

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application Nos.180/00860/2014

Friday, this the 5th day of October, 2018

CORAM:

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

1. Sri Babu Antony,
S/o Sri K.J.Anotony,
MES 190677, Office Superintendent,
Milintary Engineer Services,
O/o the Garrison Engineer (Naval Services),
Naval Base (P.O), Kochi-682 004.
2. Smt.Philomina Philip,
W/o Sri P.O.Philip,
MES.122035, Office Superintendent
Milintary Engineer Services,
O/o the Garrison Engineer (Naval Services),
Naval Base (P.O), Kochi-682 004.
3. Sri. P.V.Francis,
S/o late P.P.Vareed,
MES.313762, Office Superintendent
Milintary Engineer Services,
O/o the Garrison Engineer.
Fort Kochi, Kochi-682 001.
4. Sri K.J.Vinod,
S/o Late K.A.Janardanan,'
MES.187871, Office Superintendent,
Milintary Engineer Services,
O/o the Assistant Garrison Engineer (1) R&D,
Kakkanad, Kochi-682 021.
5. Smt.Money R.,
W/o Sri K.Vishwanathan,
MES.506955, Office Superintendent
Milintary Engineer Services,

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O/o the Commander Works Engineer (Naval Works),
Naval Base (P.O), Kochi-682 004.Applicants

(By Advocate Mr.P.K.Madhusudhanan)

V e r s u s

1. The Chief Engineer, Head Quarters,
Southern Command,
Pune-411 001.
2. The Director General (Personnel) E-1(DPC),
EI DPC (PP& Sub),
Engineer-in-Chief's Branch,
Integrated Head Quarters of Ministry of Defence (Army),
Kashmir House, Rajaji Marg,
New Delhi – 110 011.
3. The Commander Works Engineer (Naval Works),
Military Engineer Services,
Kataribagh, Naval Base (P.O.),
Kochi – 682 004.
4. Union of India
represented by its Secretary,
Ministry of Defence,
Central Secretariat,
New Delhi – 110 001.
5. Sri K.B.Suresh, MES-189004,
Upper Division Clerk, Military Engineer Services,
O/o The Chief Engineer (Naval Works),
Kataribagh, Naval Base P.O.,
Kochi-4.
6. Smt.Valsala M.P., MES-18737,
Upper Division Clerk, Military Engineer Services,
O/o The Assistant Garrison Engineer (Independent),
Cannanore – 670 012.
7. Smt.V.Girija Kumari, MES-187842,
Upper Division Clerk, Military Engineer Services,
O/o The Garrison Engineer (Project)(Naval Works),
Kataribagh, Naval Base (P.O.),
Kochi-4.

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8. P.A.George, MES 187032,
Upper Division clerk, Military Engineer Services,
O/o The Garrison Engineer (Project) No.2,
Ezhimala – 670033.
New Delhi – 110 001.
9. Smt. P.N.Satyabhama, MES 186082,
Upper Division Clerk, Military Engineer Services,
O/o The Commander Works Engineer (Naval Works),
Kataribagh, Naval Base (P.O.),
Kochi-4.
10. P.A.Paul, MES-125277,
Upper Division Clerk, Military Engineer Services,
O/o The Commander Works Engineer (Naval Works),
Kataribagh, Naval Base (P.O.),
Kochi-4.
11. R.Sreekantan Nair, MES-14450821,
Upper Division Clerk, Military Engineer Services,
O/o The Garrison Engineer (Air Force),
Trivandrum-690031.
12. Smt.Sathikumari Radhakrishnan, MES-187856,
Upper Division Clerk, Military Engineer Services,
Office of the Garrison Engineer (Air Force),
Trivandrum- 690031. ...Respondents

(By Sr.PCGC Shri Anil Kumar)

ORDER

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

This OA is filed by Babu Antony (Applicant No.1), Smt.Philomina Philip (Applicant No.2), P.V.Francis (Applicant No.3), K.J.Vinod (Applicant No.4) and Smt.Money R (Applicant No.5), all Office Superintendents of Military Engineer Service, Office of the Commander Works Engineer (Naval Works), Naval Base (P.O), Kochi, against the action of the respondents to deny the settled

