

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00396/2015

Dated this Tuesday , the 18th day of December, 2018.

CORAM:

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

Sabeena Varghese, Aged 43 years,
W/o Varghese Daniel, Lower Division Clerk,
870 A DSC Platoon, Thiruvananthapuram,
Residning at Mukaluvitlakizhakkethil ,
Manakkala P.O. Adoor,
Pathanamthitta District, Pin 691551.
(By Advocate – Mr.B. Harishkumar)

Applicant

V e r s u s

1. Union of India,
Represented by the Secretary to the Ministry of Defence,
Central Secretariat, New Delhi.
2. Flag Officer Commanding-in-Chief, For SSO (CP),
Head Quarters Southern Naval Comand,
Cochin 682 004.
3. Chief Record Officer,
DSC Records, Mill Road,
Kannur, Kerala 670 013.
4. The Chief Controller (For CQA (Administration)
Naval Aeronautical Quality Assurance Service,
Kochi.

..... **Respondents**

(By Advocate – Mr.N. Anilkumar,SCGSC)

This Original Application having been heard on 10.12.2018, the Tribunal on 18 /12/2018 delivered the following:

O R D E R

Per: Ashish Kalia, Judicial Member:

The brief facts of the case are that applicant is aggrieved by the denial of promotion of the post of UDC/Assistant, the applicant prefers this original application. The applicant

commenced her service as Lower Division Clerk on 20.08.21997. On the basis of the departmental examination conducted during the year 2005, the applicant was promoted as Upper Division Clerk on 21.2.2006 on completion of 9 years regular service. Due to extreme family problem and ill-health, the applicant sought for an inter-departmental transfer and the same was allowed by the respondent after forefeiting her service. Accordingly she joined the service of the 2nd respondent on 8.1.2007 as Lower Division Clerk. The claim for 1st MACP was not considered by the respondent stating that she was already granted promotion to the post of UDC and there was no stagnation to the promotion prospects. As per the Recruitment Rule, she is entitled to be promoted as Assistant on completion of 18 years of qualifying service as per the dictum laid down by the Supreme Court. So denial of promotion to the post of Upper Division Clerk on completion of 8 years in the grade of lower division clerk and Assistant on completion of 18 years in the grade of Upper Division Clerk is illegal, arbitrary, discriminatory and violative of Article 16 (1) of the Constitution of India. Feeling aggrieved by this, she has approached this Tribunal for redressal of her grievance on the following reliefs sought in the O.A.

- (a) To direct the respondents to promote the applicant to the post of UDC from the date of inter departmental transfer and also thereafter promotion to the post of Assistant/Office Superintendent forthwith with all consequential benefits.
- (b) To declare that the applicant is deemed to have been promoted to the post of Upper Division Clerk on completion of 8 years service in the grad of Lower Division Clerk and to fix the seniority in the grade of Upper Division Clerk and to grant consequential promotion with monetary benefits.
- (c) Any other appropriate order or direction as this Tribunal deem fit in the interest.

2. The applicant has relied upon the jundgment of the Hon'ble Apex Court in the case of *UOI v. C.N. Ponnappan* 1996(1) SCC 524 in which it is held that:

“ The service rendered by an employee at the place from where he was transferred on compassionate ground is regular service. It is not different from the service rendered at the place where he is transferred. Both the periods are taken into account for the purpose of leave and retiral benefits. The fact that as a result of transfer he is placed at the bottom of the seniority list at the place of transfer does not wipe out his service at the place where he was transferred. The said service, being regular service in the grade, has to be taken into account as part of his experience for the purpose of eligibility for promotion and it cannot

be ignored only on the ground that it was not rendered at the place where he has been transferred. “

3. The applicant also relied upon the judgment of the Hon'ble Supreme Court in the case of *Ajith Singh Januja & ors v. State of Punjab and Ors.* case AIR 1999 SC 3471 in which it is held that right to be considered for promotion is a fundamental right.

4. Notices were issued and respondents put appearance through Mr. N. Anilkumar, Sr.PCGC and filed detailed reply statement resisting the O.A.

