion tests and for fixation of pay, terminal benefits etc, vide Annexure A-2 order dated 14-07-2003. Rest of the similarly situated officials have also approached this Hon'ble Tribunal in OA No. 463/2005 and as per order dated 13th June 2005, the same benefits of the applicants in A-2 order were allowed.

(e) Respondents revised the dates of appointment of the applicants in the above O.As w.e.f. the date of their initial entry on daily wages basis. The applicants in A-2 order again approached this Tribunal in OA No. 523/2004 when they were denied the benefit of ACP

reckoning from the period of initial entry on daily rated wages basis. This Tribunal was pleased to allow the same also, and has directed that for the purpose of ACP, the services of the applicants should be reckoned from the date of initial entry and allowed back wages from the date of initial entry also. The Government had challenged the decision of this Tribunal before the Hon'ble High Court in W.P© No. 8271/2007 but the High Court dismissed the same. As a matter of fact, the applicants herein have also been issued with an order, regularizing their dates of appointment w.e.f. the date of entry on casual basis vide Annexure A-3 order dated 21st July 2006. What has not been granted on the basis of initial date of engagement was actual pay and seniority. The applicants claimed actual pay instead of notional pay as others, including juniors to the applicants were not only regularized in the grade of LDCs w.e.f. their initial date of engagement on daily rated basis, but also had been paid pay on actual basis and arrears worked out and paid. Annexure A-6 refers. (Similar representations have been filed by the other two applicants also.) By the impugned Annexure A-1 order in all the three O.As, the respondents have turned down the request referring to the decision by the Apex Court in the case of Uma Devi vs State of Karnataka and others. The applicants have come up against the rejection of their claim for parity with other similarly situated. Hence this O.A.

3. Respondents have contested the O.A. While the factual aspects have not been denied by them, their main ground for rejecting the claim of the applicants is brought out in paragraphs 9 to 11 of their reply and the same is reproduced as under:-

9. The respondents had considered to implement the order of the CAT in OA No.1557/1998 and O.A 436/2005 in respect of applicants as well as other similarly placed persons and underway of processing the same but in the meantime the Hon'ble supreme Court's judgment dated 10.04.2006 in *Uma Devi vs. State of Karnataka* was pronounced wherein Apex Court has clearly ruled that casual workers cannot claim any benefit as applicable for regular employees. In para 38 of the judgment the Hon'ble Supreme Court has stated that "*Those who are working on daily wages formed a class themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on par with a regularly recruited candidate.*" In Para 40, the Apex Court has stated that "*considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of relevant rules or in adherence of Article 14 and 16 of the Constitution.*" In Para 46, the Apex Court has stated that "*We find that the High Court had clearly gone wrong in directing that these employees be paid salary equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively engaged or appointed.*" The Apex Court has specifically stated in para 45 of it's judgment that "*those decisions which run counter to the principle settled in this decision or in which directions running counter to what we have held herein, will stand denuded of their status as precedents... by virtue of Article 141 of the Constitution, what it lays down is the law of the land and it's decisions are binding on all Courts.*" Honouring the Apex Court's judgment, it was decided by the Ministry to withhold the implementation of the CAT's order in all pending cases.

10. The respondents were in the process of implementation of the order of Hon'ble CAT in OAs 1557/98 and 436/05 to extend the benefits in respect of applicants and other similarly placed but after the judgment dated 10th April, 2006 of the Supreme Court, the respondents abandoned it in the interest of Law of the Land. The Apex Court has specifically stated in para 45 of it's judgment that "*those decisions which run counter to the principle settled on this decision or In which directions running counter to what we*

have held herein, will stand denuded of their status as precedents... by virtue of Article 141 of the Constitution, what it lays down is the law of the land and its decisions are binding on all Courts."

11. This case is very similar to the case of Uma Devi and may be seen in the light of the judgment dated 10th April, 2006 of the Apex Court. In para 38 of the said judgment, the Apex Court has stated that "when a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection, as recognized by the relevant rules or procedure, he is aware of the consequences of appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked a positive relief of being made permanent ion the post."

4. Counsel for the applicant submitted that admittedly all the other similarly situated LDCs were granted the pay and allowances as well as regularization right from the date of their initial engagement on daily rated basis and the respondents had decided that identical treatment be given to the applicants also, whereas, subsequently, they had changed their mind and thus denied the benefit of regularization from the date of initial entry on daily rated basis w.e.f. the dates mentioned in para 1 above with consequential benefits of re-fixation of pay and arrears of such re-fixation. The reason given is that the Apex Court has in Umadevi has held that regularization is not permissible. Counsel for the applicants further argued that the decision in Umadevi

is not applicable to the case of the applicants on more than one ground.

