


**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. NO.1935/2003

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

This, the 11th day of August, 2004.

Mahendra Kumar Goyal S/O Rameshwar Dass,
R/O G-22/142, Sector-7, Rohini,
New Delhi-110085.

... Applicant

(By Shri K. K. Rai with Ms. K. Iyer, Advocates)

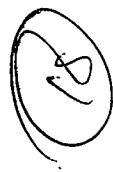
-versus-

1. The Central Administrative Tribunal,
Principal Bench through its
Principal Registrar,
61/35, Copernicus Marg,
New Delhi-110001.
2. Shri K. K. Narayanan,
Section Officer/Court Officer,
Central Administrative Tribunal,
Ernakulam Bench,
Ernakulam.
3. Shri Kailash Chand Goyal,
Section Officer/Court Officer,
Central Administrative Tribunal,
Jodhpur Bench, Jodhpur.
4. Shri P. T. Jhonson,
Jr. Accounts Officer,
Central Administrative Tribunal,
Ernakulam Bench, Ernakulam.
5. Shri S. A. Rozaire,
Section Officer/Court Officer,
Central Administrative Tribunal,
Chennai Bench, Chennai.
6. Shri S. K. Sekhar,
Section Officer/Court Officer,
Central Administrative Tribunal,
Chennai Bench, Chennai.
7. Shri K. Selvaraji, Jr. Accounts Officer,
Central Administrative Tribunal,
Chennai Bench, Chennai.



8. Shri G. H. Jana,
Assistant,
Central Administrative Tribunal,
Calcutta Bench, Kolkata.
9. Shri A. D. Pyne,
Assistant,
Central Administrative Tribunal,
Calcutta Bench, Kolkata.
10. Smt. S. Santhi,
Upper Division Clerk,
Central Administrative Tribunal,
Chennai Bench, Chennai,
11. Shri K. Krishnaveni,
Upper Division Clerk,
Central Administrative Tribunal,
Chennai Bench, Chennai,
12. Shri N. K. Saha,
Section Officer/Court Officer,
Central Administrative Tribunal,
Calcutta Bench, Kolkata.
13. Shri Subhash Chand,
Assistant,
Central Administrative Tribunal,
Principal Bench, New Delhi.
14. Shri Gyan Chand,
Section Officer/Court Officer,
Central Administrative Tribunal,
Jodhpur Bench, Jodhpur.
15. Shri Kulbir Singh,
Section Officer/Court Officer,
Central Administrative Tribunal,
Principal Bench, New Delhi.
16. Shri A. J. Dickson,
Assistant,
Central Administrative Tribunal,
Ahmedabad Bench, ahmedabad.
17. Shri B. V. Warang,
Section Officer/Court Officer,
Central Administrative Tribunal,
Mumbai Bench, Mumbai.
18. Shri Gullshan Rai,
Section Officer/Court Officer,
Central Administrative Tribunal,
Chandigarh Bench,
Chandigarh.





19. Shri K. Senapathy,
Section Officer/Court Officer,
Central Administrative Tribunal,
Chennai Bench,
Chennai.
20. Smt.A. Thomeena,
Assistant,
Central Administrative Tribunal,
Chennai Bench,
Chennai.
21. Shri K.M. Rabha,
Assistant,
Central Administrative Tribunal,
Guwhati Bench,
Guwhati.
22. Shri S.K. Das,
UDC,
Central Administrative Tribunal,
Guwhati Bench,
Guwhati.
23. Shri R.N. Singh,
U.D.C.,
Central Administrative Tribunal,
Cuttack Bench,
Cuttack.
24. Shri M.B. Manjrekar,
Assistant,
Central Administrative Tribunal,
Mumbai Bench,
Mumbai.
25. Shri Hari Singh Kaushal,
Assitant,
Central Administrative Tribunal,
Chandigarh Bench,
Chandigarh.
26. Shri K.C. Mishra,
U.D.C.,
Central Administrative Tribunal,
Cuttack Bench, Cuttack.
27. Shri B.D. Behra,
Section Officer/Court Officer,
Central Administrative Tribunal,
Cuttack Bench, Cuttack.
28. Shri K.M. Patel,
U.D.C.,
Central Administrative Tribunal,
Ahmedabad Bench,
Ahmedabad.



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29. Shri K.K.Pukhral,
Assistant,
Central Administrative Tribunal,
Principal Bench,
New Delhi.
30. Shri Dinesh Chander Singh,
Central Administrative Tribunal,
Principal Bench,
New Delhi.

