

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00521/2015

Thursday, this the 7th day of February, 2019

C O R A M :

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

1. Sri.K.P.Alavi,
S/o.Ali,
Passport Granting Officer (Retired),
Passport Office, Kozhikode.
Residing at 6/71 D, Ajmal Mahal,
Mannarukandi Parampa, Konott P.O.,
Kozhikode – 673 571.
2. Smt.P.K.Sudha,
W/o.P.Pavithran,
Passport Granting Officer (Retired),
Passport Office, Malappuram.
Residing at Sithara, Florican Road,
Karapamba P.O., Kozhikode – 673 010.
3. Smt.Anniamma Mani,
W/o.Mathew Varghese Vaidyan,
Passport Granting Officer (Retired),
Passport Office, Cochin.
Residing at NIT Campus,
No.D Eleven A, NIT Campus P.O.,
Calicut – 673 601.
4. M.Radha,
D/o.Kuttan,
Passport Granting Officer (Retired),
Passport Office, Kozhikode.
Residing at Ashique, Poovattu Paramba PO,
Via Medical College, Kozhikode – 673 008.
5. K.Seethala,
W/o.P.Gopinath,
Passport Granting Officer (Retired),
Passport Office, Kozhikode.
Residing at Sarang, Beypore P.O.,
Kozhikode – 673 015.

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6. E.Sarojini,
W/o.P.Kesavan,
Passport Granting Officer (Retired),
Passport Office, Kozhikode.
Residing at Saritha, Beypore P.O.,
Kozhikode – 673 015. ...Applicants

(By Advocate – Mr.Shafik.M.A.)

v e r s u s

1. Union of India
represented by Secretary to the Government of India,
Ministry of External Affairs, New Delhi – 110 001.

2. The Chief Passport Officer & Joint Secretary (CPV),
Ministry of External Affairs, New Delhi – 110 001.

3. The Under Secretary (CPV-RTI & Cadre),
CPV Division, Ministry of External Affairs,
New Delhi – 110 001. ...Respondents

(By Advocate Mr.N.Anilkumar,SCGSC)

This Original Application having been heard on 24th January 2019, the Tribunal on 7th February 2019 delivered the following :

O R D E R

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

This is the second round of litigation by the applicants. Earlier they had approached this Tribunal by filing O.A.718/2013 which was disposed of by this Tribunal along with similar O.As vide common order dated 21.8.2014. The relevant part of the aforesaid order reads as under :

20. We take note that in the initial stages the Central Passport Organization under the Ministry of External Affairs had engaged daily rated clerks on the basis of selection from the lists furnished by the Employment Exchanges. Recruitment of Lower Division Clerks through the Staff Selection Commission came into vogue only at a later stage. Even then also the daily rated casual clerks already engaged continued in service. Such daily rated persons were subsequently regularized in

service. According to the respondents there are over 1,000 such daily rated clerks all over the country who were working on casual basis and got regularized subsequently. We further note that apart from the orders relied on by the respondents 1 to 3 in OA No. 609 of 2012 a few other orders also were passed by this Tribunal granting seniority and other service benefits retrospectively to those employees who were initially engaged on casual basis, dating back to their initial engagement. Some of those orders were subjected to judicial review by Hon'ble High Court without success. As conflicting decisions have been rendered by this Tribunal in different cases relating to the seniority of persons who were initially engaged as daily rated clerks, three OAs viz. OA Nos. 75 of 2010, 82 of 2010 and 196 of 2010 were referred to the Full Bench of this Tribunal. Those cases were jointly heard and a common order dated 12.8.2011 was passed by the Full Bench holding that the persons who were initially appointed on daily rated basis cannot claim seniority from the date of such initial engagement. Nevertheless, the full bench of this Tribunal granted other service benefits with retrospective effect from the date of their initial engagement.

21. Respondents Nos. 1 to 3 in OAs Nos. 609 of 2012 and 92 of 2013 and the applicants in OAs Nos. 718/2013, 721/2013, 790/2013, 180/38/2014, 180/104/2014 and 180/311/2014 bank heavily on the earlier orders of this Tribunal conferring seniority of the applicants therein from the date of their initial employment and further on the strength of the orders of Hon'ble High Court dismissing the Writ Petitions challenging those orders.

22. We note that applicants in many of the OAs under consideration before us have already retired from service. Some are on the verge of retirement. Meanwhile most of the genera of officials who were initially appointed as daily rated clerks after their regularization have earned promotions, reaching up to the rank of Passport Granting Officers/Assistant Passport Officers and some could reach only up to the level of Superintendents. So is the case of the direct recruits. No doubt, upsetting the long enjoyed seniority of such officials will cause heart burn and humiliation to many of them. Therefore, it is high time that the controversy has to be brought to a quietus which requires a broad consensus and sense of equity, justice and over and above, the willingness to accept realities.

