

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.**

ORIGINAL APPLICATION No.504 OF 2015

Dated this Wednesday, the 07th day of February, 2018

**CORAM: HON'BLE SHRI ARVIND J. ROHEE, MEMBER (J)
HON'BLE SHRI R. VIJAYKUMAR, MEMBER (A)**

1. *Mrs. Sunita Alurkar nee Sunita Kulkarni,
Age : 41 years, Occ.-Service,
O/o A-401, Monarch, Ashar Residency,
Gladys Alwares Road,
Off Pokhran Road No.2,
Behind MTNL Office,
Thane (W) 400 607.*
2. *Mrs. Sangeeta Deepak Kamod,
Age : 41 years, Occ.- Service,
O/o Vardhan Bldg. MIDC Rd. No.16,
Wagale Estate, R/o. Shriram Niwas,
Wagle Estate, Thane 400 607.*
3. *Mrs. Leena Soman Nair,
Age : 44 years, Occ.- Service,
O/o Vardhan Bldg. MIDC Rd No.16
Wagale Estate, Thane 400 607.
R/o. Swastik Alps, A-704,
Phase 4, Next to Brahmand,
Thane (W) 400 607.*
4. *Mrs. Alka Sharad Bhandarkar,
Nee Alka S. Randive,
O/o 1st Flr, 'B' Block,
C.G.O. Complex, Nagpur 440 006.
Age : 46 years, Occ.-Service,
R/o. Plot No.140, New Diamond Nagar,
Near Bahubali Nagar, Kharbi Road,
Nagpur 440 024.* .. *Applicants*

(By Advocate Shri P.S.Kadam)

Versus

1. *Union of India, Through the Secretary,
Ministry of External Affairs,
C.P.V. Division, Cadre Cell II,
Patiala House Annexe,
New Delhi 110001.*

2. *The Joint Secretary (P.S.P.) and Chief Passport Officer, C.P.V. Division, Ministry of External Affairs, Room No.8, Patiala House Annexe, Tilak Marg, New Delhi 110 001.*
3. *Regional Passport Officer, Regional Passport Office, MIDC, Wagle Estate, Thane 400 604.*
4. *Regional Passport Officer, Regional Passport Office, Nagpur 440 006.*
5. *Shri Veer Singh, Age : Adult, Occ. Service, Posted as Assistant in Office of Regional Passport Officer, R.K.Puram, Behind Hayat Hotel, New Delhi 110 001.*
6. *Shri Ram Pujan Singh Gautam, Age : Adult, Occ. Service, Posted as Assistant, Passport Office, Lucknow, Uttar Pradesh 226 001.*
7. *Ram Meher Singh, Age – Adult, Occ. Service, Posted as Assistant, Regional Passport Office, Ambika Tower, 2nd floor and 3rd floor, Near Police Line, Jalandhar, Punjab 144 001.*
8. *Shri Ved Prakash, Age : Adult, Occ. Service, Posted as Assistant, Regional Passport Office, Ambika Tower, 2nd floor and 3rd floor, Near Police Line, Jalandar, Punjab 144 001.* ..**Respondents.**

(By Advocate Shri R.R.Shetty and Shri Suhas Mandal proxy counsel for Shri N.K.Rajpurohit)

OA filed on 24.08.2015

Order reserved on 05.02.2018

Order delivered on 08.02.2018

O R D E R

PER : SHRI ARVIND J. ROHEE, MEMBER (JUDICIAL)

The applicants, who are presently working in Regional Passport Office under the respondent Nos.3 and 4 at Thane and Nagpur respectively, have grievance regarding their seniority list in the cadre of Upper Division Clerk (for short '**UDC**') and seek the following reliefs in this OA :-

“8(a). This Hon'ble Tribunal may graciously be pleased to call for the records of the case from the Respondents and after examining the same, quash and set aside the seniority list as on 01.01.2012 in the officials of UDC in CPO and the Applicants be placed below Shri Sahdev Kaushik and Smt. Vandana Sharma from batch of 1993 with all the consequential benefits including giving effect to the promotion in the post of UDC from 26.02.2004 with all consequential benefits including further promotion in group B (Assistants) w.e.f. 2012 by directing the official Respondents to refix the seniority.

