

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH, BOMBAY

ORIGINAL APPLICATION NO. 853 OF 1995

A Govindankutty ..... APPLICANT

V/s

Union of India & others ..... RESPONDENTS

WRITTEN REPLY ON BEHALF OF THE RESPONDENTS

I, Commodore N Bakshi, Chief Staff Officer (PCA), having my office, at Headquarters, Western Naval Command, Shahid Bhagat Singh Road, Bombay-400 001, do hereby state on solemn affirmation as under :-

1. I have been authorised to file reply on behalf of the respondents.
2. I am acquainted with the facts and circumstances of the case in my official capacity.
3. I have gone through the records/petition filed by the applicants and my reply is as under :-
4. At the outset the applicant is comparing his position for stepping up of his pay with his junior Shri MC Nair first time by his representation dated 11 Feb 94 to Respondent No.3. The said MC Nair was promoted as officiating UDC to carry out the duties of Assistant Cashier with effect from 15 Mar 71 and therefore for all purposes the cause of action arose on 15 Mar 71 whereas the applicant has filed original application in the month of Jun 1995 and therefore this Hon'ble Tribunal which is came into existence with effect from 1.11.1995 has no jurisdiction to try and entertain the cause of action arose on 15 Mar 71 and hence the application should be dismissed on the ground of jurisdiction itself.

b) The respondents respectfully submitted that there is an unexplained delay of 24 years in adjudicating the grievances which occurred on 15.3.71 and therefore the present application is not within the limitation prescribed under Section 21 of the Administrative Tribunal Act 1985 and hence the application should be dismissed on the ground of limitation. This is very much limitation in this case is very very important since the applicant wants to unsettle the position by asking for stepping up after 12 years and if said plea dehorse the limitation and jurisdiction is allowed then there will be plethora of litigations coming before this court. In fact, the Hon'ble Supreme Court has stated time and again that the settled position should not be unsettled.

c) It can be seen from the original application in the entire pleadings, the applicant has grievance against the Respondents. In fact, the applicant has made a representation dated 11 Feb 89 to the Respondent No.3 in other words in the original application as well as in the representation dated 11 Feb 89, the applicant has not made out any case whatsoever against respondents No.1 and 2. The applicant has also not claimed any relief in this application against the Respondents No.1 and 2. In these circumstances the application is bad in law since the Respondents No.1 and 2 are unnecessarily joined as the party respondents and therefore the application should be dismissed on the ground of joinder of unnecessary party.

d) Without prejudice to the aforesaid contention, even on merit the applicant has no case whatsoever to compare himself that the said MC Nair's case in the year 1971 itself Shri MC Nair the junior individual to the applicant tender his willingness in response to the circular issued by the Respondent No.3 and promoted as officiating UDC with effect from 15 Mar 1971 to perform the duties of Assistant Cashier in the pay scale of Rs.130 - 300 attached to the post of UDC and after due consideration by the DPC. In these circumstances the applicant who was not tender his willingness in pursuance of the said circular is not entitled for any reliefs after a lapse of almost 24 years and hence his application is grossely misconceived and hence should be dismissed with costs.

5. Without prejudice to the aforesaid contention the respondents would like to reply the application parawise as under :-

6. With reference to the paragraph 1 of the application I say that the applicant who had no grievance for almost 24 years has made representation in 11 Feb 85 to the Respondent No.3 first time only with a view to gain the benefits of the so called judgement in the case of N Lalitha and ors. as is being stated by the applicant in para 4.6 of this application. It is submitted that the applicant is praying for stepping up of his pay at par with Shri MC Nair UDC with effect from 22.9.1982 by filing the

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present original application in the month of Jun 95, therefore the application is deserved to be dismissed with cost on the ground of delay and latches.

7. With reference to the paragraphs 2 and 3 of the application as stated in paragraph 4 above this Hon'ble Tribunal has no jurisdiction to try and entertain the stale claim of the applicant which arose prior to constitution of this Hon'ble Tribunal and hence the application is bad in law and should be dismissed with cost.

