

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE 30TH SEPTEMBER, 1986

Present: Hon'ble Mr Justice K.S.Puttaswamy Vice-Chairman
Hon'ble Mr P.Srinivasan Member (A)

Application Nos. 1282/86, 1283/86 and 1284/86

1. S. Abdul Khayum,
L.D.C.,
Aeronautical Development Establishment,
Bangalore. (A.No. 1282/86)
2. A. Madhavan Nair,
L.D.C.,
Aeronautical Development Establishment,
Bangalore. (A.No. 1283/86)
3. Manuel Antony,
95, R.K. Street,
Cox Town, Bangalore 5. (A.No. 1284/86)...Applicants
(Shri M.Balachandran ... Advocate)
Vs.
1. Union of India by its
Secretary, M/o Defence,
Govt. of India, New Delhi.
2. Scientific Adviser to the
Ministry of Defence and Director
General, Research and Development
Organisation, Ministry of Defence,
Government of India,
D.H.Q. P.O., New Delhi - 11.
3. Director, Aeronautical Development
Establishment, Research and
Development Organisation, Ministry
of Defence, Government of India,
Jeevan Bhima Nagar, Bangalore-75.
4. A.B.Suresh
5. G.L. Gangadharaiah
6. T.K.Ramamurthy
7. R. Moan
8. Mrs D.Sheeba
9. Mrs Usha Ramakrishnan
10. S. Charles

Respondents common
to A.No. 1282, 1283
and 1284/86

Respondents in
A.No. 1284/86

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

P. S. R. S.

The application has come up before Court Member(A) made the following:

ORDER

A composite petition by two petitioners described as Writ Petitions Nos 5484 and 5485 of 1981 was filed before the Karnataka High Court on 27.3.1981 and a separate petition by a third petitioner filed on 8.2.82 was registered as Writ Petition No. 10523 of 1982. All these Writ Petitions were transferred to this Tribunal and have been taken on file as Applications Nos. 1282, 1283 and 1284 of 1986. All of them involve a common point and are therefore disposed of by a common order.

2. Shri Abdul Khayum, the applicant in application no. 1282/1986 (to be referred to hereinafter as applicant 1) worked as a Lower Division Clerk (LDC) in 29 Air Defence Regiment (a unit of the army) between 9.3.70 and 10.9.74, when he was transferred on compassionate grounds, to Aeronautical Development Establishment (ADE), Bangalore, where he is presently working. The applicant in application no. 1283 of 1986, Shri A. Madhavan Nair (to be referred to hereinafter as applicant 2) was working as LDC in 32 Light

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Regiment (PACK) (another unit of the army) from 18.5.68 to the date of his transfer to ADE on compassionate grounds in the same capacity on 13.6.77 where he continues to work now. Similarly, Shri Manuel Antony, applicant in application no. 1284/86 (applicant 3) was an LDC in MEG Records (another unit of the army) between 6.5.63 and 20.2.79 before he was also transferred on compassionate grounds to ADE as LDC. When all the 3 were transferred to ADE, a condition was imposed that they would take the juniormost position in the cadre of LDC in ADE on the respective dates of their joining. No grievance is made of this, as all of them accepted this condition before joining ADE.

3. The first promotion of an LDC is to the post of Upper Division Clerk(UDC). According to the Defence Research and Development Organisation (DRDO), Ministry of Defence, Group 'C' Non-gazetted (Ministerial) posts Recruitment Rules, 1980("Rules" for short) which are applicable to ADE, promotions to the post of UDC are to be made on the basis of seniority-cum-fitness from LDCs "with 8 years regular service in the grade." Such promotions are to be made to the extent of 75% of the posts of UDC while for the balance of 25%, promotions are to be made on the basis of departmental competitive examination. We are not concerned with the latter mode of promotion in the present case. In September,

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1980 or thereabout, 8 vacancies of UDCs arose in ADE. In the seniority list of LDCs in ADE as it stood at the time, applicants 1,2 and 3 figured at serial numbers 6,8 and 22 respectively.

Positions at numbers 1 - 5 (above applicant 1) and no. 7 (above applicant 2) were all occupied by persons who had been working in ADE as LDCs from the beginning of their career, but none of these ~~8~~ persons, six in all, had completed 8 years of service as LDC by September, 1980. Between applicant 2 and applicant 3 there were 13 persons. The first among them had been promoted as LDC within the organisation itself (ADE) on 24.6.77.

The others appear to have come on transfer from other organisations like the present applicants and they had not completed 8 years of service as LDC after they joined ADE. So far as the 3 applicants are concerned, the administration took the view that only the service rendered by them after joining ADE had to be taken into account and by that reckoning they had also not completed 8 years of regular service in the cadre by September, 1980. The dates on which applicants 1,2 and 3 joined as LDCs in ADE have been given earlier and it is common ground that none of them had completed 8 years of service from those dates. On this view of the matter, there being no person among the LDCs working in ADE who

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had completed 8 years of service which was the minimum eligibility for promotion, the authorities did not make any promotion immediately on the occurrence of the vacancies in September, 1980.

