

SLC *UPC*

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA),
1st Floor, Indira Nagar,
BANGALORE-560 038.

Application No. 1282, 1283 + 1284/86 (T),
(CWL No. 5484, 85/81, + 10523/82)

Dated the 22/10/86

To

1. Shri Sanjeev Malhotra,
All India Services Law Journal,
Hakikat Nagar, Mal Road,
NEW DELHI - 110 009.
2. Shri R. Venkatesh Prabhu, Member,
Editorial Committee,
Administrative Tribunal Reporter,
67 - Lawyer Palace Orchards,
BANGALORE-560 003.
3. The Registrar,
Central Administrative Tribunal,
Principal Bench, Faridkot House,
Copernicus Marg,
NEW DELHI - 110 001.

Subject: Sending Copies of Order passed by the Bench in
application No. 1282, 1283, 1284/86 (T).

....

Please find enclosed herewith the copy of the Order
passed by this Tribunal in the above said Application on 30-9-86
for needful. The Judgement is ordered to be reported.

R.
SECTION OFFICER
(JUDICIAL)

Folder copy

Copy to File No. 1284/86 (T),
Encl: as above.

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. Gangadharaiyah
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)



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

O R D E R

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



D. S. [Signature]

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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,



P J B

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 ~~six~~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 juniormost 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 upto date, 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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7. In this background, learned counsel for the applicants, Shri Balachandran, urged that the authorities concerned (respondents 1 - 3) 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 ^M Tribunal. In Ponappan's case, the Madras Bench of the ^M Tribunal, 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



D. S. B.

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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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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. ~~He~~ 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

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(S. S.)

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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 ^{long} ~~a~~ time, 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~~ ^{by} 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.



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.



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SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
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Sd/-
Vice-Chairman

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Member(A) 30/9/86
20/9/86