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seniority by issuance of impugned order at Annexure A8 and A15. The reliefs sought for in the OA are as follows:

- (a) Set aside Annexures-A8 and A15 only in so far as it denies seniority to the applicants in the cadre of UD Clerk and office superintendent over the respondents 5 to 12.
- (b) Declare that the applicants are senior to respondents 5 to 12 in the cadre of UD Clerk and office superintendent.
- (c) Issue necessary directions to the respondents to grant the applicants seniority over the respondents 5 to 12 in the cadre of UD Clerk and office superintendent as they enjoyed the same in Annexure-A4, untrammelled by Annexures-A8 and A15.
- (d) Issue necessary directions to the respondents to grant the applicants further promotions to higher posts in accordance with law, untrammelled by Annexure-A8 and A15, as per their seniority and merit hitherto enjoyed by the applicants.
- (e) Award costs of these proceedings.
- (f) Grant such other and further reliefs as this Hon'ble Tribunal deems fit and proper in the interest of justice.

2. The facts of the case are as follows:

The five applicants in the OA have joined Military Engineer Service (MES) being selected as Lower Division Clerk (LDCs) on various dates in 1983. As per the Recruitment Rules in force (Copy at Annexure A1) the next avenue of promotion open to the applicants is to the post of Upper Division Clerk (UDC) – 75% by promotion of LDCs with three years experience in the grade and 25% through Limited Department Competitive Examination (LDCE) from among the LDCs. Further beyond the UDC's post is the post of Office Superintendent/Assistant which is open to the UDCs with five years service. It is submitted in the OA that LDCE for granting promotion from LDC to UDC

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against 25% vacancies was not held since the year 1973 until the year 2002. A departmental examination under LDCE was held in February 2002 and a selected panel approved by the DPC was published by Respondent-1 vide letter dated 21.12.2002 (Annexure A3). The applicants were all successful, found a place in the select list and were promoted with effect from 21.12.2002. An extract of all India seniority list compiled from January, 1999 to December, 2003 is at Annexure A4. After their requisite tenure as UDC was completed, they were considered for the post of Assistant against the vacancies for the year 2011-2012 and placed in the panel at Appendix A1, the relevant extract of which is produced and marked as Annexure A5, wherein the applicants also find a place. Accordingly, the applicants were promoted as Office Superintendent in pursuance of Annexure A5 on 16.03.2013, 13.03.2013, 18.03.2013, 16.03.2013 and 18.03.2013 respectively and are continuing in the post of Office Superintendent in their respective offices.

3. All of a sudden, a Show Cause Notice (copy of which is at Annexure A6 dated 17.07.2014) was first served on the first applicant with identical notices served on other applicants. In the said Show Cause Notice it was stated that the applicants ought to have passed the LDCE examination before 1st January of the crucial year of DPC and since they had passed the LDCE only on 24.05.2002, they are eligible to be considered for UDC promotion against 25% vacancies on 01.01.2003 i.e., for vacancies of 2003-2004, whereas they were inadvertently considered for the vacancies of 2002-2003 and promoted on 21.12.2002. Now with intent to rectify the error, their date of promotion

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is proposed to be amended as 01.04.2003 from 21.12.2002. The applicants were called upon to show cause in case of disagreement and furnish their reply within 10 days. The applicants allege that the publication of an amended panel No.41269/EIDPC(PP&SSP) dated 10.06.2014 in the MES website (copy at Annexure A8) already assigning revised seniority to the applicants before the show cause notices were issued, itself is an indicator of the fact that the action was predetermined and biased.

4. All the applicants submitted their objection to the second respondent (copies at Annexure A9, A10, A11, A12 and A13). But disregarding the same the first respondent issued letter No.132402/24/110/E1B(S)A1 dated 09.10.2014 (Annexure A15) whereby the seniority of the applicants stood revised downwards. This is to the great detriment of the applicants as they are in danger of reversion from the post of Office Superintendent to that of UDC as more than 100 persons have overtaken them in seniority. The fact that this revision has been implemented upsetting a position that was there for the last 12 years caused grave injury to the applicants. It is alleged that this is in clear violation of the principle of 'Sit back' theory and natural justice. The applicants have filed further representations aggrieved by these turn of events. As no remedy was forthcoming, they had to turn to this Tribunal for relief.

