

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/01076/2014

Tuesday, this the 14th day of August, 2018

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member

1. Smt. Narayanikutty Kavu, aged 64 years,
 W/o. Late K. Peethambara Menon,
 Superintendent (Retired), Regional Passport Office,
 Panampilly Nagar, Cochin 682 035,
 Residing at Vilasodayam Bungalow, Nedumbal,
 Thottipal PO, Puthukkad via, Trichur District.
2. Smt. V.PO. Chandramma, aged 63 years,
 W/o. V.A. Ramachandran, Passport Granting Officer (Retired),
 Regional Passport Office, Panampilly Nagar,
 Cochin – 682 035, Residing at Valummel House,
 Thoppumpady, Cochin – 682 005. **Applicants**

(By Advocate : Mr. Shafik M.A.)

V e r s u s

1. Union of India, represented by Secretary to the
 Government of India, Ministry of External Affairs, New Delhi.
2. The Chief Passport Officer & Joint Secretary (CPV),
 Ministry of External Affairs, New Delhi. **Respondents**

[By Advocate : Mr. N. Anilkumar, Sr. PCGC (R)]

This application having been heard on 06.08.2018 the Tribunal on 14.08.2018 delivered the following:

O R D E R

Hon'ble Mr. Ashish Kalia, Judicial Member –

The applicants claimed relief as under:

“(i) To call for the records relating to Annexure A-1 to A1-10 and to declare that the applicants are entitled to be granted seniority as LDC with effect from the date of initial entry i.e. 21.3.1978 & 15.5.1978 on par with

similarly situated officials;

(ii) To direct the respondents to grant seniority to the applicants with effect from 21.3.1978 & 15.5.1978 with all consequential benefits including all attendant promotions, actual pay fixation and arrears of pay and to correct the seniority list and place the applicants in the correct spots based on the date of initial entry;

(iii) To issue such other appropriate orders or directions this Honorable Court may deem fit, just and proper in the circumstances of the case;

And

(iv) To grant the costs of this Original Application.”

2. The applicants joined the services of respondents as Daily Rated Clerks (DRCs in short) with effect from 21.3.1978 and 15.5.1978 respectively. They were given regular appointment as LDC with effect from 26.6.1980 and 1.6.1985 respectively. Later they were promoted as UDCs in the year 1992 and Assistants in the year 2004. Further they were promoted as Superintendents in year 2008 and thereafter retired from service with effect from 31.10.2010 and 31.8.2011 respectively. As there were no regular appointments of LDCs in the Passport Offices, the respondents were engaging casual labourers to work as LDCs on daily wages recruited through Employment Exchanges. As and when the vacancies are created by the Ministry these casual labourers were regularized as LDCs from the date of result of the departmental examination conducted for them was announced. The period of service as casual labourers was not at all considered but not treated as regular service. While so Smt. P. Lathi Kumari and three other UDCs who were initially appointed as DRCs filed OA No. 494/1996 before this Tribunal seeking to fix their date of initial appointment as LDCs with effect from the date on which they were appointed as DRCs.

This Tribunal allowed the OA directing that the applicants therein be regularized as LDCs with effect from the dates on which they were appointed as DRCs. The said order was challenged by the respondents by filing SLP No. 11185/1997 which was eventually dismissed by the Hon'ble Supreme Court. The applicants in OA No. 494/1996 were given the benefits vide order dated 1.12.2006. It is further submitted that number of officials have filed Original Applications and their services were regularized with effect from the date of their initial engagement. The applicants in the present OA has made representation seeking regularization of their service as DRCs and pointed out further that juniors have been given seniority above them and since applicants are similarly situated they are also entitled to earlier dates of regularization. Lastly it is submitted by the applicants that juniors Smt. Geetha, Smt. Susheela Devi and Smt. Omana have also approached this Tribunal by filing OA No. 27/2009 praying to re-fix seniority, their pay and disburse the arrears of salary and other emoluments with effect from the date of initial entry as DRCs. This Tribunal has declared that they are entitled for regularization from the date of initial entry as DRCs i.e. with effect from 15.5.1978. The applicants have approached this Tribunal feeling aggrieved by the action of the respondents in not treating them as similarly situated persons as in OA No. 27/2009.

3. Notices were issued and respondents put appearance through Mr. N. Anilkumar, Sr. PCGC (R). They filed a reply statement stating as under:

“This Hon'ble Tribunal vide order dated 21.8.2014 has disposed of the above Original Applications with the direction that “.....Ministry of External Affairs has accepted the Full Bench decision of this Tribunal and

has decided to implement the said decision. It further appears that none of the aggrieved parties to the common order of the Full Bench have challenged it before any forum”.