The Apex Court has in 'Umadevi' deprecated the practice of back door entry into service, whereas in the case of the applicants, all have come through proper selection duly sponsored by the employment exchange.

Again, decision in Umadevi is not applicable when the question involved is one of equality amongst equals. Again, it is not the case of the applicants that others have been unduly benefited and regularization in the case of others is illegal and hence, the same need not be perpetuated. In the case of others, such regularization from the date of initial engagement, re-fixation of pay from that date, payment of arrears arising out of such re-fixation are all legal. The Apex Court has

in the case of U.P. SEB v. Pooran Chandra Pandey, (2007) 11 SCC

92 has held that where regularization has been sought for in pursuance of Article 14 of the Constitution, decision in Umadevi would not apply.

Counsel for the applicant has submitted that in other similarly situated cases (OA No. 49/2008, OA No. 657/2008 read with RA No. 12/2008, and in a latest decision in OA No. 82/2008, this Tribunal has considered the very same issue and allowed the O.As and orders as in those O.As may be passed in these O.As as well as the same would render equal justice to all the similarly situated.

5. Counsel for the respondents has submitted that the decision of the respondents is purely on the basis of the judgment in the case of Umadevi.

6. Arguments were heard and documents perused. Service records produced by the respondents have also been gone through.

Admittedly, others similarly situated have all been granted regularization from the date of their initial engagement as daily rated LDCs and the consequential benefit including seniority granted. Fixation of pay, however, was on notional basis. The question is whether the same treatment should be extended to the applicants in these O.As

7. Respondents have candidly stated vide para 9, "The respondents had considered to implement order of the CAT in O.A. No. 1557/1998 and O.A. No. 436/2005 in respect of applicants as well as other similarly placed persons and underway of processing the same" and thereafter, went to say, "but in the meantime, the Hon'ble Supreme Court's judgment dated 10-04-2006 in Umadevi vs State of Karnataka was pronounced wherein the Apex Court has clearly ruled that casual workers cannot claim any benefit as applicable for regular employees." Thus, if the decision of Umadevi is applicable in the case of the applicants, then decision taken by the respondents cannot be interfered with. However, if the decision in Umadevi is not applicable, then the applicants' case should be allowed.

8. Counsel for the applicant is right when he argued that decision in Umadevi is not applicable as the case of the applicants in these O.As is one of equality amongst similarly situated. The decision cited by the applicant as mentioned above supports the case of the applicants. The Apex Court in para 11 of the said judgment in **Pooran Chandra Pandey** has held as under: -

11. Learned counsel for the appellant has relied upon the decision of this Court in Secy., State of Karnataka v.

Umadevi and has urged that no direction for regularisation can be given by the Court. In our opinion, the decision in Umadevi case is clearly distinguishable. The said decision cannot be applied to a case where regularisation has been sought for in pursuance of Article 14 of the Constitution.

9. Once the respondents have admitted the fact that the applicants are similarly situated as others in whose case, the regularization had been granted from the date of their initial entry on daily rated basis and consequential benefits thereof also made available, the logical corollary is that the same treatment should be extended to the applicants. And, as stated earlier, that was the real intention of the respondents, which was changed when judgment in Umadevi came to be delivered.

10. 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.

11. 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 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."

12. In view of the above, all the OAs are allowed to the extent as specified hereinafter. It is declared that the applicants are entitled to the very same benefits as available to those similarly situated persons, vide O.A Nos. 82/2008 etc., referred to above. Thus, regularization of the applicants' service in the grade of LDC shall be with effect from 03-08-1992, 02-09-1983 and 19-03-1982 (respectively of applicants in OA 297/08, 299/08 and 300/08) i.e. the date of their initial engagement on daily rated basis and they are entitled to consequential seniority. However, as in the other case, they would be entitled to notional fixation of pay without any monetary benefits. They are entitled to grant of A.C.P. reckoning the period of regular service from the aforesaid dates. Again, on the basis of his revised seniority, if the applicants are entitled to higher promotion, the same be considered and granted from the date their immediate junior was promoted and the seniority in respective posts (UDC and Assistant as the case may be) rescheduled.

Their entitlement to monetary benefit on account of the advancement such promotion on the basis of revision of seniority would be reckoned only prospectively after the review DPC takes place and promotion dates altered. In so far as promotion to the higher grade of Superintendent is concerned, their 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. The above order is passed keeping in view the equality clause in the Constitution and also Rule 24 of CAT (Procedure) Rules, 1987.

13. No cost.

Dated, the 9th December, 2008.

Dr. K.S.SUGATHAN
ADMINISTRATIVE MEMBER

Dr.K.B.S.RAJAN
JUDICIAL MEMBER

VS