4. At this stage, applicants 1 and 2 represented to the authorities that their earlier service as LDC in different army establishments should be counted for determining their eligibility for promotion and if that were done, they would become eligible: their total service as LDC computed in this way would be more than 8 years by September, 1980. On this ground, they requested the authorities to consider them for promotion in the vacancies of UDCs which had come into existence by then. They pleaded that there was no justification for not filling up the vacancies merely because their seniors had not fulfilled the requirement of 8 years of service by then. The authorities replied that neither applicant 1 nor applicant 2 fulfilled the eligibility condition as indicated earlier. Their service prior to joining ADE could not be counted for this purpose because their transfer to ADE was made on the express condition that they would take the juniomost position in the LDC's cadre on the date of their joining ADE and this meant that such earlier service had to be ignored for the purpose of promotion. While challenging this decision in the

composite Writ Petition filed by them before the High Court of Karnataka, applicants 1 and 2 sought for a writ of certiorari quashing the said decision and a writ of mandamus directing respondents 1 - 3 to consider the applicants for promotion to the posts of UDCs against vacancies which had arisen in September, 1980. This petition was filed on 5.3.81.

5. Subsequently, respondents 1 - 3 decided that in the absence of persons with the requisite period of service, "LDCs with 3 years of service may be considered for promotion as UDCs purely on adhoc basis without title for seniority etc. in that grade." (Annexure-D to application no. 1282). In pursuance of this decision, 13 persons including applicants 1 and 2 in the strict order of seniority were promoted as UDCs on an adhoc basis by an order dated 23.1.82 with effect from 30.12.81. Thereupon, applicant 3 who, being at serial no. 22 of the seniority list had not been promoted, filed his writ petition before the High Court of Karnataka on 8.2.82 in which he impleaded 7 of the persons so promoted as respondents 4 - 10 - excluding applicants 1 and 2 and 4 other persons who like the applicants here had come from other departments and whose total service as LDC including the period spent in their earlier departments exceeded 8 years. His prayer was that the decision of

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respondents 1 - 3 not to count his earlier service for the purpose of promotion be quashed and he be considered for promotion against one of the vacancies of UDC that had existed from September, 1980 onwards. In order to bring the narration of facts uptodate, we may mention that on a specific enquiry made by us at the time of hearing, learned counsel for respondents stated that applicant 3 was also promoted as UDC on an adhoc basis in 1986 along with others, again in the strict order of seniority and learned counsel for applicant confirmed this when it was put to him.

6. The contention common to all these applications is that persons with less than 8 years of service should not have been considered for promotion and adhoc promotions of such persons, when the applicants with more than 8 years of service were available for regular promotion, was illegal. The applicants are not aggrieved with the adhoc promotion of persons who, like them, had joined ADE on transfer as LDCs and who had put in more than 8 years of service in that cadre taking into account their earlier service. It is common ground here between the applicants and the respondents 1 to 3 that if the service of the applicants in their earlier establishments before they joined ADE, is taken into account, all 3 of them were eligible for promotion as UDCs by September, 1980.

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should have that much of valuable experience. Applicant did have such experience and it cannot be ignored." Learned counsel for the applicants, Shri Balachandran also filed before us a copy of an interim order passed by the High Court of Kerala in Ponnappan's case before it was transferred to the Madras Bench of this Tribunal for final disposal. The High Court of Kerala held that prima facie, a person taking the juniormost position on transfer on compassionate grounds does not lose the "benefit of his past service altogether for all purposes. In these circumstances, the respondents have to consider his claim (treating him as qualified) subject to seniority and fitness." It was urged on behalf of the applicants that following these decisions, all the 3 applications should be allowed. Shri Balachandran submitted that it was grossly unfair to ignore the long years of service put in by the applicants as LDCs prior to their joining ADE for the purpose of determining their eligibility for promotion. The rules required "8 years regular service in the grade". (emphasis supplied) meaning the grade of LDC. They did not stipulate that such service should have been rendered in ADE itself. Respondents 1 - 3 were reading more into the rules than the language employed therein warrants. The other requirement of the rules was that promotions

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7. In this background, learned counsel for the applicants, Shri Balachandran, urged that the authorities concerned (respondents 1 - 31 in all the applications) had gone wrong in rejecting the claims of the applicants that the service rendered by them as LDC prior to joining ADE should be counted for the purpose of determining their eligibility for promotion as UDCs. In this connection, he relied on the ruling of the Central Administrative Tribunal, Madras Bench dated 20.6.86 given in T.A. No. 770 of 1986, C.N. Ponappan Vs. Union of India and others, as also an interim order passed by the High Court of Karnataka in the same case before it was transferred to the ^Mtribunal. In Ponappan's case, the Madras Bench of the ^Mtribunal, in circumstances identical with those with which we are here concerned, has held that where a person is transferred to one department of Government from another, the earlier service rendered by him in his former establishment should be counted as regular service for the purpose of his promotion in the new establishment to which he is transferred. "When the rules prescribe a period of regular service as an eligibility qualification for consideration for promotion", the Bench has observed "it is to be understood that what is intended is that a person

