

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

REVIEW APPLICATION NO.170/00130 /2016

IN

ORIGINAL APPLICATION NO.310/2014

DATED THIS THE 1st DAY OF AUGUST 2017

HON'BLE DR. K.B. SURESH, MEMBER(J)

HON'BLE SHRI P. K. PRADHAN , MEMBER(A)

PK.Bahera,
S/o RC.Bahera,
Aged about 46 years, working as
Group 'B' Assistant,
Office of Regional Passport Office,
80 Feet Road, 8th Block,
Koramangala,Bangalore-560 095.

...Applicant

(By Shri. Zameer Pasha..... Advocate)

Vs.

1.Union of India
Secretary,
Ministry of External Affairs,
South Block,
New Delhi-110001.

2.The Joint Secretary(CPV) &,
Chief Passport Officer,
Ministry of External Affairs,
South Block, New Delhi-110001.

3.The Regional Passport Officer,
80 Feet Road, 8th Block,
Koramangala,Bangalore-560 095.

...Respondents

(By Shri S.Prakash Shetty.. Senior Panel Counsel)

O R D E R (ORAL)

HON'BLE DR. K.B. SURESH, MEMBER(J)

Taken up by Circulation. Now the question is very very simple. We had held from a particular date onwards the applicant will have benefits. But, it appears that following the Ernakulam Bench of CAT order, the juniors of the applicant had been granted the benefits. The order of the Ernakulam Bench is quoted below for easy understanding of their views.

“The legal issue involved in all the above O.As being one and the same, viz whether the applicants in these O.As are eligible to take up the Limited Departmental exam (LDE for short), all these O.As are dealt with together and this common order passed. Of course, there are some variations in the facts of the cases and these are dealt with in the succeeding paragraphs.

2. The entire group of cases could be divided into categories as hereunder:

1. Where applicants are serving as UDCs with 16 years of combined experience as both LDC and UDC before the date of examination (23rd November 2008) and who have been

permitted by an interim order to participate in the exam.

2. Where applicants serving as UDCs with 16 years of combined experience as both LDC and UDC before the date of examination (23rd November 2008) and who could not approach this court earlier and hence could not participate in the exam.
3. Where the applicants, who were not promoted as UDC but who have put in more than 16 years of service as LDC before the date of the examination.
4. Where the applicants' juniors have been permitted to participate in the exam, and the applicants have not but whom the Tribunal permitted by way of interim orders.

3. The facts capsule:

(a) The applicants are all serving in the Regional Passport Offices and they were initially engaged as Daily Rated Clerks, later on regularized and posted as LDCs. Details of their career graph are as under:

OA. No.	Name	Date of appointment as LDC	Date of appointment as UDC
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651/08	Rajalekshmy Balachandran	17.4.1990	05/10/06
651/08	K. Muraleedharan Pillai	23/7/1990	05/10/06
652/08	Rema Babu	20/4/1992	05/10/06
652/08	Ani Shibu	20/4/1992	22/3/2005
652/08	Shibu John	20/4/1992	22/3/2005
652/08	Ajith Kumar S.	20/4/1992	22/3/2005
652/08	Sobha Ajayakumar	22/4/1992	28/3/2005
652/08	Sheeba Reghu	22/4/1992	05/10/06
652/08	Daisy Paulose	23/4/1992	05/10/06
652/08	Annie Alex	24/4/1992	05/10/06
652/08	Omana Pradeep	24/4/1992	05/10/06
652/08	K.V. Kochurani	25/4/1992	09/10/06
652/08	V.S. Jyothirmayi	27/4/1992	05/10/06
652/08	Sunu K. Paul	27/4/1992	05/10/06
652/08	K.C. Bindu	27/4/1992	06/10/06
652/08	Beena Somasekharan	27/4/1992	05/10/06
652/08	A.S. Latha	28/4/1992	05/10/06
652/08	P.A. Preetha	28/4/1992	05/10/06
652/08	C.P. Suhasini	04/05/92	06/10/06
652/08	Mini Paul	03/06/92	09/10/06
652/08	K.R. Sheeba	08/06/92	05/10/06
652/08	Jiji Roby	10/06/92	05/10/06

