

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION NOs. 338 of 2013
&
895 of 2013

this the 12th day of October, 2015

CORAM

Hon'ble Mr. Justice N.K.Balakrishnan, Judicial Member
Hon'ble Mrs. P.Gopinath, Administrative Member

OA 338/2013:

1. N.Sukumaran, aged 75 years, S/o late Neelakantan, Upper Division Clerk (Retd), Garrison Engineer, Redfields, Coimbatore-18 residing at Koduvathara House, PO.Vilakkuvettom, Via. Punaloor, Kollam-691305.
2. G.Kunjukrishnan Nair, aged 75 years, S/o late Gopala Pillai, Upper Division Clerk (Retd), Chief Engineer (Navy), Naval Base PO, Kochi.4 residing at Krishna Vilasam, Karavaloor PO, Punaloor, Kollam-691333.

...Applicants

O.A.895/2013:

N.B. Pillai, S/o late Narayana Pillai, aged 69 years, Administrative Officer II (Retired), Chief Engineer, Pune Zone, Pune, residing at Prasantham, Melila PO, Kunnicode, Kollam-691508.

..Applicant

(By Advocate Mr. R.Sreeraj)

Versus

1. Union of India, represented by its Secretary, Government of India, Ministry of Defence, New Delhi.11.
2. The Engineer-in-Chief, Military Engineer Services,\ Army Headquarters, DHQ PO, New Delhi-110 011.
3. The Chief Engineer, Military Engineer Services, Southern Naval Command, Pune-411 001.

...Respondents in OA 338/2013 & OA 895/2013

(By Advocate Mr. N.Anil Kumar, Sr. Panel Central Govt. Counsel)

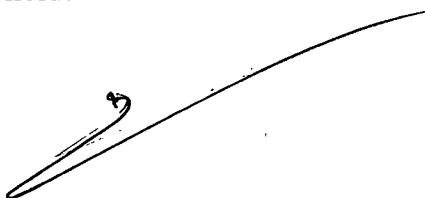
This application having been finally heard on 05.10.2015, the Tribunal on10..2015 delivered the following:

ORDER

Per: Justice N.K.Balakrishnan, Judicial Member

The two applicants in OA 338/13 and the sole applicant in OA 895/2013 have filed these applications seeking a direction to the respondents to consider the applicants for promotion as Assistants with effect from 1.1.1996 and to grant them such promotion with all consequential benefits like fixation of pay with special pay of Rs. 140/-, consequential revision of pension, payment of arrears etc.

2. The applicants rely upon the final orders passed by the Madras Bench of this Tribunal in OA 27/1999 which became final in the year 2009 and also the order passed by this Tribunal in OA 731/2005 which also has become final. The applicants also rely upon the order passed by this Tribunal in OA 726/2011 and O.A 991/2011. The decision of the Madras Bench of the Tribunal in OA 27/99 was upheld by the High Court of Madras as per judgment in WP No. 18889/99. The SLP No. 6499/2004 filed against the same was dismissed. The order passed in OA 27/1999 was implemented by the respondents. Since the first respondent was not inclined to follow the decision in OA 27/99 confirmed by the superior courts, when similar claims were made by others, OA 731/2005 was filed by one Vasavan. Following the earlier order passed in OA 27/99 of Madras Bench of CAT, the applicant in OA 731/2005 was also granted similar relief vide order dated 29.6.2007. It was held:



"13. In view of the above, OA is allowed to the extent that the respondents are directed to confer the benefits of letter dtd 13.8.2003 (Annexure.A9) which was passed in pursuance of the decision of the Madras Bench in OA 27/1999 (Annexure.A.7) to the applicant. However, this shall be made subject to the final outcome of SLP supra and an undertaking to the effect that in case the judgment is set aside by the Apex Court the applicant shall refund the entire amount received by him, should also be obtained."

3. The respondents reiterated the contention taken earlier in other matters which were decided against them. According to them it was only a mistake of fact and so the other applicants are not entitled to get the benefit. It is also contended that several seniors will be neglected and juniors will be promoted to the upgraded posts, which may lead to filing of court cases, by superseded seniors. It may lead to unsettle the settled position with swelling of upgraded posts above the recommended 10% of the total strength of the existing UDCs in all the Ministries/Departments of Central Government and it will ultimately put to undue loss to the exchequer of the government. It was further contended that the CAT Madras Bench had erred in directing the respondents to give effect to the promotion w.e.f. 1.1.1996.

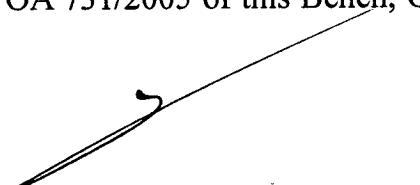
4. The point for consideration is whether the applicants are entitled to the benefit as ordered in OA 731/2005 and the earlier applications filed by other similarly placed officers?

4. We have gone through the pleadings and documents and also heard the submission of the learned counsel for both parties. It is not disputed that the earlier litigations is exactly identical to the claim made in these Original Applications. Since similarly placed officers were granted the benefit as per Annexure. A1 order and other earlier orders, the applicants cannot be denied

similar benefits. The respondents were directed to upgrade the applicants to the level of Assistants w.e.f. 1.1.1996 without convening a fresh Departmental Promotion Committee. That was the order passed by the Madras Bench in OA 27/1999. Similarly in OA 731/2005 also order was passed on the same lines. The principal Bench of this Tribunal in OA 1120/2004 also passed similar orders granting the reliefs as stated above. Besides, a common order was passed by this Tribunal in OA 726/2011 and OA 9912011. The operative portion of the order reads thus:

“6. The respondents are directed to antedate the promotion of the applicants as Assistants to 01.01.1996 with all consequential benefits, like fixation of pay with special pay of Rs. 140/- consequential antedating of promotion as Office Superintendent and promotion as Administrative Officer Grade II, as the case may be, to revise the pay and allowances and pension and to pay arrears etc. to them by extending the final orders of the Tribunal in OA Nos. 731/2005 and 27/1999. But the payment of arrears will be limited to 3 years prior to filing of the respective O.As. The amount of gratuity will not be revised. Appropriate orders in this regard should be issued and payment made within a period of 3 months from the date of receipt of a copy of this order.”

5. It is not disputed that though the matters were taken before the High Court and later before the Supreme Court all those Petitions filed by the respondents were dismissed. It is also not disputed that some of the orders have already been implemented by the respondents. Hence it is not necessary for us to delve deep into the facts of the case. In view of the fact that similarly placed officers were granted the relief as per the orders passed by this Tribunal in the earlier matters, we direct the respondents to pre-pone the promotion of the applicants as Assistants to 1.1.1996 with all consequential benefits like fixation of pay etc., as ordered in OA 731/2005 of this Bench, OA 29/1999 of Madras Bench

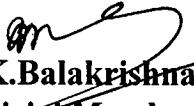


and OA 726/2011 and OA 991/2011 of this Bench. But it is made clear that the payment of arrears would be limited to 3 (three) years prior to the filing of the respective O.As and that the amount of gratuity will not be revised. The respondents will pass orders with regard to the same and effect payment within three months from the date of receipt of a copy of this order.

6. Both these O.As are allowed accordingly. No order as to costs.


(P.Gopinath)
Administrative Member

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(N.K.Balakrishnan)
~~Judicial Member~~