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to the post of UDC should be on the basis of "seniority cum fitness". This meant that the case of the seniormost person would be considered first but if he was not eligible, the case of the next senior person would be taken up for consideration and so on. Seniority did not mean automatic promotion without regard to the requirement of qualifying service: both the tests have to be applied before making promotion. If that had been done, respondents no. 4-10 would not have been found eligible for promotion in September, 1980, while all the 3 applicants who had put in 8 years of qualifying service by that date would have become eligible for regular promotion. There was no justification to make adhoc promotions when eligible persons like the applicants were available.

8. On the other hand, Shri Padmarajaiah, learned counsel for the respondents resisted the claim of the applicants. He urged that the ruling of the Madras Bench in Ponnappan's case was unsound. ~~The~~ M The Rules with which we are concerned here deal with promotions within DRDO. In fact promotions could be effected only within each unit of DRDO like ADE which were independent of the other units under DRDO itself not to speak of organisations outside DRDO. Persons working in the non-gazetted cadres within ADE were to be promoted to higher posts in that cadre within the unit on completing qualifying years

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of service. In this context, what was relevant was service within ADE itself and service elsewhere was not relevant. Therefore, respondents 1 - 3 were right when they rejected the claims of the applicants that they were eligible for regular promotion in September, 1980 and should therefore have been promoted as UDC on a regular basis from that date. Moreover, persons who were working in ADE before the applicants joined would certainly be disgruntled, and rightly so, if the applicants had been promoted above them especially when they had been taken on transfer in ADE on compassionate grounds with the specific condition that they would forego their earlier service for the purpose of seniority. He, therefore, urged that the claim of the applicants should be rejected.

9. We have given the matter our most anxious consideration. With great respect, we are unable to agree with the view that commended itself to the Madras Bench of the Tribunal. The prima facie view adopted by the Kerala High Court without fully examining the question in the same case when dealing with an interim prayer of the applicants, in our opinion, breaks down on deeper examination. While deciding the matter before us, we feel that we have to recognise and take judicial notice of

certain basic facts of public administration.

The Government of India has a vast network of offices spread over the entire country, with staff numbering in several thousands. These offices and staff cannot obviously be supervised and controlled by one administrative head. Therefore, in order to ensure a reasonable span of control, they are grouped into several administrative units organised either on the regional or functional basis. Recruitment, promotion and transfer of non-gazetted staff take place within each of these units functioning independently of the others. Rules of recruitment and promotion, whether framed on an all India basis or for individual ministries or departments of Government are operated within each of these units, at least so far as Group 'C' staff are concerned. Generally, each department of Government has its own rules of recruitment and promotion to meet its special requirements. That is why the rules with which we are here concerned have been made for recruitment and promotion to group 'C' non-gazetted (ministerial) posts in DRDO. As we have indicated earlier, even within DRDO, there are several independent functional units of which ADE is one and recruitment and promotion is made in each of these units independent of the others. To illustrate the point, a person working in one of the other units of DRDO like the LRDE, GTRE (Electronic Research Development Establishment and Gas Turbine Research Centre respectively)

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etc. in a non-gazetted post cannot claim promotion to a higher post in the non-gazetted cadre in ADE merely because he has worked in the lower cadre longer than anybody in ADE itself. Much more so, persons working in departments outside DRDO under the Defence Ministry itself can lay no claim for promotion to higher posts in any of the DRDO units. In other words, service in a particular cadre outside ADE, will have no relevance for the purpose of the rules of promotion within ADE. That is why, it happens that in some departments and administrative units, persons stagnate in one post for ^{of a time} ~~long~~ while in others, promotions are fast, something inevitable in the nature of things.

10. Coming to the present case, all the three applicants were working in different civilian units of the army before they joined ADE. Applicant 3 had completed nearly 16 years of service as an LDC in his earlier department. If that service was at all relevant for promotion to the post of UDC in ADE, he should have been taken as UDC in ADE straight-away and not as LDC. The same is the case with applicant 2 who had completed nearly 9 years of service in the army before he came to ADE. It was only because their earlier service was irrelevant for promotion within ADE that they were taken as LDCs and that too at the bottom of the cadre when they joined. It would be both illogical and unfair

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to give credit for that earlier service for the purpose of promotion, after one year i.e. by September, 1980 (in the case of applicant 3) or after 3 years (in the case of applicant 2) of their joining ADE. In the light of this and considering that rules of promotion govern only promotions of persons working within each administrative unit and not across units, the only interpretation that can be placed on the rules is that the qualifying service has to be ~~given~~ ^U within the unit only. When we say this, we are not importing any words into the rules which are not there but are only understanding them in the context in which they are framed and in the light of the purpose which they are designed to achieve.