652/08	Shobhana Varghese	24/6/1992	05/10/06
656/08	V.K. Ravindranath	01/12/88	22/2/2007
656/08	C.K. Jayalekha	01/12/88	22/2/2007
656/08	Suhasini K.	12/03/90	26/2/2007
656/08	Baby Sreeja V.	12/03/90	22/2/2007
656/08	Sreelatha K.	12/03/90	22/2/2007
656/08	Prabhavathi K.E.	12/03/90	22/2/2007
656/08	Vijayan K.	12/03/90	22/2/2007
656/08	Geethamani T.P.	19/3/1990	22/2/2007
656/08	Sheeba V.	19/3/1990	22/2/2007
658/08	Satheeshkumar K	10/07/91	05/10/06
658/08	K.V. Santhoshkumar	10/07/91	22/3/2005
658/08	Asokan KK	10/07/91	05/10/06
658/08	P. Venugopalan	10/07/91	05/10/06
658/08	Saly Joseph Many	10/07/91	22/3/2005
658/08	Smitha U.V.	10/07/91	05/10/06
658/08	Jiji K.	10/07/91	05/10/06
667/08	Ushakumari K.T.	03/12/96	05/10/06
667/08	Reeja. V	03/12/96	05/10/06
667/08	Venugopal E.M.	05/06/95	05/10/06
667/08	Pankaja O.K.	09/01/95	05/10/06
667/08	Babu P.K.	05/12/96	05/10/06

667/08	Reena P.	01/06/95	05/10/06
667/08	Sheeba K.	01/06/95	05/10/06
667/08	Bindu K.	09/01/95	05/10/06
667/08	Rema A.R.K.	29/5/1995	05/10/06
667/08	Bindu M.	09/01/95	05/10/06
667/08	Anithakumari M.K.	10/01/95	05/10/06
667/08	Ramadasan T.K.	09/01/95	05/10/06
667/08	Jayasree C.	03/12/96	05/10/06
667/08	Baby Shylaja. K.	03/12/96	05/10/06
667/08	Mini P.	09/01/95	05/10/06
667/08	Sobhana V.	10/01/95	05/10/06
667/08	Ajirani P.	09/01/95	05/10/06
667/08	Beena P.	03/12/96	05/10/06
737/08	K. Unnikrishnan	01/12/88	-
737/08	P.T. Rajagopal	01/12/88	-
737/08	N. Girija	01/12/88	-
737/08	P. Sivarani	01/12/88	-
737/08	P. Vinodini	01/12/88	-
737/08	P. Ramadevi	01/12/88	-
739/08	G. Umadevi	03/08/92	22/3/2005
739/08	V. Ajishbabu	01/06/92	05/10/06
739/08	N. Ajildas	01/06/92	05/10/06

739/08	P. Mohanan	02/03/92	05/10/06
739/08	Juni Susan Abraham	02/03/92	05/10/06
739/08	N.K. Ajayakumar	02/03/92	05/10/06
739/08	C.P. Manoharan	02/03/92	05/10/06
739/08	M. Sunil Kumar	01/06/92	05/10/06
754/08	N.K. Beena	03/02/92	12/09/07
754/08	N. Geetha	02/03/92	12/09/07
754/08	C.P. Rema	03/06/92	12/09/07
45/09	S.S. Beena	03/08/92	22/3/2005
45/09	S. Ushakumari Amma	03/08/92	22/3/2005
45/09	A.R. Parameswaran	03/08/92	22/3/2005
45/09	C.S. Geetha Kumari	27/10/92	05/10/06
45/09	R.S. Murali	03/08/92	05/10/06
45/09	P. Solie	03/08/92	05/10/06
45/09	A. Viajaya Kumari	03/08/92	05/10/06
45/09	S. Jasmine	03/08/92	05/10/06
45/09	Zeema Mary	03/08/92	05/10/06
45/09	L.G. Salilaja	03/08/92	05/10/06

(b) In all the above, except in the case of Applicants in OA No.667 of 2008 there was a uniform communication from the respondents, advancing their date of regularization as LDCs, which reads

as under:

".....and in partial modification of this Ministry's order of even number dated _____ Shri/Smt. is appointed as a Lower Division Clerk in the Regional {Passport Office}, in the Central Passport Organization of the Ministry of External Affairs in the pay scale of Rs 3050-75-3950-80-4590/-in a temporary capacity with effect from i.e. from the date of his/her initial engagement as casual labourer

Shri/Smt..... will be entitled to all consequential benefits such as 'notional' fixation of pay, eligibility to appear in any test or examination if held for her/her promotion to the next grade, counting of qualifying service for terminal benefits from except seniority in the Grade of LDC which will be counted from only."