8. With reference to the paragraph 4.1 and 4.2 of the application the contentions made by the applicant are denied and it is respectfully submitted that in the year 1971 Shri MC Nair, the junior individual to the applicant tender his willingness in response to the circular issued by the Respondent No.3 and was promoted as officiating UDC with effect from 15 Mar. 1971 to perform the duties of assistant cashier in the pay scale of Rs.130 - 300 attached to the post of UDC after due consideration and recommendations of the DPC. However, since the event took place on 15 Mar 1971 i.e. almost 24 years back the record of the said selection is not readily available with the Respondent No.3 except civilian establishment order Part I. The said casualty was published in Civilian Establishment Order Part I No.55/71 dated 19 Mar 1971. Hereto annexed and marked as Exh.R-1 is the copy of the said order dated 19 Mar 1971. The respondents at this juncture would like to submit that the applicant and many others are know about the said order dated 19 Mar 1971 only

and therefore the applicants contention that the application is within the limitation is far from the truth in fact, if the aforesaid event is considered by this Hon'ble Tribunal, it will appreciate that there is a delay of 24 years and hence it is sufficient documentary proof for establishing the point of limitation under Section 21 of the Administrative Tribunal Act 1985 and hence the application should be dismissed for delay and laches. The respondents state that since the said Nair was given officiating promotion as UDC to carry out the duties of Assistant Cashier by issue of Respondent circular dated 19 Mar 1971 his pay was fixed to the minimum in the scale of pay Rs.130 - 300. Subsequently he was promoted as UDC in normal course with effect from 22 Sep 1982 according to his seniority in the LDC grade. However, he was continued to draw annual increment regularly from 15 Mar 1971 every year i.e. the date of officiating promotion to UDC (Asst.Cashier) i.e. for more than 10 years. Whereas the applicant was promoted as a UDC first time with effect from 22 Sep 1982 and his pay has been fixed in the UDC scale i.e. Rs.130 - 300 accordingly. From the condition stated herein above, it is proved beyond doubt that Shri MC Nair was drawing UDC's pay with effect from 15 Mar 1971 i.e. 11 years prior to the applicant and hence the question of removal of anomaly in the applicant's pay <sup>does not</sup> arise in the peculiar circumstances of the present case.

8. With reference to the paragraph 4.4 of the application the claim made by the applicant are denied and it is submitted that Shri MC Nair,UDC was drawing more pay than the applicant

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with effect from 15 Mar 1971 the applicant's case does not fall in the purview of the Rule 8 of FR 22 as claim by the applicant.

9. With reference to the paragraph 4.5 of the application the claim made by the applicant are denied. It is submitted that since MC Nair, UDC was drawing more pay than the applicant from 15 Mar 1971 on his officiating promotion to the post of UDC to carry out the duties of Assistant Cashier and therefore the applicant's case does not fall within the purview of rule 8 of FR.

10. With reference to the paragraph 4.6 of the application the claim made by the applicant are denied. It is submitted that the judgement relied upon in the application are having no relevance whatsoever in the facts and circumstances of the present case as the person was promoted to the post of officiating UDC to perform the duties of Assistant Cashier in the pay scale of Rs.130 - 300 after his response to the circular issued by the Respondent No.3 and his case was duly considered and recommended by the duly constituted DPC and accordingly the casualty had published vide CEO Part I No.55/81 dated 19 Mar 1971 for all concerned persons. Not a single person claiming the said promotion in 1971 and in fact, no one has represented against the said promotion which was to be made by the order of Respondent No.3 in the year 1971 till date. It is therefore proved that the said position was accepted by the applicant till 1994 (i.e. date of his representation) regarding removal of anomaly. According to the CE Order dated 19 Mar 1971, Shri MC Nair was promoted to draw pay in the

scale of Rs.130 - 300 attached to the post of UDC post and his seniority will be count only from the date of which he would normally be promoted as UDC according to his seniority in the LDC grade.