11. With great respect, we find it difficult to subscribe to the view of the Madras Bench in Ponnappan's case that the "valuable experience" required for promotion would include experience in any other department of Government. Experience for promotion within a department or an administrative unit, to be "valuable", has to be rendered within that department or unit itself because to a greater or lesser degree, the manner of functioning and specific items of work to be carried out at all levels within each unit or department differ from those obtaining in other units or departments of Government. For instance, we are informed that applicant 2 was working as LDC in 32 Light Regiment

(PACK) where his duties were connected with reaching letters and articles received by post to the units of the army located in different places. It is obvious that that experience, however valuable in itself, is of no relevance for a person working in ADE which is a scientific research organisation. Therefore, when work methods and work content differ, earlier experience can have no relevance and cannot be considered valuable for promotion in the new unit to which a person may be transferred.

12. Another point made by the Madras Bench in Ponnappan's case is that the bottom seniority in the grade accepted by the persons transferred to the new unit had nothing to do with counting their earlier service for determining eligibility for promotion in the new unit. Seniority in the cadre of LDCs is determined with reference to the length of service put in in that cadre. Thus, when the applicants willingly took the juniormost position in the cadre when they joined ADE, the length of their service as LDC was taken at nil. To put it differently, seniority in that cadre is synonymous with length of service in that cadre. It seems to us therefore that it would be a contradiction in terms to say that for the purpose of seniority the period of service should be counted from the date of their joining ADE, but for purposes of promotion, the earlier service would require to be counted.

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Besides, the very purpose of insisting on persons accepting bottom seniority in the new unit to which they are transferred on compassionate grounds would be rendered meaningless if their earlier service is counted for promotion. It may be mentioned in this connection that where earlier service, like in the case of ex-servicemen is to be taken into account for the purpose of seniority and promotion, specific rules are framed for counting such service and in the absence of such rules, there is no question of automatically counting such earlier service for promotion in the new service.

13. To rephrase what we have stated earlier differently, an organisation rewards its employees with promotion for services rendered by them to the organisation and not elsewhere and the rules of promotion applicable to that organisation have to be understood only in this context. Transfers from one administrative unit of the Government to another are not normally permitted, but where such transfers are allowed at the request of the employees themselves, a salutary condition is imposed that they would take the bottom seniority in the new service, to discourage such movement and that condition would be rendered nugatory if we accept the claim of the applicants. If we did that,

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persons who are stagnating in a cadre for a long period in one department or administrative unit, could somehow persuade the authorities to permit their transfer on compassionate grounds to another department or unit where promotions are quick, albeit with a bottom seniority and thus, earn a promotion to which they would otherwise not have been entitled. Transfers across departments and administrative units which are as a matter of policy discouraged, could then well become the order of the day. We have no intention of defeating the policy of the Government in this regard which ensures stability of individual organisations.

14. For the reasons set out above, we hold that respondents 1 - 3 were right when they declined to count the service of the applicants in the departments in which they worked earlier for determining their eligibility for promotion to the cadre of UDC. As a consequence, the prayers of all the 3 applicants have to fail.

15. In the result, all the 3 applications are dismissed. Parties will bear their own costs.

M.S. Pallareem P. S. *18*
Vice-Chairman Member (A) *30/9/86*
30/9/1986

CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH

5th Floor, TNTEB,
DPI Compound,
College Road, Madras-6.

Dated: 23-11-87

1. The Registrar
Central Administrative Tribunal
Principal Bench
Faridkot House
Copernicus Marg
NEW DELHI - 110 001.
2. The Registrar
Central Administrative Tribunal
Calcutta Bench
CGO Complex, 234/4-AJC Bose Road
CALCUTTA - 700 020.
3. The Registrar
Central Administrative Tribunal
Bombay Bench
CGO Complex (CBD), 1 Floor
Near Kankon Bhawan
NEW BOMBAY - 400 614.
4. The Registrar
Central Administrative Tribunal
Allahabad Bench
23-A Thorn Hill Road
ALLAHABAD - 211 001.
5. The Registrar
Central Administrative Tribunal
Chandigarh Bench
SCO No.102-103, Sector-34 A
CHANDIGARH
6. The Registrar
Central administrative Tribunal
Guwahati Bench
Rajgarh Road
Off. Shilong Road
GUWAHATI - 781 005.
7. The Registrar
Central Administrative Tribunal
Bengalore Bench
Commercial Complex (BDA)
Indira Nagar
BANGALORE - 560 082.
8. Registrar
Central Administrative Tribunal
Ernakulam Bench
Kandankulathy Towers
5th & 6th Floor, MG Road
Ernakulam
COCHIN - 682 001.