(c) Above the post of UDC, the hierarchical ladder consists of the post of Assistant. Recruitment Rules for the same provide for filling up the said post as under:

"11. Method of recruitment: : 75% by promotion;

whether by direct recruitment or by promotion or deputation or absorption and percentage of the vacancies to be filled by various methods

25% by Limited Departmental Competitive Examination

12. In case of recruitment : Promotion

by promotion or deputation or absorption grades from which promotion or deputation or absorption to be made

(i)Upper Division Clerks of Central Passport Organization with eight years of regular service in their grade: or

(ii)Upper Division Clerks of the Central Passport Organisation with sixteen years of combined regular service as Upper Division Clerk and Lower Division Clerk in the cadre of Central Passport Organisation.

Note: If a junior person is

considered for promotion on the basis of his completing the prescribed qualifying period of service in that grade, all persons senior to him in the grade shall also be considered for promotion notwithstanding that they may not have rendered the prescribed qualifying period of service in that grade but have completed successfully the prescribed period of probation.

Limited Departmental Competitive Examination :

(c)(i)Upper Division Clerks of the Central Passport Organisation with eight years of regular service as Upper Division Clerk; or

(ii)Upper Division Clerks of

the Central Passport Organisation with sixteen years of combined regular service as Upper Division Clerk and Lower Division Clerk in the cadre of Central Passport Organisation; and

(d)possessing the Bachelor's Degree of a recognised university or its equivalent.

Note : In the case of persons holding the post of Upper Division Clerk on regular basis on the date of commencement of the Ministry of External Affairs, Central Passport Organisation (Group 'C' post) Recruitment Rules, 2004, the eligibility service for promotion to the posts of Assistants shall

be five years regular service in
the feeder grade."

(e) The respondents have published a circular dated 17th September 2008 which reads as under:

"NO.V.IV/551/34/2008 September 17, 2008

CIRCULAR

Subject: Limited Departmental Examination (LDE) for promotion from UDC to the post of Assistant

Under the new Passport Seva project, a total of 454 vacancies in the Grade of Assistant have become available for promotion from UDCs to Assistants. As per the revised Recruitment Rules 2004, (Group 'C' posts), 75% of the total posts available, i.e., 341 posts have to be filled up by departmental promotion; and 25% of the total posts available, i.e. 113 posts have to be filled up through a Limited Departmental Examination (LDE).

2. In order to fill up the posts through LDE, the Ministry is in the process of conducting a Departmental Examination on Sunday, the 23rd Nov. 08, for the employees of the CPO for promotion from UDCs to Assistants, after conducting

departmental promotions in October 2008. The LDE examination will be conducted at New Delhi.

3. According to CPO (Group C posts) Recruitment Rules,

2004, the eligibility criteria for promotion from UDCs to

Assistants is specified as:

i) eight years of regular service in UDC grade;

ii) UDC with sixteen years of combined regular service as UDC & LDC in CPO cadre;

iii) In the case of persons holding the post of UDC on regular basis before the commencement of CPO RRs

2004, i.e. 3rd March, 2004, the eligibility service for

promotion to the posts of Assistants shall be five years regular service in the feeder grade.

iv) Possession of a Bachelor's Degree of a recognized

University or its equivalent.

4. In order to fill up 113 posts of Assistant available after

departmental promotions, a special dispensation to the above

rules has been obtained from the Competent Authority as

follows:

- i) Relaxation of 1 year i.e. from five years to four years in respect of UDCs who were promoted as on 21.1.2003; and
- ii) Relaxation of 2 years i.e. from five years to three years in respect of UDCs who were promoted as on 26.2.2004.