5. It is submitted on behalf of the respondents that the promotion of the civilian staff serving with Defence Security Corps, is totally on the basis of seniority-cum-fitness and availability of vacancy. As per Civilian Personnel Routine Order (CPRO) 73/73 as amended vide 11/75, “no benefit of past service is given to the staff adjusted in other Corps/Service/Units for purpose of fixation of seniority in the grade in which they are adjusted. Their seniority on their adjustment in new appointments will be determined in accordance with their date of joining th new unit on their adjustment.” It is further submitted that the applicant was appointed as LDC in the Air Force Station, Tambaram on 20.08.1997. The applicant was promoted to the rank of Upper Division Clerk w.e.f 21.02.2006. While serving with Air Force Station, Tambaram, the applicant had applied for a compassionate ground transfer to HQ Southern Naval Command, Kochi and accordingly transferred under the 4th respondent. In accordance with the Govt. policy the applicant was reverted to LDC on her transfer under the 4th respondent. The applicant though, well aware of the Govt. Policy on the subject and knowing well the implications of compassionate ground transfer, had applied for transfer on compassionate ground and submitted her willingness to accept reckoning seniority and pay fixation in the lower granted after joining the new unit. It is further submitted that even though the petitioner was reverted to lower post carrying lower scale of pay, her pay was protected and only grade pay was reduced to Rs.1900/. She had again applied for a mutual transfer to 870A DSC Platoon attached to Sub unit “B”of 42 WEU, C/o HQ SAC, IAF at Trivandrum and accordingly transferred to 870A DSC PI on 01.10.2011 and thereby counted her seniority for promotion with effect from 01.10.2011. Therefore, the issuance of transfer order of the

petitioner from Air Force Station, Tambaram to NAQAS, Naval Base Kochi and further transfer to 870A DSC Platoon, Trivandrum which resulted in her reversion to LDC, was fully with the consent and willingness of the petitioner. Hence, the petitioner has no legal right to claim the promotion of UDC and Assistant from the date of her inter departmental transfer. It is pertinent to mention here that as per policy laid down in the Statutory Rules and Order no. 23/2012 dated 11.04.2012 minimum eight years qualifying service as LDC is mandatory for promotion to the post of UDC. The applicant has only four years qualifying service in DSC as LDC and as on date there are 84 LDCs senior to the petitioner awaiting promotion to the post of UDC. It is further submitted on behalf of the respondents that the post of Assistant has already been merged and designated as Office Superintendent.

6. It is further submitted that the petitioner was transferred to 870A DSC Platoon from NAQAS on 01.10.2011 on mutual transfer basis and taken on the strength of DSC and counted the seniority with effect from the same date. A representation regarding grant of MACP-1 from the petitioner was received in DSC Records through 870A DSC P1 vide letter dated 11.09.2013. As per entries made in the service records of the petitioner, MACP 1 has been granted to her with effect from 01.09.2008 while serving with previous unit i.e. NAQAS, accordingly the fact has communicated to her unit vide DSC Records letter dated 27.09.2013. Therefore, it is submitted by the respondents that pay fixation has also been carried out by audit authority and granted first MACP1 with effect from 01.09.2008 i.e. the date of issue of order of VIth Pay Commission at the rate of Rs.2000/- per month as intimated vide Naval Aeronautical Quality Assurance Service Kochi letter dated 16.3.2015 (Annexe R1(f)). The applicant is entitled next MACP with effect from 20.08.2017 at the rate of Rs.2400/- per month as per present norms of service which will be granted in time of the individual fulfill all eligible criteria.

7. The applicant has filed his rejoinder reiterating the contentions in the O.A. The respondents filed additional reply to support their claim of resisting the O.A.

8. We have heard the learned counsel for the parties and perused the pleadings and case laws cited by the learned counsel for the applicant.

