

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No.180/00587/2014

Tuesday, this the 13th day of March, 2018

CORAM:

Hon'ble Mr.U.Sarathchandran, Judicial Member
Hon'ble Mr.E.K.Bharat Bhushan, Administrative Member

1. K.H. Maya,
Aged 36 years, W/o. Manoj Kumar,
Upper Division Clerk, Naval Aircraft yard, Kochi.
Residing at 'Devanandhanam' Manakkappady,
Karumalloor P.O., Ernakulam District – 683 511
2. A.R. Sreeja,
Aged 36 years, W/o. V. Jayaprakash,
Upper Division Clerk, Controllerate of Naval
Armament Inspection, Alwaye,
Residing at 'Eyampilly House', Vidakuzha,
Thaikkattukara P.O., Aluva, Pin – 683 106.
3. B. Geetha,
Aged 34 years, W/o. Anil Kumar N.,
Upper Division Clerk, Section IX,
Material Organization, Naval Base, Kochi,
Residing at 'Nethramangalath', Kadavanthra, Kochi.
4. Sini N. Francis,
Aged 33 years, W/o. Feby Xavier,
Upper Division Clerk, NSRY, Kochi,
Residing at 'Thaiparambil House', Manjummal P.O.,
Udyogamandal, Pin – 683 501.
5. Savitha K. Nair,
Aged 40 years, W/o. P.V. Suresh Babu,
Upper Division Clerk, Naval Aircraft Yard, Kochi.
Residing at 'Sarovaram', Sreekala Road, Vennala P.O.,
Kochi- 28.
6. K.O. Sujith Kumar,
Aged 37 years, S/o. Late R. Chandran,
Upper Division Clerk, Naval Aircraft Yard, Kochi.
Residing at 'Nandanam', SRA-77, Palachuvadu,
Padamugal, Kakkanad, Kochi – 682 030.

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Applicants

(By Advocate – Mr. S. Radhakrishnan)
V e r s u s

1. Union of India rep. By the Secretary
to the Government of India,
Ministry of Defence, New Delhi – 110 001.,
2. The Chief of Naval Staff,
Naval Headquarters,
R.K. Puram New Delhi – 110 001.
3. The Flag Officer Commanding in Chief,
Southern Naval Command,
Naval base, Cochin – 4.
4. Usha Bai D. Pai,
Upper Division Clerk,
INS Dronacharya,
Southern Naval Command,
Naval Base, Cochin – 4.
5. Smt. V.V. Eliamma,
Upper Division Clerk,
Base Logistics Office (Kochi)
Southern Naval Command,
Naval Base, Cochin – 4.
6. C.B. Sobhana,
Upper Division Clerk, INS Venduruthy,
Southern naval Command,
Naval Base, Cochin - 4.
7. Smt. T. Vijaya Dilip,
Upper Division Clerk,
Material Organization (Kochi),
Southern Naval Command,
Naval Base, Cochin – 4.
8. G. Vijayalakshmi Amma,
Upper Division Clerk, Headquarters,
Southern Naval Command,
Naval Base, Cochin – 4.
9. M.K. Sreerekha,
Upper Division Clerk, INS Venduruthy,
Southern Naval Command,
Naval Base, Cochin – 4.

10. Shri. T.A. Francis,
UD Clerk, INS Dronacharya,
Naval Base, Kochi – 04.
11. Smt. CG Shylaja,
UD Clerk, INS Venduruthy,
Naval Base, Kochi – 04.
12. Smt. K.B. Regina,
UD Clerk, Material Organisation,
Naval Base, Kochi – 04.
13. Shri. M.G. Thankachan,
UD Clerk, Material Organization,
Naval Base, Kochi – 04.
14. Shri. J.P. Kurian,
UD Clerk, Naval Ship Repair Yard,
Naval Base, Kochi – 04.
15. Smt. S. Padmakumari Amma,
UD Clerk, Headquarters, INS Venduruthy,
Naval Base, Kochi – 04.
16. Smt. N. Asha Vinod,
UD Clerk, Headquarters,
Southern Naval Command,
Naval Base, Kochi – 04.
17. Shri. P.R. Sreekumar,
UD Clerk, Command Transport Workshop,
Naval Base, Kochi – 04.
18. Smt. P.B. Kairali,
UD Clerk, Naval Aircraft Yard,
Naval Base, Kochi – 04.
19. Smt. CPS Latha,
UD Clerk, Material Organization,
Naval Base, Kochi – 04.
20. Smt. K.C. Rajamma,
UD Clerk, INS Garuda,
Naval Base, Kochi – 04.
21. Smt. V.P. Remadevi,
UD Clerk, INS Garuda,
Naval Base, Kochi – 04.

