

filed 12/1/87

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH

Appln. No. 1106 of 1986 (T)

Between:

K. K. V. Ranganatha Swamy .. Applicant/s

And

Union of India .. Respondents  
& others

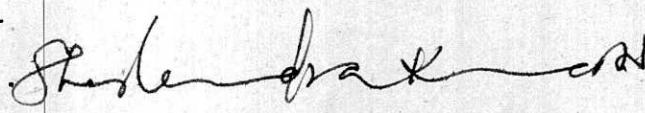
I N D E X

Sl. No.	Description	Pages
1	Reply to the application	1 - 7

ANNEXURES: NIL

Received copy  
L.S. Govt. of India  
Adv. for Petitioner  
12/1/87

Bangalore  
12th Jan., 1987

  
CENTRAL GOVT. STANDING COUNSEL  
&  
ADVOCATE FOR RESPONDENTS

BEFORE THE ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

Application No. 1106/1986(T)

BETWEEN:

K.K.V.Ranganatha Swamy. ... Applicant.

A N D:

(1) Union of India,  
Department of Culture,  
Ministry of Education,  
Shastri Bhavan,  
New Delhi and others. ... Respondents.

COUNTER STATEMENT ON BEHALF OF RESPONDENTS 1, 2 & 3

The above named respondents submit as  
under:

In the above transferred application the  
applicant has prayed for the relief -

(1) to declare that the seniority list as  
per ANNEXURE 'A' is incorrect as in its  
preparation the principles of 1949 vide  
ANNEXURE 'C' and 'D' have been ignored  
and violated and to quash the same  
accordingly by the issue of CERTIORARI  
or other appropriate writ direction or  
order.

(2) to direct respondents 1 to 3 to promote  
the petitioner on the ~~petitioner on the~~  
arising of a suitable vacancy, on the  
basis of his place at Sl.No.51 of  
ANNEXURE 'B', the seniority list of  
31.3.1980.

*Sheshendra K. A.*<sup>2</sup>

- (3) to quash the promotions of respondents 4 to 12 on the basis of ANNEXURE 'A', consequent to quashing of ANNEXURE 'A' itself.
- (4) directly respondents 1 to 3 to calculate and pay to the petitioner all such monetary benefits as would accrue to him in the light of the reliefs granted as per (a), (b) and (c) supra.  
and to grant other reliefs.

It is respectfully submitted that the applicant is not entitled to any of these reliefs and the application is liable to be rejected in the following narration of events and circumstances. Application is also liable to be dismissed for delay and laches as the applicant has sought to impugn the seniority list published in the year 1981, only in the year 1983.

1. It is true that Shri K.K.V.Ranganatha Swami is at present working as U.D.C. in Jayanagar Office, Mid-Southern Circle Office of the Archaeological Survey of India, and that the petitioner had joined the services in Archaeological Survey of India on 1.3.1956. It is also true that as stated by him that he was promoted as U.D.C. with effect from 30.6.1976.

A seniority list was issued on 1.3.1980. On realising that due to wrong interpretation of the principles enunciated in the 1949 orders the seniority list issued on 1.3.1980 was revised and a list based on the factual data available was issued as it stood on 1.7.1981.

3  
Shyamdaswaran

2. The 1949 rules say that in respect of persons employed in any particular grade his seniority should, as a rule, be determined on the basis of the length of service in that grade as well as service in an equivalent grade or post irrespective of whether the latter was under the central or provincial Government.

The orders further say that when it has been found difficult to workout seniority on the basis of comparable posts or grade, the service in an equivalent grade should generally be defined as service on a rate of pay higher than that of the minimum of the time-scale of the grade concerned.

It is thus, submitted that the very purpose of the 1949 orders was to give seniority on the basis of length of service in the similar grade or post. In case only when it is not possible to give seniority on the basis of length of service and it might be difficult to draw comparison between two grades concerned the seniority may be fixed on the basis of pay drawn. In the present case, the grades of L.D.C. and U.D.C. are not comparable and as such the question of giving weightage on the basis of pay drawn does not arise. Thus, the petitioner has not been denied any benefit.

It is submitted that, the principles enunciated in the Government orders issued on 22.6.1949 are to be observed only at the initial stage and thereafter the date of promotion is to be

... 4  
S. Venkateswaran

taken as the date of seniority in that grade.

This fact was also clarified from the Department of Personnel and A.R. who are the concerned administrative authority, before the seniority list as on 1.7.1981 was issued.

3. The orders issued by the authority in Government of India are of administrative and executive nature. In the case of ambiguity the reference is made to the concerned authority ~~the~~ for seeking clarification. In the present case the 1949 orders were issued by the Ministry of Home Affairs. Now the Department of Personnel and A.R. On noticing ambiguity in the seniority list of 1.3.1980 a clarification was sought from them and as per their clarification revised list of seniority of 1.7.1981 was issued.

It is apparently clear that there is a vast difference in the duties and responsibilities of L.D.C and U.D.C. These two grades are not equal and therefore cannot be considered as comparable in terms of the 1949 rules. As such mere drawing the pay higher or equivalent to the minimum pay of the U.D.C. scale does not entitle any incumbent to count his seniority in the post which carries higher responsibilities and duties.

4. The Seniority list of 1.7.1981 has actually and correctly been issued on the basis of 1949 principles in respect of incumbents appointed upto 31.12.1976. As already stated in para 2 above, the 1949 principles indicate that

the seniority is to be accorded on the basis of length of service in the grade or in the comparable post or grade.

Only in case where it is not feasible to decide the issue of seniority on the length of service in the grade or in comparable post the issue is to be decided on the basis of pay drawn in comparable grade. Since in the present case, it is very clear and it was possible to decide the seniority on the basis of the length of service in the grade a correct list of seniority of 1.7.81, was issued. In view of this no further alteration is warranted. The contention of the petitioner in this respect is wrong and therefore untenable and not acceptable.

5. In reply to his representations, the petitioner was informed about the correctness of the seniority list through the concerned office. There is no use to send the same reply to him time and again particularly when the issue was got clarified from the appropriate authority in the Government of India, and 1949 rules are very much clear in this respect.

It is wrong to say that the petitioner had no other avenue to redress his grievances.

The Archaeological Survey of India has the Employees Union ~~in~~ with which meetings are arranged periodically in accordance with J.C.M. rules. He could have easily brought this issue through the Union for the discussion and clarification at one of the meetings. The applicant

Shyamdaswaran  
...  
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is not diligent in airing his grievance and as such the application is hit by laches.

6. The petitioner's contention in paragraph-6 are absolutely wrong. As already stated above in paras 2 and 4 the 1949 rules have been applied correctly and after getting clarifications from the appropriate authorities, no cancellations of promotions are warranted.

7. As already stated above in paras 2 and 4 the seniority list of 1.7.1981 has been correctly drawn and is not to be altered. As such the petitioner may please be dismissed with costs.

8. The contention of the petitioner in this para is ~~shew~~ absolutely wrong and therefore does not hold good. At no place it has been mentioned that the criterion for all appointees before 31.12.1976 was not length of service but the date on which the person concerned first draws a basic pay in the lower cadre (LDC in this case) more than the minimum fixed in the high cadre (UDC in this case) as the commencement of the length of service for counting seniority. The orders contained in letter of 1949 have been amply clarified in para 2 and 4 above.

9. In paras 9 to 16 are mere repetition of the facts mentioned in earlier paras and do not indicate any fresh or new fact which could be clarified through this counter-affidavit.

10. Since the petitioner has not been denied any benefits and his seniority has been fixed correctly in the seniority list of 1.7.1981,

*Sheshadri 7/10/81*

no interim relief is due to him. It is, therefore, once again prayed that his petition may please be dismissed with costs.

  
RESPONDENT

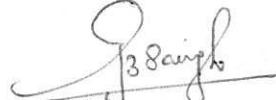
  
Addl. Central Govt. Standing Counsel  
&  
ADVOCATE FOR RESPONDENTS 1 TO 3

VERIFICATION

I, Gurbachan Singh, working as Director Administration, do hereby state that the statements made in Counter Statement on behalf of Respondents 1 to 3 in paras 1 to 10 are true to the best of my knowledge and information based on records.

  
Bangalore,

Dt: 5 -12-1987.

  
RESPONDENT

IN THE COURT OF APPEAL FOR APPEAL  
On Friday the 29th day of August 1986 at 10-30 A.M.

BEFORE

THE HON'BLE MR. JUSTICE RAMA JOIS

COURT HALL NO.4.

FOR HEARING

1. WP 16354/85 (LR)	Sri G.R.Ramesh for ptr. " V.Gopal Gowda for R3 R1 & 2 sd.,
2. WP 1151/86 "	Sri K.N.Subba Reddy for ptr. " G.S.Visweswara for R4 R1 to 3 & 5 sd.,
3. WP 14317/86 "	Sri U.L.N.Rao for ptr. R1 to 3 sd. R4 unsd.,
4. WP 11842/86 "	Sri B.M.Gangadharaiyah for ptr. R1 to 3 sd.,
5. WP 9314/86 "	Sri C.H.Jadhav for ptr. " Umesh R.Malimath for R3 R1 & 2 sd.,
6. WP 4663/85 "	Sri K.Appa Rao for ptr. Govt. Adv. is directed to take notice for R2 & 3 R1 sd.,
7. WP 6210/85 "	Sri V.P.Kulkarni for ptr. " A.K.Bhat for R3 R1 & 2, 4 sd.,
8. WP 6066/84 "	Sri I.G.Gachchinamath for ptr. " S.R.Bannurmath for R3 R1, 2 & 4 sd.,
9. WP 9706/84 "	Sri J.S.Gunjal for ptr. " G.D.Shirgurkar for R1 R2 & 3 sd.,
10. WP 517/86 "	Sri H.G.Hande for ptr. " A.Keshava Bhat for R1 R3 and 4 sd. R2 unsd.,
11. WP 2343/86 "	Sri K.S.Vyasa Rao for ptr. " K.B.Yuvraj Ballan for R2 R1 & 3 sd.,
12. WP 2379/86 "	Sri B.M.Krishna Bhat for ptr. " V.V.Upadhyaya for R3 R1 & 2 sd.,

13. WP 1399/86 (LR) Sri R.G.Hegde for ptr.  
Govt. Adv. for R1 & 2  
Sri Vighneshwar S.Shastri for R4  
R3, 5, 6 & 8 sd. R7 unsd.,

14. WP 28152 & 153/82 " Sri G.V.Thimmappaiah for ptr.  
R1 to 4 sd.,

15. WP 7581/85 " Sri K.Prabhakar for ptr.  
" M.N.Gurulingappa for  
R3b, 3c, 3d and 3c.  
R3, 3a unsd., R1 & 2 sd.,

16. WP 14934/85 " Sri U.L.N.Rao for ptr.  
" Vyasa Rao K.S. for R3 & 4  
" H.G.Hande for R5  
R1, 2 & 6 sd.,

17. WP 7229/86 " Sri P.V.Shetty for ptr.  
" K.Radhesh Prabhu for R1  
R2 & 3 sd.,

18. WP 7222/86 " -do-

19. WP 12802/85 " Sri P.V.Shetty for ptr.  
" B.L.Ravindra for R1  
R2 to 4 sd.,

20. WP 9733/84 " Sri I.G.Gachchinamath for ptr.  
" Bapu Heddurshetty for  
R3a to 3c, R1 & 2 sd.,

21. WP 15987/85 " Sri R.K.Hatti for ptr.  
" K.Channabasappa and  
" H.Kumarswamy for R1 R2 sd.,

22. WP 14768/85 " Sri B.V.Krishnaswamy Rao for ptr.  
" K.R.D.Karantha for R3 & 4  
R1 unsd. R2 sd.,

23. WP 16257/85 " Sri H.S.Jois for ptr.  
R1 to 3 sd.,

24. WP 14325/85 " Sri S.B.Shahapur for ptr.  
" Umesh R.Malimath for R3  
Applicant in IA I.

25. WP 29828/81 " Sri T.R.Narayan Rao for ptr.  
" K.S.Ramesh for R2  
" N.Y.Hanumanthappa for R5 to 9  
R1 & 3 unsd.,

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Bangalore  
12th Jan 1987

*Sheshadri*

CENTRAL GOVT. STANDING COUNSEL  
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It is respectfully submitted that the applicant is not entitled to any of these reliefs and the application is liable to be rejected in the following narration of events and circumstances. Application is also liable to be dismissed for delay and laches as the applicant has sought to impugn the seniority list published in the year 1981, only in the year 1983.