9. The short question that is to be answered in this Original Application is whether the applicant who is transferred from one unit to another on compassionate ground and is placed at the bottom of the seniority list is entitled to count the past service rendered by her at the earlier units from where she has been transferred, being regular service, and consequently placed at the bottom of the seniority, towards qualifying service making her eligible for promotion to the post of UDC and Assistant in the new unit or for the purpose of grant of ACP/MACP

10. In the backdrop of the claim made by the applicant, it is useful to examine the judgment of the Hon'ble Supreme Court cited by the learned counsel for the applicant in the case of *UOI and Others v. C.N.Ponnappan 1996 (1) SCC 554* in which it is held as under:

“ The service rendered by an employee at the place from where he was transferred on compassionate ground is regular service. It is not different from the service rendered at the place where he is transferred. Both the periods are taken into account for the purpose of leave and retiral benefits. The fact that as a result of transfer he is placed at the bottom of the seniority list at the place of transfer does not wipe out his service at the place where he was transferred. The said service, being regular service in the grade, has to be taken into account as part of his experience for the purpose of eligibility for promotion and it cannot be ignored only on the ground that it was not rendered at the place where he has been transferred. “

A perusal of the above finding of the Hon'ble Apex Court clearly points out that the service rendered by an employee at the place from where he/she was transferred on compassionate ground is regular service. It is not different from the service rendered at the place where he is transferred. Both the periods are taken into account for the purpose of leave and retiral benefits. The fact that as a result of transfer he is placed at the bottom of the seniority list at the place of transfer does not wipe out his service at the place where he/she was transferred. The said service, being regular service in the grade, has to be taken into account as part of his experience for the purpose of eligibility for promotion and it cannot be ignored only it was not rendered at the place where he/she has been transferred.

12. It is admitted facts that the applicant joined as Lower Division Clerk on 20/08/1997 at Air Force Station, Chennai. On the basis of departmental examination she was promoted as Upper Division Clerk on 21.2.2006 and posted at Air Force Station Chennai.

She opted for transfer to Naval Base Kochi on reversion to the post of LDC and joined there on 8.1.2007. While working at Naval Base Kochi she was posted at 870 DSC platoon on 03.10.2011 and is still working under the 3rd respondent office.

13. In short, in the case of present applicant, the service rendered her in her previous organisations w.e.f. 20.08.1997 needs to be counted towards qualifying service, though her seniority is fixed at the bottom of the list on her joining at 870A DSC Platoon, Trivandrum. Therefore, the contention of the respondents that as per policy laid down in the Statutory Rules and Order no. 23/2012 dated 11.04.2012 minimum eight years qualifying service as LDC is mandatory for promotion to the post of UDC as stated in the reply statement at para 4 is acceptable . But the contention of respondents that that the applicant has four years qualifying service in DSC as LDC will not hold good as the same is not in conformity with the Honble Apex Court ruling in *C.N.Ponnappan (supra)*. The service rendered by the applicant in her previous organisations/units as LDC is to be counted towards qualifying service, though her seniority will count from the date of joining at 870A DSC Platoon. In short, if her seniors in the 870A DSC Platoon, at Trivandrum do not possess qualifying service of eight years vis-a-vis the applicant, then the applicant has a legitimate claim to be considered for promotion as UDC by counting her previous service rendered in previous organisations/units towards qualifying service. The applicant was promoted as UDC while working in the Air Force Station, Tambaram and on transfer on compassionate ground reverted to the post of LDC is not a ground for the respondents to deny her promotion to the post of UDC in her turn in the new unit.

14. It is well settled law by the Hon'ble Supreme Court in a *catena* of judgements that even if an employee is transferred on his/her own request from one Department to another, his/her past services in previous Department cannot be ignored for the purpose of promotion in the new Department and the question of eligibility for promotion cannot be confused with seniority as they are two different and distinct factors, Therefore, we are not in agreement with the contention of the respondents that only four years qualifying service in DSC as LDC only be counted towards eligibility for promotion to the post of UDC in the unit is not tenable in the eye of law and the same cannot be sustainable. While

considering her eligibility for promotion to the post of UDC the service rendered in the previous units right from 20.8.1997 is to be taken into account as qualifying service and she is to be considered for promotion to the post of UDC along with her seniors who have put eight years regular/qualifying service.