5. The respondents have filed their detailed reply statement wherein they have not disputed the facts as maintained in the OA. Clearly the dispute is about the interpretation involved. The guiding rules for assigning seniority

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for a selection conducted through DPC is the Rule position quoted in Annexure R1(b), wherein it is given as below.

“Crucial date for determining eligibility.

The eligibility dates for determining the eligibility of officers for promotion would be the first day of the crucial year, i.e., January 1 irrespective of whether the ACRs are written financial yearwise or calendar yearwise.

The crucial dates indicated above would be applicable to only such services and posts for which statutory Service Rules do not prescribe a crucial date.”

6. In this particular year the applicants had appeared for LDCE examination in February, 2002 with the results being declared in May, 2002. They were assigned seniority against the vacancies of 2002-2003 erroneously, as on first of January of crucial year 2002 they had not passed the LDCE examination. Having been qualified with the passing of examination in May, 2002, they ought to have been considered only against vacancies of 2003-2004. This was the reason why correction was necessary. It is affirmed in the reply statement that before amendment to the panel was issued refixing seniority, the applicants in question were issued Show Cause Notices as to why they should not be placed in the seniority list of UDC with effect from 01.04.2003.

7. It is admitted that it was an administrative mistake. But respondents contend that orders of Hon'ble Supreme Court in **M.KI.Venkatachalam Vs. Bombay Dyeing & Mfg Co. Ltd reported in AIR 1958 S, C-875** and also in **Maharashtra State Seeds Corporation Ltd Vs. Hariprasad Drupadaro Jadav reported in (2006) 3 SCC 690** support their legal position. The rule position

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as reflected in Swamy's compilation on seniority and promotion, clearly specify that to be considered against the vacancy for a particular year, the candidate ought to have been eligible on 1st January of that year. Based on this the applicants can only be considered against the vacancies of 2003-2004 and hence suitable correction has been made.

8. Heard Shri P.K.Madhusudhan, learned Counsel for the applicant and Shri Anil Kumar, Sr.PCGC. This is a case in which a settled position of seniority had been amended by the official respondents well after a decade. Consequent dislocation caused to the fortunes of the applicants can well be imagined. It is after a very long gap that the LDCE came to be conducted in 2002, results being published in May 2002. Presumably due to inadvertence, the respondents ignored the regulation relating to the crucial date for determining eligibility and assigned the applicants to the vacancies for 2002-2003. Several years went by and applicants were even promoted to the next higher grade. All of a sudden the respondents have decided to implement the provisions under the regulation placing the applicants much below (as it would not only involve LDCE but the entire number of personnel promoted under 75% quota also). While the interpretation they have adopted now may be the correct one, we have to consider whether the long delay and the manner in which they failed to give adequate notice to the applicants colour the decision in an adverse light.

9. The learned Counsel for the applicants quoted from the principles of Sit back theory to support the applicants' case. This is the decision in **Rabindra**

Nath Bose and others Vs. Union of India and others reported in AIR 1970 SC 470 wherein the Hon'ble Supreme Court held as follows:

“Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set aside after a lapse of number of years”

The applicants had no knowledge of the said intentions on the part of the respondents until they came by the document in the official website of the respondents, Annexure A8. Crucially it is dated 10.06.2014. In the said document five applicants are shown to have been promoted on 01.04.2003 which is the revised date as per the new calculation. The fact that the applicants were informally told of the proposal only by Show Cause Notices dated 17.07.2014 and 18.07.2014 (Annexure A6 and A7) puts the action of the applicants in a most unfavourable light. We can only conclude from this that the respondents had taken the decision to scale down the applicants seniority and was only issuing the Show Cause Notice as a formality. We feel that principles of fair play and justice have clearly been violated as a result of dubious sequencing seen in the documents referred to.