All UDCs who have put in three years of regular service as on 1.1.2008 are eligible for LDE examination. Those UDCs who are in the zone of departmental promotion can also apply for the proposed LDE.

5. Please forward names of the interested UDCs who wish to appear for the proposed LDE, in the enclosed format after checking their eligibility and educational qualification. The LDE is optional and, therefore, no TA/DA will be admissible for appearing in the Examination. Completed application forms and Admit Card, in duplicate are attached and same should reach Administrative Officer (PV.IV), CPV Division, MEA, New Delhi by 26.9.2008 positively. In case there is no eligible candidate from your office, a 'Nil' reply may please be sent."

(f) The last date for receipt of application, as indicated in the notification was 26th September 2008. The examination scheduled was as on 23rd November, 2008.

(g) As the applicants have completed their 16 years of service in all the above cases, they were keen in taking part in the Limited Departmental Examination as the number of vacancies in the post of Assistants under the Examination quota were sizeable and probabilities of their coming out victorious in the same and being promoted to the said post were considered to be more. However, when they preferred the necessary application forms on time, the New Delhi Office of the Respondents had communicated to the Regional Office at Kerala rejecting the applications preferred by the applicants; the communication reads as under:

"This is with reference to Limited Departmental Examination for the posts of Assistant. After careful scrutiny of the applications, the following officials from your office have not been found eligible for the Limited Departmental Examination as they do not meet the eligibility norms stipulated vide our circular of even

number dated 17th September 2008. Please inform the concerned officials suitably."

4. Applicants in O.A. Nos 651/08, 652/08, 656/08, 658/08 and 667/08, approached this Tribunal challenging the aforesaid order of the respondents and they were by an interim order permitted to participate in the examination, their candidature having been made only provisional. All have participated in the said examination.

5. Applicants in O.A Nos.737/08, 739/08, 754/08 and 45/09 who did not approach the Tribunal but who approached their office, were, (according to the counsel for the applicants) given verbal assurances that they too would be permitted to participate in the examination, but on their presenting themselves before the authorities on the date of the examination, they were not permitted to participate in the Examination.

6. In all the above O.As, the relief sought for is almost identical/similar and the same is as under:

"A) issue an order setting aside Annexure A-23.

B) Declare that the applicants are entitled to appear for the Departmental Examination for promotion to the post of

Assistant notified as per Annexure A-22 Circular dated
17.9.2008,

C) Declare that the applicants are eligible to appear for the limited departmental examination for promotion to the post of Assistant in terms of paragraph 12 (c) (ii) to the Schedule to the A-21 Rules, and

D) such other orders and directions as are deemed fit in the facts and circumstances of the case."

7. In the case of applicants in O.A. No.667/08 the additional prayer is as under:

"Declare that the applicants are entitled to count their initial dates of entry as daily rated clerks for the purpose of computing 16 years service as per Rule 12(ii) of Annexure A-2 Rules as permitted in the case of their juniors and other similarly situated officials and for all other purposes including seniority and other consequential benefits including monitory benefits."

8. In the case of the applicants in the above O.A. the interim order passed on 19th November 2008 reads as under:

"Ms.Preethi for P.Ramakrishnan

Ms.Jisha for TPM Ibrahim Khan.....

Eighteen applicants have prayed for an interim relief in this case to permit them to sit for the limited departmental examination scheduled at Delhi on 23.11.2008 for promotion to the post of Assistant. Their claim is based on the fact that in the case of similarly situated persons, their entry as daily rated clerks has taken into consideration by which they have fulfilled 16 years of service to appear the examination. The seniority list vide Annexure A-3 contained the names of certain persons who are shown juniors to the applicants herein in whose case also interim orders have been passed directing the respondents to permit them in the proposed examination. A prima facie case has been made out in that juniors having been permitted to sit for the examination, respondents are directed to permit the applicants in this O.A. also to sit in the examination on 23.11.2008 subject to the condition that the results of the applicants shall not be

disclosed.

It is made clear that the admission for the examination is only provisional and their entitlement or otherwise shall be decided at the time of final hearing. List on 15.12.2008. A copy of the order be made available to the parties."