(b). Costs of the application be provided for.

(c). Any other and further order as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed.”

2. The applicants appeared in the examination for selection to the post of Lower Division Clerk (for short '**LDC**') in pursuance of the advertisement issued by the Staff Selection Commission (for short

'SSC') in the year 1993. The SSC declared result of said examination and published a select list as per merit on 17.02.1995, in which the applicants are shown as senior to the private respondent Nos.5 to 8, who are promotees to the said post. The applicants Nos.1 to 3 were then posted at Regional Passport Office at Thane and the applicant No.4 at Nagpur Office respectively.

3. The applicants became eligible for promotion post of UDC from 26.02.2004. However, they were granted financial upgradation under Assured Career Progression Scheme (for short '**ACP**') on 03.07.2008. In the seniority list published on 01.01.2008 in the cadre of LDC, the applicants were placed at Serial Nos.28 to 31 respectively with date of their appointment as 20.11.1995, 01.12.1995 and 05.12.1995 respectively. On 09.01.2009, total 194 officials including the applicants were promoted to the grade of UDC. On 26.11.2009, the respondent No.1 vide notification

clarified that the candidate selected through SSC in the cadre of LDC would be senior to the candidates promoted to the said cadre through Limited Departmental Competitive Examination (for short '**LDCE**') . However, in the seniority list of UDCs, the applicants are shown at Serial Nos.166 to 169, whereas, the private respondents, who are juniors to applicants and Shri Sahdev Kaushik (Serial No.164) and Smt. Vandana Sharma (Serial No.165) in the cadre of LDC are wrongly placed at Serial No.67 to 70 in the seniority list published on 01.01.2012, in the cadre of UDC.

4. Aggrieved by it, the said Shri Sahdev Kaushik and Smt. Vandana Sharma filed OA No.510-CH-2012 before CAT Chandigarh Bench. The said OA was allowed vide order dated 29.04.2014 with a directions to the respondents to refix the seniority with effect from 01.01.2012. The matter was challenged by the respondents in the Hon'ble High Court of Punjab and Haryana. Vide order dated

30.10.2014, the Hon'ble High Court was pleased to direct the respondents to give effect to the order passed by CAT Chandigarh Bench, subject to final outcome of the said petition.

5. In pursuance of the aforesaid direction, the respondents on 19.11.2014 modified the seniority list and modified the initial date of promotion of Shri Sahdev Kaushik and Smt. Vandana Sharma from 27.11.2008 to 26.02.2004.

6. In pursuance of the aforesaid decision, the applicant made a representation dated 27.03.2015 to the respondents praying similar relief of appropriate placement in seniority list and promotion to the post of UDC with effect from 26.02.2004 and to the grade of Assistant with effect from 09.03.2012. The applicants, therefore, being similarly placed are seeking same relief that they are seniors to private respondent Nos.5 to 8 in the cadre of UDC and are eligible for the said promotion cadre from 26.02.2004 and to the further promotion cadre of

Assistant from 09.03.2012.

7. On notice, the respondents appeared and by reply denied the claim and justified seniority position of the applicants as mentioned in the seniority list. They disputed that applicants are similarly placed and are entitled to same relief. The parties filed further pleadings also.

8. On 05.02.2018, when the matter is called out for final hearing, heard Shri P.S.Kadam, learned Advocate for the applicants and the reply arguments of Shri R.R.Shetty and Shri Suhas Mandal proxy counsel for Shri N.K.Rajpurohit, learned Advocates for the Respondents.

9. We have carefully gone through the record and the decision rendered by the CAT Chandigarh Bench relied upon by the applicant.