... Respondents

(By Advocates Shri N.S. Mehta for Official Respondents
Shri Yashpal for Shri M.K. Bhardwaj, for
Respondent No.15.)

O R D E R

Hon'ble Shri V. K. Majotra, VC(A) :

Applicant is aggrieved by the draft seniority list of UDCs in the Central Administrative Tribunal (CAT) on centralized basis (as on 1.11.1989) circulated vide Annexure P-1 dated 31.12.2002. This seniority list was finalised by the respondents on 5.11.2003 (Annexure R-III-A to the counter reply). Applicant is also aggrieved by the alleged failure on the part of the respondents to absorb him as UDC w.e.f. 1.11.1989 despite his undertaking/written option for absorption as UDC. As such, he has sought his absorption in the cadre of UDCs w.e.f. 1.11.1989 with consequential benefits of seniority etc.

2. At the outset, the learned counsel of the official respondents Shri N.S.Mehta took exception that this OA is time barred having been filed with delay of about 12 years as while the applicant had been absorbed as UDC w.e.f. 1.1.1993, he submitted his representation thereagainst on 18.11.2002. In this connection, the learned counsel of applicant Shri K.K.Rai stated that the seniority list of UDCs in CAT on centralized basis w.e.f. 1.11.1989 (retrospective effect) was circulated by the respondents vide letter dated 31.12.2002 (Annexure P-1) for the first time in terms of



directions of the Court orders dated 18.4.2001 and 2.9.2001 passed by the Ernakulam Bench of this Tribunal in OA No.160/2000 and MA No.632/2002 respectively in the matter of **M.K.Balachandran Pillai v. Central Administrative Tribunal & Ors.** The said seniority list was finalised by the respondents on 5.11.2003 (Annexure R-III-A to the counter reply) in terms of the directions of the Tribunal in the aforesaid case, read with the decision of the Hon'ble Supreme Court in the matter of **M.Ramachandran v. Govind Vallabh & Ors.** (CA No.2704/1997). As such, cause of action arose on 5.11.2003 when the final seniority list was issued. He further pointed out that no draft/final seniority list in the grade of UDCs in CAT as on 1.11.1989 on all India basis had been circulated. The earlier final seniority list of UDCs in CAT on centralized basis (as on 31.3.2000) was issued vide letter dated 7.11.2000 (Annexure P-22A) which has been superseded by the latest draft/final seniority list which has been assailed in the present case.

3. In view of the facts brought out on behalf of the applicant in regard to issue of limitation which have not been contradicted effectively, the objection as respects limitation is rejected.

4. The learned counsel of the applicant stated that the applicant was appointed as LDC through the Staff Selection Commission w.e.f. 25.2.1978 in the Directorate of Statistics and Intelligence, Central Excise & Customs, Ministry of Finance (Annexure P-2 dated 7.3.1978). In response to circular dated 19.4.1989 issued by CAT, Principal Bench for appointment of UDC in the Principal Bench of CAT on deputation basis, applicant was selected for the post of UDC in CAT on the basis of an interview pursuant to the aforesaid circular. Applicant joined the respondents w.e.f. 1.8.1989 vide his

joining report dated 1.8.1989 (Annexure P-11). Vide his letter dated 7.8.1989 (Annexure P-12 colly.) applicant sought absorption in the Principal Bench of CAT as UDC. The learned counsel of applicant submitted that on the basis of applicant's letter seeking absorption in CAT as UDC, he ought to have been absorbed in the grade of UDC w.e.f. 1.11.1989 in terms of proviso of rule 5(1) of the Central Administrative Tribunal (Group 'B' & 'C' Miscellaneous Posts) Recruitment Rules, 1989 (hereinafter referred to as the RRs) and his seniority should have been determined as per the provisions of rule 5(2). The learned counsel further pointed out that applicant had been accorded *pro forma* promotion as UDC in his parent department vide Annexure P-15 dated 22.6.1992 w.e.f. 10.4.1990. Later on applicant was promoted to the post of Assistant on *ad hoc* basis on 31.7.1995 (Annexure P-17) and was regularized as such w.e.f. 6.9.1995 (Annexure P-18). In support of applicant's claim to consider his seniority as UDC by taking into cognizance his past service as UDC in his parent department and also his eligibility under the rules for consideration for promotion to the post of UDC, the learned counsel of the applicant relied upon the following :

- (1) CAT, Ernakulam Bench order dated 18.4.2001 in OA No.160/2000 (**M. K. Balachandran Pillai v. Registrar, CAT, Principal Bench & Ors.**); and
- (2) Hon'ble Supreme Court's decision dated 21.9.1999 in CA No.2704/1997 (**M. Ramcahndran v. Govind Vallabh & Ors.**).

