

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDRABAD

ORIGINAL APPLICATION NO.938 of 1997

DATE OF ORDER: *8th* APRIL, 1999

BETWEEN:

1. G.THOMAS,
2. K.APPALARAJU,
3. KOLLA SIMHACHALAM,
4. DADI MONDALA RAO,
5. N.NARASINGA RAO,
6. D.BHADRA RAO,
7. M.KANIKI REDDY,
8. D.NAGESWARA RAO,
9. SURAJ BHADUR,
10. AVSN MURTHY,
11. N.S.PRAKASH RAO,
12. M.PADMANABHA RAO,
13. R.V.GOPAL,
14. N.SURYANARAYANA,
15. Ch.V.PRASADA RAO,
16. DUPPADA KONDALA RAO,
17. M.N.PETRUDU,
18. S.SURESH BABU,
19. K.MADHUSUDHANA RAO,
20. B.G.PRASADA RAO,
21. K.NARASINGA RAO,
22. M.S.KIRAN,
23. B.SATYANARAYANA,
24. V.V.RAMANA RAJU,
25. EGNANA PRAKASAM,
26. KVV SATYANARAYANA,
27. P.RADHAKRISHNA,
28. S.RAMACHANDRA RAO,
29. P.GOVINDA,
30. T.RAGHAVENDRA RAO,
31. S.KANAKA RAO,
32. R.V.RAMANA,
33. T.RAMA KRISHNA RAO,
34. P.RANGA RAO,
35. S.Satyenarayana,
36. JBSJ ACHARYULU,
37. G.SANYASI NAIDU,
38. S.R.APPA RAO,
39. K.BABU RAO,
40. V.ANANDA RAO.

.. APPLICANTS

AND

1. Union of India rep. by its
Secretary, Ministry of Defence,
New Delhi,

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2. The Chief of Naval Staff,
Naval Headquarters,
New Delhi-1,

3. The Flag Officer,
Commanding-in-Chief,
Head Quarters,
Eastern Naval Command,
Visakhapatnam,

4. GVN RAO,
5. PULLE SURYANARAYANA,
6. CHAMANTHULA APPA RAO,
7. CHANDANA APPA RAO,
8. S.K.MEERA,
9. A.CHINNAIAH,
10. VBS SASTRY,
11. NV BHASKARAN,
12. B.NAGESWARA RAO,
13. P.RAMANA RAO,
14. S.PATNAIK,
15. JAMI APPA RAO,
16. BN MURTHY,
17. MVS PRASAD,
18. P.APPA RAO,
19. D.SURYA RAO,
20. M.KAILASH NATH,
21. Ch.RANGARIAH,
22. J.MADHAVA RAO,
23. B.MOHAN KUMAR,
24. CH.BABU RAO,
25. S.SRINIVASA RAO,
26. A.MOHAN RAO,
27. P.GANAPATHI RAO,
28. GSN MURTHY,
29. B.V.RAMANA RAJU,
30. EMANDI APPA RAO,
31. S.KRUPA RAO,
32. CHV PRASAD RAO,
33. T.SURESH KUMAR.

.. RESPONDENTS

COUNSEL FOR THE APPLICANTS: Mrs. G.SUDHA

COUNSEL FOR THE RESPONDENTS: Mr.V.RAJESWAR RAO, Adl.CGSC
for R-1 to R-3

Mr.P.B.VIJAY KUMAR for R-4 to
R-31.

CORAM:

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

HON'BLE SHRI B.S.JAI PARAMESHWAR, MEMBER (JUDL.)

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JUDGMENT

ORDER (PER HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.))

Heard Mrs.G.Sudha, learned counsel for the applicants, Mr.V.Rajeswara Rao, learned standing counsel for the official respondents (R-1 to R-3) and Mr.P.B.Vijay Kumar, learned counsel for the private respondents 4 to 31. Notice had been sent to the private Respondent No.32 and it has been returned unserved. Notice had been served on the private respondent No.33 but he was called, absent.

2. There are 40 applicants in this OA. They are Assistant Store Keepers under R-3 organisation. Their main grievance is that the seniority of the Assistant Store Keepers, Naval Headquarters, is not uniformly decided either on the basis of the initial appointment as casual employees or on the basis of the date of regularisation. The seniority of the private respondents has been fixed on the basis of their initial appointment whereas the applicants were not given the seniority position accordingly and thus there is discrimination between the Assistant Store Keepers of the same seniority unit. They rely on the judgement in R.A.No.54/94 in OA No.788/91 decided on 22.9.95 to state that all the ^{ASST} ~~Store~~ Keepers should be placed on seniority unit uniformly without differentiating those who approached the Tribunal and got some orders in regard to their fixation of seniority and others who have ^d not approached the Tribunal.