Hon'ble

① M VACR
26/11/87

② M VACS

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27/11/87

27/11/87

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Hon'ble V.C



9. Registrar
Central Administrative Tribunal
Jabalpur Bench
CARAVS Complex
15 - Civil Lines
JABALPUR (M.P.).

10. Registrar
Central Administrative Tribunal
Patna Bench
23-A D.M. Enterprises
Shri Krishna Nagar
PATNA - 1.

11. Registrar
Central Administrative Tribunal
Jodhpur Bench
C/o Rajasthan High Court
Moghpur
Rajasthan

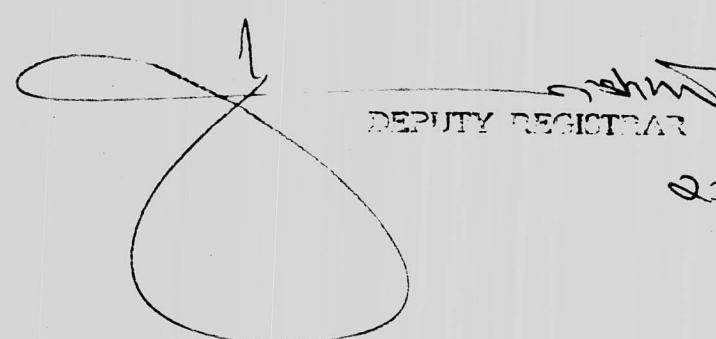
12. Registrar,
Central Administrative Tribunal
Hyderabad Bench, 6th Floor
New Insurance Building Complex
Tilak Road
Hyderabad

13. Registrar
Central Administrative Tribunal
Ahmedabad Bench
Navrang Pura
Near Sardar Patel Colony
Usmanpura
AHMEDABAD.

14. Registrar
Central Administrative Tribunal
Cuttack Bench
Dolmandai
CUTTACK - 753 001.

Sir,

I am forwarding herewith a copy of the judgments passed by this Bench,
as per the list annexed herewith, for favour of information.


DEPUTY REGISTRAR

23/1/89

Central Administrative Tribunal
Madras Bench

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Monday, the Fifth day of October, One Thousand
Nine Hundred and Eighty Seven

PRESENT

The Hon'ble Justice Shri K. Madhava Reddy - Chairman

The Hon'ble Justice Shri Asha Mukul Pal - Vice Chairman
and

The Hon'ble Shri B.N. Jayasimha - Vice Chairman

TRANSFERRED APPLICATION NO.65 of 1987

(Original Petition No.1854 of 1985
on the file of the High Court, Kerala)

K.A.Balasubramanian

Applicant

- Vs -

1. Union of India represented by Secretary, Ministry of Defence, New Delhi.]	
2. Director, Naval Physical & Oceanographic Laboratory, Cochin.]	Respondents
3. Scientific Adviser to the Minister of Defence and Directorate General Research and Development, R & D Organisation, Ministry of Defence, DHC P.O., New Delhi-110 011.]	

MR. GIRIJA VALLABHAN

Counsel for Applicant

No appearance

For Respondents

O R D E R

(Order pronounced by Justice Shri K. Madhava Reddy, Chairman)

The reference to the Full Bench is to resolve the conflict in the opinion expressed in T.A. 770 of 1986 (Order dated 20.5.1986) by the Madras Bench of the Central Administrative Tribunal, and the opinion expressed by the Bangalore Bench of the Central Administrative Tribunal, in Application No.1282 of 1986 Batch (Order dated 30th September 1986) on the question whether the service rendered

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by a Lower Division Clerk in one unit could be reckoned as part of the qualifying service or not for the purpose of further promotion to the cadre of Upper Division Clerk under the Defence Research and Development Organisation, Ministry of Defence, Group 'C' Non-Gazetted (Ministerial) posts Recruitment Rules, 1980. (For short "The Rules").

For promotion to the posts of Upper Division Clerks, the qualifications prescribed under column 11 of the Schedule to the said Rules under the caption 'In case of recruitment by promotion/transfer, grades from which promotion to be made', it is laid down as under:-

"By promotion on the basis of seniority-cum-fitness Lower Division Clerks with eight years regular service in the grade. Promotion on the basis of departmental competitive examination LDCs with five years regular service in grade."

While the Madras Bench has taken the view that service in different units aggregating to eight years in the grade would qualify an L.D.C. to be considered for promotion against the 75 per cent quota reserved to them under the Rules, the Bangalore Bench has held that service rendered in the grade of L.D.C. in the particular unit alone would count and not the service rendered in the other unit from which he was transferred on compassionate grounds.

