

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.41/99

Friday this the 10th day of August, 2001.

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE SHRI T.N.T.NAYAR, MEMBER (A)

1. V.A.Raghuprasad,
Upper Division Clerk,
Passport Office, Cochin, residing at
Veluthedath, Pachalam, Kochi-12.
2. K.A.Sulabha,
Upper Division Clerk, Passport Office,
Kozhikode, residing at Beach Road,
Kozhikode.
3. P.Lathikumari,
Upper Division Clerk, Passport Office,
Thiruvananthapuram, residing at Vellayambalam,
Thiruvananthapuram. .. Applicants

(By Advocate Sri P.Ramakrishnan)

vs.

1. Union of India, represented by the Secretary
Ministry of External Affairs, New Delhi.
2. The Joint Secretary and Chief Passport Officer,
Ministry of External Affairs, Patiala House,
New Delhi.
3. The Regional Passport Officer, Office of the
Regional Passport Officer, Cochin.
4. The Regional Passport Officer,
Office of the Regional Passport Officer, Kozhikode.
5. The Regional Passport Officer,
Office of the Regional Passport Officer,
Thiruvananthapuram. .. Respondents

(By Advocate Shri Govindh K.Bharathan, SCGSC)

The Application having been heard on 30.5.2001, the
Tribunal on 10.8.2001 delivered the following:

O R D E R

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

The applicants 1 to 3 are Upper Division Clerks
attached to the Regional Passport Office, Kochi, Kozhikode
and Thiruvananthapuram respectively. They commenced their
service as daily rated clerks in the year 1977 and were

regularised initially as Lower Division Clerks with effect from 3.7.1980. They were promoted as Upper Division Clerks in the year 1992. Finding that similarly situated persons were regularised as Lower Division Clerks with effect from 8.12.1978, the applicants filed O.A. 494/96 before this Bench of the Tribunal. The Tribunal vide its judgment dated 5.2.1997 allowed the claims of the applicants and directed that they should be regularised with effect from 8.12.78 as Lower Division Clerks with all consequential benefits. The judgment having become final as SLP filed against it was dismissed, the seniority of the applicants was revised by order dated 11.8.1997 and by order dated 30.12.1997 the applicants were regularised as Lower Division Clerks with effect from 8.12.1978. On account of the regularisation as Lower Division Clerks with effect from 8. 12.1978 and revision of seniority in that grade, the applicants were promoted as Upper Division Clerks by order dated 19.1.1998(Annexures A4, A5 and A6) with effect from 17.10.1988 . As the applicants had been regularised as Lower Division Clerks with effect from 8.12.1978, according to the applicants they should have been promoted with effect from 22.5.1985 as Upper Division Clerks on which date 43 persons were promoted as Upper Division Clerks , 26 among them being persons regularised as Lower Division Clerks on 8. 12.1978 like the applicants. In addition to the above 43 persons 16 other L.D.Cs also regularised with effect from 8.12.1978 were promoted as U.D.Clerks on ad hoc basis on 22.5.1985(Annexure A9). Two officials among those who were promoted on ad-hoc basis by Annexure A9 order Sri

m

A.N.Mohanan and Sri Sreekumaran filed O.A. 634/91 claiming regular promotion with effect from 22.5.1985, the Tribunal by order dated 23.11.1993 in O.A.634/91(Annexure A10) directed the respondents to promote them as Upper Division Clerks with effect from 22.5.1985 on a regular basis. These two applicants in O.A. 634/91 and several others were promoted alongwith them vide Annexure A9 order on ad-hoc basis were junior to the applicants in the gradation list of Upper Division Clerk circulated as on 4.9.97. The applicants therefore made a representation on 27.1.1998 claiming promotion as Upper Division Clerks with effect from 22.5.1985 as was given to other Lower Division Clerks regularised with effect from 8.12.1978. The claim of the applicants were rejected by the impugned order dated 15.10.1998 without assigning any reason. Aggrieved by that the applicants have filed this application seeking to set aside the impugned order for a declaration that the applicants are entitled to be promoted as Upper Division Clerks with effect from 22.5.1985 and for a direction to the respondents to promote the applicants as Upper Division Clerks with effect from 22.5.1985 with all consequential benefits including pay fixation and seniority.