22. Shri. N.S. Viswanathan,
UD Clerk, Headquarters,
Southern Naval Command,
Naval Base, Kochi – 04.
23. Smt. M. Rajambika,
UD Clerk, Material Organization,
Naval Base, Kochi – 04.
24. Smt. Kusumam Varghese,
UD Clerk, Material Organization,
Naval Base, Kochi – 04.
25. Smt. Omana Antony,
UD Clerk, INS Garuda,
Naval Base, Kochi – 04.
26. Smt. Sujatha B Cleatus,
UD Clerk, Naval Aircraft Yard,
Naval Base, Kochi – 04
27. Smt. C.K. Vasanthakumari,
UD Clerk, INS Venduruthy,
Naval Base, Kochi - 04.
28. Smt. Geetha Rajappan,
UD Clerk, INS Garuda,
Naval Base, Kochi – 04.
29. Smt. T.K. Jayalakshmi,
UD Clerk, Naval Institute of Aeronautical
Technology, Naval Base, Kochi – 04.
30. Smt. A.A. Lathakumari,
UD Clerk, Headquarters,
Southern Naval Command,
Naval Base, Kochi – 04.
31. Shri. P. Ramachandran,
UD Clerk, Headquarters,
Southern Naval Command,
Naval Base, Kochi – 04.
32. Shri. P. Rajan,
UD Clerk, Headquarters,
Southern Naval Command,
Naval Base, Kochi – 04.

33. Shri. K. K. Manikandan,
UD Clerk, Transmitting Station,
Kalamassery - 104

..... **Respondents**

**(By Advocate – Mr. N. Anilkumar, Sr. PCGC (R1 to 3)
Mr. M.R. Hariraj, (R4 to 6, 8 & 9))
Mr. V.V. Nandagopal Nambiar (R11, 13, 16, 18, 20, 21,
23, 24, 26, 29, 31, 32 & 33)**

This Original Application having been heard on 22.02.2018, the Tribunal on 13.3.2018 delivered the following:

ORDER

Per: HON'BLE MR. E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

O.A. No. 587 of 2014 is filed by six applicants working as Upper Division Clerks (UDCs) under the Southern Naval Command aggrieved by Annexures A18(a), 18(b), 18(c) and 18(d) Memorandum dated 20.3.2014 and 3.4.2014 respectively, by which the requests of the applicants to antedate their promotion with seniority and other consequential benefits have been rejected by the respondents.

2. The reliefs sought in the O.A are as under:

(a) *Declare that the official respondents are bound to correct the date of promotion of the applicants to the grade of UDC to the date of occurrence of vacancy in the respective vacancy year for which they were selected and promoted through the LDCE.*

(b) *Set aside Annexure A18 series of communications rejecting the request to antedate, the date of promotion.*

(c) *Direct the respondents to antedate the date of promotion of the applicants to the date of occurrence of*

the vacancy for which they were selected and promoted.

(d) Direct the respondents to grant all consequential benefits including reckoning of the period from the date of notional promotion, for further promotion, including seniority.

3. The brief facts of the case are as under:

Applicants were appointed as LDCs on 16.10.2001, 30.4.2001, 7.9.2001, 7.9.2001, 3.12.2001 and 3.2.2003 respectively in the Southern Naval Command. Department introduced a fast track promotion scheme in 1988 and from 1988 to 2006 available 25% vacancies of UDCs available were filled in every vacancy year based upon Limited Departmental Competitive Examination (LDCE). In 2006 the Southern Naval Command notified an LDCE for promotion to UDC against 25% quota set apart for fast track promotion. (Annexure A1). However on 5.7.2006, the Flag Officer Commanding-in-Chief, respondent no.3, issued a Memorandum No. CS 2762/21 cancelling the LDCE for stated purpose of revising the structure of the exam centrally in order to ensure the standard of the test. The Integrated Headquarters on 18.9.2006 issued a Memorandum No. CP(SC) 2540 directing to conduct the LDCE annually to fill up 25% of the UDC posts, where the strength of LD Clerks in a Command exceeds 200 (Annexure A3).