15. In the case of Scientific Adviser to the *Raksha Mantri and another v. V.M.Joseph (1998) 5 SCC 305* the Honble Apex Court has held as under:

"The respondent was appointed as a Lower Division Clerk on November 15, 1969 in the Ministry of Defence. Subsequently, in the same Department, he was appointed as a Store Keeper on 27th April, 1971 in the Central Ordnance Depot, Pune. He got the status of quasi permanent on 27th April, 1974 and became permanent with effect from 1st May, 1974. The respondent made a request for his transfer as a Store Keeper in the Naval Physical Oceanographic Laboratory(NPOL), Cochin, which was accepted on compassionate ground an on 6th June, 1977, he was transferred to that post, but was placed at the bottom of the seniority list of store Keepers there. on 22nd August, 1980, the respondent was promoted to the post of Senior Store Keeper.

On 15th July, 1980, a new post of Senior Store Keeper, Grade-I was created as an intermediate grade between the posts of Senior Store Keeper and Store Superintendent. One A.K. Anujan, who was the immediate senior of the respondent in the Grade of Senior Store Keeper was promoted to this intermediate post of Senior Store keeper, Grade- I on 31st August, 1982. The respondent raised a claim that he should have been promoted as Senior Store Keeper on 31st January, 1978 instead of 22nd February, 1980 and should have been further promoted to the post of Senior Store Keeper, Grade- I, on 31st August, 1982 along with his next senior A.K. Anujan. When this claim was not entertained, the respondent approached the Kerala High Court by a Writ Petition (No. O.P. 10013 of 1982-J) which was allowed on 30.7.85 and a direction was issued to the present appellants to consider the claim of the respondent for ante-dating his promotion on ad hoc basis by applying the same rules and principles on which, his immediate senior, A.K. Anujan, was promoted to the post of Senior Store Keeper, Grade- I. In pursuance of the above judgment, the case of the respondent was considered by the Review Departmental Promotion Committee on 15th October, 1985, which was the opinion that, since the respondent had completed 3 years of regular service as Store keeper commencing from 6th June, 1977, only on 7th June, 1980, he could not be promoted as Store Keeper earlier than 1980. With regard to his promotion to the post of Senior Store Keeper, Grade-I, the Departmental Promotion Committee was of the view that since under the Recruitment Rules, the respondent had completed 3 years of regular service as Senior Store Keeper only on 23rd August, 1983, the respondent could not be considered for that post as that post had, in the meantime, been taken out of the purview of the Departmental Promotion Committee and the Recruitment and Promotion Rules with regard to that post had ceased to exist with effect from 7th November, 1981.

On the basis of the decision of the Departmental Promotion Committee, the order dated 30th October, 1985 was passed by the appellants, which was challenged by the respondent before the Central Administrative Tribunal, madras Bench, which by its judgment dated 23rd February, 1988, has allowed the claim petition and issued the following directions:-

" (a) The applicant's service as Store Keeper at Pune at least from 1.5.1974 when he was made a permanent Store Keeper should be reckoned as qualifying service for the purpose of eligibility for promotion as Senior Store Keeper at NPOL, Cochin.

(b) The Review DPC should consider the applicant for ad-hoc of regular promotion as the case may be against ad-hoc/regular vacancies between 31.1.78 and 22.8.80.

(c) On the basis of the recommendations of the Review DPC III, if any, the applicant should be promoted as SSK either on ad- hoc or on regular basis by ante- dating his promotion from 22.8.80.

(d) The respondents should identify the un-filled posts of SSK-I from 1982 to date and consider the applicant for promotion as SSK-I with effect from the date he can be deemed to have put in three years of regular service as SSK either from 22.8.80 or on earlier date with effect from which the Review DPC recommends his name for regular promotion as per promotion as per

(b) above."

From the facts set out above, it will be seen that promotion was denied to the respondent on the post of Senior Store keeper on the ground that he had completed 3 years of regular service as Store keeper on 7th June, 1980 and , therefore, he could not be promoted earlier than 1980. In coming to this conclusion, the appellants excluded the period of service rendered by the respondent in the Central Ordnance Depot, Pune, as a Store Keeper for the period from 27th April, 1971 to 6th June, 1977. The appellants contended that, since the respondent had been transferred on compassionate ground, on his own request to the post of Store Keeper at Cochin and was placed at the bottom of the Seniority list, the period of 3 years of regular service can be treated to commence only from the date on which he was transferred to Cochin. This is obviously fallacious inasmuch as the respondent had already acquired the status of a permanent employee at Pune where he had rendered more than 3 years of service as a Store Keeper. Even if an employee is transferred at his own request, from one place to another, on the same post, the period of service rendered by him at the earlier place where he held a permanent post and had acquired permanent status, cannot be excluded from consideration for determining his eligibility for promotion, though he may have been placed at the bottom of the seniority list at the transferred place. Eligibility for promotion cannot be confused with seniority as they are two different and distinct factors.