2. The respondents have filed a reply statement resisting the claim of the applicants. The material contentions raised are as follows. Based on the judgment of the Tribunal in O.A. 494/96 the applicants were regularised as Lower Division Clerks and on the basis of the revised seniority as Lower Division Clerks, they were considered for promotion alongwith their immediate juniors to the post of

m

Upper Division Clerks by the Departmental Promotion Committee which met on 17.10.88 and they were promoted with effect from that date. 16 LDCs were promoted on ad-hoc basis on 22.5.1985 by Annexure A9 order making it clear that the service rendered on ad-hoc basis would not count for the purpose of seniority. It is true that Sri A.N.Mohanan and Sri B.Sreekumar filed O.A.634/91 and in terms of the order of the Tribunal in that case, they were given regular promotion and seniority with effect from the date of their ad-hoc appointment i.e. 22.5.1985, but the benefit cannot be extended to the applicants who were not promoted, or to others who have been promoted on ad-hoc basis because ad hoc officiation does not count for seniority. The application is without merit and therefore it may be dismissed.

3. We have heard the arguments of Sri P.Ramakrishnan, the learned counsel of the applicants and Sri Govindh K.Bharathan, SCGSC and perused the materials placed on record.

4. It is an undisputed fact that the regularisation of the applicants as Lower Division Clerks was pre-dated to 8.12.1978 in obedience to the directions of the Tribunal contained in O.A.494 /96 and that they were assigned seniority accordingly. It is also not disputed and borne out from the record that S/Sri Sreekumar and Mohanan, the applicants in O.A. 634/91 were juniors to the applicants in the grade of Lower Division Clerks on account of revision of the seniority of the applicants pursuant to the judgment of

✓

the Tribunal in O.A.494/96. In O.A. 634/91 filed by Sreekumar and Mohanan, the respondents contended that the ad hoc officiation would not count for seniority but after consideration of the rival contentions, the Tribunal found that as the ad-hoc promotion was given after considering all those eligible and willing for promotion and as they continued to officiate till they were regularised, the applicants in those cases were entitled to be regularised with effect from the date of their ad hoc officiation viz. 22.5.1985. The applicants in this case were not considered for ad hoc promotion when Sri Sreekumar and Sri Mohanan and 14 others were promoted under Annexure A9 order because their seniority had not been revised by then and was revised only pursuant to the order of the Tribunal in O.A. 494/96. As per the judgment in O.A. 494/96, the applicants were entitled to be regularised with effect from 8.12.78 as Lower Division Clerks the date on which their batchmates were regularised and the second respondent in that case, who is the second respondent in this case was directed to pass orders regularising the applicants with effect from 8.12.1978. It was also held in the judgment that the applicants would be entitled to all the consequential benefits which would arise from such regularisation. The consequential benefits of predating of regularisation include revision of seniority and consideration for promotion with effect from the date on which the applicants batchmates were promoted as Upper Division Clerks. Revision of seniority in the cadre of Lower Division Clerks having been granted to the applicants, the contention of the respondents that the applicants cannot be considered for

✓

regular promotion as Upper Division Clerks with effect from 22.5.85 on the date on which 16 persons including many of the juniors of the applicants were promoted on ad hoc basis and 2 of them regularly promoted as Upper Division Clerks pursuant to the order of the Tribunal in O.A. No.494/96 cannot be accepted. The applicants were not considered for ad hoc promotion only because their services were not regularised with effect from 8.12.1978 on the date of Annexure A9 order.

5. Therefore on the basis of the regularisation as L.D.C. w.e.f. 8.12.1978 and revised seniority, the applicants are entitled to the consequential benefit of consideration for promotion with effect from S/Sri Sreekumaran and Mohanan were promoted as U.D.Cs .

6. In the conspectus of facts and circumstances, the application is disposed of declaring that the applicants are entitled to be considered for promotion as Upper Division Clerks w.e.f. 22.5.1985 and to promote them w.e.f. that date, if they are not otherwise found unfit for such

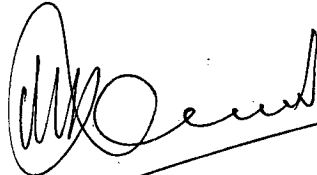
~

promotion w.e.f. that date and to assign to them proper seniority in that grade and fix their pay notionally .