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It is thus, submitted that the very purpose of the 1949 orders was to give seniority on the basis of length of service in the similar grade or post. In case only when it is not possible to give seniority on the basis of length of service and it might be difficult to draw comparison between two grades concerned the seniority may be fixed on the basis of pay drawn. In the present case, the grades of L.D.C. and U.D.C. are not comparable and as such the question of giving weightage on the basis of pay drawn does not arise. Thus, the petitioner has not been denied any benefit.

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10. Since the petitioner has not been denied any benefits and his seniority has been fixed correctly in the seniority list of 1.7.1981,

no interim relief is due to him. It is, therefore, once again prayed that his petition may please be dismissed with costs.

*Shelendranath*

RESPONDENT

Addl. Central Govt. Standing Counsel  
&  
ADVOCATE FOR RESPONDENTS 1 TO 3

VERIFICATION

I, , working as , do hereby state that the statements made in Counter Statement on behalf of Respondents 1 to 3 in paras 1 to 10 are true to the best of my knowledge and information based on records.

Bangalore,

Dt: -12-1986.

RESPONDENT

26. WP. 369/85 (LR)

Sri P.V.Shetty for Petr.,  
Govt.Advocate is directed  
to take notice for  
R-2 and 3.,  
Padubidri Raghavendra Rao  
for R-1.,

27. WP. 15787/85 "

Sri B.Veerabhadrappa for Petr.,  
Ravindra B.Gowder for R-3.,  
R-1 & 2 notice not issued.

28. WP. 8656/86 "

Sri C.R.V.Swamy for Petr.,  
R-1 and 3 Un-served  
R-2 (Sd) .,

29. WP. 2429/84 "

Sri D.V.Padmanabhaiah  
for Petitioner:  
Govt.Advocate for  
R-1 to 3.,

30. WP. 18769/84 "

Sri H.M.Munivenkataramana  
for Petitioner:  
Govt.Adv. for R-1 & 2.,

31. WP. 21094/83 "

Sri S.M.Muchhandi for Petr.,  
Umesh R.Malimath for R-4.,  
R-1 & 2 (Sd) .,  
R-3 and 5 Un-Served.

32. WP. 7211/84 "

Sri Shantesh Gureddi for Petr.,  
K.G.Shantappa for R-3.,  
R-1 and 2 (Sd) .,

33. WP. 16913/85 "

Sri V.T.Raya Reddy for Petr.,  
N.Y.Hanumanthappa for R-3.,  
R-1,2 and 4 (Sd) .,

34. WP. 351/86 "

Sri R.U.Goulay for Petr.,  
G.S.Visweswara for  
R-4 and 5.,  
R-1 to 3 and 6 (Sd) .,

35. WP. 14595/84 "

The Government Advocate  
for Petitioner:  
Sri S.R.Shinde for R-3.,  
R-1,2 and 4 (Sd) .,

36. WP. 1206/81 "

Smt.M.N.Pramila for Petr.,  
Government Advocate  
is directed to take notice  
for R-1 and 2.,  
Sri G.S.Visweswara for R-3.,  
V.P.Deenadayalu Naidu for R-5.,  
R-4 (Sd) .,

37. WP. 3148/82 (LR)

Sri Ravivarma Kumar  
for Petitioner:  
P. Ganapathy Bhat for R-6.,  
K. Krishna Bhat for R-4.,  
M. Gopalakrishna Shetty  
for R-7.,  
R-1 to 3.,  
5 and 6 (Sd) .,

38. WP. 16299/84 "

Sri B.R. Srinivasa Gowda and  
Smt. A. Nimmy Swamy  
for Petitioner:  
Sri R.H. Chandangowder  
for R-1 and 2.,  
K. Subba Rao for R-4.,  
R-3 un-served.

39. WP. 31486/82 "

Sri S.R. Nayak and  
B.R. Srinivasa Gowda  
for Petitioner:  
Government Advocate  
for R-1 and 2.,  
B.A. Reddappa for  
R-3 and 4.,

40. WP. 35742/82 "

Sri Suresh S. Joshi  
for Petitioner:  
Umesh R. Malimath  
for R-3.,  
R-1 and 2 (Sd) .,

41. WP. 36699/82 "

Sri B. Rudra Gowda  
for Petitioner:  
B.K. Ramachandra Rao  
for R-3 to 5.,  
R-1 and 2 (Sd) .,

42. WP. 43210/82 "

Sri H.G. Hande for  
Petitioner:  
R-1 to 4 (Sd) .,

43. WP. 11942/82 "

Sri K. Shivashankar Bhat  
for Petitioner:  
R-1 and 2 (Sd) .,

44. WP. 31762/82 "

Sri D.S. Hosmath  
for Petitioner:  
Smt. Hemalata Mahishi  
for R-3.,  
W.K. Joshi for R-4.,  
R-1 and 2 (Sd) .,

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH, BANGALORE

DATED THIS THE SIXTH DAY OF MARCH, 1987

Present : Hon'ble Shri Ch.Ramakrishna Rao

Member(J)

Hon'ble Shri L.H.A.Rego

Member(AM)

APPLICATION NO.1106/86(T)

K.K.V.Ranganatha Swamy,  
UDC, D/o the Superintending  
Archaeologist, Archaeological  
Survey of India, Mid-Southern  
Circle, Jayanagar,  
Bangalore - 560 041.

...

APPLICANT

( Shri L.S.Varadaraja Iyengar ... Advocate )

vs.

1. Union of India,  
Department of Culture,  
M/o Education,  
Shastri Bhavan,  
New Delhi.
2. Director General,  
Archaeological Survey of India,  
Janpath, New Delhi - 11.
3. Director(Administration)  
Archaeological Survey of India,  
Janpath, New Delhi - 11.
4. Sri L.H.Mehta,  
C/o Superintending Archaeologist,  
Archaeological Survey of India,  
Western Circle, Madhav Bagh,  
Near Sapna Talkies,  
VADODARA - 390 001.
5. Sri V.T.Bhatia,  
C/o Director(Epigraphy),  
Archaeological Survey of India,  
Old High Court Building,  
Nagpur.
6. Sri L.A.Thakur,  
C/o Superintending Archaeologist,  
Archaeological Survey of India,  
Western Circle, Madhav Bagh,  
Near Sapna Talkies,  
VADODARA.
7. Sri B.N.Prasad,  
C/o Dy.Suptd.Horticulturist,  
Archaeological Survey of India,  
Garden Branch No.II,  
Qutub Minar, New Delhi.

8. R.D.Satbhai,  
C/o Superintending Archaeologist,  
Archaeological Survey of India,  
South-Western Circle, Bibi-ka-Maqbara,  
Aurangabad.

9. Sri I.K.Gajabhiye,  
C/o Superintending Archaeologist,  
Archaeological Survey of India,  
Central Circle, Ahmedabad Palace Road,  
Bhopal.

10. Sri R.N.Agarwal,  
C/o Superintending Archaeologist,  
Archaeological Survey of India,  
Central Circle, Ahmedabad Palace Road,  
Bhopal.

11. Sri A.B.Tirumalai,  
C/o Superintending Archaeologist,  
Archaeological Survey of India,  
Mid-Southern Circle, Jayanagar,  
Bangalore - 560 041.

12. Shri P.H.Babu,  
C/o Superintending Archaeologist,  
Archaeological Survey of India,  
South-Eastern Circle,  
University Road,  
Hyderabad.

... ..

RESPONDENTS.

( Shri M.S.Padmarajaiah ... Advocate )

This application has come up before the court today.

Hon'ble Shri L.H.A.Rege, Member (A) made the following :

O R D E R

This application is transferred to this Bench by the High Court of Judicature, Karnataka, under Section 29 of the Administrative Tribunals Act, 1985 and is re-numbered as an application, wherein the applicant prays that :

i) the Seniority List of Upper Division Clerks (UDCs) drawn up as on 31.3.1980 (Annexure-B), by R3, be quashed the same being incorrect and violative of principles of seniority enunciated in Annexures C and D;

ii) R1 to R3 be directed, to promote the applicant in a suitable vacancy, with reference to his rank at Sl.No.51 of the Seniority List of UDCs, as on 31.3.1980, (Annexure-B) drawn up by R-3;

iii) consequent to quashing the Seniority List at Annexure-A, the promotions granted to R4 to R12 on the basis of the said Seniority List, be annulled;

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iv) R1 to R3 be directed to determine, pay and other monetary benefit due to the applicant, pursuant to the relief to be granted, in accordance with (i) to (iii) supra, and such other relief as may be deemed appropriate.

2. The matrix of facts leading to this application is as follows. At the material time, the applicant was serving as UDC in the Mid-Southern Circle, Archaeological Survey of India, Jayanagar, Bangalore (ASI), on a monthly salary of Rs.464/- in the grade of Rs.330-10-380-EB-12-500-EB-15-560. He entered service in the ASI on 1.3.1956 and was promoted as UDC with effect from 30.6.1976. A Seniority List of UDCs (SL) was drawn up by R3 as on 31.3.1980, and sent to all offices of the ASI under his letter dated 30.9.1980(Annexure-B), with instructions to indicate, errors or omissions if any therein, not later than 45 days, from the date of issue of that letter, failing which, it was given to understand, that the SL would be deemed as final as on 31.3.1980. It was later discovered, that the SL was not proper, as the principles enunciated in O.M. dated 22.6.1949(Annexure-C) of the Ministry of Home Affairs (MOH), Government of India, (GOI) had not <sup>been</sup> correctly applied and therefore, the SL was revised by R3 as on 1.7.1981(RSL) under his letter dated 17.12.1981(Annexure-A) and was circulated to all the offices of the ASI, with instructions to indicate, errors or omissions if any, therein, within a period of one month, from the date of issue of that letter, failing which, it was made clear, that it would be presumed, that there was no objection in regard to <sup>the</sup> SL. R3 had indicated in his aforesaid letter, that the ~~revised~~ RSL as on 1.7.1981 was drawn up, on the basis <sup>of</sup> length of service, in accordance with the principles enunciated by the MOH, GOI, in their letter (Annexure-C), in respect

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of appointees upto 31.12.1976 and in regard to appointees after that date, on the basis of the instructions contained in Letter dated 21/27.11.1976 (Annexure-D) of R2. The following is the relevant excerpt of the instructions contained in O.M. dated 22.6.1949, from the Ministry of Home Affairs, GOI (Annexure-C), <sup>to servants</sup> on the subject viz., "Seniority of displaced Governments, who have been absorbed temporarily in service, under the Central Government":-

" The question of seniority of Assistants in the Secretariat, was recently examined very carefully, in consultation with all the Ministries and the Federal Public Service Commission and the decisions reached, are incorporated in para 8 of the Instructions for the initial constitution of the grade of Assistants, and extract of which is attached. It has been decided, that this rule should generally be taken as the model, in framing the rules of seniority for other services, and in respect of persons employed in any particular grade, seniority should as a general rule, be determined, on the basis of the length of service in that grade, as well as service in an equivalent grade, irrespective of whether the latter, was under the Central or Provincial Government in India or Pakistan. It has been found difficult to work on the basis of 'comparable' posts or grades and it has therefore been decided that 'service in an equivalent Grade', should generally be defined as service on a rate of pay, higher than the minimum of the time-scale of the grade concerned. The seniority of persons appointed on permanent or quasi-permanent basis, <sup>to</sup> before appointed on permanent or quasi-permanent basis before the 1st January, 1944, should, however, not be disturbed.