In the circumstances and in order to bring quietus to the controversy we are inclined to accept the stand taken by the 1st respondent Ministry which we considered as their policy decision to give effect to the Full Bench decision dated 12.8.2011 in OAs Nos. 75 of 2010, 82/2010 and 196/2010 rendered by this Tribunal. However, we direct the 1st respondent that while doing so not to disturb the rights of those employees who have secured orders of this Tribunal which have been confirmed by the High court and attained finality, prior the date of the Full Bench's order.”

It is further submitted by the respondents that the applicants have already been granted benefits on notional basis from the date of their initial engagement and the Full Bench has not agreed to grant seniority from the date of initial engagement and also directed the Ministry not to disturb the rights of those employees who have secured orders of this Tribunal which have been confirmed by the High Court and attained finality prior to the date of the Full Bench's order. The larger Bench of this Tribunal vide its common order dated 12th August, 2011 observed that the applicants will be entitled to all consequential benefits other than seniority and monetary benefits as was given to the applicants in OA No. 1557/2008 if not already granted. It is also submitted that in view of the above larger Bench decision in OA No. 75/2010 and connected matters, applicants are not entitled to seniority from their notional service as LDC and are entitled for seniority only from the date of regularization and prayed for dismissal of the OA.

4. Heard Shri Shafik M.A., learned counsel appearing for the applicant and learned Senior Central Government Standing Counsel (Retainer) appearing for the respondents. Perused the records.

5. Now the question raised before us by the applicants herein are that whether they are entitled to seniority as monetary benefit at par with their juniors namely Smt. Geetha, Smt. Susheela Devi and Smt. Omana who were granted seniority and regularization from the date of their initial service as DRCs ?

6. This Tribunal is of the view that we are bound by the decision of the Full Bench rendered by this Tribunal. Counsel for the applicant has not been able to show us that whether the judgment of the Full Bench has been challenged before any other forum. However, at present it has to be assumed that the matter has attained finality. The respondents has taken it as a policy decision. Further the Full Bench has discussed and held that applicants who were granted seniority from the date of initial appointment as DRCs or by the Hon'ble High Court are not to be disturbed. Now the applicants cannot be allowed to question the same issue which has already been decided by the Full Bench of this Tribunal. There is nothing left to be decided by this Tribunal with reference to the present grievance of the applicants. The law is clearly laid down by the Full Bench. Unless and until the higher forum set asides the judgment passed by the Full Bench the Division Bench of this Tribunal is bound by the said decision of the Full Bench.

7. Under these circumstances we find no merit in the present Original Application. Hence, it is dismissed. Parties shall suffer their own costs.

(ASHISH KALIA)

(E.K. BHARAT BHUSHAN)

JUDICIAL MEMBER

ADMINISTRATIVE MEMBER

“SA”

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APPLICANTS' ANNEXURES

Annexure A1 - True copy of the order dated 5.2.1997 of this Hon'ble Tribunal in OA No. 494/1996.

Annexure A2 - True copy of the order No. V.IV/441/3/2009 dated 9.4.2010 issued by the Deputy Secretary (PVA) of the 2nd

respondent.

Annexure A3 - True copy of the order dated 30.9.2008 of this Hon'ble Tribunal in OA No. 159/2008.

Annexure A4 - True copy of the order dated 28.10.2009 of this Hon'ble Tribunal in OA No. 27/2009.

Annexure A5 - True copy of the letter No. V.IV/441/3/2011 dated 17.3.2011 issued by the Under Secretary of the 2nd respondent.

Annexure A6 - True copy of the order dated 23.5.2011 in Original Application No. 942/2010 of this Hon'ble Tribunal.

Annexure A7 - True copy of the memorandum No. CHN/682/1/2001 (Vol.II) dated 22.8.2012 issued by the Regional Passport Officer, Cochin.

Annexure A8 - True copy of the memorandum No. CHN/682/1/2001 (Vol.II) dated 4.12.2012 issued by the Regional Passport Officer, Cochin.

Annexure A9 - True copy of the memorandum No. CHN/682/2/2001 (Vol.II) dated 21.1.2013 issued by the Regional Passport Officer, Cochin.

Annexure A10 - True copy of the representation dated 16.10.2013 submitted before the 2nd respondent.

RESPONDENTS' ANNEXURES

Annexure R1(a) - True copy of the order dated 11.5.2012 issued by the Ministry.

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