9. Respondents have contested the O.A. Their contentions as contained in their counter run as hereunder:

A) In OA/651/2008 & OA/652/2008 in paragraph 8 the respondents have submitted that many LDCs were appointed in the CPO from Staff Selection Commission and have been promoted as UDCs and placed alongwith the UDCs from the stream of DRCs. As the direct-recruit LDCs are now senior UDCs vis-a-vis the UDCs promoted from DRCs, the former cannot be left out from appearing in the LDE, as this will be discriminatory and against the principles of natural justice for promotion in the same cadre. In this background, it is respectfully submitted that, if the contentions of the applicants are accepted, it will lead to anomalies, which will, in turn, lead to further litigations, resulting defeat of the very purpose of conducting the LDE. It is further submitted that

ante-dating the seniority of the applicants by this Hon'ble Tribunal was de hors the service rules and also do not hold good in the light of the ratio laid down by the Apex Court in Secretary, State of Karnataka Vs. Uma Devi (2006) SCC 1.

B) In OA/656/2008, in paragraph 10 of the additional reply, the respondents have submitted that the applicants do not complete the prescribed criteria of 16 years of regular combined service as UDC and LDC on 1.1.2008, vide Ministry's circular No. V.IV/551/34/2008 dated 17.9.2008, and, therefore, they were not eligible for appearing in LDE. It is submitted that, on that date, none of the applicants was within the zone of consideration. It is submitted that the respondents had gone out of way in regularizing these ad hoc employees and allowed them to be absorbed in the cadre. Having accepted the regularized status, there is no case now for antedating their service from the day of their respective casual engagements.

C) In OA/658/2008, in paragraph 5, the respondents have submitted that since they were regularized from 22.4.1997 onwards only, they have completed around 11 years of

service as on 1.1.2008. With regard to their claim for counting of casual labourer service, reference is invited to the recent Supreme Court's judgment dated 10.4.2006 (Appeal (Civil) Nos. 3595-3612 of 1999) in Uma Devi Vs. State of Karnataka, wherein the Apex Court has clearly ruled that casual workers cannot claim any benefit as applicable to regular employees. In para 39 of the said judgement, the Hon'ble Supreme Court has stated that "those who are working on daily wages formed a class by themselves; they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules." The Apex Court has specifically stated in Para 45 of its judgment that "those decisions which run counter to the principle settled in this decision or in which directions running counter to what we have held herein, will stand denuded of their status as precedents". Further in para 10 of additional reply, the respondents have submitted that the applicants do not complete the prescribed criteria of 16 years of regular combined service as UDC and LDC on 1.1.2008, vide Ministry's circular No. V.IV/551/34/2008 dated 17.9.2008, and, therefore, they were not eligible for

appearing in LDE. It is further submitted that, on that date, none of the applicants was within the zone of consideration. It is submitted that the respondents had gone out of way in regularizing these ad hoc employees and allowed them to be absorbed in the cadre. Having accepted the regularized status, there is no case now for antedating their service from the day of their respective casual engagements.

D) In OA/667/2008, in paragraph 4, the respondents have submitted that Recruitment Rules (RR) of March 2004 of CPO stipulate sixteen years of combined regular service as UDC and LDC in the cadre of CPO. According to seniority list of UDCs, these UDCs were given seniority from their regular appointment in the grade of LDCs. As the applicants are seeking seniority from the date of their appointment as DRCs, instead of their regular promotion to UDC grade, it is submitted that the same is untenable. It is also to be noted that none of the applicants qualify the eligibility criteria stipulated as per the 2004 RR, i.e. sixteen years of combined regular service as UDC and LDC in the cadre of CPO. It is also submitted that Ministry has not given permission to any ineligible candidate for appearing in

the examination. Only those applicants, who have the requisite eligibility criteria, as per Recruitment Rules 2004, were only permitted to appear in the examination. Further in para 10 of additional reply the respondents have submitted that the applicants do not complete the prescribed criteria of 16 years of regular combined service as UDC and LDC on 1.1.2008, vide Ministry's circular No. V.IV/551/34/2008 dated 17.9.2008, and, therefore, they were not eligible for appearing in LDE. It is submitted that, on that date, none of the applicants was within the zone of consideration. It is submitted that the respondents had gone out of the way in regularizing these ad hoc employees and allowed them to be absorbed in the cadre. Having accepted the regularized status, there is no case now for antedating their service from day one of their casual engagement.

