

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**ERNAKULAM BENCH**

**Original Application No. 353 of 2012**

**Original Application No. 388 of 2012**

**Original Application No. 389 of 2012**

**Original Application No. 678 of 2012**

Monday, this the 28<sup>th</sup> day of January, 2013

**CORAM:**

**Hon'ble Mr. Justice P.R. Raman, Judicial Member**

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

1. **Original Application No. 353 of 2012 -**

1. Shobhana V., W/o. Santhosh Kumar T.A., aged 44 years, Assistant, Passport Office, Kozhikode, residing at C32, Passport Office Quarters, Eranjipalam, Kozhikode-673 006.

2. Reena P., W/o. Venugopalan P., aged 44 years, Assistant, Passport Office, Kozhikode, residing at Kollambath House, Panniyankara, Kallai, Kozhikode-673 003.

3. Sreelatha K., W/o. Krishnadas, aged 45 years, Assistant, Passport Office, Kozhikode, residing at Elayedath House, Vengeri PO, Kozhikode-673 010.

4. Mini P., W/o. Sivadasan K., aged 44 years, Assistant, Passport Office, Kozhikode, residing at Kunnam House, Post Beypore, Kozhikode District, Pin 673 015.

5. Vijayan K., S/o. K. Raghavan Nair, aged 47 years, Assistant, Passport Office, Kozhikode, residing at Kandiyoth House, Nanminda Post, Kozhikode 673 613.

6. Geethamani T.P., W/o. Krishnanunni, aged 48 years, Assistant, Passport Office, Kozhikode, residing at Vignesh, Pilassery, Edakkadu Post, Kozhikode 673 005.

7. Venugopal E.M., S/o. E.M. Narayanan Nair, aged 42 years, Assistant, Passport Office, Kozhikode, residing at Edavanameethal House, Nut Street Post, Vadakara, Kozhikode-673 104.

..... **Applicants**

**(By Advocate – Mr. M.R. Hariraj)**

**V e r s u s**

1. Union of India, represented by Secretary, Ministry of External Affairs, New Delhi – 110 001.
2. Joint Secretary (CPV) and Chief Passport Officer, Ministry of External Affairs, New Delhi – 110 001.
3. The Regional Passport Officer, Regional Passport Office, Kozhikode – 695 024.
4. G. Appavoo, Assistant, Regional Passport Office, First Floor, Water Tank Building, West Buliward Road, Tiruchirappalli, Tamil Nadu – 620 008.
5. K.I. Ayyappankutty, Assistant, Regional Passport Office, Kochi Kerala, Pin-682 036.
6. T. Thenmozhi, Assistant, Passport Office, Shastri Bhavan, 26, Haddows Road, Chennai, Tamil Nadu – 600 006.
7. R. Radhika, Assistant, Passport Office, SNSM Building, Karalkada Jn., Kaithamukku, Trivandrum-695 024.
8. G. Velumani, Assistant, Passport Office, Shastri Bhavan, 26, Haddows Road, Chennai, Tamil Nadu – 600 006.
9. Beenakumar S., Assistant, Passport Office, SNSM Building, Karalkada Jn., Kaithamukku, Trivandrum-695 024.
10. J. Chandrasekaran, Assistant, Passport Office, Shastri Bhavan, 26, Haddows Road, Chennai, Tamil Nadu-600 006.
11. V. Thulasi, Assistant, Regional Passport Office, First Floor, Water Tank Building, West Buliward Road, Tiruchirappalli, Tamil Nadu – 620 008.
12. M. Latha Maheswari, Assistant, Regional Passport Office, First Floor, Water Tank Building, West Buliward Road, Tiruchirappalli, Tamil Nadu – 620 008.
13. G. Kayalvzhi, Assistant, Regional Passport Office, First Floor, Water Tank Building, West Buliward Road, Tiruchirappalli, Tamil Nadu – 620 008.
14. S. Vijayarani, Assistant, Regional Passport Office, First Floor, Water Tank Building, West Buliward Road, Tiruchirappalli,

Tamil Nadu-620 008.

..... **Respondents**

[By Advocates – **Mr. Sunil Jacob Jose, SCGSC (R1-3)**  
**Mr. R. Sreeraj (R5)**]

2. **Original Application No. 388 of 2012 -**

1. K.C. Bindu, Assistant, Regional Passport Office, Kochi.
2. Sheeba Reghu, Assistant, Regional Passport Office, Kochi.
3. Sobhana Varghese, Assistant, Regional Passport Office, Kochi.
4. Omana Pradeep, Assistant, Regional Passport Office, Kochi.
5. K.R. Sheeba, Assistant, Regional Passport Office, Kochi.
6. Rema Babu, Assistant,  
 Regional Passport Office, Kochi.