It is realised, that this rule will upset some of the decisions regarding seniority, already made in the various offices but in the extraordinary circumstances, in which a large number of

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displaced Government Servants, have had to be absorbed in other offices, the usual seniority rules cannot be applied, if equitable treatment is to be meted to displaced Government servants, having in most cases, lost all their property and having had to migrate in difficult circumstances, should be given some weightage in the matter of seniority on compassionate grounds. The matter has been considered in all its aspects and the decision conveyed in the previous paragraph, is considered to be the most equitable in the circumstances of the case. It is requested that these principles may be borne in mind, in determining seniority of Government servants of various categories, employed under <sup>de R</sup> Ministry of Finance etc.

3. The following is <sup>is</sup> the gist of the above instructions of the GOI, in so far as they are relevant to the case before us,

- i) In respect of persons employed in any particular grade, seniority should, as a general rule, be determined on the basis of length of service, in their grade, as well as the service in an equivalent grade, regardless of whether, they were under the Central or Provincial Government of India or Pakistan.
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4. The applicant states, that he was placed at Sl. No. 51 in the SL, that he was promoted as UDC on 30.6.1976 having been confirmed as LDC, and that column No. 9 of the SL shows, against his name, 1.8.1961 as the date, from which his seniority in the grade of UDC was to be reckoned. According to the applicant, at the <sup>material</sup> ~~national~~ time, he was drawing monthly pay, more than the minimum ~~as a day~~ of the pay-scales of the UDCs, viz. Rs. 130-5-160-8-200-EB-8-256-EB-8-280-10-300. In Annexure-A, however, when the SL came to be

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revised by R3, the name of the applicant was shown at Sl.No.50, taking into account, only the continuous length of service in the grade of UDC, commencing from 30.6.1976. According to the applicant, this was contrary to the instructions contained in Annexures-C and D. He, therefore, submitted a series of representations thereon to R2 and others from 18.1.1982 to 2.3.1983, urging that the principles enunciated in Annexures-C and D, be properly applied, and he be assigned the correct rank in the Seniority List. Respondent-3 communicated to the Superintending Archaeologist (under whom the applicant was directly working) under his letter dated 16.10.1982 (Annexure-N), that as the applicant had joined duty as UDC on 30.6.1976, his seniority in that grade as on 1.7.1951, was correctly determined and that the applicant be informed accordingly. The applicant alleges that, as he did not receive any reply to this representation dated 2.3.1983, addressed to R2, he had no other alternative but to file a writ petition in the High Court of Judicature, Karnataka, which has since been transferred to this Bench and is now before us for consideration.

5. The learned Counsel for the applicant contended, that R2 and R3, did not faithfully comply with the instructions of GOI, in Annexures C and D, which should have been read together and not in isolation, to help appreciate their true import and meaning; that these instructions were explicit, in that, the criterion for determination of seniority in the case of an employee appointed before 31.12.1976, was not merely the length of service in a particular grade but the date on which his basic salary in the grade of Lower Division Clerk (LDC), exceeded the minimum of pay scale of the next higher grade, namely, that of UDC; that the applicant was appointed before 31.12.1976, which

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*As the*  
was *cut-off* date stipulated in Annexure-D, for application of the principles of seniority, enunciated in Annexure-C and therefore, according to the above criteria of seniority, he should have been ranked in seniority between Serial Nos. 8 and 9 in the RSL and not at S.No.50; that R2 and R3 have by misapplication of the principles of seniority, placed the employees at S.No.s.10-16,18-22,24,25 and 27-49 above him in Annexure-A, to the detriment of his career prospects; that the Seniority List at Annexure-A, is also liable to be struck down on the ground of discrimination, as the seven employees listed in Annexure-J, who have been correctly ranked in the SL at Annexure-B, have since been promoted to the higher grade, on correct interpretation of the instructions of the GOI, contained in Annexures C and D, on account of which, their names do not appear in the RSL, which was drawn up subsequent to their promotion; that the said seven employees listed in Annexure-J, have not been reverted on the basis of the revised Seniority List at Annexure-A, for which, the basis of seniority adopted, was mere length of service in the concerned grade; that the applicant should have been granted seniority and promoted parity with the above persons, on a vacancy becoming available, but this was not done, and on the contrary, he was placed far below in the order of seniority, namely at S.No.50 in Annexure-A, resulting in discrimination against him; that Annexure-A is liable to be quashed, as this Seniority List is not drawn up in accordance with the principles of seniority, enunciated in Annexures C and D, though the covering letter to Annexure-A purports to do so.

6. Rebutting each of these contentions, the learned Counsel for the respondents submitted, that the Seniority List as on 1.3.1980, drawn up initially by R-3 on 30.9.1980, (Annexure-B), had to be revised by him, owing to misinterpretation of the principles of seniority, enunciated by the GOI in Annexure-C

*SL*

(1959 Principles) and the amended Seniority List as on 1.7.1981, was drawn up by R-3 on 17.12.1981(Annexure-A) on receipt of instructions from the Department of Personnel and Administrative Reforms, GOI. In interpreting the instructions of the GOI, in Annexure-C, Counsel for the respondents sought to emphasise, that in the context of the instant case, the only prevailing principle of seniority as enunciated in Annexure-C, was length of service in a similar grade or post. He argued, that the question of considering for the purpose of seniority, the quantum of basic pay drawn, would arise, only if there was difficulty <sup>in</sup> ~~and~~ in regard to determining equivalence of comparable posts/grades. In the present case, he submitted, there was no such difficulty and the grades of LDC and UDC not being comparable, the question of taking into account, the quantum of basic pay for the purpose of determination of equivalence of comparable posts and resultant seniority did not arise. He explained the special background and circumstances, under which the <sup>GOI</sup> was required to evolve the criterion of quantum of pay, for determining the equivalence of comparable posts and seniority, to help resolve the difficulty, <sup>of</sup> during the transitional phase of the country's independence, when the administrative setup, had to be streamlined with a sense of urgency. Such a circumstance and situation, no longer subsisted, he said, after well over three decades and therefore there was no warrant, to invoke the principle of quantum of basic pay, as spelt out in Annexure-C(1949 Principles) now, for the purpose of determination of seniority. Besides, in the instant case, there was no problem whatever, in regard to determining the equivalence of comparable posts/grades. The grades of LDC and UDC, were by no means comparable and in fact the former was a feeder-cadre for the latter.

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7. Counsel for the respondents contended, that the applicant cannot have a grievance at this distance of time, that he ought to have been assigned seniority and considered for promotion, to the next higher grade, on par with the seven employees listed in Annexure-J. These seven persons he said, were promoted long back, and therefore, the plea of the applicant at this hopelessly belated stage, to assign him seniority and grant him promotion, on par with the above seven persons, was prima facie, hit by laches. Even then, Counsel for the respondents stressed, that these 7 persons were clearly senior to the applicant, by virtue of their earlier dates of appointment as LDC and of continuous officiation in the post of UDC. By the same token, he submitted, R4 to R12 were distinctly senior to the applicant.

8. We have examined carefully the rival contentions and the material placed before us. The entire case hinges crucially on the instructions of the GOI contained in Annexures C and D (1949 and 1959 Principles of seniority respectively) in regard to the criteria, for determination of seniority of Class III and IV staff. Annexure-D refers to the instructions of the Ministry of Home Affairs, GOI under their O.M. dated 22.12.1959, the principles of seniority embodied in which, had to be given effect to, from that date, in respect of the above categories of staff, but as the ASI had no recruitment rules till the end of 1976, these principles could not be implemented in the ASI. The GOI therefore decided as a very special case, to apply only upto 31.12.1976, the 1949 principles of seniority (Annexure-C) (under the circumstances envisaged therein), in the case of the ASI and the 1959 principles of seniority (Annexure-D) thereafter. Neither parties showed us the copy of the above O.M dated 20.12.1959 from the GOI.

9. It is apparent from the foregoing, <sup>as only</sup> that the criterion of length of service (i.e., the date of continuous efficiacy in the grade in question i.e., UDC in the present case) should have been adopted for the purpose of determination of seniority, as spelt out in Annexure-C (1949 Principles). The question of adopting the ~~other~~ <sup>other</sup> criterion viz., quantum of basic pay did not arise, as no difficulty was encountered in regard to determination of equivalence of comparable posts, as was the case initially in 1949 and thereabout, during the transitional phase of our country's freedom, when administrative structures <sup>had</sup> to be streamlined. R3 is seen to have drawn up the <sup>Revised</sup> <sub>A</sub> Seniority List in the grade of UDCs at Annexure-A, on the basis of continuous efficiacy in that grade.

10. It is not clear to us, as to why the GOI should have as late as on 27.11.1976 (Annexure-D) decided, to apply the 1949 seniority principles with a cut-off date upto 31.12.1976. The distinctive feature of these principles, was the manner prescribed, to decide the equivalence of comparable posts, on the basis of the quantum of basic pay drawn in a particular grade. If that situation did not exist in 1976 i.e., after nearly three decades, when the 1949 seniority principles were laid down, to cover, special circumstances, there was little propriety, to invoke these principles as <sup>is</sup> <sub>also</sub> late as in 1976. The only residuary seniority principle of 1949, subsisting in 1976 in the above circumstances, was continuous length of service in the grade in question, which is a universal principle, and for which in fact, there was no need to invoke 1949 seniority principles. Counsel for the respondents confirmed to us that in 1976, there was no case which necessitated determination of equivalence of posts and resultant seniority, on the basis of the 1949 seniority principles and therefore he sub-

*Id*

mitted that Seniority List of UDCs, at Annexure-B, erroneously drawn up on 30.9.1980 by R-3, on misapplication of the 1949 seniority principles, had to be revised on 17.12.1981 (Annexure-A) on the instructions of the Department of Personnel and Administrative Reforms, GOI and that representations, if any thereon were called from all concerned, to help finalise this Seniority List.

11. Counsel for the respondents reiterated, that the seven persons listed in Annexure-J and R4 to R12 were clearly senior to the applicant, for the reasons stated in para 6 supra, and therefore, the applicant could have no grievance, that he had been superseded on grounds of misapplication of the seniority principles. These 7 persons have not been impleaded by the applicant and Counsel for the applicant admits, that they are senior to his client on any criterion. In our view, the applicant, did not bestir himself, <sup>within</sup> well in time, ~~when~~ the above 7 persons were promoted and his plea at this ~~far~~ too belated stage is, therefore, clearly hit by laches.

12. In the result, we hold that the revised Seniority List at Annexure-A drawn up by R3 on 17.12.1981, is in order and that R4 to R12 are senior to the applicant on that basis. We therefore, dismiss the application but in the circumstances of the case, direct the parties to bear their <sup>own</sup> ~~own~~ costs.