E) In OA/737/2008 in paragraph 4 the respondents have submitted that since all the applicants are LDCs, their applications for appearing in the LDE could not be considered.

F) In OA/739/2008, in paragraph 4, the respondents have

submitted that the applicants do not complete the prescribed criteria of 16 years of regular combined service as UDC and LDC on 1.1.2008; hence, the applicants were not eligible for appearing in LDE held on 23.11.2008. Reference to the case of Shri PT Rajagopal is not relevant as that case is already under challenge in the Supreme Court. Further, in paragraph 7, they have also submitted that vide Ministry's circular No. V.IV/551/34/2008 dated 17.9.2008, the date for fulfilling the above conditions including calculating 16 years of combined service is 1st of January, 2008 and on that date none of the applicants were within the zone of consideration; hence, not permitted to participate in the LDE held on 23.11.2008. In addition to the above, in their counter in the above OA, the respondents profusely quoted from the decision in Uma Devi's case.

G) In OA/754/2008, in paragraph 6, the respondents have submitted that the applicants' statement that they have a total of 16 years of combined service as LDC and UDC in the cadre is totally wrong and confusing. As per their own statement at Sl. No. 2 of Para IV of the OA they have completed around 13 years of service only as

on 1.1.2008. Further, they submitted that the order No. V.IV/551/34/08 dated 6.11.2008 was issued, as all the applicants are not found eligible for appearing the Limited Departmental Examination for promotion to the post of Assistant, which was held on 23.11.2008.

10. In respect of those cases where interim orders were passed, respondents challenged the same through civil writ petitions before the High Court, but their writ petitions were dismissed holding as under:

"We notice that the order impugned is only an interim order. By allowing the applicants to take the examination, nobody is prejudiced. If, ultimately, the Original application is allowed, the writ petitions are also saved of the botheration to hold a fresh test. It is an order passed, having regard to the principles of balance of convenience. Needless to say, if the O.A. is dismissed, the interim order will also go. In view of the above position, we find no reason to interfere with the impugned order Ext. P2 Accordingly the writ petition is dismissed."

11. Counsel for the applicants in all the cases contended that

there is no cut off date prescribed either in the recruitment rules or in the notification calling for the examination. The date 01st January 2008 for working out the eligibility (i.e. completion of 16 years of combined service as LDC as well as UDC) for participating in the examination, is thus arbitrary and illegal. On the date of the examination all have put in 16 years of services.

12. Counsel for the respondents submitted that since the date of 01st January 2008 has been uniformly fixed, the same cannot be held to be arbitrary.

13. Counsel for the applicants submitted that admittedly, from the date of initial appointment as DRC, all have put in 16 years' service. However, the requirement is 16 years of combined service as LDC and UDC, which means that at least for one day, the individuals should have held the post of UDC. In so far as the applicants in OA No. 667/08, the counsel submitted that in their cases, unlike in the other cases of identical nature, the dates of regularization from the date of initial engagement as DRC had not been notified, though they are eligible for the same and it is for this reason that an additional prayer as contained in sub para E of para 8 of the OA had been made. (The said prayed is already extracted above). As per the counsel for the applicants, this condition of combined

services of LDC and UDC has been fulfilled by all the applicants in all the Original Applications (except O.A. No 737/08 in whose case, though the total number of years of service exceeded 16 years, the applicants were not promoted as UDCs prior to the date of examination). In so far as the applicants who have not been promoted as UDCs are concerned, counsel for the said applicants submitted that according to the circular, it was after filling up of the post under the 75% quota that action would be taken to fill up the rest of the 25% quota and had this been followed, the applicants would have been promoted against the chain vacancies created in the wake of promotions to the post of Assistant under the 75% quota earlier to the date of examination. By not doing so, the applicants came to be promoted only on 27th November 2008, i.e. a few days after conducting of the examination. This fault on the part of the respondents should not deprive the applicants in those O.As from participating in the examination.