4. On the basis of Annexure A3, the Southern Naval Command circulated a Memorandum inviting applications from eligible candidates. The Memorandum stipulated that the length of service would be reckoned as on the first day of July of the year in which the examination is held. Since, except for applicant No.2, none of the applicants had completed 5 years

service in the grade of LDC as on 1.7.2006, they could not appear for the LDCE as per Annexure A3. However, soon another notification was issued in which the cut-off date for calculating the length of service was fixed as 1st day of January of the vacancy year for which the examination is held. On the basis of this, a Memorandum No. CS 2762/21 dated 20.2.2008 was issued, in which it was stated that as on 20.2.2008, i.e. the vacancy year 2007-08, there were 4 vacancies of UDC kept for 25% fast track promotion quota. Only individuals who have completed 5 years of regular service as on 1st day of January of the vacancy year could appear in the examination. Since Applicant 1 to 5 were eligible, they submitted their applications to participate in the LDCE. But owing to unknown reasons the next examination was conducted only in 2010 and that too after publication of a yet another notification.

5. This notification was published on 7.1.2010 to fill up separate vacancies of UDCs in the fast track promotion quota for three different vacancy years (Annexure A6), in which the vacancy position was stated as:

2007-08	2008-09	2009-10	Total
3	4	5	12

Annexure A6 was issued specifically stipulating that the date of eligibility was to be decided as on 1.1.2007. In the examination conducted on 18.3.2010, 19 candidates including applicants 1 to 4 had participated. But on 25.3.2010, the Headquarters through Memorandum No CS 2762/21 cancelled the examination due to some technical reasons in setting question

papers and it was rescheduled to 30.3.2010. (Annexure A8). Applicants 1 to 4 again participated in the examination which was conducted on 30.3.2010. In the result published on 30.4.2010, the applicants 1 to 5 were successful and were included for promotion to the post of UDC (Annexure A10).

6. On the basis of Annexure A10 Memorandum, the applicants 1 to 4 were promoted as UDC on 3.5.2010 in the Southern Naval Command. This was followed by a flurry of activity. They were promoted against the vacancies of 2007-2008. Another notification for the 4 vacancies of UDC of the year 2008-09 was issued on 4.5.2010. Based upon the LDCE, the respondents notified the result and the 5th applicant was promoted as UDC on 25.6.2010. Another notification was issued to fill up 5 vacancies of the vacancy year 2009-10 on 22.9.2010. (Annexure A-14). On the basis of this selection, the 6th applicant was promoted as UDC. (Annexure A-15).

7. Applicants' contention is that the respondents should have conducted the LDCE each year for filling up the vacancies of each year. The failure to do so has resulted in the failure of the fast track system and the applicants were deprived of their chance to get promotion in the vacancy year itself, even though vacancies were available. The LDCE of the vacancy years 2007-08, 2008-09 and 2009-10 were not conducted in time. Due to the delay in conducting the LDCE, the applicants were promoted only on 3.5.2010, 25.6.2010 and 13.10.2010 for the vacancies of the years 2007-08, 2008-09 and 2009-10 respectively. Since the LDCE were meant to be conducted for vacancies in existence in a particular vacancy year, the

applicants ought to have been appointed with effect from the date of occurrence of the vacancy. While 25% fast track promotion was denied, several LDCs from Southern Naval Command and other Commands continued to be promoted to the 75% quota set apart for normal promotions in the process becoming senior to the applicants. When the applicants approached the respondents, they were assured that the issue will be settled on the notification of the final seniority list. However, this was not done. They have produced a draft seniority list of UD Clerks notified vide Memorandum dated 10.9.2013 (Annexure A16), in which the applicants were given seniority with effect from the date of their promotion as UDC i.e., in the year 2010 only.

8. Aggrieved by the above, applicants submitted representations to the Flag Officer Commanding in Chief requesting to antedate their date of promotion to the date of occurrence of vacancy in the respective vacancy years. A copy of the representation submitted by the 1st applicant is produced at Annexure A17. Similar representations were made by other applicants also. Those representations have been rejected by the respondents stating that the delay in conducting the LDCE would not enable the employee to get the date of promotion ante-dated (Annexures A18(a) to (d). In the above replies the respondents have admitted that the applicants had appeared the LDCE conducted for the vacancy years 2007-08, 2008-09 and 2009-10. The persons who have been promoted in the 75% seniority quota during 2007-08 to 2009-20 were included in the seniority list above the applicants. By way of illustration the applicants have impleaded 6 UD Clerks promoted

just before the promotion of the applicants in a representative capacity. Applicants have cited the decision of the Hon'ble Supreme Court in *A Janardhana Vs. Union of India – (1983) 3 SCC 601* to state that it is not necessary to implead all promotees from 2007 to 2010 in the OA. They have cited another judgment of the Hon'ble Supreme Court in *Union of India Vs. J.Santhanakrishnan (2007) 15 SCC 694* in which it was held that in the event of delay in holding the LDCE against 33 1/3% quota, the promotees under quota would be entitled to get deemed benefit in their date of promotion. Thus the applicants claim that they are entitled to get their promotion antedated to the date of occurrence of vacancy.

