

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

Original Application No. 355 of 2011

Tuesday, this the 12<sup>th</sup> day of June, 2012

**CORAM:**

**HON'BLE MR. JUSTICE P.R. RAMAN, JUDICIAL MEMBER  
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

1. P. Radhamma, aged 45, W/o. R. Reghu,  
Lower Division Clerk, O/o. The CE (NW), Kochi,  
Residing at Chandrabhavan, Nedungadappally PO,  
Kottayam-686 545.
2. Raji Jayan, aged 36, W/o. C.G. Jayan,  
Lower Division Clerk, O/o. The CE (NW), Kochi,  
Residing at Chembakasseril House, Kochukadavanthra,  
Kadavanthra, Post-682 020.
3. V.P. Sarithakumari, aged 41 years, W/o. V.G. Surendran,  
Lower Division Clerk, O/o. The CE (NW), Kochi,  
Residing at Gokulam, H. No. 19/179-A, Palluruthy P.O.,  
Kochi-682 006.
4. Manju Liju, aged 39 years, W/o. Liju Thomas, Lower  
Division Clerk, O/o. The GE (NW), South Kochi,  
Residing at "Thomas Villa", Kottarkavu, Mavelikkara  
Post, Mavelikkara-690 101.
5. N.G. Sudheer, aged 37 years, S/o. Late P.C. Gopalan,  
Lower Division Clerk, O/o. The CE (NW), Kochi,  
Residing at Nedumparambil House, Kaloor, Kochi-17.
6. K. Adarsh Praveen, aged 38 years, Lower Division Clerk,  
O/o. The CWE (NW), Kochi, Residing at Harisree House,  
TC 48/136 (2), Government UPS Lane, Ambalathara,  
Poonthura Post, Thiruvananthapuram-695 026. .... Applicants

[By Advocate Mr. R. Sreeraj]

Versus

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



4. The Chief Engineer (NW),  
 Military Engineer Services,  
 Naval Base, Katari Bagh,  
 Kochi-682 004. ... Respondents

[By Advocate Mr. Sunil Jacob Jose, SCGSC]

The application having been heard on 05.06.12, this Tribunal on 12-06-12 delivered the following :

**O R D E R**

**Hon'ble Mr. K. George Joseph, Administrative Member -**

Applicants in this O.A are Lower Division Clerks (LDC) in the Military Engineering Service who were promoted from Group-D in the 10% merit quota on the basis of a Limited Departmental Competitive Examination (LDCE). As the LDCE was not held in time, they are falling short of the required 5 years of regular service as LDC to be eligible to appear in the examination for promotion to Upper Division Clerk (UDC) conducted on 11<sup>th</sup> and 12<sup>th</sup> July, 2011. Hence they filed this O.A for the following reliefs:

I) To declare that the denial of notional promotion to the applicants as Lower Division Clerks with effect from the date of occurrence of the vacancies against which they were promoted, contrary to the earlier assurances in the matter is illegal, arbitrary, irrational, unjust and unreasonable and that the same violates Articles 14, 16 and 21 of the Constitution of India.

II) To quash Annexure A-11 as also Annexure A-4 to the extent the applicants are denied their due seniority.

III) To direct the respondents to treat the applicants as having been notionally promoted to the cadre of Lower Division Clerk with effect from the date of occurrence of the vacancies against which they were ultimately promoted and to grant them all consequential benefits including seniority, pay fixation, eligibility to appear for the Limited Department Competitive Examination for promotion as UDC scheduled to be held in July 2011 etc.

IV) Such other relief as may be prayed for and this Tribunal may deem fit to grant.

V) Grant the cost of this Original Application."



2. The applicants contended that the refusal on the part of the respondents to grant them notional promotion as LDC with effect from the respective dates of occurrence of vacancies against which they have ultimately been appointed is illegal and arbitrary. They were denied timely promotion as LDC due to reasons solely attributable to the respondents. Since 2003-04, the respondents had not filled up even a single vacancy of LDC from among the Group-D till the year 2010. At the same time, they were filling up the vacancies set apart for other categories. Had the right thing been done at the right time, the 1<sup>st</sup> and the 2<sup>nd</sup> applicants would have been promoted in 2004-05, the 3<sup>rd</sup> and 4<sup>th</sup> applicants would have been promoted in 2005-06 and the 5<sup>th</sup> and 6<sup>th</sup> applicants would have been promoted in 2006-07 itself with all consequential benefits. It is not the case of the respondents that they were not able to make timely promotion to the cadre of LDC due to non availability of eligible Group-D candidates. All the applicants except the 5<sup>th</sup> applicant had passed the typing test and are eligible to appear in the LDCE for promotion to the post of UDC.