14. Arguments were heard and documents perused. First, while dealing with the case of applicants in OA No. 737/2008, we have no difficulty in holding that those who did not function as UDC even for a day (i.e. whose promotion to the post of UDC is posterior to the date of examination) cannot be said to have fulfilled the requisite condition of 16 years' combined service as LDC and UDC. Though the executive order states that the examination would be conducted after the 75% quota for

promotion is over, since the resultant vacancies should be worked out and DPC held for promotion from LDC to UDC to fill up the chain or resultant vacancies in the grade of UDC, which is a time consuming process, the contention of the counsel for the applicants in OA No. 737/08 that the applicants should have deemed to have been promoted as UDC prior to the holding of the examination cannot be accepted. For participating in the 25% quota examination, one should be holding the post of UDC and the total service as LDC and UDC should be minimum 16 years. This condition having not been fulfilled in so far as the applicants in OA 737/08, are concerned the said OA No. 737/08 is liable to be dismissed.

15. The question is what should be the cut off date to work out the eligibility condition of completion of 16 years of service. The Recruitment Rules do not prescribe any cut off date for this purpose. The notification dated 17th September 2008 too does not indicate any such date for working out 16 years of combined service. It would be crucial to note that while 8 years of regular service is prescribed for eligibility, the same has been reduced to 3 years of regular service as on 01-01-2008 and the cut off date is conspicuously prescribed here as of 01-01-2008 whereas for the combined 16 years of service, such a cut off date has not been prescribed.

16. It has been held in the case of Bhupinderpal Singh v. State of Punjab, (2000) 5 SCC 262, as under:

13. Placing reliance on the decisions of this Court in Ashok Kumar Sharma v. Chander Shekhar (1997) 4 SCC 18, A.P. Public Service Commission v. B. Sarat Chandra (1990) 2 SCC 669, District Collector and Chairman, Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi(1990)3 SCC 655, Rekha Chaturvedi v. University of Rajasthan1993 Supp (3) SCC 168, M.V. Nair (Dr) v. Union of India(1993) 2 SCC 429 and U.P. Public Service CommissionU.P., Allahabad v. Alpana(1994) 2 SCC 723 the High Court has held (i) that the cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cut-off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications;

(ii) that if there be no such date appointed then the eligibility criteria shall be applied by reference to the last date

appointed by which the applications have to be received by the competent authority. The view taken by the High Court is supported by several decisions of this Court and is therefore well settled and hence cannot be found fault with.

17. The above decision of the Apex Court, when pressed into service in the instant cases, would clearly reflect that the date by which the eligibility condition should be satisfied is the last date for receipt of application, which in this case is 26th September, 2008. All those applicants, who are holding the post of UDC have the combined services of 16 years in the grade of LDC as well as UDC. This position is not ambiguous. Hence, in respect of UDCs those who have put in 16 years of combined service as of 26th September 2008, and who are eligible for sitting in the examination, denying them the permission to participate in the examination is illegal. We declare so.

18. In so far as applicants in OA No. 667/08 are concerned, there is one requirement i.e. their date of regularization as done in other cases should be w.e.f. their initial date of engagements as DRC. There is no escape from the same since, uniformly in respect of all others such a procedure has been followed. Again, since their juniors have been permitted, these applicants equally become eligible for participating in the

examination. We accordingly order that regularization with retrospective effect be given to them.

19. The ground reality is that some of the applicants on the strength of the interim orders participated in the examination, while some other applicants working as UDCs, have not been able to participate in the examination. For such persons who had not been permitted to take up the examination, the respondents should hold examination and in case the individuals qualify in the same, they should also be treated as having been qualified in the earlier examination held on 23rd November 2008. Such an examination be conducted at the convenience of the respondents, but not later than 3 months from the date of communication of this order.