9. As grounds applicants states that even though they were eligible to appear in the LDCE for the years 2007 to 2010, the respondents had delayed the conduct of LDCE for those vacancy years. Hence their legitimate claims were overlooked and they could only be promoted in 2010 when the examination was finally held. Their valid request for antedating of promotion to the date of occurrence of vacancy has been rejected. This action on the part of the respondents is arbitrary, illegal and liable to be deprecated by this Tribunal. The legitimate expectation of the applicants for being considered for fast track promotion in the test notified for a particular year was snuffed out by the respondents by their action in not conducting the LDCE in the respective years. Qualified and eligible candidates cannot be deprived of their rights by sheer laches and non-feasance on the part of the respondents. As the vacancies for fast track promotion during 2007 to 2010 were kept vacant upto 2010, there were clear

vacancies to accommodate the successful candidates in the LDCE if held in the respective years. Hence there is no question of transgressing into the area of regular promotees, if the fast track promotees are accommodated in the respective vacancy years even at the late hour. The refusal to do so is illegal and arbitrary. Even if the LDCE could not be conducted annually due to whatever reason, the eligible and qualified candidates cannot be denied their opportunity to get promotion in the respective years. The Hon'ble Supreme Court has held that once the selection is fixed annually, it is mandatory to conduct it annually and the delay cannot affect the rights of eligible and qualified candidates for being considered for promotion. They have cited the judgments of Hon'ble Supreme Court in *Syed Khalid Rizvi & Others Vs. Union of India and others – (1993) Supp(3) SCC 575*, *Union of India and others Vs. Vipin Chandra Hiralaal Shah – (1996) 6 SCC 721*, *Union of India and Anr V. Hemraj Singh Chowhar & Others – (2010) 4 SCC 290*, *Nirmal Chandra Bhattacharjee and others Vs Union of India – (1991) Supp (2) SCC 363* and *A.N. Sehgal V. Raje Ram Sheoran – 1992 (suppl) 1 SCC 302* in support of this contention. Due to the delay on the part of the respondents in conducting the LDCE in time, the applicants' legitimate rights have been infringed upon. The final seniority list of UDCs in Southern Naval Command had not been published. They have published a draft seniority list inviting objections, if any, to the draft seniority list. In view of the Annexure A18 series of orders of the respondents, applicants submit that there is no meaning in submitting any objection to the draft seniority list. Hence applicants have filed the aforesaid OA praying for the reliefs therein.

10. Per contra official respondents 1 to 3 have filed a reply statement refuting the allegations made in the OA except those which are specifically admitted therein. They submit that as per the Recruitment Rules for the post of UDC, 75% of the vacancies are to be filled up by promotion and the remaining 25% through LDCE. In Annexure A3 and A4 there came about a difference regarding length of service for appearing in the LDCE. In Annexure A-3 the condition mentioned is that a permanent or regularly appointed temporary LDC should have, on the first day of July of the year in which the examination held, rendered not less than 5 years approved and continuous service in the grade of LDC. In Annexure A-4 it is stated that a permanent or regularly appointed temporary LDC should have, on the first day of January of the vacancy year in which the examination is held, rendered not less than 5 years regular service in the grade of LDC in respective Command Roster. The Secretary of the All India Naval Clerks Association questioned this stipulation of 'regular service' in the grade of LDC in respective Command Roster stating that such a restriction will go against the spirit of the order in OA 545 of 1995 of this Tribunal, wherein it was clarified that those who have completed 5 years service in the cadre can appear for the LDCE. In view of this the 3rd respondent sought comments/view from all the Commands vide Annexure R-2 dated 22.5.2008 to which Annexure R-3 reply was received. The 3rd respondent again took up the matter with Annexure R-4 and Annexure R-5 letters and finally with a DO letter from the Chief Staff Officer to the Senior Principal Director (Civilians) of Integrated Headquarters of MoD (Navy) vide Annexure R6. The Integrated Headquarters issued a revised guideline vide letter dated