23. It appears from the reply filed by the official respondents 4 to 6 in OA No. 609 of 2012 that the Ministry of External Affairs has accepted the Full Bench decision of this Tribunal and has decided to implement the said decision. It further appears that none of the aggrieved parties to the common order of the Full Bench have challenged it before any forum.

24. In the circumstances and in order to bring quietus to the controversy we are inclined to accept the stand taken by the 1st respondent Ministry which we consider as their policy decision to give effect to the Full Bench decision dated 12.8.2011 in OAs Nos. 75 of 2010, 82 of 2010 and 196 of 2010 rendered by this Tribunal. However, we direct the 1st respondent that while doing so not to disturb the rights of those employees who have secured orders of this Tribunal which have been confirmed by the High Court, and attained finality, prior the date of the full bench's order.

25. Accordingly, we are inclined to dispose of these OAs with the

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above direction to the 1st respondent Ministry. We hope that the 1st respondent Ministry will implement the decision at the earliest, reckoning the rights accrued to the different persons who will be affected in the process. The OAs are disposed of accordingly. No order as to costs.

2. In the present O.A the applicants are aggrieved by Annexure A-1 order dated 10.11.2014 issued in pursuance to Annexure A-10 order of this Tribunal dated 21.8.2014 rejecting their claim for seniority and consequent promotions with effect from the date of initial entry as daily rated Clerks in 1977. The reliefs sought by the applicants in this O.A are as under :

1. To call for the records relating to Annexure A-1 to Annexure A-11 and to quash Annexure A-1 being illegal, arbitrary and violative of the Articles 14 and 16 and the rules relating to the subject.

2. To declare that the applicants are entitled to be granted seniority as LDC with effect from the date of initial entry on daily wages in 1977 on par with similarly situated officials.

3. To direct the respondents to grant seniority to the applicants with effect from 11.10.1977, 3.10.1977, 3.10.1977, 21.3.1977, 2.5.1977 and 4.10.1977 with all consequential benefits including all attendant promotions, actual pay fixation and arrears of pay and to correct the seniority list and place the applicants in the correct spots based on the date of initial entry.

4. To issue such other appropriate orders or directions this Hon'ble Court may deem fit, just and proper in the circumstances of the case.

5. To grant the costs of this Original Application.

3. The brief facts are : The applicants retired from service while working as Passport Granting Officers in the offices in Kerala. They joined the services as daily rated Clerks in 1977, on their names being sponsored by the Employment Exchange. However they were regularized as Lower Division Clerks (LDCs) only with effect from 8.12.1978. It is submitted that till the end of 1989, there were no regular appointments and these Passport Offices were engaging casual workers on daily wages, recruited

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through Employment Exchanges, on need basis. On creation of regular posts by the Ministry, they were regularized as LDCs from the date on which the result of the Departmental Examination conducted for them was announced, without taking into consideration the casual labour period of service. This Tribunal vide its orders in Annexure A-3 to Annexure A-5 has repeatedly allowed the claims made by the applicants therein by granting seniority with effect from the date of entry into service under the respondents and directed that further promotions to the higher cadres be also regulated as per the revised seniority. It is pointed out that all these orders were complied with.

4. The applicants submit that the claims of the applicants were kept pending for a long time by the respondents, Annexure A-1 order was issued without application of mind and in violation of the equality clauses enshrined in the Constitution of India.

5. As grounds they submit that they were entitled to similar treatment as has been done for those who have joined along with them way back in 1978 itself with effect from their date of entry. They possess the same qualification. They have relied on the judgment of the Hon'ble Supreme Court in **State of Karnataka & Ors. v. C.Lalitha reported in 2006 (2) SCC 747** wherein it has been held thus :

“ Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court that would not mean that persons similarly situated should be treated differently. It is furthermore well-settled that the question of seniority should be governed

by the rules. It may be true that this Court took notice of the subsequent events, namely, that in the meantime she had also been promoted as Assistant Commissioner which was a Category I Post but the direction to create a supernumerary post to adjust her must be held to have been issued only with a view to accommodate her therein as otherwise she might have been reverted and not for the purpose of conferring a benefit to which she was not otherwise entitled to.”