..... **Applicants**

(By Advocate – **Mr. P. Ramakrishnan**)

**V e r s u s**

1. Union of India, represented by Secretary, Ministry of External Affairs, New Delhi – 110 001.
2. Joint Secretary (C.P.V) and Chief Passport Officer, Ministry of External Affairs, New Delhi – 110 001.
3. The Regional Passport Officer, Panampilly Nagar,  
 Regional Passport Office, Kochi – 682 020.
4. Reena K.R., Upper Division Clerk, Regional Passport Office,  
 Panampilly Nagar, Kochi-682 020.
5. Ponnu K.M., Upper Division Clerk, Regional Passport Office,  
 Panampilly Nagar, Kochi-682 020.
6. Kalakumari C., Upper Division Clerk, Regional SNSM Buildings,  
 Kaithamukku, Thiruvananthapuram.
7. G. Appavoo, Upper Division Clerk, Passport Office, Municipal  
 Water Tank Building, WB Road, Tiruchirappalli,  
 Tamil Nadu – 620 008.
8. K.I. Ayyappankutty, Upper Division Clerk, Regional Passport Office,  
 Panampilly Nagar, Kochi, Pin-682 020.

9. T. Thenmozhi, Upper Division Clerk, Regional Passport Office, Royala Towers, IVth Floor, Anna Salai, Chennai-600 002.
10. Radhika R., Upper Division Clerk, Regional Passport Office, SNSM Buildings, Kaithamukku, Thiruvananthapuram.
11. G. Velumani, Upper Division Clerk, Regional Passport Office, Royala Towers, IVth Floor, Anna Salai, Chennai – 600 006.
12. Beenakumar S., Upper Division Clerk, Regional Passport Office, SNSM Buildings, Kaithamukku, Thiruvananthapuram.
13. J. Chandrasekaran, Upper Division Clerk, Regional Passport Office, Royala Towers, IVth Floor, Anna Salai, Chennai - 600 002.
14. V. Thulasi, Upper Division Clerk, Passport, Municipal Water Tank Building, WB Road, Tiruchirappalli, Tamil Nadu – 620 008.
15. M. Latha Maheswari, Upper Division Clerk, Passport Office, Municipal Water Tank Building, WB Road, Tiruchirappalli, Tamil Nadu – 620 008.
16. G. Kayalvzhi, Upper Division Clerk, Passport Office, Municipal Water Tank Building, WB Road, Tiruchirappalli, Tamil Nadu – 620 008.
17. S. Vijayarani, Upper Division Clerk, Passport Office, Municipal Water Tank Building, WB Road, Tiruchirappalli, Tamil Nadu – 620 008. .... **Respondents**

[By Advocates – **Mr. George Joseph, ACGSC & Mr. T.C.G. Swamy (R4-5)**]

**3. Original Application No. 389 of 2012 -**

K. Muraleedharan Pillai, Assistant, Regional Passport Office, Cochin-682 036. .... **Applicant**

(By Advocate – **Mr. N. Nagaresh**)

**V e r s u s**

1. Under Secretary (PVA), Govt. of India, Ministry of External Affairs, CPV Division, New Delhi – 110 001.

2. Deputy Secretary (PVA), Govt. of India,  
Ministry of External Affairs, CPV Cadre Cell,  
New Delhi – 110 001.
3. Regional Passport Officer,  
Regional Passport Office, Cochin-682 036.
4. Reena K.R., aged 47 years, W/o. C.S. Anilan,  
Upper Division Clerk, Regional Passport Office,  
Panampilly Nagar, Kochi-36, Residing at :  
Chakkanad House, ABHAYAM, Kesari Road,  
North Paravur, Ernakulam, District-683 513.
5. Ponnu K.M., aged 52 years, W/o. Sadanandan M.K.,  
Upper Division Clerk, Regional Passport Office,  
Panampilly Nagar, Kochi-36, Residing at : Passport Office  
Staff Quarters No. 2/3, Perumanoor PO, Kochi-682 015.
6. The Deputy Passport Officer (Cadre),  
Ministry of External Affairs, Govt. of India,  
New Delhi-110 001. .... **Respondents**

