

(2020) 03 CAT CK 0071

In the Central Administrative Tribunal

Case No : Original Application No. 1768 Of 2016

Sheo Kumar

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 17-03-2020

Acts Referred:

CAT (Group B&C Misc. Posts) Recruitment Rules, 1989 — Rule 5

Citation : (2020) 03 CAT CK 0071

Hon'ble Judges : Pradeep Kumar, Member (A); Vijay Lakshmi, Member (J)

Bench : Division Bench

Advocate : A.K. Pandey, Krishan Kumar Mishra, Gyanendra Singh, Rajinder Nischal

Final Decision : Dismissed

Judgement

Pradeep Kumar, Member (A)

1. Applicant was promoted as Deputy Registrar on regular basis vide order dated 20.12.2017 and is presently working in Central Administrative Tribunal (CAT) at Allahabad. He is aggrieved at his wrong fixation of seniority as UDC, which was circulated on 16.12.2013 and filed this OA where respondent No.1 is DOP&T, respondent No.2 is Principal Registrar, CAT, Principal Bench, respondent No.3 is Registrar of CAT, Allahabad Bench and there are 16 private respondents also from respondent No.4 to 19.

Applicant claims that he should be placed above one Sh. D.V.Lokeshwara Rao (private respondent No.4 herein) in the seniority list of Section Officer/Court Officer (SO/CO) and above Sh. Ravinder Kumar (respondent No.5 herein) in the seniority list of Assistants.

2. Applicant seeks benefit of seniority in terms of following two judgments:

(a) Judgment of CAT, Principal Bench in OA No.48/2010 dated 25.01.2011 (Khushal Singh vs. CAT and ors.)

(b) Judgment by CAT, Chennai Bench in OA No.1523/2010 dated 26.03.2013 (K.Selvaraji vs. UOI & ors.)

3. Applicant had initially joined the employment as Copyist in the District Court, Azamgarh w.e.f. 03.07.1981. He was posted to Allahabad judgeship on mutual transfer basis in this post w.e.f. 19.03.1985. Thereafter, he came on deputation to CAT, Allahabad on the post of LDC w.e.f. 01.02.1988.

He was promoted to the post of Appeals Clerk in his parent department under Next Below Rule (NBR) in the pay scale of Rs.430-685 (revised to Rs.1200-2040) w.e.f. 04.08.1988. This pay scale is analogous to UDC in CAT. Accordingly, he was granted pay protection at the stage of Rs.1010 p.m. w.e.f. 04.08.1988 vide orders issued in April 1989 while working in CAT in the scale of LDC.

Later on, applicant was promoted and absorbed to the post of UDC by CAT, Allahabad w.e.f. 15.02.1990 in the pay scale of Rs.1200-2040.

4. Applicant pleads that initially the seniority lists were prepared benchwise. Subsequently based on the ratio laid down by Hon^{ble} Apex Court in the case of M.Ramachandran vs. Govind Ballabh & ors., (1999) 8 SCC 592, seniority lists were prepared on centralised basis i.e. for all benches combined. The direction by Hon^{ble} Apex Court read as under:

"13. 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.

14. 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."

Based on judgments by different benches, the date of absorption of large number of UDCs including the applicant, was taken to be 01.11.1989 instead of 15.02.1990. This 01.11.1989 appears to have some link with Recruitment Rules (RRs) for CAT which were notified on 20.09.1989.

4.1 In the final seniority list of UDC so prepared on 31.08.2005/02.09.2005, the applicant was placed at Sl.No.48, i.e., below Sh. T.N. Kushwaha (Sl. No.33) as well as Sh. Vijay Kumar Srivastava (Sl. No.34). These two UDCs were promoted

as Assistant w.e.f. 01.10.1995 and as Section Officer w.e.f. 17.01.2007.

Applicant felt aggrieved at this wrong fixation of his seniority and consequent non-promotion and he filed OA No.794/2007 (Sheo Kumar vs. UOI), impleading these two employees also as private respondents No.5 & 6 and claimed seniority above both of them and promotion as Assistant and Section Officer at par with them.

4.2 The Tribunal relied upon a letter dated 23.07.1994 issued by District Judge, Allahabad, wherein applicant was shown senior to Sh. T.N. Kushwaha in the parent department. The draft seniority list of UDCs of CAT, Allahabad Bench was thereafter issued on 20.01.1995, wherein applicant was shown senior to both Sh. T.N. Kushwaha and Sh. V.K. Srivastava and for all three, the date of absorption in CAT, Allahabad, as UDC was shown as 15.02.1990.

This order of seniority of these three officials was thereafter, correctly reflected in the centralised draft seniority list of UDCs issued by Principal Registrar, CAT, Principal Bench on 03.06.2004. This list showed the date of absorption as LDC as 01.11.1989 and as UDC as 15.02.1990 for all three of them.