10. We are of the view that the failure on the part of the respondents to adhere to existing eligibility criteria and then deciding to enforce it well after a decade to the detriment of certain employees is completely illegal and impinge on the settled rights of the applicants.

11. The OA, for the above reasons, succeeds. The relief sought is allowed in full. It is directed that the seniority of the applicants is to be restored as existed before Annexure A8 and A15 statements. The necessary

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amendments will be effected to the seniority list within 30 days of receipt of a copy of this order. No costs.

(Dated this the 5th day of October 2018)

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures in O.A. No.180/00860/2014

1. **Annexure A1** – True copy of the relevant extract of recruitment rule (RR) in force contained in Schedule to SRO 178 of 5th May, 1975
2. **Annexure A2** – True copy of the letter dated 31.08.2001 of the 2nd respondent.
3. **Annexure A3** – True copy of the letter No.150101/4-A/LDC/126/EIB(R-DPC) dated 21.12.2002
4. **Annexure A4** – True copy of the letter No.150101/23/UDC/RL/59/EIB(R-DPC) dated 3/7/2010 of the 1st respondent.
5. **Annexure A5** – True copy of the relevant extract of panel for promotion dated 30.11.2012.
6. **Annexure A6** – True copy of show cause notice dated 17/7/2014 served on the first applicant.
7. **Annexure A7** – True copy of the show cause notice dated 18.7.2014 served on the 2nd applicant.
8. **Annexure A8** – True copy of the relevant extract of Letter No.41269/EIDPC (PP&SUP) dated 10/6/2014 of the 2nd respondent.
9. **Annexure A9** – True copy of the objection dated 29.7.2014 filed by the 1st applicant to the 2nd respondent.
10. **Annexure A10** - True copy of the objection dated 29.7.2014 filed by the 2nd applicant to the 1st respondent.
11. **Annexure A11** – True copy of the objection dated 26.7.2014 filed by the 3rd applicant to the 2nd respondent.
12. **Annexure A12** – True copy of the objection dated 24.7.2014 filed by the 4th applicant to the 2nd respondent.
13. **Annexure A13** – True copy of the objection dated 22.7.2014 filed by the 5th applicant to the 2nd respondent.
14. **Annexure A14** – True copy of the additional reply to the show cause submitted to the 2nd respondent through proper channel by the 5th applicant.

15. **Annexure A15** – True copy of the Letter No.132402/24/110/EIB(S)/A1 dated 9.10.2014 issued by the first respondent.
16. **Annexure A16** – True copy of the representation dated 15/9/2011 submitted by the 2nd applicant to the 1st respondent.
17. **Annexure A17** - True copy of the letter No.150101/23/UDC/2011-12/53/EIB(R-DPC) dated 6.1.2012.
18. **Annexure A18** – True copy of the relevant extract of Part II order dated 23.8.2004.
19. **Annexure R1(a)** – True copy of the letter dated 03.08.2009.
20. **Annexure R1(b)** – True copy of the Swamy's compilation on seniority & promotion.
21. **Annexure R1(c)** – True copy of the letter dated 21.12.2002.
22. **Annexure R1(d)** – True copy of the letter dated 19.02.2014.
23. **Annexure R1 (e)** – True copy of the letter dated 16.10.2014.
24. **Annexure R1(f)** – True copy of the letter dated 24.11.2014.
25. **Annexure A19** - True copy of the relevant extract of list for LDCE for promotion to the vacancies of U.D.Clerk.
26. **Annexure A20** – True copy of the revised panel of LDC to UDC 75% by promotion for the year 2003-04.
27. **Annexure A21** - True copy of the letter dated 4.10.2013.
28. **Annexure A22** – True copy of the letter dated 2.9.2015, secured under RTI Act.
29. **Annexure R1(g)** – True copy of the letter No.A/20009/4/Clk/E1C(V) dated 31.05.1994.
30. **Annexure R1(h)** – True copy of the letter No.A/20009/4/Clk/E1C(V) dated 13.03.1995.
31. **Annexure R1(i)** - True copy of the letter No.41269/E1 DPC(PP and Sub) dated 01.10.2013.