FINDINGS

10. It is obvious from record that the applicants grievance is regarding their placement in the seniority list in the cadre of UDC as against the private

respondents, who were junior to them in the feeder cadre of LDC. Perusal of the order passed by the Chandigarh Bench (Annexure A-7), clearly shows that the present official respondent Nos.1 and 2 were impleaded in the same capacity as respondent Nos.1 and 2 whereas the Divisional Passport Officer, Chandigarh was impleaded as official respondent No.3, in the said OA. Similarly private respondent Nos.5 to 8 in the present OA were impleaded there as private respondent Nos.4 to 7. Like the two applicants namely Shri Sahdev Kaushik and Smt. Vandana Sharma in the OA before Chandigarh Bench, the present applicants seek their inter se seniority in the cadre of UDC over and above the private respondents as stated earlier, who were admittedly junior to them in the feeder cadre of LDC, being the promotees through LDCE. However, it is stated by the respondents that they are promoted earlier to applicants to the cadre of UDC, since they belong to reserve category. This aspect has been considered

and the following order is passed by the Chandigarh Bench. The entire text of order is reproduced here for ready reference :-

**“CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

Order reserved on: 23.04.2014

*ORIGINAL APPLICATION NO. 510 -CH of 2012
Chandigarh, this the 29th day of April, 2014*

*CORAM: HONBLE MS. RAJWANT SANDHU, MEMBER (A)
HONBLE DR. BRAHM A. AGRAWAL, MEMBER (J)*

1. *Sahdev Kaushik son of Shri Radhey Shyam, resident of House No. 3102, Sector 44-D, Chandigarh, presently posted as UDC in office of Regional Passport Office, Sector 34-A, Chandigarh.*

2. *Smt. Vandna Sharma wife of Sh. Ashok Kumar, resident of 99 Ekta Nagar Phase-II, near Rama Mandir, Jalandhar, presently posted as UDC in the office of Passport Office Jalandhar, District Jalandhar (Punjab).*

APPLICANT

BY ADVOCATE: SHRI MANOJ CHAHAL

VERSUS

1. *Union of India through Secretary, Ministry of External Affairs, C.P.V. Division, Cadre Cell-II, Patiala House Annexe, New Delhi.*

2. *Joint Secretary and Chief Passport Officer, MEA, CPV Division, Tilak Marg, Patiala House, New Delhi.*

3. *Regional Passport Officer, Regional Passport Office, SCO- 28-32, Sector 34-A, Chandigarh.*

4. *Veer Singh posted as UDC in the office of Regional Passport Officer, RPO, R.K. Puram, Behind Hayat Hotel, New Delhi.*

5. *Ram Pujan Singh Gautan posted as UDC in the office of Passport Officer, Passport Office, Lucknow (U.P.)*

6. *Ram Mehar Singh posted as UDC in the office of Passport Officer, Ambika Tower 2nd and 3rd Floor, near Police Line, Jalandhar, District Jalandhar (Punjab).*

7. *Ved Parkash posted as UDC in the office of Passport Officer, Ambika Tower 2nd and 3rd Floor, near Police Line, Jalandhar, District Jalandhar (Punjab).*

RESPONDENTS

**BY ADVOCATE: SHRI SANJAY GOYAL FOR
RESPONDENTS NOS. 1-3
NONE FOR RESPONDENTS 4-7**

ORDER

**HONBLE DR. BRAHM A. AGRAWAL,
MEMBER(J):-**

The two applicants in the instant O.A. seek their inter se seniority in the cadre of UDC above the private respondents, who were junior to them in the feeder cadre of LDC but were promoted earlier being from the reserved category.

2. *Learned counsel for the applicants relies on the judgments of the Honble Supreme court in Ajit Singh Vs. State of Punjab [2000 (1) SCT 770], M. Nagaraj V. UOI [2007 (4) SCT 664] and Suraj Bhan Meena Vs. State of Rajasthan [2011 (2) SCT 260] as well as the judgment of the Honble Punjab and Haryana High Court dated 07.08.2012 in CWP No. 17280 of 2011 (Prem Kumar Verma Vs. State of Haryana).*

3. *Learned counsel for the official respondents, on the other hand, relies on the Department of Personnel and Trainings OM dated 21.01.2002 on the subject: seniority of SC/ST Government servants on promotion by virtue of rule of reservation/roster (Annexure R-1).*

4. *We may now take note of the aforesaid judgment of the Honble Punjab and Haryana High Court, wherein the aforesaid judgments of the Honble Supreme Court, besides its later judgments, were discussed and it was held in the context of the State of Haryana as under:*

In view of the above, this Court has no option and hesitation to hold that the decision

of the Government of Haryana, as circulated through its instructions dated 16.03.2006 (Annexure P-8), granting accelerated seniority to the scheduled caste employees as a consequence of promotion under the reservation policy, is ultra vires as the same runs counter to the dictum in M. Nagarajs case (supra) and, therefore, deserves to be quashed.