The Tribunal also took note of the counter reply filed by official respondents in another OA No. 237/1996 (filed by said Sh. V.K. Srivastava) that applicant herein, was drawing pay in the scale of UDC w.e.f. 04.08.1988, whereas Sh. T.N. Kushwaha and Sh. V.K. Srivastava were drawing this scale w.e.f. 23.05.1989 and 01.09.1989 respectively.

4.3 This OA was allowed vide order dated 19.05.2009. The observations of the Tribunal and operative part of judgment is reproduced below:

"13. It is beyond doubt, from the perusal of above pleadings, that said ?Interse-Seniority List? issued by Tribunal - Allahabad Bench - vide Office Order No.15/95-Annexure-A-14/Comp.II and Draft Seniority List dated 3.6.2004 ?Annexure A-1/Compilation II? was never challenged/disputed or otherwise modified/ revoked.

Xxx xxx xxx

28. (i) Consequently, impugned promotion orders dated 6.6.2007 (Annexure A-1/Compilation I) and 29.9.2005 (Annexure A-2/Compilation I) and centralized seniority list dated 31.8.2005/2.9.2005 (Annexure A-3/Compilation I) are set aside only to the extent it relates to the Applicant and Respondent Nos. 5 and 6 with a ?directions? to decide inter-se seniority afresh between them in accordance with Law; we further direct that in case the applicant (on fresh determination of ?Seniority?) is found senior to Respondent Nos. 5 and/or 6, he shall be placed accordingly in the seniority list and entitled to all consequential privileges, benefits, etc.- treating him notionally promoted with effect from the date of issue of impugned promotional Orders - treating the impugned Centralized Seniority List dated 31.08.2005/2.09.2005 (Annexure 3/Compilation II) deemed amended from the date of its inception at par with others shown in the impugned seniority list/promotional orders (in question). We further provide

that higher emoluments-(if any)-paid to Respondent No. 5 & 6-on the basis of impugned orders/List shall not be recovered nor they shall be required to be reverted to lower posts.

(ii) Any of the contesting parties may file, within 6 weeks from today, a certified copy of this order before Principal Registrar, Central Administrative Tribunal - Principal Bench, New Delhi for necessary action and to ensure finalization of ? seniority list?, in accordance with law- within ?four months? of receipt of certified copy of this order.

O.A. allowed subject to the above directions. No costs."

In compliance to these orders, a final seniority list of UDC absorbed in CAT was issued on 30.09.2010.

4.4 Meanwhile, during pendency of OA No. 794/2007, the applicant was also granted notional promotion to the post of Assistant and SO/CO w.e.f. 01.01.1999 and 01.01.2008 respectively.

4.5 Sh. T.N. Kushwaha felt aggrieved at the judgment in OA No. 794/2007 and filed Writ No. 50588/2009 (T.N.Kushwaha vs. Sheo Kumar) in Hon?ble High Court of Allahabad, which is reported to be still pending.

5. It appears there were certain other OAs also relating to disputes for seniority of UDC, e.g. OA No. 333/2010 (Sapan Kumar vs. UOI), OA No. 210/2008 (P.C. Dutta vs. UOI), OA No. 01/2001 (T. N. Rao vs. UOI), OA No. 1935/2003 (M.K. Goyal vs. Principal Registrar, CAT) and OA No. 122/2001 (D.J. Panchal vs. UOI). The seniority list of UDCs in CAT as of 01.11.1989 was accordingly, revised and issued by Principal Registrar, CAT on 01.12.2010 and was in turn circulated by CAT, Allahabad on 07.12.2010. In accordance with this list, the seniority order was shown as under:

S. No.

Name S/Sh.

Date of Birth

Post held in parent department on regular basis with scale and pay

Date of absorption in the grade of UDC in CAT

(1)

(2)

(3)

(6)

(8)

1 to 19

Xxx xxx xxx

20

D.V.Lokeshwara Rao,

BA

30.05.1951

Examiner 05.04.1975 250- 430, Asstt. SO = UDC 24.02.1989 - (1230-2330)

01.11.1989 UDC

21 to 34

Xxx xxx xxx

35

Sheo Kumar,

BA

01.01.1961

Copiest -

03.07.1981 (Rs.354-550) (Rev. 950-1500 w.e.f. 01.01.1986) (Rev. 1200-2040 w.e.f. 04.08.1988)

01.11.1989 UDC

36

T.N.Kushwaha,

BA

01.08.1957

Copiest -

09.01.1980 (Rs.200-320) (Rev. 950-1500 w.e.f. 01.01.1986)

01.11.1989 UDC

37.