6. Per contra the respondents in their reply statement have submitted that the seniority of nearly 1000 officials, who were initially recruited as Daily Rated Clerks and then appointed as LDC on regular basis, has been fixed from the date of their regular appointment/regularization and not from the date of initial engagement as per rules except in the case of applicants in R.A.No.12/2008 in O.A.No.675/2007, O.A.No.49/2008, O.A.No.82/2008 and O.A.No.29/2009 who were given seniority from the date of initial engagement in compliance with the order of this Tribunal. Accordingly those officials had been granted seniority from the date of initial engagement, they having secured orders of this Tribunal which have been confirmed by the Hon'ble High Court and attained finality, prior to the date of the Full Bench's order ie. 12.8.2011. The Full Bench of this Tribunal vide its common order dated 12.8.2011 in O.A.No.75/2010, O.A.No.82/2010 and O.A.No.196/2010 held that “*the applicants will be entitled for all consequential benefits other than seniority and monetary benefits, as was given to the applicants in O.A.No.1557/1998, if not already granted*”. Thus counting of casual service for all consequential benefits including seniority were given only to certain officials.

7. In the rejoinder the applicants state that though the larger Bench decision restricted grant of seniority they point out that all the applicants

had retired from service and therefore granting them seniority will result only in re-arrangement in the seniority list which will not cause hardship to anyone. Further they submitted that they were the only officials who were left out from 1977 batch.

8. In the additional reply statement filed by the respondents, they have relied on the order of this Tribunal in O.A.No.843/2009 dated 15.3.2011 whereint it is held that "*since the applicant is already retired and her only claim alive for consideration is for service benefits as was given to other employees. The seniority question has no relevance as of now as the applicant had already retired*". Further it is categorically clarified that the applicant will be entitled for notional fixation from 21.3.1977 counting her service with effect from 21.3.1977 and her last pay be fixed notionally and her pensionary benefits be calculated and paid. The applicant therein was not entitled for any other benefits. It is pointed out that this Tribunal in 8 other O.As of identical nature took similar stand.

9. We have heard Shri.Shafik M.A., learned counsel for the applicant and Shri.Vineeth Komalachandran representing Shri.K.I.Mayankutty Mather, learned counsel for the respondents. All pleadings both oral and documentary are perused.

10. The point at issue in this case is regarding the claim of the applicants to consider their service dating back from the days they were engaged on casual basis for seniority as well as consequent promotions. The

respondents replied to this contention that they are agreeable only to consider their seniority from the date they were regularised as LDCs. The various judgments referred to in the contentions raised by both parties do not give a uniform verdict on the subject. Hence we have delved into the issue at little deeper. We cannot ignore the fact that the applicants are all retired employees and the claim they are making is in support of their casual engagement dating back 1977. As they have all retired long ago from service, the seniority which they are claiming has no relevance whatsoever except in terms of marginal monetary benefits. Hence we feel that the order of this Tribunal in O.A 843/09 given out on 15.3.2011 appears to be the most reasonable way of addressing the issue. We will not get into adjudicating the seniority question as it has no relevance now. However, we categorically state that the applicants will be entitled for notional fixation with effect from the dates of original engagement as given in the Original Application which have not been disputed by the respondents. The pensionary benefits will necessarily have to be recalculated and disbursed to the applicants within six months from the date of receipt of a copy of this order.

11. The Original Application is disposed of with the above direction. No costs.

**ASHISH KALIA
JUDICIAL MEMBER**

**E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER**

List of Annexures in O.A.No.180/00521/2015

1. Annexure A-1 - True copy of the order No.V.IV/441/26/2012 dated 10.11.2014 issued by the 3rd respondent
2. Annexure A-2 - True copy of the Memorandum No.101(2)AD/Ker/77 dated 26.9.1977 issued by the Regional Passport Officer, Ernakulam
3. Annexure A-3 - True copy of the order dated 16.6.2008 of this Tribunal in R.A No.12/2008 in O.A No.675/2007
4. Annexure A-4 - True copy of the order dated 27.8.2008 of this Tribunal in O.ANo.49/2008
5. Annexure A-5 - True copy of the order dated 23.10.2008 of this Tribunal in O.A No.82/2008
6. Annexure A-6 - True copy of the Order No.CDR-II/441/03/2008 dated 27.8.2012 issued by the Deputy Passport Officer of the 2nd respondent
7. Annexure A-7 - True copy of the order No.CDR-II/441/03/2009 dated 31.12.2012 issued by the Deputy Passport Officer of the 2nd respondent
8. Annexure A-8 - True copy of the representations submitted by the 3rd applicant before the 2nd respondent
9. Annexure A-9 - True copy of the representation dated 14.6.2013 by the 1st applicant
10. Annexure A-10 - True copy of the order dated 21.8.2014 of this Tribunal in O.ANo.609/2012 and connected cases
11. Annexure A-11 - True copy of the representation dated 11.11.2014 submitted by the 1st applicant.