7. The above directions shall be complied with within a period of four months from the date of receipt of a copy of this order. No costs.



(T.N.T.NAYAR)
ADMINISTRATIVE MEMBER



(A.V.HARIDASAN)
VICE CHAIRMAN

/njj/

List of annexures referred to in the Order:

- | | | |
|----|--------------|---|
| 1. | Annexure A4 | True copy of order No.V.IV/560/1/98(III) dated 19.1.1998 issued by Administrative Officer, Ministry of External Affairs to the 1st Applicant. |
| 2. | Annexure A5 | True copy of order No.V.IV/560/1/98(V) dated 19.1.1998 issued by Administrative Officer, Ministry of External Affairs to the 2nd Applicant. |
| 3. | Annexure A6 | True copy of order No.V.IV/560/1/98(vi) dated 19.1.1998 issued by Administrative Officer, Ministry of External Affairs to the 3rd Applicant. |
| 4. | Annexure A7 | True copy of office order No. V.IV/584/1/85 dated 22.5.1985 issued by the Deputy Secretary, Ministry of External Affairs. |
| 5. | Annexure A10 | True copy of order dated 23.11.1992 of the Hon'ble Tribunal in O.A.634/91. |

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.41/99

Friday this the 28th day of October 2005

C O R A M :

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. V.A.Raghuprasad,
S/o.late V.A.Achuthan,
Upper Division Clerk,
Passport Office, Cochin.
Residing at Veluthedath,
Pachalam, Kochi – 12.
2. K.A.Sulabha,
W/o.V.V.Kuttan,
Upper Division Clerk,
Passport Office, Kozhikode.
Residing at Beach Road, Kozhikode.
3. P.Lathikumari,
W/o.L.R.Sasikumar,
Upper Division Clerk,
Passport Office, Thiruvananthapuram.
Residing at Vellayambalam,
Thiruvananthapuram.

...Applicants

(By Advocate Mr.P.Ramakrishnan)

Versus

1. Union of India represented by the Secretary,
Ministry of External Affairs, New Delhi.
2. The Joint Secretary and Chief Passport Officer,
Ministry of External Affairs, Patiala House, New Delhi.
3. The Regional Passport Officer,
O/o. Regional Passport Officer, Cochin.
4. The Regional Passport Officer,
O/o. Regional Passport Officer, Kozhikode.
5. The Regional Passport Officer,
O/o. Regional Passport Officer,
Thiruvananthapuram.

...Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC)

✓

ORDER

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER


Vide order dated 6.7.2005 the Hon'ble High Court has remanded the matter to the Tribunal with a direction that "we remand the matter for the limited purpose of deciding the plea of the applicants regarding their claim for monetary benefits and arrears of pay in the post of UDC for the period 22.5.1985 to 17.10.1988 after giving both sides an opportunity to defend raise their respective contentions in this behalf." We have heard both the parties and the case is restored to the file of the Tribunal. The brief facts of the case is as follows :-

2. The applicants 1-3 are Upper Division Clerks attached to the Regional Passport Office, Kochi, Kozhikode and Thiruvananthapuram respectively. They were regularised initially as Lower Division Clerks with effect from 3.7.1980 and promoted as Upper Division Clerks in the year 1992. Finding that similarly situated persons were regularised as Lower Division Clerks with effect from 8.12.1978 they filed O.A.494/96 before this Bench of the Tribunal. The Tribunal allowed the claims of the applicants and directed that they should be regularised with effect from 8.12.1978 as Lower Division Clerks with all consequential benefits. The order having become final as SLP filed against it was dismissed, the seniority of the applicants was revised by order dated 11.8.1997 and by order dated 30.12.1997 the applicants were regularised as Lower Division Clerks with effect from 8.12.1978 on account of which the applicants were promoted as Upper Division Clerks with effect from 17.10.1988. As the applicants had been regularised as Lower Division Clerks with effect from 8.12.1978,

✓

.3.