V.K.Srivastava,

MA

16.08.1956

Copiest - 01.02.1980 (Rs.200-320) (Rev. 950-1500 w.e.f. 01.01.1986)

01.11.1989 UDC

38 to 43

Xxx xxx xxx

44

K.Selvaraji,

B.Sc.

05.06.1955

LDC 20.01.1981 NBR 10.02.1987 - UDC

01.11.1989 UDC

45 to 75

Xxx xxx xxx

In regard to this list, applicant has made following averment in the instant OA:

"14. That compliance of remaining part of the judgement dated 19.05.2009 i.e. promotion to the post of Assistant and S.O/C.O of the petitioner at par with Sh. T.N.Kushwaha and Shri V.K.Srivastava was pending and, in the meantime, the seniority list of Upper Division Clerk absorbed as on 01.11.1989 including the petitioner was again revised in implementation of order dated 26.09.2010 passed by the Guwahati Bench of this Hon'ble Tribunal in OA No.210 of 2008 (P.C.Dutta versus Union of India and others) and was circulated by Respondent No.2/ Principal Bench vide its letter dated 01.12.2010 which too was served upon the petitioner vide a letter dated 07.12.2010 issued by Respondent No.3 wherein the petitioner was placed at Sl. No.35 and the reason behind it was that the name of Sh. P.C.Dutta was interpolated and added at Sl. No.5 of the aforesaid final seniority list to which extent the petitioner has no grievance at all....."

(Emphasis supplied)

6. Thereafter, another OA No. 48/2010 (Khushal Singh vs. CAT) was decided on 25.01.2011. Sh. Khushal Singh had joined CAT as UDC on 29.11.1991 on deputation basis from his parent department namely, Central Ground Water Board and was absorbed as UDC w.e.f. 15.05.1996. He was already promoted as UDC in parent department on 06.10.1987 in the pay scale of Rs. 1200-2040. He claimed seniority as UDC w.e.f. 06.10.1987, relying on the judgment by Hon'ble Supreme Court in SI Roop Lal & anr. vs. Lieutenant Governor through Chief Secretary, Delhi & ors., 1999 (9) SC 597. In this judgment, the expression "whichever is later" in the DOP&T OM of 29.5.1986, which deals with fixation of seniority of deputationist on absorption, was quashed and set aside for the reason that it operated to deprive the persons the benefits of their services in the equivalent grade in their parent department. In compliance, the expression "whichever is later" was substituted by "whichever is earlier" vide DOP&T OM dated 27.3.2001.

Thus, even though the seniority list of UDC was revised by CAT on 27.05.2002, i.e. subsequent to the issuance of this DoP&T OM dated 27.03.2001, the benefit was not given to Sh. Khushal Singh and hence he had preferred the OA No. 48/2010. Tribunal passed following order:

"28. In view of the aforesaid, the contention of the respondents that the applicant cannot be given benefits of service rendered by him in an equivalent cadre in the parent department for the reason that he was absorbed in the services of the respondents before the date on which the OM dated 27.3.2001 became available, is not sustainable and the same is accordingly rejected.

29. In view of the aforesaid, the respondents' action in fixing the applicants seniority w.e.f. 15.05.1996, the date on which he was absorbed in the post of UDC in the Tribunal, without taking into consideration his regular service in the same and equivalent post in the parent department is not admissible in law. We accordingly quash and set aside the impugned Memorandum dated 22.04.2009 (Annexure A-1). We further direct the respondent to refix the seniority of the applicant in the grade of UDC after taking into consideration his regular service in the equivalent post of UDC in Central Ground Water Board i.e. his parent department. The applicant should also be considered for further promotions consequent upon revised seniority as per rules.

30. The OA is accordingly allowed in the above terms. No order as to costs." (Emphasis supplied)

7.0 Once this decision was delivered (para 6 supra), applicant made a representation dated 16.05.2011 seeking same benefit, pleading that he was granted NBR benefit to the pay scale of Appeal Clerk in his parent department (said to be equivalent to UDC in CAT on the plea that pay scale was same, Rs. 1200-2040) w.e.f. 04.08.1988. He was advised on 24.05.2011 that in implementation of Court Order passed in OA-48/2009 (Khushal Singh vs. UOI and others) the seniority in the grade of UDC is yet to be revised and the representation dated 16.05.2011 will be considered at the time of preparation of revised seniority in the grade of UDC.

8.0 Subsequently, the draft seniority list for UDC in CAT as on 01.11.1989 and as on 01.01.1994, both were issued on 16.04.2013. This list as on 01.11.1989 is as under:

S.

No.

Name S/Sh.

Date of

Birth

Post held in parent department on regular basis with scale and pay

Date of absorption in the grade of UDC in CAT

(1)

(2)

(3)

(6)

(8)

1 to 18

Xxx xxx xxx

19

D.V.Lokeshwara Rao,

BA

30.05.1951

Examiner 05.04.1975 250-430, Asstt. SO = UDC 24.02.1989 - (1230-2330)

01.11.1989

UDC

20 to 33

Xxx xxx xxx

34

Sheo Kumar,

B.A.