[By Advocates – **Mr. Sunil Jacob Jose, SCGSC &**  
**Mr. T.C.G. Swamy (R4-5)]**

**4. Original Application No. 678 of 2012 -**

Sindhu K.S., Assistant, Passport Office,  
Thiruvananthapuram, Pin-695 024. .... **Applicant**

**(By Advocate – Mr. P. Santhosh Kumar)**

**V e r s u s**

1. The Union of India represented by the Secretary,  
Ministry of External Affairs, New Delhi – 110 001.
2. The Joint Secretary (CPV) & Chief Passport Officer,  
Ministry of External Affairs, New Delhi- 110 001.
3. The Regional Passport Officer, Regional Passport Office,  
SNSM Building, Karalkada Junction, Kaithamukku,  
Thiruvananthapuram-695 024. .... **Respondents**

**(By Advocate – Mr. Sunil Jacob Jose, SCGSC)**

These applications having been heard on 11.01.2013 the Tribunal on

28/01/2013 delivered the following:

## ORDER

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

Having common facts and issues these OAs were heard together and are disposed of by this common order.

#### OA No. 353 of 2012 -

2. The applicants commenced service as daily rated clerks. Their daily rated service is to be counted for all purposes except seniority. They were promoted as Upper Division Clerks (UDCs) prior to 26.9.2008. A UDC with 16 years service as LDC and UDC can aspire for promotion as Assistants. 25% of the vacancies in the cadre of Assistant are to be filled up by Limited Departmental Competitive Examination (LDCE) based on merit. 75% is to be filled up based on seniority in the cadre of UDCs. LDCE for 113 vacancies was notified on 17.9.2008. If the daily rated service was reckoned as qualifying service the applicants were fully qualified to be promoted as Assistants but it was not done. In the common final order dated 1.4.2009 in connected cases this Tribunal held that the applicants were entitled to be considered for promotion as Assistants and to appear in the LDCE and directed that a supplementary examination be conducted for those eligible candidates who were not permitted to appear in the examination. The applicants were promoted as Assistants with effect from 12.12.2008 based on the rank list of 112 candidates from among those who appeared in the 1<sup>st</sup> examination. Subsequently there was a revision of seniority of UDCs in compliance with Court orders, resulting in assignment of higher seniority to 35 individuals vide order dated 26.11.2009. Based on the revised seniority,

promotion to the post of Assistants under the 75% seniority quota was effected as per order dated 22.1.2010. Supplementary examination as directed by this Tribunal was held on 21.3.2010. The results were published integrating the rank list of two examinations. The applicants did not figure under the 1<sup>st</sup> 112. They filed OA No. 43 of 2011. This Tribunal directed that those who are ineligible for appearing in the 1<sup>st</sup> examination and those who are given promotions in the seniority quota be removed from the rank list and fresh list be published as per order dated 8.4.2011. The applicants 6 & 7 do not figure in the revised rank list. All other applicants figure in the new rank list dated 1.7.2011 at Annexure A7. Applicants 6 & 7 challenged the said rank list in OA No. 639 of 2011 and as per interim orders of this Tribunal they continued to work as Assistants under the respondents. OA No. 639 of 2011 was disposed of directing that objection against Annexure A7 revised rank list dated 1.7.2011 may be made to the 2<sup>nd</sup> respondent and that he shall after hearing the affected parties take a decision in the matter. Detailed representations were made by applicants 6 & 7 against Annexure A7 revised rank list. However, no response was given to the representations and without any notice or prior intimation a fresh combined select list of officials of Grade-VI (UDC) based on LDCE of 2008 and 2010 is published vide letter dated 2.5.2012 (Annexure A11). None of the applicants herein are included in it. Persons at serial nos. 14 and 88 have already been held ineligible to be included in the rank list by this Tribunal. So also persons at serial nos. 98 and 99 are not qualified to be included in the rank list. Persons from rank nos. 96 to 104 are all persons below the applicants in the rank. They are included on the ground that they are reserved category candidates. There is no reservation

notified in Annexure A1 and at this distance of time a new condition cannot be included in Annexure A1 and without making such notification making reservation is not permissible. It is stated that the said order is issued based on the order in OA No. 43 of 2011. In an order dated 2.5.2012 publishing a revised select list the respondents directed that reversion will take effect from 1.5.2012. After filing this OA the respondents have issued a corrigendum superseding Annexure A11 dated 12.7.2012. However the names of the applicants are not included in the select list for promotion to the post of Assistant. Hence, this OA.