The applicant is a Scheduled Caste candidate who was appointed as a 'casual LDC' on 4.8.1971 by the Foc-in-C (South) Cochin. As

there was no regular vacancy at Cochin, the applicant was transferred under the surplus adjustment scheme to the Aviation Electronics Inspection Specification Documentation Authority (Directorate of Technical Development and Production) (Air Force), Bangalore. The applicant joined the Bangalore unit on 8.10.1973 and was made permanent on 8.5.1977. On his request he was transferred on compassionate grounds from Bangalore to Cochin and posted under the Directorate of Naval Physical and Oceanographic Laboratory (NPOL). Finding that there were fifteen vacancies of UDCs in the unit to which he was transferred the applicant submitted a representation that he had put in twelve years of service by 1983 and that he may be promoted as an UDC. He was informed by letter dated 31.1.1984 that no DPC was held to consider LDCs for promotion to UDC since 1.9.1982. In response to his repeated representations, by letter dated 22nd February 1985 (Ex.P.5(c)) he was ultimately informed as under:

"Since promotion from LDC to UDC is vested with the DPC III and Sri K.A. Balasubramanian, LDC has reported to this Laboratory only on 11.5.1981 on transfer under compassionate grounds, he will become eligible for regular promotion to the post of UDC on 10.5.1985 only".

It is this refusal of the respondents to consider the applicant's name for promotion to the cadre of UDC or the ground that he would

become eligible for promotion only on 10.5.1989, that is called in question in this application.

The applicant claims that he had been appointed as a regular LDC. He has however failed to support this claim by any documents. He has neither produced the order of initial appointment nor the subsequent order of regularisation, if any. On the other hand his own averment in the application is that he was appointed as a Casual LDC on 4.8.1971. Nowhere in the application has he averred that he was appointed on a regular basis on any particular date. In fact, he stated that there was no regular vacancy at Cochin and therefore he was transferred under the surplus adjustment scheme to Bangalore. We are therefore unable to accept that he was appointed on a regular basis with effect from 4.8.1971 as claimed by him. However, from the seniority list filed by the respondents themselves, it would appear that the applicant was made permanent LDC on 8.5.1977. No document has been produced by the applicant to establish that he was appointed as regular LDC on a date earlier to 8.5.1977. In this state of record we are constrained to hold that the applicant was not appointed as a regular LDC earlier to 8.5.1977 and we further hold that he was appointed as a permanent LDC on that date and his regular service in the grade of LDC commenced on that date.

The applicant, however did not continue at Bangalore. On his request he was transferred on compassionate grounds to Cochin on 11.5.1981. In view of the Standing Instructions in CPR 11/75 governing the Regulation of seniority of transferred employees, he was placed in the Bangalore unit as the junior-most LDC. These instructions read as under:-

"CIVILIAN PERSONNEL ROUTINE ORDERS

C.P.R.C.11/75: General principles for determining seniority of various categories of persons ~~in respect of central service~~

Reference CPR 73/73.

2. In accordance with the revised principles of seniority, no benefit of past service is given to the surplus staff adjusted in other Corps/Service/Units for purpose of fixation of seniority in the grade in which they are adjusted. Their seniority on their adjustment in new appointments will be determined in accordance with their date of joining the new unit on their adjustment. It has now been decided that when two or more surplus persons of an office are rendered surplus on different dates for absorption in the same receiving unit, their inter seniority as it existed in the office in which they worked before being rendered surplus should be maintained in the grade in which they are absorbed in the new organisation provided that no direct recruit has been selected for appointment to that grade in between these dates.

3. There have also been some doubts about the applicability of the revised principles of seniority in respect of individuals adjusted under surplus and deficiencies scheme and transferred on compassionate grounds. Revised principles of seniority are applicable with effect from 1st July 1973. In view of this, the seniority of locally controlled staff, rendered surplus and adjusted or transferred on compassionate grounds, prior to 1st July 1973 will be determined in accordance with A1 241/50. Seniority of the individuals adjusted or transferred on compassionate grounds on or after 1st July 1973 will be determined in accordance with the revised principles of seniority. In

other words those adjusted/transferred on or after 1st July 1973 will not get the benefit of their previous service on their reporting to the new units.

4. Seniority of the individuals centrally controlled or Corps/Service roster will not be disturbed under the revised seniority rules if they are adjusted/transferred within the Corps/Service."