5. In the end, the learned counsel pointed out that respondents had not considered the applicant for absorption immediately on his application for absorption as the respondents had taken a decision that "the question of absorption of a deputationist may be gone into

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only after a year or his working and assessing his work and entry in ACR." The learned counsel stated that such a decision on the part of the respondents was *de hors* the rules and the applicant could have been considered for absorption immediately after he made application for absorption.

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6. Shri N.S.Mehta, the learned counsel for official respondents maintained that while a deputationist has no vested right for absorption, the applicant was absorbed as UDC on a permanent basis in CAT w.e.f. 1.1.1993 vide Annexure R-I dated 14.1.1993. He further stated that seniority has to be related to regularization of services of the government employee. Applicant's seniority as such has to be related to 1.1.1993 when he was absorbed on a permanent basis. The learned counsel also contended that respondents do have a right to consider absorption of a deputationist after watching his work for a reasonable period, say, one year.

7. Respondents 8 and 9 (Shri G. H. Jana and Shri A. D. Pyne) have stated in their counter reply that assuming that the applicant was appointed to the post of UDC w.e.f. 10.4.1990 in his parent department on regular basis, respondents 8 and 9 had already been absorbed in CAT w.e.f. 1.11.1989 and both were promoted as UDCs w.e.f. 19.2.1988 in their parent department. As such, applicant cannot have any precedence over these respondents. Shri M.K.Bhardwaj, learned counsel for respondent No.15 adopted the arguments made on behalf of the official respondents.

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8. We have considered the respective contentions raised on behalf of the parties and also perused the material on record and records produced by the official respondents.

9. Admittedly, applicant had joined the respondents as UDC after an interview w.e.f. 1.8.1989 on deputation basis. He had sought his absorption as UDC with the CAT by his letter dated 7.8.1989 in terms of respondents' circular dated 10.7.1989. Applicant was not considered for absorption in view of a decision taken by the Chairman, CAT on 27.5.1990 (Annexure R-II) to the effect that question of absorption of a deputationist would be considered after a year of his functioning and assessing his performance and entries in ACRs. Respondents have not been able to establish that this decision was taken in terms of any rules/instructions on the subject. Non-consideration of the applicant for absorption as UDC pursuant to respondents own circular inviting applications for absorption, particularly when the applicant was eligible for absorption as UDC, is against the relevant rules and instructions. Such action of the respondents is unsustainable.

10. On perusal of the final seniority list dated 5.11.2003, we have to observe that while applicant was not considered for absorption as UDC as he had not completed one year of service in CAT, certain other persons such as Sl. No.46 Shri K.K.Pukhral and Sl. No. 47 Shri Dinesh Chandra Singh who had joined CAT on 5.12.1988 as UDCs were considered for absorption w.e.f. 1.11.1989 before completing one year of service in CAT. Not only that applicant had been discriminated against by not being considered for

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absorption as UDC within one year of his joining CAT as UDC on deputation basis, respondents' decision in this behalf for considering persons for absorption only after a service of one year in CAT is against the spirit of the rules.

11. In the case of **M.K.Balachandran Pillai** (supra) although he had been promoted on 1.2.1983 as a Lower Division Assistant in his parent department, which was analogous to the post of UDC in the Central Government, on his own request he had come on deputation to CAT on 7.8.1986 on the lower post of LDC. He was later on absorbed in CAT as UDC on 1.11.1989. It was held in that case that his regular service prior to 18.11.1987 as UDC or an equivalent post in his parent department would not get wiped out just because he had initially come on deputation as LDC. The related seniority list was set aside to the extent it denied him the benefit of his past service in his parent department in an analogous post. It was directed that he should be assigned correct seniority taking into account the period of holding an equivalent or higher post by him in his parent department under rule 5(2) and its proviso with consequential benefits. It is appropriate to reproduce rule 5 of the RRs, thus :

“5. Absorption/regularization of existing employees :

(1) Notwithstanding anything contained in the provisions of these rules, the persons holding the posts of Court Officers/Section Officers, Hindi Translator, Assistant, Junior Librarian, Care-Taker, Upper Division Clerk/Receptionist/Store-Keeper and Lower Division Clerk on the date of commencement of the rules either on transfer or on deputation basis or, as the case may be, on direct recruitment basis and who fulfill the qualifications and experience laid down in the rules and who are considered suitable by the Departmental Promotion Committee shall be eligible for



absorption/regularization in the respective grade subject to the condition that such persons exercise their option for the absorption and that their parent Departments do not have any objection to their being absorbed in the Tribunal.