according to the applicants, they should have been promoted with effect from 22.5.1985 as Upper Division Clerks on which date 43 persons were promoted as Upper Division Clerks, 26 among them being persons regularised as Lower Division Clerks on 8.12.1978 like the applicants. In addition to the above 43 persons, 16 other Lower Division Clerks also regularised with effect from 8.12.1978 were promoted as Upper Division Clerks on ad hoc basis on 22.5.1985. Two officials among those who were promoted on ad hoc basis by Annexure A-9 order, Sri.A.N.Mohanan and Sri.Sreekumaran, filed O.A.634/91 claiming regular promotion with effect from 22.5.1985, the Tribunal by its order dated 23.11.1993 in O.A.634/91 (Annexure A-10) directed the respondents to promote them as Upper Division Clerks with effect from 22.5.1985 on regular basis. These two applicants in O.A.634/91 and several others who were promoted along with them vide Annexure A-9 order on ad hoc basis were junior to the applicants in the gradation list of Upper Division Clerk circulated as on 4.9.1997. The applicants, therefore, made a representation which was rejected by the order dated 15.10.1998 without assigning any reason. Aggrieved by that, the applicants have filed this OA seeking the following reliefs :-

1. An order quashing and setting aside Annexure A-12 and similar orders.
 2. A declaration that the applicants are entitled to be promoted as Upper Division Clerks with effect from 22.5.1985.
 3. A direction to the respondents to promote the applicants as Upper Division Clerks with effect from 22.5.1985 with all consequential benefits including pay fixation and seniority.
3. This Tribunal after elaborate discussion passed a considered order. The operative portion of which is as follows :-
- 

" In the conspectus of facts and circumstances, the application is disposed of declaring that the applicants are entitled to be considered for promotion as Upper Division Clerks with effect from 22.5.1985 and to promote them with effect from that date, if they are not otherwise found unfit for such promotion with effect from that date and to assign to them proper seniority in that grade and fix their pay notionally."

4. Both the parties have filed O.Ps. before the Hon'ble High Court (OP Nos. 7461 & 18268/02). O.P.7461/02 was filed by the Union of India and others challenging the finding of the Tribunal on the ground that the applicants are not entitled to be promoted from 22.5.1985 and they justified their stand in giving promotion notionally with retrospective effect from 1988. O.P.18268/02 was filed by the applicants praying that consequential benefits should be granted to the applicants as also monetary benefits for the period from 22.5.1985 to 17.10.1988.

5. We have heard Shri.P Ramakrishnan & Smt.Preethi Ramakrishnan for the applicants and Shri.T.P.M.Ibrahim Khan,SCGSC and Smt.Jisha for the respondents. We have given due consideration to the arguments advanced by the learned counsel. The short question to be considered as per the remand order is whether the applicants are entitled for the monetary benefits and arrears of pay in the post of Upper Division Clerk for the period from 22.5.1985 to 17.10.1988. All other issue has been settled by the decision of the Hon'ble High Court and the above issue has been left open for the orders of the Tribunal. Learned counsel for the applicants submitted that as per Annexure A-1 order of the Tribunal in O.A.494/96 applicants are entitled to all consequential benefits which would arise from such regularisation and that his juniors Shri.Sreekumaran and Shri.A.N.Mohanan



.5.

was granted the benefits as per order in O.A.634/91. He further submitted that the applicants were already granted arrears of pay and all other benefits for the period from 1988 to 1992 while they are not holding the post of Upper Division Clerks and that same benefits could be extended for the period in question. Learned counsel for the respondents, on the other hand, persuasively argued that the applicants were not holding the post of Upper Division Clerks for the disputed period, therefore, they were not holding higher responsibilities, as such no arrears could be granted for the said period and that the original order of this Tribunal fixing the benefits notionally is justified. It is pertinent to quote the operative portion of the order in O.A.494/96 dated 5.2.1997 (Annexure A-1) wherein this Tribunal has held that :-

" In the light of the discussion above, we consider that applicants are entitled to regularisation from the date on which they had been appointed in the same manner as the other persons recruited along with them were regularised, i.e. applicants are entitled to be regularised with effect from 8.12.1978, the date on which their batch-mates were regularised. Second respondent is directed to pass appropriate orders regularising applicants with effect from 8.12.1978 in terms of the above declaration within three months of today. Applicants will be entitled to all consequential benefits, which would arise from such regularisation."