20. In some of the O.As, in their reply the respondents have cited Umadevi's case. It is to be noted here that the applicants in these O.As, (except OA 667/08) do not claim regularization and in all such cases, regularization has already been granted by valid orders of the respondents. As such Umadevi cannot come to the rescue of the respondents. In so far as OA No 667/08 is concerned, the case of the applicants is based on equal treatment to equally situated cases and in this regard, the decision in the case of U.P. SEB v. Pooran Chandra

Pandey,(2007) 11 SCC 92, is relevant, wherein it has been held as under:

11. Learned counsel for the appellant has relied upon the decision of this Court in Secy., State of Karnataka v. Umadevi (3) and has urged that no direction for regularisation can be given by the Court. In our opinion, the decision in Umadevi (3) case1 is clearlydistinguishable. The said decision cannot be applied to a case where regularisation has been sought for in pursuanceof Article 14 of the Constitution.

21. Promotion as Assistant of the individuals who have qualified in the examination should not be postponed on the ground that in respect of a few individuals as stated in the preceding paragraph, examination has to be conducted. Of course, their seniority may undergo change depending upon the seniors who qualify in the examination to be held. To be on the safe side, in respect of such individuals, the promotion may be made as provisional till the examination for the individuals as mentioned in the preceding paragraph is conducted and the result thereof published and promotion granted to such individuals who qualify in the examination. This is for the respondents to consider and act.

22. To sum up,

- a) O.A. No. 737/08 is dismissed.
- b) For Applicants in OA No. 739/08, 754/08 and 45/09, as they are holding the post of UDC and are having combined service of 16 years, respondents shall conduct the requisite examination within 3 months from the date of communication of this order and on the basis of performance in that examination, their promotion shall be worked out.
- c) In respect of applicants in other O.As, who have given their examination on the strength of interim order and which has been made provisional, the same be treated as absolute and promotion be granted on the basis of the results in that examination.

23. Under the circumstances, there shall be no orders as to cost."

Therefore, at least from that date onwards the applicant also will be entitled to the benefits, even though we had already held that the original date of entitlement only will be applicable to the applicant. But thus the authorities issued annexure-RA- 4 order dated 12.7.2010 as follows:-

"In compliance of Orders passed by the CAT(EB) in the Contempt Petition (Civil) No.82/09 in OA No.739/08 filed by

Smt.G.Umadevi & others and Contempt Peition (Civil) No.83/2009 in OA No.754/2008 filed by Smt.N.K.Been and two others against the Ministry, it has been decided to conduct a Limited Departmental Competitive Examination for promotion of UDCs to the Grade of Assistants in the CPO on 21st March 2010 at Delhi. The applicants who are holding the post of UDC and have combined services of 16 years in the grade of LDC as well as UDC including the service as daily rated clerks, as on 26th September 2008 and are in possession of the Bachelor's degree of a recognized University or its equivalent are eligible for appearing in the exam.

2. You are requested to circulate the information in your office and forward names of the interested UDCs who wish to appear for the proposed LDE, in the enclosed format afte checking their eligiblty and eductional qualification. The duly filled in applications forwarded to the Ministry, in duplicate to reach the undersigned latest by 22nd January by Speed/Registered post.

3. The LDE is optional and, therefore, no TA/DA will be admissible for appearing in the Examination. In case there is no eligible candidate from your office, a 'Nil' reply may please be sent.

4. The Ministry has also filed a SLP in the Hon'ble Supreme Court against the above judgment of the Hon'ble CAT Ernakulam Bench

and a final decision on the promotions will be based on the outcome of the SLP.

5. The above may be brought to the attention of all concerned. “

But the Hon'ble High Court had passed an interim order by which the review applicant was allowed to compete in the LDCE and he passed it.

Therefore, under Article 14 of the Constitution of India applicant is eligible for parity.

Therefore, we hereby modify the order and hold that the applicant will be eligible for the benefits in terms of the benefits given to the juniors as on the date on which benefits for the juniors had arisen.

The order of the OA is, therefore, modified. The junior of the applicant need not be heard to decide on the eligibility of the applicant as the LDCE was only for determining suitability and not on the basis of competition.

Therefore, seniority will be the yardstick for deciding the issue.

Review application is allowed.

OA allowed and order modified to this extent. No order as to costs.

(P. K. PRADHAN)
MEMBER(A)

(DR. K.B. SURESH)
MEMBER(J)

bk.