- (2) The Seniority of officers mentioned in sub-rule (1) shall be determined with reference to the dates of their regular appointment to the posts concerned :

Provided that the seniority of officers recruited from the same source and in the posts held by them in the parent Department shall not be disturbed.

- (3) The suitability of persons for absorption may be considered by a Departmental Promotion Committee."

12. In the case of **M. Ramachandran** (supra) the Hon'ble

Supreme Court held as follows :

"We are of the considered opinion that Sub-rule (2) of Rule 5 is the relevant rule relating to the determination of the seniority of the officers recruited to the service under Sub-rule (1) of Rule 5. The seniority of such recruited officers is required to be determined with reference to the dates of their regular appointment to the post. The proviso to Sub-rule (2) shall cover the case of such officers whose seniority cannot be determined under Sub-rule (2) as is the present case of the persons appointed/ recruited on the same date. In such a case the seniority of the officers recruited from the same source has to be determined by giving them the benefit of the equivalent post held by them in their parent departments. Sub-rule (2) and its proviso is based upon the general principle of service jurisprudence. It is not correct to say that the rules do not provide any method of determining the seniority of the persons recruited to the service and that in the absence of there being specific rule, resort be had to the Official Memorandum relied upon by the respondents. Seniority is a relevant term having reference to the class, category and the grade to which the reference is made. Length of service is a recognized method of determining the seniority. Such length of service shall have reference to the class, category or grade which the parties were holding at the relevant time. It, therefore, follows that total length of service is not relevant for determining the seniority but length of service to a particular class, category or grade is relevant consideration for the purposes of counting the period with respect to length of service for the purposes of determining the seniority. In other words the period of holding of the equivalent post in the parent department would be the relevant period to be taken note of for the purposes of determining the seniority under Rule 5 (2) and its proviso. Any other interpretation would be against the settled rules of service jurisprudence and is likely to create many

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anomalies resulting in failure of justice and defeating the acquired rights of the civil servants based upon their length of service. A perusal of the Rules does not, in any way, show and rightly so that the rule making authority had ever intended to take away the benefit of the length of service of a person in his parent department before his deputation and absorption in the service.

We are of the opinion that the Tribunal has taken a very casual approach while passing the order impugned in this appeal and completely ignored the basic principles of service jurisprudence as confirmed and applied by this Court by way of pronouncements in various cases, some of which have been noted hereinabove. We are of the view that all the employees recruited in the service under Rule 5(1) are entitled to the benefit of the service on equivalent post in their parent departments.

Under the circumstances, the appeal is allowed and the order impugned is set aside. The official-respondents are directed to finalise the seniority list of all the employees recruited in the service under Rule 5(1) of the Rules strictly applying the provisions of Sub-rule (2) and its proviso keeping in mind the observations made hereinabove. All orders passed consequent upon the order of the Tribunal impugned herein shall be deemed to be *non-est* and not given effect to. Fresh seniority list be finalised at the earliest and if possible within a period of three months from today. Till the finalisation of the seniority list, the parties shall be permitted to hold the posts presently held by them."

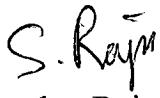
The ratios of these cases are squarely applicable to the facts of the present case. Although the applicant was accorded *pro forma* promotion as UDC in his parent department later on w.e.f. 10.4.1990, yet service with effect from that date has to be given cognizance for purposes of determining his seniority in the grade of UDC in CAT. However, the applicant had acquired eligibility for the post of UDC, having rendered service of eight years as LDC on 7.3.1986 and as such, he would have been considered for appointment as UDC in the parent cadre on that date. The effect of date of eligibility of applicant for promotion on post of UDC will have a further positive effect for determining his seniority as UDC.

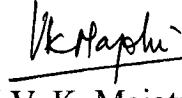


In any case, applicant is certainly entitled for absorption as UDC in CAT w.e.f. 1.11.1989 as has been done in several other cases including those of **M.R.Balachandran Pillai** (supra) and **M.Ramachandran** (supra).

13. In result, applicant should be considered for absorption and regularization of his services in UDC cadre w.e.f. 1.11.1989 in terms of rule 5(1) and 5(2) and proviso thereto of the RRs. He should be accorded seniority and consideration for further promotion, if eligible, on allocation of seniority as UDC w.e.f. 1.11.1989.

15. The OA is allowed in the above terms. No costs.


(Shanker Raju)
Member (J)


(V. K. Majotra)
Vice-Chairman (A)
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/as/