**OA No. 388 of 2012 -**

The applicants herein appeared in the LDCE held on 23.11.2008 and were declared as qualified. On the basis of their inclusion in the rank list they were promoted as Assistants on 12.12.2008 and are now continued in the said capacity but their names do not figure in the combined rank list. They had filed OA No. 68 of 2011 challenging the inclusion of ineligible candidates and also to include their names in the combined rank list. Pursuant to the direction of this Tribunal dated 8.4.2011 in the said OA a revised combined rank list have been published on 1.7.2011. Applicants Nos. 4-6 were included in the above mentioned rank list. However, applicants 1 to 3 were omitted. Hence, they filed OA No. 613 of 2011 which was disposed of directing the applicants to file objections against the rank list and the 2<sup>nd</sup> respondent therein was directed to hear the affected parties and take a decision in the matter. Accordingly, they have submitted detailed representations. Till date no orders have been communicated to the

applicants as regards their representation. In the corrected combined select list dated 12.7.2012 the names of the applicants are excluded. Candidates from serial Nos. 92 to 104 in Annexure A9 are all persons who are below the applicants in ranking and they appear to have been included in the list only on the ground that they belong to the reserved category. 8 vacancies are not filled up. Apprehending that on the basis of the combined select list dated 12.7.2012 the applicants would be reverted from their post, they have filed this Original Application.

**OA No. 389 of 2012 -**

The applicant herein who was a daily rated clerk was regularized in service as LDC on 23.7.1990 for all purposes except seniority. He was found eligible to appear in the LDCE for promotion to the post of Assistant as per circular dated 17.9.2008. On the strength of an order from this Tribunal he appeared in the LDCE held on 23.11.2008. On the basis of the LDCE held he was promoted as Assistants along with 111 others as per order dated 28.8.2009 but his name did not figure in the combined rank list dated 31.12.2010. Aggrieved he had filed OA No. 86 of 2011 which was allowed quashing the combined rank list dated 31.12.2010 and directing the respondents to revise the rank list. In the combined rank list of LDCE carried on 23.11.2008 and 21.3.2010 he stood at serial No. 138 based on marks obtained by him in the LDCE examination. In the combined revised select list on 1.7.2011 the applicant is ranking at serial No. 99. However, in the fresh revised combined select list of 2.5.2012 his name is not included. It has been directed that the Assistants like the applicant who could not be included in the select list of

2.5.2012 are reverted to the grade of UDC with effect from 1.5.2012. In the corrected combined seniority list of 12.7.2012 also the name of the applicant does not figure. Aggrieved he has filed this OA.

**OA No. 678 of 2012 -**

On the basis of result of LDCE for the post of Assistant conducted on 23.11.2008 and 21.3.2010 the applicant herein was promoted as Assistant notionally with effect from 12.12.2008 vide order dated 22.5.2012. Her name is included in the combined select list of Assistants dated 2.5.2012. But in the corrected combined select list of Assistant dated 12.7.2012 her name does not figure. Apprehending that she will be reverted to the post of UDC she has filed this OA.

3. The applicants submitted that the impugned orders are without notice to them. Thus there is violation of principles of natural justice. The respondents have applied reservation to the 25% quota for limited departmental examination which is illegal. There is no rule or instruction providing for such reservation. The notifications for the LDCE never contemplated any kind of reservation for appointment to 25% quota. The application of reservation which is not provided for in the notification is illegal and unfair. It is prejudicial to the rights of other SC & ST candidates who have not been notified of the existence of reserved category vacancies and who could not appear for the examination. Even if reservation is applied to 112 posts the respondents have applied it far in excess of the prescribed percentage. The number of posts reserved for SC as per the roster when

filling 112 vacancies are only 16. But the respondents have given appointment to 19 SC candidates.

4. The respondents in their reply statement submitted that they are bound to follow the principles of reservation. Out of 112 vacancies as per rule, 18 officials of SC reserved category and 8 officials of ST category are to be promoted and since there is no candidates of ST category available the 8 posts of ST category is kept for reserved category for the next LDCE. The respondents submitted that in compliance of the directions of this Tribunal dated 8.4.2011 in OA No. 43/2011, 68/2011 and 86/2011 revised select list on 1.7.2011 was issued which was superseded by revised combined select list of 2.5.2012 and further by the combined seniority list dated 12.7.2012.