19.10.2009 and amendments to these guidelines were issued vide letter dated 27.10.2009 and 1.12.2009 replacing the restriction of eligibility requirement of 5 years service as LDC in Command Roster with 5 years regular service in the grade of LDC irrespective of Department/Office in Central Government. (Annexure R-7 to R-9). Due to these unavoidable developments a delay occurred which was not deliberate and it was decided that conduct of LDCE must await clarity in this regard. After receipt of clarification, the 3rd respondent issued Memorandum at Annexure A6 to fill up 13 vacancies by promotion under 25% quota for the vacancy years 2007-08, 2008-09 and 2009-10 and the LDCE were conducted on 30th March 2010, 12 May 2010 and 22nd Sept. 2010. Based on the result, the applicants 1 to 4 were promoted as UDCs w.e.f. 3.10.2010, 5th applicant on 25.6.2010 and 6th applicant on 13.10.2010. Respondents have cited a decision of the Hyderabad Bench in OA 571/2007 in which it was held that the applicant therein could not be granted any relief as there was no fault on the part of the respondents, because the examination had to be postponed during the period of transition when a new set of rules were coming into force. (Annexure R-10). Respondents submit that the delay occurred on account of the these facts and the applicants have no claim for antedating their promotion.

11. DOP&T vide Office Memorandum No.2011/1/2006-Estt.(D) dated 3.3.2008 (Annexure R-11) stated that “when appointments against unfilled vacancies are made in subsequent year or years either by direct recruitment or promotion, the persons so appointed shall not get seniority of any earlier years (viz year of vacancy/panel or year in which recruitment process is

initiated) but should get the seniority of the year in which they are appointed on substantive basis. They have also produced Annexure R-12 a copy of the Department of Personnel & Administrative Reforms Office Memorandum dated 24.6.1978. They have referred to a decision of the Hon'ble Supreme Court in *Union of India and others Vs. K.K. Vadera and others* in which it is stated that the promotion to a post should be from the date of promotion is granted and not from the date on which the post fell vacant. This position was reiterated in the case of *State of Uttaranchal and another Vs. Dinesh Kumar Sharma in Civil Appeal SLP(C) No.12966/2005*. They have also produced an order of the Principal Bench of this Tribunal in OA 3596/201 and OA No. 475/2012 in which the Principal Bench held that “even though the LDCE-1999 selectees would be adjusted against the accumulated LDCE-sub quota vacancies till 1999, it is held that none of them would get retrospective seniority, and they would get their seniority, after its fixation in accordance with the law as laid down in N. Ravindran (supra) by the Hon'ble Apex Court, only from 16.2.2001, the date of declaration of the result of LDCE-1999 Examination, in accordance with the DOP&T OM dated 10.4.1978.

12 From the aforesaid rulings it is clear that promotion and related seniority will be counted against the promotion in the cadre from the date of issue of order of substantive appointment in the said cadre and no retrospective effect can be given to promotion and seniority. Separate and distinct Departmental Promotion Committees were constituted for respective vacancy years to avoid bunching of vacancies as per rules in vogue. The

respondents have adopted the procedure correctly by taking up the matter before the competent authority who required adequate time to come to a decision by seeking a consensus on the issue. The applicants herein got promotion within 8 to 9 years on account of fast track promotion, whereas an LDC had to wait 25 to 28 years to get promotion as UDC on promotion quota. The final seniority list of UDCs was promulgated vide HQ SNC minutes sheet No. CS 2775/5 dated 17.9.2010 and the applicants have noted the seniority list in 2010 itself. Thus raising the issue of seniority now would attract limitation.. They have also stated that all necessary parties have not been impleaded in this case and on that count itself the OA is to be dismissed. In this connection, they have cited a decision in ***KH Siraj Vs. High Court of Kerala and others - (2006) 6 SCC 395*** and ***All India Employees SC/ST Association Vs. A. Authur Jeen and others - (2001) 6 SCC 380***.

13 Respondents 4 to 6 and 8 to 9 filed a reply statement producing a copy of seniority list of UDCs as on 1.9.2010. which is the final seniority list of UDCs as on 1.9.2010 published by the official respondents [Annexure R-4(A)]. They submit that the final seniority list was prepared after considering the claim reflected in Annexure A-17 series. Prior to their passing the LDCE, they cannot claim seniority above these respondents, as they have been promoted before the promotion of the applicants. Respondents 11,13,16,18,20,21,23,24,26,29,31,32 and 33 have also filed their reply statement reiterating the contentions of the other party respondents in this OA, who were all promoted as UDCs before the promotion of the applicants.