3. There are some grievances in regard to the non-application of reservation point but that cannot be agitated as there is no enough material in this OA. The

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only point for consideration in this OA is in regard to the method of fixing seniority of all the Assistant Store Keepers now working under R-3 and worked earlier ~~as~~ ^{as} ~~as~~ Assistant Store Keepers and then promoted as Store Keepers.

4. This OA is primarily filed challenging the seniority list of Assistant Store Keepers published on 27.12.96 and 27.1.97 and the list of promotion and empanelment of R-4 to R-33 as Store Keepers as per the proceedings No.SE/2029/DPC/ASK-SK/96, dated 8.6.97 and to set-aside the above proceedings.

5. A reply has been filed in this OA. Para 5 of the reply is relevant. It is reproduced below:-

"The respondents further respectfully submit that the applicants at Sl.No.1, 3, 4, 7, 8, 19, 20, 23, 24, 25, 27, 28 to 30 and 32 in the said OA have already been granted the benefit of regularisation in service from the date of initial appointment as per the Govt of India, Ministry of Defence letter dated 26.6.95. The cases of remaining applicants are under examination for extending the benefit of regularisation from the date of initial appointment, if otherwise applicable/admissible. There are no rules which permit the grant of seniority with retrospective

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effect from the initial date of appointment and no individual whose services were regularised in accordance with the letter dated 26.6.95 were granted/extended the benefit of seniority. As per the rules, the seniority can be granted only from the date on which the individual is appointed against a regular vacancy. In this regard, the Govt of India, Ministry of Defence letter No.1305/DS.SC (ii)/2986/D(Civ II) dated 27.5.80 is relevant. I am fortified in this view by the decision of the Apex Court as cited above. The Apex Court has in that case very clearly held to the effect that the Ministry of Defence had vide corrigendum dated 27 May 80, made amendments in clause 2 of the letter of 24 Nov 67. Clause 2 of the letter of 24 Nov 67 as amended provided that on regularisation the employees will be entitled to all benefit as for regular employees excepting, inter alia, seniority (emphasis supported). It also says that Service rendered on casual basis prior to an appointment on regular basis shall not count for seniority. Thus after the letter of 27th of May 1980 on regularisation for determining the seniority of employees

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whose services were regularised, their service as casual employees could not be taken into account. Before this the full bench of CAT Ernakulam had also held the same view in (ATJ 1994(2) 289). In view of the foregoing the applicants' claim for seniority from the date of initial appointment as preferred in the present OA 938/97 is clearly not tenable. Accordingly the interim as well as the main prayer as raised in paras 7 and 8 of the instant OA are untenable in law and therefore liable to be rejected in the light of the decision of the Hon'ble Supreme Court as aforesaid."

6. From the above reply it is relevant to note that the Apex Court in Civil Appeal NO.9922/95 dated 8.7.97 (Union of India and others v. M.Dharani and Others) had clearly stated that the terms and conditions of employment of casual labour and regularisation of their services will be done on/conditions laid down in the letter dated 31.1.91 (The letter No.MF.4(3)/89/D(Civ.II) dated 31.1.91 is at Page 38B enclosed to the reply affidavit filed by the respondents 1 to 3). Under clause (3) of the letter dated 31.1.91, the regularisation of the service of non-industrial casual personnel already appointed shall be regulated as laid down in that clause (3). Sub clauses (f) and (g) are as follows:-

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"(f) Seniority of employees appointed to regular establishments will be reckoned with only from the date of regular appointment.

(g) Service rendered on casual basis prior to appointment in regular establishment shall not be counted for the purposes of pay fixation etc."

7. In view of the above clear cut direction of the Supreme Court in regard to reckoning of the seniority only from the date of regular appointment and also pay fixation criteria, no further direction is necessary in this OA in regard to drawing ^{up} of the seniority list for Assistant Store Keepers' category. The Apex Court judgement as referred to above should be strictly followed and the seniority of Assistant Store Keepers presently working and the erstwhile Assistant Store Keepers ~~were~~ promoted as Store Keepers should be prepared accordingly.