*Chandrasekhar*

MEMBER(J)

*6/3/87*

MEMBER(AM)

6-3-1987

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CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH  
\* \* \* \* \*

Commercial Complex(BDA)  
Indiranagar  
Bangalore - 560 038

Dated : 24/3/87

Application No. 1106/86(T)  
W.P. No. 8973/83

Applicant

K.K.V. Ranganatha Swamy

V/s Min of Education and 11 Ors

To

1. Shri K.K.V. Ranganatha Swamy  
Upper Division Clerk  
Office of the Superintending Archaeologist  
Archaeological Survey of India  
Mid-Southern Circle  
Jayanagar, Bangalore - 560 041
2. Shri L.S. Varadaraja Iyengar  
Advocate  
No. 1, Poornaiah Chatram Road  
Balepet, Bangalore - 560 053
3. Ministry of Education  
Department of Culture  
Shastri Bhavan, New Delhi.
4. The Director General  
Archaeological Survey of India  
Janpath, New Delhi-110011
5. The Director (Administration)  
Archaeological Survey of India  
Janpath, New Delhi-110011
6. Shri L.H. Mehta  
C/o Superintending Archaeologist  
Archaeological Survey of India  
Western Circle, Madhav Bagh  
Near Sapna Talkies  
Vadodara - 390 001(Gujarat)
7. Shri V.T. Bhatia  
C/o Director (Epigraphy)  
Archaeological Survey of India  
Old High Court Building  
Nagpur (Maharashtra)

8. Shri L.A. Thakur  
C/o Superintending Archaeologist  
Archaeological Survey of India  
Western Circle, Madhav Bagh  
Near Sapna Talkies  
Vadodara (Gujarat)

9. Shri B.N. Prasad  
C/o Dy. Suptd. Horticulturist  
Archaeological Survey of India  
Garden Branch No. II  
Qutb Minar, New Delhi

10. Shri R.D. Satbhai  
C/o Superintending Archaeologist  
Archaeological Survey of India  
South-Western Circle, Bibi-ka-Maqbara  
Aurangabad (Maharashtra)

11. Shri I.K. Gajabhiye  
C/o Superintending Archaeologist  
Archaeological Survey of India  
Central Circle, Ahmedabad Palace Road  
Bhopal (Madhya Pradesh)

12. Shri R.N. Agarwal  
C/o Superintending Archaeologist  
Archaeological Survey of India  
Mid-Central Circle, Ahmedabad Palace Road  
Bhopal (Madhya Pradesh)

13. Shri A.B. Tirumalai  
C/o Superintending Archaeologist  
Archaeological Survey of India  
Mid-Southern Circle,  
Jayanagar, Bangalore - 560 041

14. Shri P.M. Babu  
C/o Superintending Archaeologist  
Archaeological Survey of India  
South-Eastern Circle  
University Road, Hyderabad (Andhra Pradesh)

15. Shri M.S. Padmarajaiah  
Senior Central Govt. Stng Counsel  
High Court Buildings  
Bangalore - 560001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH IN  
APPLICATION NO. 1106/86(T)

Please find enclosed herewith the copy of the order passed by this Tribunal  
in the above said Application on 6-3-87

Encl : As above

( Representative By  
Dir General, ASI )

16. Superintendent Archaeologist  
A.S.I., Jaynagar  
Bangalore

Recd Copy  
Check 24/3/87  
(K.C. CHAEKO)  
U.D.E. (Adm)

B.V. Venkatesh  
Deputy Registrar  
(Judicial)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH, BANGALORE

DATED THIS THE SIXTH DAY OF MARCH, 1987

Present : Hon'ble Shri Ch.Ramakrishna Rao Member(J)

Hon'ble Shri L.H.A.Rege Member(AM)

APPLICATION NO.1106/86(T)

K.K.V.Ranganatha Swamy,  
UDC, O/o the Superintending  
Archaeologist, Archaeological  
Survey of India, Mid-Southern  
Circle, Jayanagar,  
Bangalore - 560 041.

... APPLICANT

( Shri L.S.Varadaraja Iyengar ... Advocate )

Vs.

1. Union of India,  
Department of Culture,  
M/o Education,  
Shastri Bhavan,  
New Delhi.
2. Director General,  
Archaeological Survey of India,  
Janpath, New Delhi - 11.
3. Director(Administration)  
Archaeological Survey of India,  
Janpath, New Delhi - 11.
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Archaeological Survey of India,  
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12. Shri P.H.Babu,  
C/o Superintending Archaeologist,  
Archaeological Survey of India,  
South-Eastern Circle,  
University Road,  
Hyderabad.

... ..

RESPONDENTS.

( Shri M.S.Padmarajaiah ... Advocate )

This application has come up before the court today.

Hon'ble Shri L.H.A.Rao, Member (A) made the following :

ORDER

This application is transferred to this Bench by the High Court of Judicature, Karnataka, under Section 29 of the Administrative Tribunals Act, 1985 and is re-numbered as an application, wherein the applicant prays that :

i) the Seniority List of Upper Division Clerks (UDCs) drawn up as on 31.3.1980 (Annexure-B), by R3, be quashed the same being incorrect and violative of principles of seniority enunciated in Annexures C and D;

ii) R1 to R3 be directed, to promote the applicant in a suitable vacancy, with reference to his rank at Sl.No.51 of the Seniority List of UDCs, as on 31.3.1980, (Annexure-B) drawn up by R-3;

iii) consequent to quashing the Seniority List at Annexure-A, the promotions granted to R4 to R12 on the basis of the said Seniority List, be annulled;



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2. The matrix of facts leading to this application is as follows. At the material time, the applicant was serving as UDC in the Mid-Southern Circle, Archaeological Survey of India, Jayanagar, Bangalore (ASI), on a monthly salary of Rs.464/- in the grade of Rs.330-10-380-EB-12-500-EB-15-560. He entered service in the ASI on 1.3.1956 and was promoted as UDC with effect from 30.6.1976. A Seniority List of UDCs (SL) was drawn up by R3 as on 31.3.1980, and sent to all offices of the ASI under his letter dated 30.9.1980(Annexure-B), with instructions to indicate, errors or omissions if any therein, not later than 45 days, from the date of issue of that letter, failing which, it was given to understand, that the SL would be deemed as final as on 31.3.1980. It was later discovered, that the SL was not proper, as the principles enunciated in O.M. dated 22.6.1949(Annexure-C) of the Ministry of Home Affairs (MOH), Government of India, (GOI) had <sup>not</sup> ~~been~~ correctly applied and therefore, the SL was revised by R3 as on 1.7.1981(RSL) under his letter dated 17.12.1981(Annexure-A) and was circulated to all the offices of the ASI, with instructions to indicate, errors or omissions if any, therein, within a period of one month, from the date of issue of that letter, failing which, it was made clear, that it would be presumed, that there was no objection in regard to <sup>the</sup> ~~the~~ SL. R3 had indicated in his aforesaid letter, that the <sup>revised</sup> ~~the~~ RSL as on 1.7.1981 was drawn up, on the basis of length of service, in accordance with the principles enunciated by the MOH, GOI, in their letter (Annexure-C), in respect



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revised by R3, the name of the applicant was shown at Sl.No.50, taking into account, only the continuous length of service in the grade of UDC, commencing from 30.6.1976. According to the applicant, this was contrary to the instructions contained in Annexures-C and D. He, therefore, submitted a series of representations thereon to R2 and others from 18.1.1982 to 2.3.1983, urging that the principles enunciated in Annexures-C and D, be properly applied, and he be assigned the correct rank in the Seniority List. Respondent-3 communicated to the Superintending Archaeologist (under whom the applicant was directly working) under his letter dated 16.10.1982(Annexure-N), that as the applicant had joined duty as UDC on 30.6.1976, his seniority in that grade as on 1.7.1951, was correctly determined and that the applicant be informed accordingly. The applicant alleges that, as he did not receive any reply to this representation dated 2.3.1983, addressed to R2, he had no other alternative but to file a writ petition in the High Court of Judicature, Karnataka, which has since been transferred to this Bench and is now before us for consideration.

5. The learned Counsel for the applicant contended, that R2 and R3, did not faithfully comply with the instructions of the GOI, in Annexures C and D, which should have been read together and not in isolation, to help appreciate their true import and meaning; that these instructions were explicit, in that, the criterion for determination of seniority in the case of an employee appointed before 31.12.1976, was not merely the length of service in a particular grade but the date on which his basic salary in the grade of Lower Division Clerk(LDC), exceeded the minimum of pay scale of the next higher grade, namely, that of UDC; that the applicant was appointed before 31.12.1976, which

~~the~~ was ~~the~~ cut-off date stipulated in Annexure-D, for application of the principles of Seniority, enunciated in Annexure-C and therefore, according to the above criteria of seniority, he should have been ranked in seniority between Serial Nos. 8 and 9 in the RSL and not at S.No.50; that R2 and R3 have by misapplication of the principles of seniority, placed the employees at S.No.s.10-16,18-22,24,25 and 27-49 above him in Annexure-A, to the detriment of his career prospects; that the Seniority List at Annexure-A, is also liable to be struck down on the ground of discrimination, as the seven employees listed in Annexure-J, who have been correctly ranked in the SL at Annexure-B, have since been promoted to the higher grade, on correct interpretation of the instructions of the GOI, contained in Annexures C and D, on account of which, their names do not appear in the RSL, which was drawn up subsequent to their promotion; that the said seven employees listed in Annexure-J, have not been reverted on the basis of the revised Seniority List at Annexure-A, for which, the basis of seniority adopted, was mere length of service in the concerned grade; that the applicant should have been granted seniority and promoted parity with the above persons, on a vacancy becoming available, but this was not done, and on the contrary, he was placed far below in the order of seniority, namely at S.No.50 in Annexure-A, resulting in discrimination against him; that Annexure-A is liable to be quashed, as this Seniority List is not drawn up in accordance with the principles of seniority, enunciated in Annexures C and D, though the covering letter to Annexure-A purports to do so.

6. Rebutting each of these contentions, the learned Counsel for the respondents submitted, that the Seniority List as on 1.3.1980, drawn up initially by R-3 on 30.9.1980, (Annexure-B), had to be revised by him, owing to misinterpretation of the principles of seniority, enunciated by the GOI in Annexure-C



(1959 Principles) and the amended Seniority List as on 1.7.1981, was drawn up by R-3 on 17.12.1981(Annexure-A) on receipt of instructions from the Department of Personnel and Administrative Reforms, GOI. In interpreting the instructions of the GOI, in Annexure-C, Counsel for the respondents sought to emphasise, that in the context of the instant case, the only prevailing principle of seniority as enunciated in Annexure-C, was length of service in a similar grade or post. He argued, that the question of considering for the purpose of seniority, the quantum of basic pay drawn, would arise, only if there was difficulty <sup>44</sup> in regard to determining equivalence of comparable posts/grades. In the present case, he submitted, there was no such difficulty and the grades of LDC and UDC not being comparable, the question of taking into account, the quantum of basic pay for the purpose of determination of equivalence of comparable posts and resultant seniority did not arise. He explained the special background and circumstances, under which the GOI was required to evolve the criterion of quantum of pay, for determining the equivalence of comparable posts and seniority, to help resolve the difficulty, <sup>45</sup> during the transitional phase of the country's independence, when the administrative setup, had to be streamlined with a sense of urgency. Such a circumstance and situation, no longer subsisted, he said, after well over three decades and therefore there was no warrant, to invoke the principle of quantum of basic pay, as spelt out in Annexure-C(1949 Principles) now, for the purpose of determination of seniority. Besides, in the instant case, there was no problem whatever, in regard to determining the equivalence of comparable posts/grades. The grades of LDC and UDC, were by no means comparable and in fact the former was a feeder-cadre for the latter.