An additional reply statement has been filed by the respondents reiterating their contentions in the reply statement producing Annexure R-18 and Annexure R-19. The Annexure R-19 is a representation submitted by JCM Member on behalf of All India Naval Clerks Association which was mentioned in the reply statement. The letter dated 7.9.2007 (Annexure R-19) is the result of the LDCE for promotion to the post of UDC held on 21 and 22 March, 2007. This has been produced to show that applicant No.2 had already appeared in the LDCE for the year 2006-7 but failed.

14 Applicants have filed a rejoinder reiterating most of their contentions in the OA. They have produced Annexure A18 to show that LDCs have been promoted as Upper Division Clerks w.e.f. 1.2.2010 by order dated 29.1.2010 based on seniority. Annexure A19 is dated 6.4.2010 promoting 12 LD Clerks on the basis of seniority under the 75% quota for the vacancy years 2010-11.

15 Shri S.Radhakrishnan, learned counsel appeared for the applicant, Shri N. Anilkumar, Sr. PCGC appeared for Respondents 1 to 3, Shri MR Hariraj and V.V. Nandagopal Nambiar, learned counsel appeared for the contesting respondents in this O.A. They have been heard and all documents/records/citations produced were perused.

Judgments produced by Shri MR Hariraj for party respondents.

- (I) Nani Shah & others Vs. State of Arunachal Pradesh and others- (2007) 15 SCC 406.
- (II) P. Sudhakar Rao and others Vs. U.Govinda Rao and others – (2013) 8 SCC 693.
- (III) Keshav Chandra Joshi and others Vs. Union of India and others

- 1992 Supp(1) SCC 272.
- (IV) Shiba Shankar Mohapatra and others Vs. State of Orissa and others – (2010) 12 SCC 471.
- (V) State of Bihar and others Vs. Akhouri Sachindra Nath and others – 1991 Supp(1) SCC 334.
- (VI) Sajeeva NJ Vs. Union of India and others – WPC No. 36499 of 2007.
- (VII) Pawan Pratap Singh and others Vs. Reevan Singh and others – (2011) 3 SCC 267.
- Applicants' citations.
- (VIII) Union of India and others Vs. NR Parmar and others -2012(13) SCC340
- (IX) PN Premachandran Vs. State of Kerala and others – (2004) 1SCC 245.

16. Respondents raised a preliminary objection stating that the applicants were aware of the position reflected in Annexures A-11, A-13 and A-15 dated 3.5.2010 onwards, but did not choose to challenge the same at that time. Thereby, it was argued by the learned counsel for the respondents that the Original Application is hit by limitation. Shri.S.Radhakrishnan, learned counsel for the applicants pointed out that the issue had remained live all these years and the applicants had filed several representations agitating their grievance. It was also pointed out that the seniority list as available now was a draft seniority list and a final list has not been published so far. On this ground, he opposed the contention of the respondents that the Original Application was hit by limitation. As the grievance raised by the applicants is of a continuous nature, we are of the view that the question of limitation does not arise here.

17 Going on to the merits of this case, it is necessary to recapitulate the facts as under:

Since 1988, as per a special dispensation, 25% of available vacancies of UDCs were set apart for candidates coming through LDCE. These examinations were conducted every year from 1988 to 2006 wherein candidates who had attained eligibility by a certain specified date could compete. From 2006 onwards, this arrangement came to an abrupt halt and remain suspended till 2010. The applicants are candidates who attained the eligibility i.e, 5 years of regular service, during the period 2006-2010. Their contention is that by the non-conduct of LDCE, they have been deprived of an opportunity to appear in the examination and to obtain promotion under fast-track.

18 The official respondents conducted the examination in 2010 aggregating the vacancies of UDCs that fell open during the time the examinations were not conducted i.e, between 2006 and 2010. As seen at Annexure A-6 memorandum, 13 vacancies were marked for promotion under the 25% quota and these were the vacancies for 2007-2008, 2008-2009 and 2009-2010. Based on the performance of the applicants in the LDCE conducted in 2010, the six applicants were promoted on 30.3.2010, 12.5.2010 and 22.9.2010. Applicants pray that they ought to be given seniority from the date of occurrence of those vacancies against which the examination was conducted i.e, from the year 2007-2008 onwards. This has been contested by the official respondents stating that some changes in the modalities for conducting LDCE had to be considered on the basis of representations made by stake holders and during the period of transition, they were not in a position to conduct the examination. Thereby, they argue

that the delay or break in the conduct of examinations was un-avoidable and not deliberate.