• 85362/8/Org 4(Civ) (a)"

It would be noticed that these Instructions only govern determination of seniority in the grade of the transferred employee. The instructions are that in the case of individuals adjusted or transferred on compassionate grounds on or after 1st July 1973, their seniority will be determined in accordance with the date of joining the new unit. It is also clarified therein that the benefit of their previous service will not be given to them in the matter of fixation of their seniority in the new unit to which they are transferred at their request. Obviously it was contended before the Bench that if the benefit of past service cannot be given for the purpose of determining the seniority in the new unit, it cannot also be counted for the purpose of determining the eligibility for promotion to the cadre of UDCs. Although this contention found favour with the Bangalore Bench, we find it difficult to accept the same. These instructions, from their wording, govern only determination of seniority. It is in that context stated that the benefit of past service cannot be given to the transferred employees. They do not further say that the past service will be wholly wiped off and will

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not be counted for any purpose whatsoever. Eligibility of LDCs has to be determined with reference to the statutory rules governing promotion to the cadre of UDC. The rules referred to above specifically lay down that an LDC "with eight years regular service in that grade" (emphasis supplied) would be eligible on the basis of seniority-cum-fitness. The rules do not lay down that the eight years of regular service in the grade should be in any particular unit, it is the regular service in the grade of LDC. When a LDC is ~~is~~ ~~not~~ ~~as~~ a ~~casual~~ LDC or a ~~ad hoc~~ or ~~temporary~~ LDC is made permanent, he is not immune from transfer. He may be transferred on administrative grounds or on his own request. Even when a request is made unless it is agreed to by the competent authority, transfer is not effected. On such transfer, his posting in the new unit does not constitute a fresh appointment. However, such transfer is likely to disturb the seniority of LDCs of the unit to which he is transferred. Although logically he should take the place which should be assigned to him as per his length of service in the grade of LDC, the instructions specifically declare that so far as his seniority is concerned, he will be placed as the junior-most LDC in the new unit. This is the only disability which attaches to him on transfer on compassionate grounds. The instructions do not further declare that the service rendered by him in the grade of LDC in the other unit will be totally wiped off. In fact his services in the other unit is counted for the purpose of leave, annual increments, crossing

efficiency bar, pension etc. If it is to be ignored for the purpose of determining his seniority in the grade of LDC in the new unit but not for other purposes, we do not see any reason why regular service in the other unit, cannot be counted for the purpose of determining whether he has put in the requisite number of years of regular service or not, to qualify him for promotion to the cadre of UDC. In the absence of a specific rule, we do not see any valid ground to ignore the regular service in the other unit only because he has been transferred in his request and that service is to be ignored for determining his seniority in the grade of Lower Division Clerk in the new unit. The rules governing the promotion to the cadre of UDC from the cadre of LDC are statutory rules. Any instructions governing seniority in the cadre of LDC cannot have the effect of amending the rules or restricting the operation of the said rules. Inasmuch as in these rules there is no rule governing seniority, the instructions may regulate seniority in the cadre of LDC; but they cannot control the operation of the statutory rule governing promotion to the cadre of UDCs.

We are therefore of the view that on transfer while the applicant would become the junior-most LDC in the Cochin unit, he does not lose the benefit of his past service in the Bangalore unit for the purpose of his promotion to the cadre of UDC. He was made a permanent

LDC on 8.5.1977 while he was in the Bangalore unit. No material is placed before us to hold that the applicant herein was appointed as a regular LDC & with retrospective effect from 4.8.1971 by any subsequent order. His regular service in the grade of LDC commenced on 8.5.1977. The applicant's services in Bangalore unit as LDC from 8.5.1977 would count for the purpose of determining his eligibility for consideration for promotion to the cadre of UDC. Since he has thus completed eight years of regular service in the cadre of LDC on 7.5.1985, he was eligible to be considered for promotion from that date onwards.

It was however argued that if service in the other unit is computed, while some of the LDCs placed senior to the transferee LDC in the Cochin unit, would not have completed eight years of service, the newly transferred LDC, although placed as junior, would have completed eight years of service and would therefore become eligible earlier than his seniors for being promoted as UDC. But that is a result flowing from the rule as it stood in 1985. The rule lays down that LDCs with eight years of regular service in the grade are eligible. It may be that some LDCs placed above the applicant in the seniority list, in view of the exigencies of service, may not have completed eight years of regular service as in the present case.

But that is a consequence of the special instructions governing determination of seniority. If there were no such administrative instructions, as repeatedly laid down by the Supreme Court, as ordinary seniority in service would have reckoned by length of service they would have been placed as juniors. If we were to give effect to this contention that only service in the unit should be considered for the purpose of determining eligibility, we would be ignoring the specific words "eight years regular service in the grade" of the statutory rules and we would be adding the word "in the unit" to the expression "eight years regular service in the grade". There is no compelling reason to add these words. The addition of these words would deprive persons otherwise eligible the right to be considered for promotion.