7. Counsel for the respondents contended, that the applicant cannot have a grievance at this distance of time, that he ought to have been assigned seniority and considered for promotion, to the next higher grade, on par with the seven employees listed in Annexure-J. These seven persons he said, were promoted long back, and therefore, the plea of the applicant at this hopelessly belated stage, to assign him seniority and grant him promotion, on par with the above seven persons, was prima facie, hit by laches. Even then, Counsel for the respondents stressed, that these 7 persons were clearly senior to the applicant, by virtue of their earlier dates of appointment as LDC and of continuous officiation in the post of UDC. By the same token, he submitted, R4 to R12 were distinctly senior to the applicant.

8. We have examined carefully the rival contentions and the material placed before us. The entire case hinges crucially on the instructions of the GOI contained in Annexures C and D (1949 and 1959 Principles of seniority respectively) in regard to the criteria, for determination of seniority of Class III and IV staff. Annexure-D refers to the instructions of the Ministry of Home Affairs, GOI under their O.M. dated 22.12.1959, the principles of seniority embodied in which, had to be given effect to, from that date, in respect of the above categories of staff, but as the ASI had no recruitment rules till the end of 1976, these principles could not be implemented in the ASI. The GOI therefore decided as a very special case, to apply only upto 31.12.1976, the 1949 principles of seniority (Annexure-C) (under the circumstances envisaged therein), in the case of the ASI and the 1959 principles of seniority (Annexure-D) thereafter. Neither parties showed us the copy of the above O.M dated 20.12.1959 from the GOI.

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9. It is apparent from the foregoing, that the criterion of length of service (i.e., the date of continuous efficiation in the grade in question i.e., UDC in the present case) should have been adopted for the purpose of determination of seniority, as spelt out in Annexure-C (1949 Principles). The question of adopting the ~~other~~ <sup>the only</sup> other criterion viz., quantum of basic pay did not arise, as no difficulty was encountered in regard to determination of equivalence of comparable posts, as was the case initially in 1949 and thereabout, during the transitional phase of our country's freedom, when administrative structures <sup>had</sup> ~~to~~ be streamlined. R3 is seen to have drawn up the <sup>the</sup> ~~the~~ Seniority List in the grade of UDCs at Annexure-A, on the basis of continuous efficiation in that grade.

10. It is not clear to us, as to why the GOI should have as late as on 27.11.1976(Annexure-D) decided, to apply the 1949 seniority principles with a cut-off date upto 31.12.1976. The distinctive feature of these principles, was the manner prescribed, to decide the equivalence of comparable posts, on the basis of the quantum of basic pay drawn in a particular grade. If that situation did not exist in 1976 i.e., after nearly three decades, when the 1949 seniority principles were laid down, to cover, special circumstances, there was little propriety, to invoke these principles as <sup>the</sup> ~~the~~ same as in 1976. The only residuary seniority principle of 1949, subsisting in 1976 in the above circumstances, was continuous length of service in the grade in question, which is a universal principle, and for which in fact, there was no need to invoke 1949 seniority principles. Counsel for the respondents confirmed to us that in 1976, there was no case which necessitated determination of equivalence of posts and resultant seniority, on the basis of the 1949 seniority principles and therefore he sub-



mitted that Seniority List of UDCs, at Annexure-B, erroneously drawn up on 30.9.1980 by R-3, on misapplication of the 1949 seniority principles, had to be revised on 17.12.1981 (Annexure-A) on the instructions of the Department of Personnel and Administrative Reforms, GOI and that representations, if any thereon were called from all concerned, to help finalise this Seniority List.

11. Counsel for the respondents reiterated, that the seven persons listed in Annexure-J and R4 to R12 were clearly senior to the applicant, for the reasons stated in para 6 supra, and therefore, the applicant could have no grievance, that he had been superseded on grounds of misapplication of the seniority principles. These 7 persons have not been impleaded by the applicant and Counsel for the applicant admits, that they are senior to his client on any criterion. In our view, the applicant, did not bestir himself, <sup>when</sup> well in time, ~~when~~ <sup>in</sup> the above 7 persons were promoted and his plea at this ~~far~~ too belated stage is, therefore, clearly hit by laches.

12. In the result, we hold that the revised Seniority List at Annexure-A drawn up by R3 on 17.12.1981, is in order and that R4 to R12 are senior to the applicant on that basis. We therefore, dismiss the application but in the circumstances of the case, direct the parties to bear their <sup>our</sup> ~~own~~ costs.

Sd/-

MEMBER(J)

AN.

Sd/-

MEMBER(AM) 6-3-1987

- True Copy -

B. V. Venkateshwar  
DEPUTY REGISTRAR  
CENTRAL ADMINISTRATIVE TRIBUNAL  
ADDITIONAL BENCH  
BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH  
\* \* \* \* \*

Commercial Complex(BDA)  
Indiranagar  
Bangalore - 560 038

Dated : 24-3-87

Application No. 1106/86(T)  
W.P. No. 8973/83

Applicant

K.K.V. Ranganatha Swamy

v/s Min of Education and 11 Ors

To

1. Shri K.K.V. Ranganatha Swamy  
Upper Division Clerk  
Office of the Superintending Archaeologist  
Archaeological Survey of India  
Mid-Southern Circle  
Jayanagar, Bangalore - 560 041
2. Shri L.S. Varadaraja Iyengar  
Advocate  
No. 1, Poornaish Chatram Road  
Balepet, Bangalore - 560 053
3. Ministry of Education  
Department of Culture  
Shastri Bhavan, New Delhi.
4. The Director General  
Archaeological Survey of India  
Janpath, New Delhi-110011
5. The Director (Administration)  
Archaeological Survey of India  
Janpath, New Delhi-110011
6. Shri L.H. Mehta  
C/o Superintending Archaeologist  
Archaeological Survey of India  
Western Circle, Madhav Bagh  
Near Sapna Talkies  
Vadodara - 390 001(Gujarat)
7. Shri V.T. Bhatia  
C/o Director (Epigraphy)  
Archaeological Survey of India  
Old High Court Building  
Nagpur (Maharashtra)

8. Shri L.A. Thakur  
C/o Superintending Archaeologist  
Archaeological Survey of India  
Western Circle, Madhav Bagh  
Near Sapna Talkies  
Vadodara (Gujarat)

9. Shri B.N. Prasad  
C/o Dy. Suptd. Horticulturist  
Archaeological Survey of India  
Garden Branch No. II  
Qutb Minar, New Delhi

10. Shri R.D. Satbhai  
C/o Superintending Archaeologist  
Archaeological Survey of India  
South-Western Circle, Bibi-ka-Maqbara  
Aurangabad (Maharashtra)

11. Shri I.K. Gajabhiye  
C/o Superintending Archaeologist  
Archaeological Survey of India  
Central Circle, Ahmedabad Palace Road  
Bhopal (Madhya Pradesh)

12. Shri R.N. Agarwal  
C/o Superintending Archaeologist  
Archaeological Survey of India  
Mid-Central Circle, Ahmedabad Palace Road  
Bhopal (Madhya Pradesh)

13. Shri A.B. Tirumalai  
C/o Superintending Archaeologist  
Archaeological Survey of India  
Mid-Southern Circle,  
Jayanagar, Bangalore - 560 041

14. Shri P.M. Babu  
C/o Superintending Archaeologist  
Archaeological Survey of India  
South-Eastern Circle  
University Road, Hyderabad (Andhra Pradesh)

15. Shri M.S. Padmarajaiah  
Senior Central Govt. Stng Counsel  
High Court Buildings  
Bangalore - 560001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH IN  
APPLICATION NO. 1106/86(T)

Please find enclosed herewith the copy of the order passed by this Tribunal  
in the above said Application on 6-3-87

*B. V. Venkateshwar*  
Deputy Registrar  
(Judicial)

Encl : As above

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH, BANGALORE

DATED THIS THE SIXTH DAY OF MARCH, 1987

Present : Hon'ble Shri Ch.Ramakrishna Rao

Member(J)

Hon'ble Shri L.H.A.Rego

Member(AM)

APPLICATION NO.1106/86(T)

K.K.V.Ranganatha Swamy,  
UDC, D/o the Superintending  
Archaeologist, Archaeological  
Survey of India, Mid-Southern  
Circle, Jayanagar,  
Bangalore - 560 041.

...

APPLICANT

( Shri L.S.Varadaraja Iyengar ... Advocate )

Vs.

1. Union of India,  
Department of Culture,  
M/o Education,  
Shastri Bhavan,  
New Delhi.
2. Director General,  
Archaeological Survey of India,  
Janpath, New Delhi - 11.
3. Director(Administration)  
Archaeological Survey of India,  
Janpath, New Delhi - 11.
4. Sri L.H.Mehta,  
C/o Superintending Archaeologist,  
Archaeological Survey of India,  
Western Circle, Madhav Bagh,  
Near Sapna Talkies,  
VADODARA - 390 001.
5. Sri V.T.Bhatia,  
C/o Director(Epigraphy),  
Archaeological Survey of India,  
Old High Court Building,  
Nagpur.
6. Sri L.A.Thakur,  
C/o Superintending Archaeologist,  
Archaeological Survey of India,  
Western Circle, Madhav Bagh,  
Near Sapna Talkies,  
VADODARA.
7. Sri B.N.Prasad,  
C/o Dy.Suptd.Horticulturist,  
Archaeological Survey of India,  
Garden Branch No.II,  
Qutub Minar, New Delhi.



8. R.D.Satbhai,  
C/o Superintending Archaeologist,  
Archaeological Survey of India,  
South-Western Circle, Bibi-ka-Maqbara,  
Aurangabad.

9. Sri I.K.Gajabhiye,  
C/o Superintending Archaeologist,  
Archaeological Survey of India,  
Central Circle, Ahmedabad Palace Road,  
Bhopal.

10. Sri R.N.Agarwal,  
C/o Superintending Archaeologist,  
Archaeological Survey of India,  
Central Circle, Ahmedabad Palace Road,  
Bhopal.

11. Sri A.B.Tirumalai,  
C/o Superintending Archaeologist,  
Archaeological Survey of India,  
Mid-Southern Circle, Jayanagar,  
Bangalore - 560 041.

12. Shri P.H.Babu,  
C/o Superintending Archaeologist,  
Archaeological Survey of India,  
South-Eastern Circle,  
University Road,  
Hyderabad.

... ..

RESPONDENTS.

( Shri M.S.Padmarajaiah ... Advocate )

This application has come up before the court today.

Hon'ble Shri L.H.A.Rege, Member (A) made the following :

O R D E R

This application is transferred to this Bench by the High Court of Judicature, Karnataka, under Section 29 of the Administrative Tribunals Act, 1985 and is re-numbered as an application, wherein the applicant prays that :

i) the Seniority List of Upper Division Clerks (UDCs) drawn up as on 31.3.1980 (Annexure-B), by R3, be quashed the same being incorrect and violative of principles of seniority enunciated in Annexures C and D;

ii) R1 to R3 be directed, to promote the applicant in a suitable vacancy, with reference to his rank at Sl.No.51 of the Seniority List of UDCs, as on 31.3.1980, (Annexure-B) drawn up by R-3;

iii) consequent to quashing the Seniority List at Annexure-A, the promotions granted to R4 to R12 on the basis of the said Seniority List, be annulled;



iv) R1 to R3 be directed to determine, pay and other monetary benefit due to the applicant, pursuant to the relief to be granted, in accordance with (i) to (iii) supra, and such other relief as may be deemed appropriate.