19 Shri.S.Radhakrishnan, learned counsel for the applicants drew our attention to a set of judicial decisions whereby the promotees under 25% quota would be entitled to get deemed benefits in their date of promotion thereby getting their promotion antedated to the date of occurrence of vacancies. He argued that the non-conduct of LDCE amounts to depriving the applicants of their right for advancement in career. Once the LDCE was resumed in 2010 these candidates came out on top in the select list and hence their merit and eligibility are beyond question. He further states that due to this delay and their being given 2010 validity on promotion, several promotees who are under the 75% quota have sailed passed them and find a place well above the applicants in seniority. This is an unusual circumstance where candidates who came through a competitive process are ignored in seniority in favour of candidates who claim promotion only on the ground of seniority. There is a clear case of *malafide* on the part of the official respondents in instituting such a system, he argues

20 Shri.N.Anilkumar, learned counsel for respondent Nos.1 to 3 argued that the delay was entirely on account of the official respondents wanting to have broadbased consultations with all stake holders before implementing improvement in the examination process. He also referred to a few judgments which disallow the pre-dating of promotion to the date of occurrence of vacancies.

21 Shri.M.R.Hariraj, learned counsel for respondent Nos.4,5,6,8 & 9 submitted that there is no question of claim on quota here and thus no analogy can be drawn with orders in *N.R.Parmar's* case.

22 The question which arises here is whether the applicants had been discriminated against by applying a different yardstick than what was in existence. It is true that there was a hiatus in the conduct of the LDCE. But this was on account of the fact that various representative bodies of the employees themselves had petitioned for changes in the modalities of examination, particularly with reference to the date from which eligibility was to be considered. Hence, we cannot conclude that there was any kind of deliberate discrimination involved. Once, this issue was settled, the official respondents moved with great speed for conduct of the examination and effected the promotions to the successful candidates in 2010 itself.

23 We see no case for antedating the promotions to the date of vacancies occurred on the ground that examinations were not conducted in time. The applicants argue that if the examination had been conducted, they would have attained success. We view this as pure hypothesis. Applicants are candidates who have relatively much less length of service as compared to the promotees, whom the applicants' claim, have taken their place in seniority. For example, while the applicants have a little over 5 years of regular service under the belt, the candidates who are promoted on the strength of their service tenure have put in 20 years and beyond.

24 As far as the citations which were submitted from both sides are concerned, we feel that great caution has to be exercised in drawing analogies from the same. In all these cases, closer examination would reveal that the circumstances were distinct and different from what we are faced with in this Original Application.

25 After due consideration of all factors, based on pleadings offered both oral and documentary, we have no hesitation in coming to the conclusion that the applicants have no merit on their side in claiming that their seniority should be re-fixed from the date of occurrence of the respective vacancies. We reject the Original Application as devoid of merit. No costs.

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

(U.SARATHCHANDRAN)
JUDICIAL MEMBER

SV

List of Annexures of the applicant

- | | | |
|--------------|---|--|
| Annexure A-1 | - | A true copy of the Memorandum No. C.S 2762/21 notifying a Limited Departmental Competitive Examination (LDCE) for promotion to the post of UDC dated 06.06.2006. |
| Annexure A-2 | - | A true copy of the Headquarters Memorandum No. CS 2762/21 cancelling the LDCE, dated 05.07.2006. |
| Annexure A-3 | - | A true copy of the Memorandum No. CP(SC)/2540 dated 18.09.2006. |
| Annexure A-4 | - | A true copy of the Memorandum No. CP(SC)/2540/PC dated 21.01.2008. |
| Annexure A-5 | - | A true copy of the Memorandum No. CS 2762/21 proclaiming LDCE for promotion to the 25% of |

vacancies of UDC in Southern Naval command dated 20.02.2008.