6. Further this Tribunal in its order in O.A.41/99 dated 10.8.2001 has declared that applicants are entitled to be considered for promotion as Upper Division Clerks with effect from 22.5.1985 and to promote them with effect from that date with notional benefits. As far as the current position is concerned as per the orders of the Hon'ble High Court all other issues are settled except the grant of benefits in actual arrears.

✓

7. Learned counsel for the applicants submitted that as per the orders of the Tribunal in O.A.634/91 his juniors Shri.A.N.Mohanan and Shri.B.Sreekumaran have been granted the benefits with actual arrears. If the contentions of the respondents is to be accepted that arrears cannot be granted as they were not holding the post of Upper Division Clerks for the disputed period, it is pertinent to note that applicants were granted actual arrears from 1988 to 1992 when they were not holding the post of Upper Division Clerks. If that is the case, we are of the view that the same logic and rational can be made applicable during this period as well. Besides, the Hon'ble High Court while passing the orders observed that "but we find that the prayer made in the O.A is not only for promotion with effect from 22.5.1985 but also for all consequential benefits arising therefrom. If it is found that the petitioners were denied promotion, then unless there are good reasons, they have a rightful claim for arrears of pay." Learned counsel for the applicants further submitted that one of the applicant in Annexure A-1 order i.e. Smt.K.S.Leelamani was granted all consequential benefits with arrears from 1984 onwards which was not disputed in any of their pleadings. In the light of the facts as narrated above we are of the view that applicants have got a good case. Learned counsel for the applicants brought to our notice ~~some~~ [✓] decisions which are quoted below :-

1. Gracy Vs. State of Kerala [1985 KLT 269]
2. Sivarajan Vs. State of Kerala [1993 (2) KLT 287]

and canvassed for a position that applicants are entitled for restoration of all benefits including monetary benefits if it is found that promotion was wrongly denied to them. Further counsel has brought to our notice a decision of the Hon'ble High Court in State of Kerala Vs. Bhaskaran Pillai reported in 2003 (1) KLT 60. Para 8 of the judgment is quoted as follows :-

✓

" Coming to the challenge raised against the order in the Original Petition by the petitioner/appellant, it is perhaps easy to opine that the facts in each case are of crucial importance while deciding whether monetary benefits from the date of retrospective promotion must be given to such promotee. Ultimately, the decision in each case will have to be taken on the facts of such case. But definitely courts have to ascertain the principles which have to be applied while considering the facts in each case. Two views appear to be prevalent. The first is that no person is entitled to wages for work which he has not actually performed. This is a reflection or extension of the well recognised maxim in labour/employment jurisprudence that no work will fetch no pay. But the maxim of "no work no pay" cannot be extended or applied to all cases ignoring factual realities. This is all the more so in the case of Government employee who has been denied promotion. Fictionally at least, the entire time, competence and energies of a Government servant are available and due to the State. He is on duty round the clock in the service of the Government. He performs such work as is allotted to him making use of his acumen and energies. Whether he works at the lower post or promoted post he is expected to give in his best. In these circumstances the doctrine of no work no pay cannot be blindly, mechanically or rigidly applied to a person entitled to promotion and whose claim is initially not recognised but recognised later with retrospective effect. Such person has always remained willing and prepared to perform the work assigned to him. He has not been able to do such work for reasons beyond his control and for no fault of his. It is very poor consolation for him that his superior authorities had made a mistake which is honest and not mala fide. The fact remains that he who was willing to work and who has entitled to perform higher work for higher remuneration has been denied of such opportunity to perform such work for no fault of his. He did actually perform the work assigned to him."

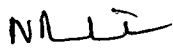
8. Considering the facts of the case and also the submissions made by the applicants that their juniors/co-applicant were granted the benefits but the same was denied to them for no fault of theirs, we are of the view that respondents are duty bound to grant the actual arrears as claimed by them.

✓

.8.

9. In the conspectus of facts and circumstances we are of the considered view that applicants are entitled to monetary benefits and arrears of pay in the post of Upper Division Clerks for the period from 22.5.1985 to 17.10.1988 and we direct the respondents to grant the said benefits to the applicants forthwith, in any case, within two months from the date of receipt of a copy of this order. The O.A is disposed of as above. In the circumstances, no order as to costs.

(Dated the 28th day of October 2005)



N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER



K.V.SACHIDANANDAN
JUDICIAL MEMBER

asp