2. The matrix of facts leading to this application is as follows. At the material time, the applicant was serving as UDC in the Mid-Southern Circle, Archaeological Survey of India, Jayanagar, Bangalore (ASI), on a monthly salary of Rs.464/- in the grade of Rs.330-10-380-EB-12-500-EB-15-560. He entered service in the ASI on 1.3.1956 and was promoted as UDC with effect from 30.6.1976. A Seniority List of UDCs (SL) was drawn up by R3 as on 31.3.1980, and sent to all offices of the ASI under his letter dated 30.9.1980(Annexure-B), with instructions to indicate, errors or omissions if any therein, not later than 45 days, from the date of issue of that letter, failing which, it was given to understand, that the SL would be deemed as final as on 31.3.1980. It was later discovered, that the SL was not proper, as the principles enunciated in O.M. dated 22.6.1949(Annexure-C) of the Ministry of Home Affairs (MOH), Government of India, (GOI) had not <sup>48 been</sup> correctly applied and therefore, the SL was revised by R3 as on 1.7.1981(RSL) under his letter dated 17.12.1981(Annexure-A) and was circulated to all the offices of the ASI, with instructions to indicate, errors or omissions if any, therein, within a period of one month, from the date of issue of that letter, failing which, it was made clear, that it would be presumed, that there was no objection in regard to <sup>48</sup> the SL. R3 had indicated in his aforesaid letter, that the ~~reviewed~~ RSL as on 1.7.1981 was drawn up, on the basis of length of service, in accordance with the principles enunciated by the MOH, GOI, in their letter (Annexure-C), in respect



of appointees upto 31.12.1976 and in regard to appointees after that date, on the basis of the instructions contained in Letter dated 21/27.11.1976 (Annexure-D) of R2. The following is the relevant excerpt of the instructions contained in O.M. dated 22.6.1949, from the Ministry of Home Affairs, GOI (Annexure-C), <sup>de seruante</sup> on the subject viz., "Seniority of displaced Government, who have been absorbed temporarily in service, under the Central Government":-

" The question of seniority of Assistants in the Secretariat, was recently examined very carefully, in consultation with all the Ministries and the Federal Public Service Commission and the decisions reached, are incorporated in para 8 of the Instructions for the initial constitution of the grade of Assistants, <sup>de</sup> and extract of which is attached. It has been decided, that this rule should generally be taken as the model, in framing the rules of seniority for other services, and in respect of persons employed in any particular grade, seniority should as a general rule, be determined, on the basis of the length of service in that grade, as well as service in an equivalent grade, irrespective of whether the latter, was under the Central or Provincial Government in India or Pakistan. It has been found difficult to work on the basis of 'comparable' posts or grades and it has therefore been decided that 'service in an equivalent Grade', should generally be defined as service on a rate of pay, higher than the minimum of the time-scale of the grade concerned. The seniority of persons appointed on permanent or quasi-permanent basis, <sup>de</sup> before appointed on permanent or quasi-permanent basis before the 1st January, 1944, should, however, not be disturbed.

It is realised, that this rule will upset some of the decisions regarding seniority, already made in the various offices but in the extraordinary circumstances, in which a large number of

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displaced Government Servants, have had to be absorbed in other offices, the usual seniority rules cannot be applied, if equitable treatment is to be meted to displaced Government servants, having in most cases, lost all their property and having had to migrate in difficult circumstances, should be given some weightage in the matter of seniority on compassionate grounds. The matter has been considered in all its aspects and the decision conveyed in the previous paragraph, is considered to be the most equitable in the circumstances of the case. It is requested that these principles may be borne in mind, in determining seniority of Government servants of various categories, employed under <sup>the</sup> Ministry of Finance etc."

3. The following is the gist of the above instructions of the GOI, in so far as they are relevant to the case before us,

- i) In respect of persons employed in any particular grade, seniority should, as a general rule, be determined on the basis of length of service, in their grade, as well as the service in an equivalent grade, regardless of whether, they were under the Central or Provincial Government of India or Pakistan.
- ii) Service in an equivalent grade, should generally be defined as service on a rate of pay higher than the minimum of the time-scale of the grade concerned.

4. The applicant states, that he was placed at Sl. No. 51 in the SL, that he was promoted as UDC on 30.6.1976 having been confirmed as LDC, and that column No. 9 of the SL shows, against his name, 1.8.1961 as the date, from which his seniority in the grade of UDC was to be reckoned. According to the applicant, at the <sup>material</sup> ~~national~~ time, he was drawing monthly pay, more than the minimum of the pay-scale of the UDCs, viz. Rs. 130-5-160-8-200-EB-8-256-EB-8-280-10-300. In Annexure-A, however, when the SL came to be



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revised by R3, the name of the applicant was shown at Sl.No.50, taking into account, only the continuous length of service in the grade of UDC, commencing from 30.6.1976. According to the applicant, this was contrary to the instructions contained in Annexures-C and D. He, therefore, submitted a series of representations thereon to R2 and others from 18.1.1982 to 2.3.1983, urging that the principles enunciated in Annexures-C and D, be properly applied, and he be assigned the correct rank in the Seniority List. Respondent-3 communicated to the Superintending Archaeologist (under whom the applicant was directly working) under his letter dated 16.10.1982 (Annexure-N), that as the applicant had joined duty as UDC on 30.6.1976, his seniority in that grade as on 1.7.1951, was correctly determined and that the applicant be informed accordingly. The applicant alleges that, as he did not receive any reply to this representation dated 2.3.1983, addressed to R2, he had no other alternative but to file a writ petition in the High Court of Judicature, Karnataka, which has since been transferred to this Bench and is now before us for consideration.

5. The learned Counsel for the applicant contended, that R2 and R3, did not faithfully comply with the instructions of the GOI, in Annexures C and D, which should have been read together and not in isolation, to help appreciate their true import and meaning; that these instructions were explicit, in that, the criterion for determination of seniority in the case of an employee appointed before 31.12.1976, was not merely the length of service in a particular grade but the date on which his basic salary in the grade of Lower Division Clerk (LDC), exceeded the minimum of pay scale of the next higher grade, namely, that of UDC; that the applicant was appointed before 31.12.1976, which

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was cut-off date stipulated in Annexure-D, for application of the principles of Seniority, enunciated in Annexure-C and therefore, according to the above criteria of seniority, he should have been ranked in seniority between Serial Nos. 8 and 9 in the RSL and not at S1.No.50; that R2 and R3 have by misapplication of the principles of seniority, placed the employees at S1.Nos.10-16,18-22,24,25 and 27-49 above him in Annexure-A, to the detriment of his career prospects; that the Seniority List at Annexure-A, is also liable to be struck down on the ground of discrimination, as the seven employees listed in Annexure-J, who have been correctly ranked in the SL at Annexure-B, have since been promoted to the higher grade, on correct interpretation of the instructions of the GOI, contained in Annexures C and D, on account of which, their names do not appear in the RSL, which was drawn up subsequent to their promotion; that the said seven employees listed in Annexure-J, have not been reverted on the basis of the revised Seniority List at Annexure-A, for which, the basis of seniority adopted, was mere length of service in the concerned grade; that the applicant should have been granted seniority and promoted parity with the above persons, on a vacancy becoming available, but this was not done, and on the contrary, he was placed far below in the order of seniority, namely at S.No.50 in Annexure-A, resulting in discrimination against him; that Annexure-A is liable to be quashed, as this Seniority List is not drawn up in accordance with the principles of seniority, enunciated in Annexures C and D, though the covering letter to Annexure-A purports to do so.

6. Rebutting each of these contentions, the learned Counsel for the respondents submitted, that the Seniority List as on 1.3.1980, drawn up initially by R-3 on 30.9.1980, (Annexure-B), had to be revised by him, owing to misinterpretation of the principles of seniority, enunciated by the GOI in Annexure-C

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8. We have examined carefully the rival contentions and the material placed before us. The entire case hinges crucially on the instructions of the GOI contained in Annexures C and D (1949 and 1959 Principles of seniority respectively) in regard to the criteria, for determination of seniority of Class III and IV staff. Annexure-D refers to the instructions of the Ministry of Home Affairs, GOI under their O.M. dated 22.12.1959, the principles of seniority embodied in which, had to be given effect to, from that date, in respect of the above categories of staff, but as the ASI had no recruitment rules till the end of 1976, these principles could not be implemented in the ASI. The GOI therefore decided as a very special case, to apply only upto 31.12.1976, the 1949 principles of seniority (Annexure-C) (under the circumstances envisaged therein), in the case of the ASI and the 1959 principles of seniority (Annexure-D) thereafter. Neither parties showed us the copy of the above O.M dated 20.12.1959 from the GOI.



9. It is apparent from the foregoing, that the criterion of length of service (i.e., the date of continuous efficiation in the grade in question i.e., UDC in the present case) should have been adopted for the purpose of determination of seniority, as spelt out in Annexure-C (1949 Principles). The question of adopting the other criterion viz., quantum of basic pay did not arise, as no difficulty was encountered in regard to determination of equivalence of comparable posts, as was the case initially in 1949 and thereabout, during the transitional phase of our country's freedom, when administrative structures <sup>had</sup> ~~had~~ to be streamlined. R3 is seen to have drawn up the <sup>Revised</sup> ~~Seni~~ <sup>Seni</sup> Seniority List in the grade of UDCs at Annexure-A, on the basis of continuous efficiation in that grade.

10. It is not clear to us, as to why the GOI should have as late as on 27.11.1976 (Annexure-D) decided, to apply the 1949 seniority principles with a cut-off date upto 31.12.1976. The distinctive feature of these principles, was the manner prescribed, to decide the equivalence of comparable posts, on the basis of the quantum of basic pay drawn in a particular grade. If that situation did not exist in 1976 i.e., after nearly three decades, when the 1949 seniority principles were laid down, to cover, special circumstances, there was little propriety, to invoke these principles as <sup>in</sup> ~~as~~ late as in 1976. The only residuary seniority principle of 1949, subsisting in 1976 in the above circumstances, was continuous length of service in the grade in question, which is a universal principle, and for which in fact, there was no need to invoke 1949 seniority principles. Counsel for the respondents confirmed to us that in 1976, there was no case which necessitated determination of equivalence of posts and resultant seniority, on the basis of the 1949 seniority principles and therefore he sub-



mitted that Seniority List of UDCs, at Annexure-B, erroneously drawn up on 30.9.1980 by R-3, on misapplication of the 1949 seniority principles, had to be revised on 17.12.1981(Annexure-A) on the instructions of the Department of Personnel and Administrative Reforms, GOI and that representations, if any thereon were called from all concerned, to help finalise this Seniority List.

11. Counsel for the respondents reiterated, that the seven persons listed in Annexure-J and R4 to R12 were clearly senior to the applicant, for the reasons stated in para 6 supra, and therefore, the applicant could have no grievance, that he had been superseded on grounds of misapplication of the seniority principles. These 7 persons have not been impleaded by the applicant and Counsel for the applicant admits, that they are senior to his client on any criterion. In our view, the applicant, did not <sup>at all</sup> stir himself, well in time, <sup>between</sup> the above 7 persons were promoted and his plea at this far too belated stage is, therefore, clearly hit by laches.

12. In the result, we hold that the revised Seniority List at Annexure-A drawn up by R3 on 17.12.1981, is in order and that R4 to R12 are senior to the applicant on that basis. We therefore, dismiss the application but in the circumstances of the case, direct the parties to bear their <sup>own</sup> ~~own~~ costs.