This Court in [Union of India & Ors. vs. C.N. Ponnappan](#), AIR 1996 SC 764= 1996(1) SCC 524, has held that, where an employee is transferred from one unit to another on compassionate ground and is placed at the bottom of the seniority list, the service rendered by him at the earlier place from where he has been transferred, being regular service has to be counted towards experience and eligibility for promotion.

In view of this decision, with which we respectfully agree, the direction of the Tribunal that the respondent may be promoted to the post of Senior Store Keeper from an earlier date and the further direction concerning respondent's promotion to the post of Senior Store Keeper, Grade-I, do not suffer from any infirmity. That being so, the appeal has no merits and is accordingly dismissed without, however, any order as to costs."

16. From the above it is made out that past service rendered in previous departments/organisations even if an employee is transferred from one unit to another on compassionate ground and is placed at the bottom of the seniority list, the service rendered by him/her at the earlier places from where she has been transferred, being regular service has to be counted towards experience and eligibility for promotion.

17. In view of the above, we have no hesitation to hold that even if the applicant is transferred on her own request on compassionate grounds from one Air Force Station,

Tambaram to HQ Southern Naval Command, Kochi, her past services in previous Units cannot be ignored for the purpose of promotion in the new Unit while taking into account the qualifying service and the respondents are directed to take into account the applicant's previous service from the date of joining as LDC in the Air Force Station, Tambaram on 20.08.1997 as qualifying service for promotion to the post of UDC and not from the date of joining as LDC on reversion at 870A DSC Platoon, Trivandrum as contended by them in paragraph 4 of the written reply and she is to be considered for promotion as UDC along with her seniors who have put 8 years qualifying service. Applicant is also entitled for the consequential promotion to the post of Assistant if she is otherwise eligible. The same principle is to be adopted for grant of ACP/MACP as the case may be in the case of Applicant. This exercise shall be completed within three months from the date of receipt of a copy of this order.

18. With the above direction, the O.A. is allowed with all consequential benefits.
19. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

sj*

Applicant's Annexures

- Annexure A1 - A true copy of the appointment order dated 20.8.1987 issued by the Air Officer Commanding.
- Annexure A2 - A true copy of the transfer/posting order dated 8.1.2007 along with the movement order dated 5.1.2007 issued by the respondents.
- Annexure A3 - A true copy of the representation dated 11.9.2013 submitted before the office of the 3rd respondent.
- Annexure A4 - A true copy of the rejection order dated 24.10.2011 issued by the office of the 3rd respondent.
- Annexure A5 - A true copy of the proceeding dated nil/9/2013 issued by the office of the 3rd respondent.
- Annexure A6 - A true copy of the proceeding dated 27/5/2014 issued by the office of the 3rd respondent.
- Annexure A7 - A true copy of the pay fixation proforma dated 31.10.2014 issued to the applicant.

Annexures of Respondents

- Annexure R.1(a): True copy of the Civilian Personnel Routine Orders (CPRO) 73/73 as amended vide 11/75.
- Annexure R. 1(b): True copy of the willingness certificate of the applicant dated 28.12.2006.
- Annexure R. 1(c) True copy of the Joint Application for mutual transfer dated 22.6.2010.
- Annexure R. 1(d) True copy of the letter No. PAY/TECH/Corr/PF dated 24.10.2011.

Annexure R. 1(e) True copy of the letter No. CA-6/P1-870A/48
dated 27.09.2013.

Annexure R. 1(f) True copy of the letter No.277 dated 16.03.2015.

Annexure R. 1(g) : True copy of the Appendix to CPRO 82/80

Annexure R. 1(h) : True copy of the Seniority List of LDC in Defence
Security Corps.