5. *In the light of the above, this O.A. deserves to be allowed. The official respondents are directed to refix the inter se seniority of the applicants vis-`-vis the private respondents and modify Annexure A-4 [Seniority List of Group C (UDC) in CPO as on 01.01.2012] accordingly. This should be done within two months from the date of receipt of a copy of this Order.*

6. *The O.A. is accordingly allowed. No order as to costs.*

*sd/-
(DR. BRAHMA AGRAWAL)
MEMBER(J)*

*sd/-
(RAJWANT SANDHU)
MEMBER(A)*

Dated: 29.04.2014”

11. It is, thus, obvious that based on the decision rendered in the matter of reservation in promotion and the latest decisions rendered by the **Hon'ble High Court of Punjab and Haryana in Prem Kumar Verma Vs. State of Punjab and Haryana** in which all the landmark decisions rendered by the Hon'ble Supreme Court on the issue are discussed. The OA was allowed and directions were issued to refix the inter se seniority of the

applicants therein *vis-a-vis* the private respondents and to modify the seniority list dated 01.01.2012 in grade of UDC accordingly.

12. It is obvious from record that the applicants claim to be similarly placed. Before filing the present OA, they submitted a representation dated 23.07.2015 (Annexure A-9) to the respondents for redressal of their grievance. It appears that before it was considered by the respondents, the applicant approached this Tribunal in this OA on 24.08.2015.

13. In view of above, the applicants are *prima facie* entitled to the same relief, which was granted to the applicants by CAT Chandigarh Bench. The record further shows that the order passed by the Chandigarh Bench is challenged by the Hon'ble High Court of Punjab and Haryana in WP No.21979/2014 in which the following order is passed on 30.10.2014 (Annexure A-8) without granting any interim relief :-

“CWP No.21979 of 2014

Union of India and others Vs. Central Administrative Tribunal, Chandigarh Bench and others

Present : Mr. P.C.Goyal, Advocate, for the petitioners.

Mr. Manoj Chahal, Advocate, for caveator-respondent Nos.2 & 3.

Notice of motion.

Mr. Manoj Chahal, Advocate, accepts notice on behalf of caveator-respondent Nos.2 & 3.

List for arguments on 10.02.2015.

Meanwhile, the order passed by the Tribunal may be given effect subject to final outcome of this Writ Petition.”

14. It is pointed out by the learned Advocate for the applicants that the Writ Petition is still pending and in the meantime, the respondents have complied with the said order by revising the seniority list so far as the applicants before CAT Chandigarh Bench are concerned. It is stated that the applicants in this OA deserve the identical relief.

15. In view of the above, the OA stands disposed of with a directions to the official respondents to consider and to take appropriate steps in the matter of placement of the applicants in the seniority list published on 01.01.2012 in the cadre of UDC *qua* the private

respondent Nos.5 to 8 with all consequential benefits to them and revise seniority list dated 01.01.2012 accordingly so far as the applicants in the present OA are concerned.

16. The above exercise shall be carried out within a period of eight weeks from the date of receipt of certified copy of this order.

17. It is, however, directed that the decision so taken and the order so passed shall be subject to final outcome of the

Writ Petition No.21979/2014, Union of India Vs. Central Administrative Tribunal, Chandigarh Bench and others

pending before the Hon'ble High Court of Punjab and Haryana.

18. In the facts and circumstances of the case, the parties are directed to bear their respective costs of this OA.

***(R. Vijaykumar)
Member (Administrative)***

***(Arvind J. Rohee)
Member (Judicial)***

*kmg**