11. With reference to the paragraph 4.7 of the application the claim made by the applicant are denied. It is submitted that the circular was issued by the Respondent No.3 calling for the volunteers to accept the post of Assistant Cashier and in response to the said circular Shri MC Nair has expressed his willingness and has been promoted as officiating UDC to carry out the duties of Assistant Cashier with effect from 15 Mar 71. The said casualty was published in CE Order No.55/71 dated 19 Mar 1971 which was circulated amongst units/establishments of Respondent No.3 and hence the contention of the applicant in the said paragraph that they were not aware of such officiating promotion granted to his juniors and also he was not aware of the higher pay drawn by his junior is not correct and hence vehemently denied. Shri MC Nair junior to the applicant by date of initial appointment as LDC but drawing pay in UDC scale i.e. Rs.130 - 300 prior to 11 years to the applicant due to his officiating promotion as UDC to carry out the duties of Assistant Cashier with effect from 15 Mar 1971.

12. With reference to paragraph 5.1 to 5.3 of the application, in view of the true facts stated in paragraphs 4 to 11 above none of the ground of challenge is maintainable in law and precedence of Hon'ble Supreme Court also not applicable in the facts and circumstances of the case.

13. With reference to the paragraphs 6 and 7 of the application the contents therein are substantially correct.

14. With reference to the paragraph 8 of the application, it is submitted that the prayers are silent with regards to the date on which the applicant's pay is to be stepped up with Shri MC Hair and the said date is suppressed by him with a view to stay away from Section 21 of the Administrative Tribunal Act 1985 because the delay of 24 years will attract the mind of the Hon'ble Tribunal. In view of the true facts stated in paragraphs 4 to 13 above, the applicant has miserably failed to make out any case for granting of any relief in the present case and hence the application should be dismissed with cost.


15. With reference to the paragraphs 9 to 11 of the application the contents therein are the statement of records and hence I have no comments to offer in this regard.

#### VERIFICATION

I, Commodore N Bakshi, Chief Staff Officer (P&A), having my office at Headquarters, Western Naval Command, Shahid Bhagat Singh Road, Bombay-400 001, do hereby state on solemn affirmation that the contentions made in these above paragraphs are true and correct to the best of my knowledge and belief as the same are reveals from the official records available with me and nothing has been suppressed hereinabove.

Solemnly affirmed at Bombay

on this ~~24th~~ day of Dec. 1995

  
(N Bakshi)  
Commodore  
Chief Staff Officer (P&A)  
for the Respondents

  
(Vinay S. Masurkar)  
Addl. Cent. Govt. Standing Counsel for the Respondents.



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH, BOMBAY

ORIGINAL APPLICATION NO. 853 OF 1995

AG. KUTTY ... Applicant

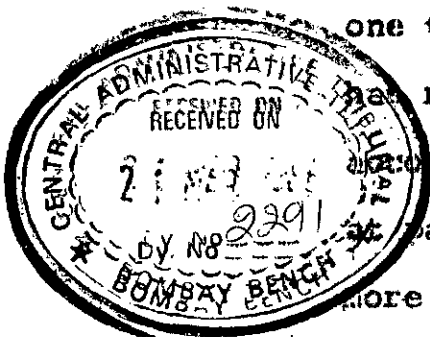
Vs.

Union of India & Ors. ... Respondents

REJOINDER TO THE WRITTEN STATEMENT FILED  
BY THE RESPONDENTS.

1. The Applicant has gone through the written reply filed by the Respondents. At the outset, the Applicant do not admit the correctness of the same which is contrary to or inconsistent with what has been stated in the Original Application and what is stated herein. The Applicant submits that the written statement filed by the Respondents is devoid of any merit as it does not reply to the main point which has been raised for consideration before this Hon'ble Tribunal.