- Annexure A-6 - A true copy of the Headquarters Memorandum No. CS 2762/21 dated 07.01.2010.
- Annexure A-7 - A true copy of the Memorandum No. CS 2762/21 notifying LDCE for the vacancy year 2007-08 on 18.03.2010 dated 09.03.2010.
- Annexure A-8 - A true copy of the Memorandum No. CS 2762/21 dated 25.03.2010.
- Annexure A-9 - A true copy of the Memorandum No. CS 2762/21 notifying the result dated 30.04.2010.
- Annexure A-10 - A true copy of Memorandum No. 2779/1/2 declaring the panel for promotion dated 30.04.2010.
- Annexure A-11 - A true copy of Memorandum No. 2762/21 effecting promotion of applicants 1-4 as UDC dated 3.05.2010.
- Annexure A-12 - A true copy of Memorandum No. 2762/21 notifying the LDCE for the vacancy year 2008-09 dated 04.05.2010.
- Annexure A-13 - A true copy of Memorandum No. CS 2762/21 promoting the 5th applicant as UDC dated 25.06.2010.
- Annexure A-14 - A true copy of Memorandum No. 2762/21 notifying the LDCE for the vacancy year 2009-10 dated 08.09.2010.
- Annexure A-15 - A true copy of Memorandum No. 2762/21 dated 13.10.2010.
- Annexure A-16 - A true copy of Memorandum No. CS 2775/5 notifying draft seniority list of UD Clerk dated 10.09.2013.
- Annexure A-17 - A true copy of representation submitted by the 1st applicant dated 18.10.2013.
- Annexure A-17 (a) & (b) - True copies of the representations submitted by applicants 5 and 6 dated 18.10.2013 and 18.10.2013.
- Annexure A-18(a) - A true copy of the Memorandum No. CS 2762/21 dated 20.03.2014.
- Annexure A-18(b) - A true copy of the Memorandum No. CS 2762/21 dated 03.04.2014.
- Annexure A-18(c) - A true copy of the Memorandum No. CS 2762/21(i) dated 03.04.2014.
- Annexure A-18(d) - A true copy of the Memorandum No. CS 2762/21(ii) dated 03.04.2014.
- Annexure A18 - A true copy of the order CS 2762/2 dated 29.01.2010 promoting LD Clerk as UD Clerk purely based upon seniority.

- Annexure A19 - A true copy of the order No. CS 2762/2 dated 6th April 2010 promoting 12 LD Clerks on the basis of seniority.

List of Annexure of the 4th Respondent

- Annexure R-4(A) - True copy of seniority list of UDCs as on 01.09.2010 published by CS 2775/5 dated 17.09.2010.

List of Annexures of the Respondents

- Annexure R-1 - Copy of IHQ of MoD (N) letter CP (SC)/2540/PC dated 30th Nov. 2007.
- Annexure R-2 - Copy of IHQ of Mod (N) letter CP (SC)/2540/PC dated 22nd May 2008.
- Annexure R-3 - Copy of IHQ SNC letter CS 2762/21 dated 26 Jun 2008.
- Annexure R-4 - Copy of IHQ SNC letter CS 2762/21 dated 23 Oct 2008.
- Annexure R-5 - Copy of IHQ SNC letter CS 2762/21 dated 16 Jan 2009.
- Annexure R-6 - Copy of CSO (P&A) DO letter 2762/21 dated 19th May 2009.
- Annexure R-7 - Copy of IHQ of MoD (N) letter CP (SC)/2540/PC/LDCE dated 19th Oct 2009.
- Annexure R-8 - Copy of IHQ of MoD (N) letter CP (SC)/2540/PC/LDCE dated 27th Oct 2009.
- Annexure R-9 - Copy of IHQ of MoD (N) letter CP (SC)/2540/PC/LDCE dated 1st Dec 2009.
- Annexure R-10 - Copy of CAT Hyderabad Bench order dated 31 Mar 2009 in OA 571/2007.
- Annexure R-11 - Copy of Govt. of India, Ministry of Personnel, Public Grievance & Pension (DoP&T) OM 20011/1/2006-Estt (D) dated 03 Mar 2008.
- Annexure R-12 - Copy of Govt. of India, Ministry of Home Affairs and Department of Personnel & Administrative Reforms OM 28011/6/76-Estt (D) dated 24 Jun 1978.
- Annexure R-13 - Copy of Hon'ble Apex Court Judgment dated 26th Oct 1989 in CA 4494/1989.
- Annexure R-14 - Copy of Hon'ble Apex Court Judgment dated 04th Dec 2006 in SLP 12966/2005.
- Annexure R-15 - Copy of Hon'ble Apex Court Judgment dated 09th May 2001 in CA 3767/2001.

- Annexure R-16 - Copy of Hon'ble CAT Principal Bench order dated 05 Sep 2013 in OA 475/2012.
- Annexure R-17 - Copy of HQSNC Minute Sheet CS 2775/5 dated 17th Sep 2010.
- Annexure R-18 - Copy of representation on behalf of AINCA dated 27 Mar 08.
- Annexure R-19 - Copy of HQSNC letter CS 2762/21 dated 07 Sep 2007.