Sd/-

MEMBER(J)

AN.

Sd/-

MEMBER(AM) V 6-3-1987

-True Copy-

B. V. Venkateshwar  
DEPUTY REGISTRAR  
CENTRAL ADMINISTRATIVE TRIBUNAL  
ADDITIONAL BENCH  
BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH  
\* \* \* \* \*

Commercial Complex(BDA)  
Indiranagar  
Bangalore - 560 038

Dated : 24-3-87

Application No. 1106/86(T)  
W.P. No. 8973/83

**Applicant**

**K.K.V. Ranganatha Swamy**

**V/s Min of Education and 11 Ors**

**To**

1. Shri K.K.V. Ranganatha Swamy  
Upper Division Clerk  
Office of the Superintending Archaeologist  
Archaeological Survey of India  
Mid-Southern Circle  
Jayanagar, Bangalore - 560 041
2. Shri L.S. Varadaraja Iyengar  
Advocate  
No. 1, Poornaish Chatram Road  
Balepet, Bangalore - 560 053
3. Ministry of Education  
Department of Culture  
Shastri Bhavan, New Delhi.
4. The Director General  
Archaeological Survey of India  
Janpath, New Delhi-110011
5. The Director (Administration)  
Archaeological Survey of India  
Janpath, New Delhi-110011
6. Shri L.H. Mehta  
C/o Superintending Archaeologist  
Archaeological Survey of India  
Western Circle, Madhav Bagh  
Near Sapna Talkies  
Vadodara - 390 001(Gujarat)
7. Shri V.T. Bhatia  
C/o Director (Epigraphy)  
Archaeological Survey of India  
Old High Court Building  
Nagpur (Maharashtra)

8. Shri L.A. Thakur  
C/o Superintending Archaeologist  
Archaeological Survey of India  
Western Circle, Madhav Bagh  
Near Sapna Talkies  
Vadodara (Gujarat)
9. Shri B.N. Prasad  
C/o Dy. Suptd. Horticulturist  
Archaeological Survey of India  
Garden Branch No. II  
Qutb Minar, New Delhi
10. Shri R.D. Satbhai  
C/o Superintending Archaeologist  
Archaeological Survey of India  
South-Western Circle, Bibi-ka-Maqbara  
Aurangabad (Maharashtra)
11. Shri I.K. Gajabhiye  
C/o Superintending Archaeologist  
Archaeological Survey of India  
Central Circle, Ahmedabad Palace Road  
Bhopal (Madhya Pradesh)
12. Shri R.N. Agarwal  
C/o Superintending Archaeologist  
Archaeological Survey of India  
Mid-Central Circle, Ahmedabad Palace Road  
Bhopal (Madhya Pradesh)
13. Shri A.B. Tirumalai  
C/o Superintending Archaeologist  
Archaeological Survey of India  
Mid-Southern Circle,  
Jayanagar, Bangalore - 560 041
14. Shri P.M. Babu  
C/o Superintending Archaeologist  
Archaeological Survey of India  
South-Eastern Circle  
University Road, Hyderabad (Andhra Pradesh)
15. Shri M.S. Padmarajaiah  
Senior Central Govt. Stng Counsel  
High Court Buildings  
Bangalore - 560001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH IN  
APPLICATION NO. 1106/86(T)

Please find enclosed herewith the copy of the order passed by this Tribunal  
in the above said Application on 6-3-87

*R.V. Venkatesh*  
Deputy Registrar  
(Judicial)

Encl : As above

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH, BANGALORE

DATED THIS THE SIXTH DAY OF MARCH, 1987

Present : Hon'ble Shri Ch.Ramakrishna Rao

Member(J)

Hon'ble Shri L.H.A.Rego

Member(AM)

APPLICATION NO.1106/86(T)

K.K.V.Ranganatha Swamy,  
UDC, D/o the Superintending  
Archaeologist, Archaeological  
Survey of India, Mid-Southern  
Circle, Jayanagar,  
Bangalore - 560 041.

...

APPLICANT

( Shri L.S.Varadaraja Iyengar ... Advocate )

Vs.

1. Union of India,  
Department of Culture,  
M/o Education,  
Shastri Bhavan,  
New Delhi.
2. Director General,  
Archaeological Survey of India,  
Janpath, New Delhi - 11.
3. Director(Administration)  
Archaeological Survey of India,  
Janpath, New Delhi - 11.
4. Sri L.H.Mehta,  
C/o Superintending Archaeologist,  
Archaeological Survey of India,  
Western Circle, Madhav Bagh,  
Near Sapna Talkies,  
VADODARA - 390 001.
5. Sri V.T.Bhatia,  
C/o Director(Epigraphy),  
Archaeological Survey of India,  
Old High Court Building,  
Nagpur.
6. Sri L.A.Thakur,  
C/o Superintending Archaeologist,  
Archaeological Survey of India,  
Western Circle, Madhav Bagh,  
Near Sapna Talkies,  
VADODARA.
7. Sri B.N.Prasad,  
C/o Dy.Suptd.Horticultrist,  
Archaeological Survey of India,  
Garden Branch No.II,  
Qutub Minar, New Delhi.



8. R.D.Satbhai,  
C/o Superintending Archaeologist,  
Archaeological Survey of India,  
South-Western Circle, Bibi-ka-Maqbara,  
Aurangabad.
9. Sri I.K.Gajabhiye,  
C/o Superintending Archaeologist,  
Archaeological Survey of India,  
Central Circle, Ahmedabad Palace Road,  
Bhopal.
10. Sri R.N.Agarwal,  
C/o Superintending Archaeologist,  
Archaeological Survey of India,  
Central Circle, Ahmedabad Palace Road,  
Bhopal.
11. Sri A.B.Tirumalai,  
C/o Superintending Archaeologist,  
Archaeological Survey of India,  
Mid-Southern Circle, Jayanagar,  
Bangalore - 560 041.
12. Shri P.H.Babu,  
C/o Superintending Archaeologist,  
Archaeological Survey of India,  
South-Eastern Circle,  
University Road,  
Hyderabad. ....

## RESPONDENTS.

This application has come up before the court today.  
Hon'ble Shri L.H.A.Rao, Member (A) made the following :

ORDER

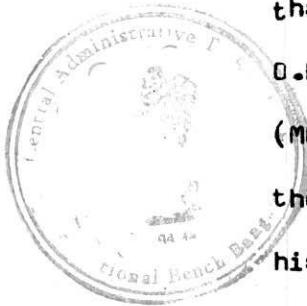
This application is transferred to this Bench by the High Court of Judicature, Karnataka, under Section 29 of the Administrative Tribunals Act, 1985 and is re-numbered as an application, wherein the applicant prays that :



- i) the Seniority List of Upper Division Clerks (UDCs) drawn up as on 31.3.1980 (Annexure-B), by R3, be quashed the same being incorrect and violative of principles of seniority enunciated in Annexures C and D;
- ii) R1 to R3 be directed, to promote the applicant in a suitable vacancy, with reference to his rank at Sl. No. 51 of the Seniority List of UDCs, as on 31.3.1980, (Annexure-B) drawn up by R-3;
- iii) consequent to quashing the Seniority List at Annexure-A, the promotions granted to R4 to R12 on the basis of the said Seniority List, be annulled;

iv) R1 to R3 be directed to determine, pay and other monetary benefit due to the applicant, pursuant to the relief to be granted, in accordance with (i) to (iii) supra, and such other relief as may be deemed appropriate.

2. The matrix of facts leading to this application is as follows. At the material time, the applicant was serving as UDC in the Mid-Southern Circle, Archaeological Survey of India, Jayanagar, Bangalore (ASI), on a monthly salary of Rs.464/- in the grade of Rs.330-10-380-EB-12-500-EB-15-560. He entered service in the ASI on 1.3.1956 and was promoted as UDC with effect from 30.6.1976. A Seniority List of UDCs (SL) was drawn up by R3 as on 31.3.1980, and sent to all offices of the ASI under his letter dated 30.9.1980(Annexure-B), with instructions to indicate, errors or omissions if any therein, not later than 45 days, from the date of issue of that letter, failing which, it was given to understand, that the SL would be deemed as final as on 31.3.1980. It was later discovered, that the SL was not proper, as the principles enunciated in O.M. dated 22.6.1949(Annexure-C) of the Ministry of Home Affairs (MOH), Government of India, (GOI) had not <sup>been</sup> correctly applied and therefore, the SL was revised by R3 as on 1.7.1981(RSL) under his letter dated 17.12.1981(Annexure-A) and was circulated to all the offices of the ASI, with instructions to indicate, errors or omissions if any, therein, within a period of one month, from the date of issue of that letter, failing which, it was made clear, that it would be presumed, that there was no objection in regard to SL. R3 had indicated in his aforesaid letter, that the revised RSL as on 1.7.1981 was drawn up, on the basis <sup>of</sup> <sub>ie.</sub> length of service, in accordance with the principles enunciated by the MOH, GOI, in their letter (Annexure-C), in respect



of appointees upto 31.12.1976 and in regard to appointees after that date, on the basis of the instructions contained in Letter dated 21/27.11.1976 (Annexure-D) of R2. The following is the relevant excerpt of the instructions contained in O.M. dated 22.6.1949, from the Ministry of Home Affairs, GOI (Annexure-C), <sup>of servants</sup> on the subject viz., "Seniority of displaced Governmental, who have been absorbed temporarily in service, under the Central Government":-

"The question of seniority of Assistants in the Secretariat, was recently examined very carefully, in consultation with <sup>the</sup> all the Ministries and the Federal Public Service Commission and the decisions reached, are incorporated in para 8 of the Instructions for the initial constitution of the grade of Assistants, <sup>an</sup> extract of which is attached. It has been decided, that this rule should generally be taken as the model, in framing the rules of seniority for other services, and in respect of persons employed in any particular grade, seniority should as a general rule, be determined, on the basis of the length of service in that grade, as well as service in an equivalent Grade, irrespective of whether the latter, was under the Central or Provincial Government in India or Pakistan. It has been found difficult to work on the basis of 'comparable' posts or grades and it has therefore been decided that 'service in an equivalent Grade', should generally be defined as service on a rate of pay, higher than the minimum of the time-scale of the grade concerned. The seniority of persons appointed on permanent or quasi-permanent basis, before appointed on permanent or quasi-permanent basis before the 1st January, 1944, should, however, not be disturbed.

It is realised, that this rule will upset some of the decisions regarding seniority, already made in the various offices but in the extraordinary circumstances, in which a large number of



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displaced Government Servants, have had to be absorbed in other offices, the usual seniority rules cannot be applied, if equitable treatment is to be meted to displaced Government servants, having in most cases, lost all their property and having had to migrate in difficult circumstances, should be given some weightage in the matter of seniority on compassionate grounds. The matter has been considered in all its aspects and the decision conveyed in the previous paragraph, is considered to be the most equitable in the circumstances of the case. It is requested that these principles may be borne in mind, in determining seniority of Government servants of various categories, employed under <sup>the</sup> <sup>Ministry of</sup> Finance etc.

3. The following is the gist of the above instructions of the GOI, in so far as they are relevant to the case before us,

- i) In respect of persons employed in any particular grade, seniority should, as a general rule, be determined on the basis of length of service, in their grade, as well as the service in an equivalent grade, regardless of whether, they were under the Central or Provincial Government of India or Pakistan.
- ii) Service in an equivalent grade, should generally be defined, as service on a rate of pay higher than the minimum of the time-scale of the grade concerned.