2. The Applicant submits that the cause of action which the Applicant is agitating before this Hon'ble Tribunal is of a continuous nature and it is not a one time action. The Applicant submits that his pay has not been properly fixed in the sense that in accordance with the rules it has not been stepped up par with his junior when the junior is drawing more pay. The Applicant submits that he fulfils all



the conditions laid down under the orders on the subject, still the stepping up of pay has been denied to him which is a continuing wrong against the Applicant and giving rise to a recurring cause of action each time when he is paid a salary which is not computed in accordance with the rules. The Applicant submits that so long as he is in service, the fresh cause of action arises every month when he is paid his monthly salary on the basis of wrong computation made contrary to rules. The Applicant submits that this is the view which has been taken by the Hon'ble Supreme Court and the Hon'ble Tribunals in number of cases for which no authority is required to be cited before the Hon'ble Tribunal.

3. The Applicant further submits that at no point of time he refused any ad-hoc or regular promotion in the post of UDC or he was never declared as unfit at any time for promotion to the post of UDC. The Applicant further submits that at no point of time any option was called for from the Applicant for promotion to the post of UDC and at no point of time he gave his unwillingness for promotion to the post of UDC either on ad-hoc basis/officiating basis or on regular basis.

4. With reference to paragraph 4 of the written reply the Applicant do not admit the correctness of the same. The Applicant submits that it has been admitted by the Respondents that Mr. M.C. Nair was

promoted as Officiating UDC from 15.3.71 and he continued in the same post till he was promoted on regular basis with effect from 22.9.82. The Applicant therefore submits that it is an admitted position that it was a long term vacancy which ought to have been filled up by the Respondents in accordance with the rules, i.e. the vacancy ought to have been filled from the panel prepared by the Respondents for promotion to the post of UDC. The Respondents have not done this and contrary to rules Mr. M.C. Nair was promoted on ad-hoc/officiating basis and therefore he is drawing more pay than the Applicant. The Applicant submits that for the wrong committed by the Respondents the Applicant should not be made to suffer. It is denied that the cause of action arose on 15.3.71 as the junior was promoted on regular basis only on 22.9.82 and in any case the Applicant came to know about this only recently when, immediately after that he made a representation to the Respondents. In any case as submitted earlier it is a continuous cause of action and as such no limitation will apply. It is denied that the Applicant wants to unsettle the settled position as he is contesting his right to get equal payment as far as his junior is concerned.

5. With reference to paragraph 4(c), it is not correct to say that there is no claim against the Respondents No. 1 and 2. The Applicant submits that Respondents No. 1 and 2 are the policy makers and they are required to be made as Respondents and their joining as Respondents is essential.

6. With reference to paragraph 4(d), it is denied that any circular was issued by the Respondents for promotion to the post of UDC. It is vehemently denied that the Applicant did not tender his willingness in pursuance of the alleged circular. The Applicant submits that he never submitted his unwillingness.

7. With reference to paragraph 6, the Applicant denies that there is any delay in submitting the claim as the cause of action is of continuous nature.

8. With reference to paragraph 7, the Applicant reiterates that this Hon'ble Tribunal has jurisdiction to entertain this claim in view of the various judgments of the Hon'ble Supreme Court and the Hon'ble Tribunals.