In Application No.1282 of 1986, the learned members of the Bangalore Bench observed: "....it would be contradiction in terms to say that for the purpose of seniority the period of service should be counted from the date of their joining ADE, but for purposes of promotion, the earlier service would require to be counted". In our opinion there is no valid basis for such an apprehension. ~~for~~ as discussed above, while past service is ignored for the purpose of seniority because the transfer is on request and in the absence of statutory rules, the administrative instructions so direct, promo-

tion to the cadre of UDC are governed by statutory rules which direct the regular service in the grade of LDC to be counted. Merely because the past service has to be ignored for the purpose of computing seniority, the past service cannot be ignored for the purpose of reckoning regular service for the purpose of promotion to the cadre of UDC governed by statutory rules. Further, this very rule lays down that in the case of promotion against the 25 percent quota reserved for promotions to be made on the basis of departmental competitive examination, the LDCs should have put in five years of regular service in the cadre. The same expression 'regular service in the grade' governs promotions on the basis of seniority-cum-fitness as well as promotion on the results of departmental competitive examination. The expression must therefore be given the same meaning in both the contexts. If we accept the contention that service in the new unit to which they are transferred alone should be taken into account, then unless they have put in 5 years service in the new unit they cannot appear even for departmental competitive examination. We think it would be wholly inequitable to deprive LDCs who have put in the requisite period of regular service in the grade the chances of promotion, by ignoring the plain meaning of the statutory rules by adopting this process of interpretation of the existing rules. There is no compelling reason to adopt this interpretation.

One of the considerations that weighed with the Bangalore Bench to hold that service in the unit alone should be computed for the purpose of determining eligibility of LDC was that "service in a particular cadre outside ADE, will have no relevance for the purpose of rules of promotion within ADE". The learned members of the Bangalore Bench also observed that "it would be both illogical and unfair to give credit for that earlier service for the purpose of promotion Experience for promotion within a department or an administrative unit, to be "valuable", has to be rendered within that department or unit itself because to a greater or lesser degree, the manner of functioning and specific items of work to be carried out at all levels within each unit or department differ from those obtaining in other units or departments of Government."

But in our opinion in the context of the rules governing promotion to the cadre of UDC what we are concerned with is/experience in the grade of LDC. There ~~there~~ are bound to be differences in the working of different units of departments, ^{but by and large} the duties to be performed by any LDC are broadly of a clerical nature. It would not so vastly disparate and would be of no use so as to justify ignoring the entire period of his service in the other unit/department. We do not think that on transfer made on request, the entire experience in the other unit would amount to nothing and should be wiped off. If that were

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so the same consequence should follow when transfer is ordered not on request or compassionate grounds but for administrative reasons. But if transfer is ordered on administrative grounds the past service is not ignored. In view of the specific rules governing the promotion to the cadre of UDC, which do not lay down that experience in the new unit or department alone should be reckoned, we will not be justified in ignoring the services rendered in the other unit or department. The rule enjoins taking regular service in the grade i.e., the grade of LDC and not services in the particular unit or particular department alone for determining the eligibility of an LDC. Any general principle of administration cannot override the specific rules governing the promotions to the cadre of UDCs with which we are concerned in these applications. When the rule requires regular service in the cadre to be taken into account, the administrative instructions governing the determination of the seniority cannot be made the basis for ignoring the service in the other unit for the purpose of determining the eligibility of LDCs for promotion.

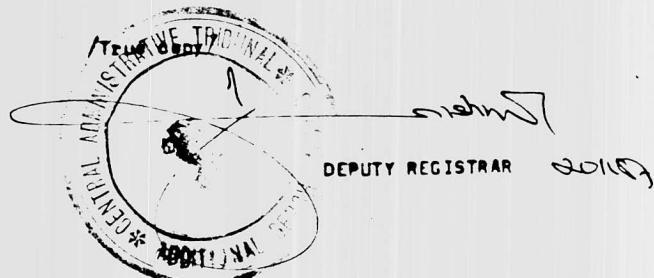
In view of the foregoing discussion, we hold that under the Rules, regular service in the grade of LDC rendered in another unit will count for reckoning the qualifying service for purpose of promotion to the cadre of UDCs in the new unit to which an LDC is transferred even on compassionate grounds. We find ourselves in agreement with the view expressed by the Madras Bench in T.A. 770 of 1986.

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We however hasten to add that neither in TA 770 of 1986 on the file of the Central Administrative Tribunal, Madras, nor in Application No.1282 of 1986 on the file of the Central Administrative Tribunal, Bangalore, the question whether the services of the casual LDCs subsequently made permanent should be reckoned as regular service with effect from the date of the first appointment as casual LDC did not fall for consideration. In the present case no material is placed before us to show that the applicant was regularised with effect from 4.8.1971 when he was first appointed as casual LDC. Hence we express no opinion on that aspect of the case.

In the result, this application is allowed to the extent indicated above. There will be a direction to consider the claim of the applicant for promotion to the post of UDC on completion of eight years of service reckoned from the date of his regular appointment i.e., 8.5.1977, in other words, on the basis that he has completed eight years of service on 7.5.1985. In the event of his being found fit by the DPC the applicant shall be promoted with effect from the date his junior was promoted or from such earlier date as the case may be and as a result of such promotion he will also be entitled to all consequential benefits. There will be no order as to costs.

Index: Yes/16.



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