8. The Full Bench of this Tribunal had also held the same view while disposing of the reference made to it in the batch cases in OA 967/90 and batch on the file of Ernakulam Bench of this Tribunal decided on 1.7.94 (K. George Varghese & 25 others v. Union of India and others). In the letter dated 31.5.96 it has been clearly stated in sub-clause (c) of para 2 that "seniority of the employee will be counted from the date of actual regularisation against Govt. billet and not from the date of initial appointment." The respondents have stated that

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the applicants 1, 3, 4, 7, 8, 19, 20, 23, 24, 25, 27, 28 to 30 and 32 in the OA had already been granted the benefit of regularisation for seniority from the date of initial appointment as per the Ministry of Defence letter dated 26.6.95 (This letter dated 26.6.95 is at Page 1A to the reply of the official respondents). The Supreme Court had also observed that if the respondents therein are entitled to the benefit of the letter dated 26.6.95, they will be entitled to make representation to that effect before the appropriate authority who will decide the same in accordance with law. Hence there is no doubt in our mind that the respondents are bound to grant the benefit entitled to the applicants as per the letter dated 26.6.95 if the applicants make a representation to that effect. As that benefit had already been extended to the 15 applicants already, there is no doubt that similar benefit will be extended to the other applicants also.

9. In view of what is stated above, we find that there is no further direction necessary in this OA except to direct the respondents to draw the seniority list of the Assistant Store Keepers in accordance with the judgement of the Supreme Court referred to above. It may be possible that as per the new seniority list of Assistant Store Keepers that is to be prepared, some of the Assistant Store Keepers who will be shown senior in the new seniority list might not have been promoted as Store Keepers whereas juniors in the proposed new seniority list to be prepared might have been working as Store Keepers. That anomaly has to be set-right. At this juncture, to revert the juniors from the post of Store Keeper to the post of Assistant

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Store Keeper may not be in order. In order to overcome this difficulty, if it arises, the senior Assistant Store Keepers in the new list who should have been promoted earlier as Store Keepers as the juniors as per the new seniority list are now working as Store Keepers, such senior Assistant Store Keepers as per the new seniority list should be promoted as Store Keepers in the vacancies that arise hereafterwards. Once they are promoted as Store Keeper, their seniority will be shown in the Store Keepers' seniority list as per their placement in the new seniority list which is to be issued. Thus, the ~~reversion~~ reversion will be avoided.

10. In the result, following direction is given:-

(i) The seniority list of Assistant Store Keepers presently working as such and those who are already promoted as Store Keepers from the lower category of Assistant Store Keepers should be prepared in accordance with the directions of the Apex Court in the aforesaid case and that seniority list should be finalised within a period of three months from the date of receipt of a copy of this judgement;

(ii) If any of the Assistant Store Keepers in the seniority list to be prepared had already been promoted as Store Keeper as per the earlier seniority list, they need not be reverted but the senior Assistant Store Keepers in the proposed seniority list should be promoted in the vacancies that arise hereafterwards. When they are promoted in pursuance of the above direction, their

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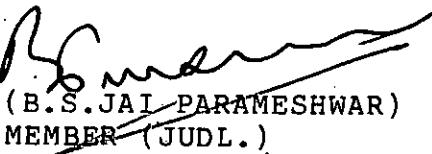
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seniority in the list of Store Keepers will be shown following the Assistant Store Keepers' seniority list to be prepared now in pursuance of the direction (i) above.

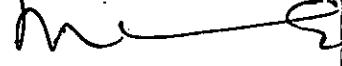
(iii) The pay of the senior Assistant Store Keepers now to be promoted as Store Keepers in view of the revised seniority list, if it arises later, shall be fixed in accordance with law in the cadre of Store Keepers.

11. The OA is ordered accordingly. No order as to costs.


(B.S.JAI PARAMESHWAR)

MEMBER (JUDL.)

8th April 1999


(R.RANGARAJAN)

MEMBER (ADMN.)

DATED : 8th APRIL, 1999

vsn


Jai
Parameshwar

Y TO:-
1. HONORABLE
2. HHRP M(A)
3. HBSJP M(J)
4. B.R.(A)
5. SPARE

1ST AND 2ND COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD.

THE HON'BLE MR. JUSTICE D.H.NASIR :
VICE - CHAIRMAN

THE HON'BLE MR. H. RAJENDRA PRASAD :
MEMBER (A)

THE HON'BLE MR. R. RANGARAJAN :
MEMBER (A)

THE HON'BLE MR. B.S. JAI PARAMESWAR :
MEMBER (J)

DATED: 8/4/99

ORDER / JUDGEMENT

M.R.A./C.P. NO.

IN 938/97
O.A. No.

ADMITTED AND INTERIM DIRECTIONS
ISSUED.

ALLOWED.

C.P. CLOSED.

R.A. CLOSED.

DISPOSED OF WITH DIRECTION
DISMISSED.

DISMISSED AS WITHDRAWN **26 APR 1999**

ORDERED/REJECTED.

NO ORDER AS TO COSTS **HYDERABAD B**

SRR.

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Central Administrative Tribunal
हैदराबाद / DESPATCH