3. The respondents in their reply statement submitted that passing of the departmental qualifying examination was mandatory for promotion against 10% quota. The benefit of promotion will accrue from the date of assumption of higher post and discharge of higher duties. The assigning of back dated seniority in respect of the applicants is not justified as they have acquired the mandatory qualification of passing the departmental qualifying examination during 2009 only.

4. We have heard Mr. R. Sreeraj, learned counsel for the applicants and Mr. Sunil Jacob Jose, SCGSC, learned counsel for the respondents and perused the records.



5. The undisputed fact is that no vacancy of LDC was filled up from the eligible Group-D candidates during the period 2004-05 to 2009-10. There were vacancies and eligible candidates. The delay in holding the LDCE cannot be attributed to any lapse on the part of the applicants. The responsibility for the delay lies only with the respondents. In *Bhoop Singh vs. Matadin Bharadwaj*, 1991 (2) SCC 128 and *Nirmal Chandra Bhattacharjee and Others vs. Union of India and Others*, 1991 Supp. (2) 363, Hon'ble Supreme Court has held that the mistake or the delay on the part of the department should not be permitted to recoil on the appellants in those cases. The Apex Court in **State of Maharashtra Vs. Jaganath Adiyut Karanadiker** reported in 1989 SCC (L&S) 417 held that "it would be unjust, unreasonable and arbitrary to penalise a person for the default of the Government to hold the examination every year." In AIR 1977 SC 1868, the Hon'ble Supreme Court held as under :-

6. *The appellant has a future and hopefully looks forward for promotion. It is, in our view, right and reasonable that for purposes of promotion, seniority will be reckoned from 20<sup>th</sup> December, 1967 but for qualifying period, if there is such a condition for promotion, his notional service from 1<sup>st</sup> January, 1959 will be considered. Of course, we need hardly say that this order will not affect adversely the seniority of those who have been appointed as traffic inspectors prior to 20<sup>th</sup> December, 1967. In the situation arising in the case, the respondent will pay the costs of the appellant in this Court. The appeal is allowed on the above lines.*

(emphasis supplied)"

6. The seniority in a cadre is to be counted from the date of joining the cadre. Higher pay is to be paid only on discharging higher duties. Promotion is not a matter of right but consideration of promotion is a right of an employee. We do not find it reasonable to grant seniority and back wages for the delayed promotion to the applicants. In view of the settled position of law as referred to above and in the facts and circumstances of the case, we are of

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the considered view that ends of justice would be met if the applicants are treated as having been notionally promoted to the post of LDC with effect from the date of occurrence of the vacancies against which they were ultimately promoted for the purpose of eligibility to appear in the LDCE for promotion as UDC held on 11<sup>th</sup> & 12<sup>th</sup> July, 2011 and thereafter, if they are otherwise eligible. The 1<sup>st</sup> applicant in this O.A has attained the age of 45 only in 2011. If examination was held in November, 2010, as was originally scheduled, she would have been an eligible candidate. The respondents cancelled the said examination and the next examination was held only in July, 2011. As the 1<sup>st</sup> applicant is in no way responsible for non-holding of the examination in November, 2010, she is not liable to be penalised for the administrative lapse. We hold that she is eligible to appear in the LDCE in July, 2011. Accordingly, it is ordered as under.

7. The O.A is allowed partly. The respondents are directed to treat the applicants as having been notionally promoted to the cadre of LDC with effect from the date of occurrence of vacancies against which they have ultimately been promoted for granting them the benefit of eligibility to appear in the LDCE for promotion as UDC held in July, 2011 and thereafter, if they are otherwise eligible. If the applicants have passed the LDCE, they should be promoted in their turn. No costs.

(Dated, the 12<sup>th</sup> June, 2012)

  
K. GEORGE JOSEPH  
ADMINISTRATIVE MEMBER

  
JUSTICE PR RAMAN  
JUDICIAL MEMBER