5. We have heard the learned counsel for the parties and perused the records.

6. In the order dated 8.4.2011 in OA No. 43/2011, 68/2011 & 86/2011 this Tribunal held as under:-

“9. In the result we hold:-

i) All those persons who had requisite qualification as on cut off date viz. 26.9.2008 and who have appeared in the competitive examination are entitled to be included in the combined rank list based on the marks obtained by them in the examination.

ii) Those who did not satisfy the service eligibility conditions as on the cut off date cannot be included in the rank list merely for the reason that they have appeared in the examination on the basis of an interim order or otherwise.

iii) Since some of the candidates who have been included in the combined rank list having been promoted retrospectively

within the 75% quota they cannot be included again in the combined rank list to fill up the 25% quota based on the examination. In such circumstances these vacancies will also be available to be filled up from the 25% quota.

10. We make it clear that those who have obtained final judgment in their favour regarding their eligibility to appear in the examination or to be included in the rank list will not be affected by this order.

11. In view of what is stated above, we direct that the Annexure A-8 rank list is to be revised based on the above principles and to facilitate the respondents to do so we set aside the same. The revised combined rank list and the promotions thereafter shall be effected by the respondents within two months from the date of receipt of a copy of this order. It will be open to the respondents to revert anybody in case he is found to be ineligible to be promoted based on the combined rank list."

7. In compliance of the above directions a revised select list dated 1<sup>st</sup> July, 2001 was issued. Considering the representations including that of the applicants in OA No. 353 of 2012 and in supersession of the list of 1.7.2011 the respondents issued corrected revised lists dated 12.7.2012 and 18.7.2012. While preparing the supersession orders the respondents followed the principles of reservation which is the main challenge in OA Nos. 353/12, 388/12 & 389/12. Reservation was not specified in the notifications in respect of the LDCE held on 23.11.2008 and 21.3.2010. In the absence of such a provision in the notification it is not open to the respondents now to introduce reservation in the combined seniority list. It is permissible for the candidates belonging to the reserved category to apply against unreserved category. Application of reservation which is not provided for in the notifications is illegal. If provision was made in the notifications, similarly placed other SC & ST candidates could have appeared for the examination. If there is any shortfall or backlog in filling up the post reserved for SC & ST

candidates the respondents are expected to issue notification for filling up of such vacancies as per rules.

8. In OA No. 678/12, the crucial issue is whether the applicant was qualified to appear in the LDCE as on 23.11.2008. It was contended by the respondents during hearing that she was not qualified to appear in the said LDCE, which is not contested. As the applicant was not eligible to appear in the LDCE on 23.11.2008, she has no legitimate claim to be promoted as Assistant on the basis of the said LDCE. Hence, the OA fails.

9. In the facts and circumstances of these cases we hold that application of reservation in the impugned orders is illegal. We notice that sufficient representation to protect the interests of SC candidates included in the impugned orders is available on record as in OA No. 353 of 2012 Shri Ayyappankutty has entered appearance as 5<sup>th</sup> respondent. Therefore the question of not having arrayed in the party list those who are affected does not arise.

10. Another contention of the applicants is that they have not been given an opportunity of being heard before issuing the impugned orders. In the interest of justice the respondents should consider individual representations from the applicants and decide the same on merits as per rules and in the light of the finding we have given above and if found necessary, revise the combined select list for promotion to the post of Assistants. Accordingly we order as under:-

The applicants in OA Nos. 353, 388 & 389 of 2012 are directed to file fresh representations against the impugned orders to Joint Secretary (CPV) & Chief Passport Officer, Ministry of External Affairs, New Delhi within a period of one month from the date of receipt of a copy of this order. The Chief Passport Officer, Ministry of External Affairs should consider the objections and decide the same on merits as per rules and in the light of the findings given in this OA and dispose of the representations and revise the select list if needed, within a further period of two months. Reversion of applicants in OA 353/12, OA 388/12 and OA 389/12 was stayed by order dated 9.5.12 or 22.5.12 as the case may be. As such the applicants will continue as Assistants till the seniority list is revised as above.

11. OA No. 678 of 2012 is dismissed. All other Original Applications are disposed of as above. No order as to costs.

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(K. GEORGE JOSEPH)  
ADMINISTRATIVE MEMBER

(JUSTICE P.R. RAMAN)  
JUDICIAL MEMBER

SA