9. With reference to paragraph 8, it is denied that any circular was issued by the Respondent No.3 and any options for promotion to the post of UDC on officiating basis were called for. The Applicant submits that in any case he never submitted his unwillingness for such a promotion at any time. The Applicant submits that the Civilian Establishment Order referred to in this paragraph is not at all a circular and this document is not at all circulated among the staff members because basically this is issued for office use only. The Applicant submits that therefore there was no question to know about the officiating promotion of Mr. M.C. Nair in the year 1971. The Applicant submits that in any case he did not know

about such promotion till he made a representation to the Respondents. The Applicant prays to this Hon'ble Tribunal to direct the Respondents to produce before this Hon'ble Tribunal any circular issued by the Respondents and any unwillingness submitted by the Applicant for promotion to the post of UDC on officiating basis. The Applicant submits that Mr. M.C. Nair was promoted as UDC on officiating basis contrary to the rules ignoring the claims of all the seniors and this resulted in drawing more pay than the Applicant and many others. The Applicant submits that the Applicant and Mr. M.C. Nair are borne on a single seniority list maintained by the Respondent No.3, both of them are working in Bombay under Western Naval Command and any long term vacancy for the post of UDC ought to have been filled up by promoting the senior-most LDC in accordance with the rules.

10. With reference to the repeated paragraph 8 of the written reply, the Applicant do not admit the correctness of the same. The Applicant reiterates that his claim falls within the purview of the conditions laid down under Rule 22(c) for stepping up of pay.

11. With reference to paragraph 9, the Applicant do not admit the correctness of what is stated therein. The Applicant reiterates that he fulfils all the conditions for stepping up of his pay in accordance

with the rules on the subject and the law laid down by the Hon'ble Supreme Court and the Hon'ble Tribunals.

12. With reference to paragraph 10, the Applicant do not admit the correctness of the same which is contrary to or inconsistent with what has been stated in the Original Application and what is stated herein. The Applicant submits that his case for officiating promotion was not at all considered by the Respondents and only the case of Mr. M.C. Nair was considered. The Applicant submits that neither any circular was issued by the Respondent No.3 nor any C.E. order issued by the Respondents was circulated and brought to the notice of the Applicant. The Applicant submits that therefore there was no question of making any representation against the promotion of Mr. M.C. Nair as the Applicant was not at all aware of such a promotion till he made a representation in the year 1994 to Respondent No.3.

13. With reference to paragraph 11, the Applicant do not admit the correctness of the same which is contrary to and/or inconsistent with what has been stated in the Original Application and what is stated herein. It is reiterated that the Respondents had not issued any circular calling for options to accept the promotion of UDC on officiating basis. The Applicant submits that in any case he never submitted his unwillingness for such a promotion to the post of UDC on officiating basis.

14. The Applicant reiterates that the cause of action which he is agitating is about the proper fixation of pay/stepping up of his pay and therefore it is a continuous cause of action and he gets cause of action every month when he draws less pay than his junior. The Applicant therefore, respectfully submits that no limitation applies in such type of cases as has been held by the Hon'ble Supreme Court and the Hon'ble Tribunals. The Applicant further reiterates that the Respondents had not issued any circular calling for options at any time or atleast no such circular was brought to the notice of the Applicant at any time and therefore there was no question of giving any willingness for promotion to the post of UDC on officiating basis. The Applicant respectfully submits that he would have certainly given his willingness for promotion to the post of UDC even on officiating basis if he would have been informed about the availability of such a vacancy and any such circular would have been brought to his notice. The Applicant reiterates that he never gave any unwillingness for promotion to the post of UDC even on officiating basis at any time. The Applicant therefore respectfully submits that he has made out his claim for stepping up of his pay and he is entitled to the said benefit.

15. With reference to what is stated in the rest of the written reply, the Applicant denies the correctness of all allegations, submissions and contentions mentioned therein as if the same were specifically

set out herein and traversed to the extent the same are contrary to and/or inconsistent with what has been stated in the Original Application and what is stated herein.

In view of the aforesaid, the Applicant prays to this Hon'ble Tribunal that the Original Application be allowed with costs.

VERIFICATION

I, A. G. KUTTY the Applicant  
in the above Application, do hereby verify that the contents of above paragraphs are true to my personal knowledge and belief and that I have not suppressed any material facts.

Place: Bombay

Dated: 19 February, 1996.

A. G. K. Kutty  
Advocate

[Signature]  
Advocate for the Applicant