4. The applicant states, that he was placed at Sl. No. 51 in the SL, that he was promoted as UDC on 30.6.1976 having been confirmed as LDC, and that column No. 9 of the SL shows, against his name, 1.8.1961 as the date, from which his seniority in the grade of UDC was to be reckoned. According to the applicant, at the <sup>material</sup> ~~national~~ time, he was drawing monthly pay, more than the minimum of the pay-scale of the UDCs, viz. Rs.130-5-160-8-200-E8-8-256-E8-8-280-10-300. In Annexure-A, however, when the SL came to be

JK

revised by R3, the name of the applicant was shown as Sl.No.50, taking into account, only the continuous length of service in the grade of UDC, commencing from 30.6.1976. According to the applicant, this was contrary to the instructions contained in Annexures-C and D. He, therefore, submitted a series of representations thereon to R2 and others from 18.1.1982 to 2.3.1983, urging that the principles enunciated in Annexure-C and D, be properly applied, and he be assigned the correct rank in the Seniority List. Respondent-3 communicated to the Superintending Archaeologist (under whom the applicant was directly working) under his letter dated 16.10.1982(Annexure-N), that as the applicant had joined duty as UDC on 30.6.1976, his seniority in that grade as on 1.7.1951, was correctly determined and that the applicant be informed accordingly. The applicant alleges that, as he did not receive any reply to this representation dated 2.3.1983, addressed to R2, he had no other alternative but to file a writ petition in the High Court of Judicature, Karnataka, which has since been transferred to this Bench and is now before us for consideration.

5. The learned Counsel for the applicant contended, that R2 and R3, did not faithfully comply with the instructions of G.O.I, in Annexures C and D, which should have been read together and not in isolation, to help appreciate their true import and meaning; that these instructions were explicit, in that, the criterion for determination of seniority in the case of an employee appointed before 31.12.1976, was not merely the length of service in a particular grade but the date on which his basic salary in the grade of Lower Division Clerk(LDC), exceeded the minimum of pay scale of the next higher grade, namely, that of UDC; that the applicant was appointed before 31.12.1976, which

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was cut-off date stipulated in Annexure-D, for application of the principles of Seniority, enunciated in Annexure-C and therefore, according to the above criteria of seniority, he should have been ranked in seniority between Serial Nos. 8 and 9 in the RSL and not at S1.No.50; that R2 and R3 have by misapplication of the principles of seniority, placed the employees at S1.Nos.10-16,18-22,24,25 and 27-49 above him in Annexure-A, to the detriment of his career prospects; that the Seniority List at Annexure-A, is also liable to be struck down on the ground of discrimination, as the seven employees listed in Annexure-J, who have been correctly ranked in the SL at Annexure-B, have since been promoted to the higher grade, on correct interpretation of the instructions of the GOI, contained in Annexures C and D, on account of which, their names do not appear in the RSL, which was drawn up subsequent to their promotion; that the said seven employees listed in Annexure-J, have not been reverted on the basis of the revised Seniority List at Annexure-A, for which, the basis of seniority adopted, was mere length of service in the concerned grade; that the applicant should have been granted seniority and promoted parity with the above persons, on a vacancy becoming available, but this was not done, and on the contrary, he was placed far below in the order of seniority, namely at S.No.50 in Annexure-A, resulting in discrimination against him; that Annexure-A is liable to be quashed, as this Seniority List is not drawn up in accordance with the principles of seniority, enunciated in Annexures C and D, though the covering letter to Annexure-A purports to do so.

6. Rebutting each of these contentions, the learned Counsel for the respondents submitted, that the Seniority List as on 1.3.1980, drawn up initially by R-3 on 30.9.1980, (Annexure-B), had to be revised by him, owing to misinterpretation of the principles of seniority, enunciated by the GOI in Annexure-C



(1959 Principles) and the amended Seniority List as on 1.7.1981, was drawn up by R-3 on 17.12.1981 (Annexure-A) on receipt of instructions from the Department of Personnel and Administrative Reforms, GOI. In interpreting the instructions of the GOI, in Annexure-C, Counsel for the respondents sought to emphasise, that in the context of the instant case, the only prevailing principle of seniority as enunciated in Annexure-C, was length of service in a similar grade or post. He argued, that the question of considering for the purpose of seniority, the quantum of basic pay drawn, would arise, only if there was difficulty <sup>in</sup> and in regard to determining equivalence of comparable posts/grades. In the present case, he submitted, there was no such difficulty and the grades of LDC and UDC not being comparable, the question of taking into account, the quantum of basic pay for the purpose of determination of equivalence of comparable posts and resultant seniority did not arise. He explained the special background and circumstances, under which the GOI was required to evolve the criterion of quantum of pay, for determining the equivalence of comparable posts and seniority, to help resolve the difficulty, <sup>of</sup> during the transitional phase of the country's independence, when the administrative setup, had to be streamlined with a sense of urgency. Such a circumstance and situation, no longer subsisted, he said, after well over three decades and therefore there was no warrant, to invoke the principle of quantum of basic pay, as spelt out in Annexure-C (1949 Principles) now, for the purpose of determination of seniority. Besides, in the instant case, there was no problem whatever, in regard to determining the equivalence of comparable posts/grades. The grades of LDC and UDC, were by no means comparable and in fact the former was a feeder-cadre for the latter.



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7. Counsel for the respondents contended, that the applicant cannot have a grievance at this distance of time, that he ought to have been assigned seniority and considered for promotion, to the next higher grade, on par with the seven employees listed in Annexure-J. These seven persons he said, were promoted long back, and therefore, the plea of the applicant at this hopelessly belated stage, to assign him seniority and grant him promotion, on par with the above seven persons, was prima facie, hit by laches. Even then, Counsel for the respondents stressed, that these 7 persons were clearly senior to the applicant, by virtue of their earlier dates of appointment as LDC and of continuous officiation in the post of UDC. By the same token, he submitted, R4 to R12 were distinctly senior to the applicant.

8. We have examined carefully the rival contentions and the material placed before us. The entire case hinges crucially on the instructions of the GOI contained in Annexures C and D (1949 and 1959 Principles of seniority respectively) in regard to the criteria, for determination of seniority of Class III and IV staff. Annexure-D refers to the instructions of the Ministry of Home Affairs, GOI under their O.M. dated 22.12.1959, the principles of seniority embodied in which, had to be given effect to, from that date, in respect of the above categories of staff, but as the ASI had no recruitment rules till the end of 1976, these principles could not be implemented in the ASI. The GOI therefore decided as a very special case, to apply only upto 31.12.1976, the 1949 principles of seniority (Annexure-C) (under the circumstances envisaged therein), in the case of the ASI and the 1959 principles of seniority (Annexure-D) thereafter. Neither parties showed us the copy of the above O.M dated 20.12.1959 from the GOI.



9. It is apparent from the foregoing, that <sup>the</sup> ~~the~~ criterion of length of service (i.e., the date of continuous efficiation in the grade in question i.e., UDC in the present case) should have been adopted for the purpose of determination of seniority, as spelt out in Annexure-C (1949 Principles). The question of adopting the ~~other~~ <sup>the</sup> other criterion viz., quantum of basic pay did not arise, as no difficulty was encountered in regard to determination of equivalence of comparable posts, as was the case initially in 1949 and thereabout, during the transitional phase of our country's freedom, when administrative structures <sup>had</sup> ~~had~~ to be streamlined. R3 is seen to have drawn up the <sup>Revised</sup> ~~Seniority~~ List in the grade of UDCs at Annexure-A, on the basis of continuous efficiation in that grade.

10. It is not clear to us, as to why the GOI should have as late as on 27.11.1976 (Annexure-D) decided, to apply the 1949 seniority principles with a cut-off date upto 31.12.1976. The distinctive feature of these principles, was the manner prescribed, to decide the equivalence of comparable posts, on the basis of the quantum of basic pay drawn in a particular grade. If that situation did not exist in 1976 i.e., after nearly three decades, when the 1949 seniority principles were laid down, to cover, special circumstances, there was little propriety, to invoke these principles as <sup>in</sup> ~~late~~ as in 1976. The only residuary seniority principle of 1949, subsisting in 1976 in the above circumstances, was continuous length of service in the grade in question, which is a universal principle, and for which in fact, there was no need to invoke 1949 seniority principles. Counsel for the respondents confirmed to us that in 1976, there was no case which necessitated determination of equivalence of posts and resultant seniority, on the basis of the 1949 seniority principles and therefore he sub-



mitted that Seniority List of UDCs, at Annexure-B, erroneously drawn up on 30.9.1980 by R-3, on misapplication of the 1949 seniority principles, had to be revised on 17.12.1981 (Annexure-A) on the instructions of the Department of Personnel and Administrative Reforms, GOI and that representations, if any thereon were called from all concerned, to help finalise this Seniority List.

11. Counsel for the respondents reiterated, that the seven persons listed in Annexure-J and R4 to R12 were clearly senior to the applicant, for the reasons stated in para 6 supra, and therefore, the applicant could have no grievance, that he had been superseded on grounds of misapplication of the seniority principles. These 7 persons have not been impleaded by the applicant and Counsel for the applicant admits, that they are senior to his client on any criterion. In our view, the applicant, did not <sup>6/4/81</sup> stir himself, well in time, <sup>when</sup> the above 7 persons were promoted <sup>6/4/81</sup> and his plea at this far too belated stage is, therefore, clearly hit by laches.

12. In the result, we hold that the revised Seniority List at Annexure-A drawn up by R3 on 17.12.1981, is in order and that R4 to R12 are senior to the applicant on that basis. We therefore, dismiss the application but in the circumstances of the case, direct the parties to bear their <sup>own</sup> ~~own~~ costs.

Sd/-

MEMBER(J)

AN.

Sd/-

MEMBER(AM) V 6-3-1987

-True Copy-

*B. V. Venkatesh Rao*  
DEPUTY REGISTRAR  
C. A. T. *6/4/81*  
CENTRAL ADMINISTRATIVE TRIBUNAL  
ADDITIONAL BENCH  
BANGALORE



C A T

Section IVA  
SUPREME COURT OF INDIA  
NEW DELHI.

DATED: 15/06/95

118/95

From:

The Registrar  
Supreme Court of India.  
NEW DELHI.

freed letters CAT  
18/12/95

Enter in SLP Register, O.A. Register,

add to file & note thereof

No need to O.C. 24/R/143 of R.O.P/93, as the Hon. Member  
who passed the order in O.A. are no longer with C.A.T.

To  
The Registrar  
Karnataka Administrative Tribunal at Bangalore

8/12/95

Sgt (SII). V  
8/12/95

Sgt B

PETITION FOR SPECIAL LEAVE TO APPEAL CIVIL NO. 11215 187

(Petition under Article 136(1) of the constitution of India from

the Judgment and Order dated 6/3/87

of ~~the~~ High court of Judicature at Karnataka Administrative Tribunal at Bangalore  
in Appln. No. 1106/86

K.K.V. RANGANATHA SWAMY

... PETITIONER(S)

13/5/95  
Mr. Subhash  
CAT  
If need be send to CAT.  
to CAT on such if application

13/5/95  
This paper pertains

FOR REGISTRATION  
13/5/95  
YOURS FAITHFULLY

I am directed to inform you that the petition above mentioned  
filed in the Supreme Court was dismissed

by the Court on 05/04/95

COPY TO  
MR. P. MAHALA (ADV)  
MR. C.V. SUBHASH (ADV)

... RESPONDENT(S)

UNION OF INDIA & ORS.

VS