01.01.1961

Copiest - 03.07.1981 (Rs.354-550) (Rev. 950-1500 w.e.f. 01.01.1986) Appeals

Clerk - 04.08.1988 (Rs.1200-2040)

01.11.1989

UDC

35

T.N.Kushwaha,

BA

01.08.1957

Copiest - 09.01.1980 (Rs.200-320) (Rev. 950-1500 w.e.f. 01.01.1986) Suit

Clerk - 23.5.89 (Rs.1200-2040)

01.11.1989

UDC

36

V.K.Srivastava,

MA

16.08.1956

Copiest - 01.02.1980 (Rs.200-320) (Rev. 950-1500 w.e.f. 01.01.1986) Suit

Clerk - 01.09.1989 (Rs.1200-2040)

01.11.1989

UDC

37 to 42

Xxx xxx xxx

43

K.Selvaraji,

B.Sc.

05.06.1955

LDC

20.01.1981

NBR

10.02.1987 -

UDC

01.11.1989

UDC

44 to 74

Xxx xxx xxx

The list as on 01.01.1994 is as under:

S. No.

Name S/Sh.

Date of Birth

Post held in parent department on regular basis with scale and pay

Date of absorption in the grade of UDC in CAT

(1)

(2)

(3)

(6)

(8)

1 & 2

Xxx xxx xxx

3

D.V.Lokeshwara Rao,

BA

30.05.1951

Examiner

05.04.1975 250- 430, Asstt. SO = UDC

24.02.1989 - (1230-2330)

01.11.1989

UDC

4 to 17

Xxx xxx xxx

18

Sheo Kumar,

B.A.

01.01.1961

Copiest - 03.07.1981 (Rs.354-550) (Rev. 950-1500 w.e.f. 01.01.1986) Appeals

Clerk - 04.08.1988 (Rs.1200-2040)

01.11.1989 UDC

19

T.N.Kushwaha,

BA

01.08.1957

Copiest - 09.01.1980 (Rs.200-320) (Rev. 950-1500 w.e.f. 01.01.1986) Suit Clerk - 23.5.89 (Rs.1200- 2040)

01.11.1989 UDC

20

V.K.Srivastava, MA

16.08.1956

Copiest - 01.02.1980 (Rs.200-320) (Rev. 950-1500 w.e.f.01.01.1986) Suit Clerk - 01.09.1989 (Rs.1200-2040)

01.11.1989 UDC

21 to 23

Xxx xxx xxx

Applicant pleads that his representation dated 16.05.2011 was not taken into account while issuing this draft seniority list, and therefore, he made another representation dated 26.04.2013.

9. Before the draft list in Para 8 above could be finalised, one another judgment was delivered by Chennai Bench of Tribunal in OA No. 1523/2010 on 26.03.2013 (K. Selvaraji vs. UOI). In this OA, 25 officials of CAT were arrayed as private respondents. In this OA, S/Sh. D.V. Lokeshwara Rao, T.N. Kushwaha and V.K. Srivastava were arrayed as private respondents no. 6, 18, 19 respectively. Sh. Sheo Kumar, the applicant in instant OA, was not made a party.

Sh. K. Selvaraji was initially appointed as LDC in Ministry of Education and Culture on 20.01.1981. He appeared in the LDCE Exam for the post of UDC in the year 1985 by DoP&T. Meanwhile, he joined CAT, Chennai as LDC on deputation basis on 01.10.1985.

However, being successful in said LDCE Exam, he was promoted as UDC w.e.f. 10.02.1987 by his parent department. Thereafter, he was deemed appointed as UDC in CAT and pay fixed in UDC cadre. However, he was absorbed in CAT as UDC w.e.f. 01.11.1989 along with others. He sought seniority as UDC in CAT w.e.f. 10.02.1987 which was denied and hence, he filed this OA.

The Tribunal passed the following judgment:

"12. It is clearly seen from the above facts that the action of the respondents 1 & 2 in not assigning the seniority from the date of his regular promotion in the grade of UDC viz. 10.2.1987 is discriminatory and arbitrary in as much as the respondents have adopted different yardsticks to identically placed persons. As such, the impugned seniority list dated 31.8/2.9.2005 in the grade of UDC is quashed in so far as it relates to the seniority of the applicant vis-a-vis the

respondents herein. Consequently, the respondents are directed to revise his seniority in the grade of UDC with effect from 10.2.1987. Pursuant to the said revision, the date of promotion in the next higher grades also to be revised in accordance with law. The above direction shall be complied with within a period of three months from the date of receipt of a copy of this order. The OA is allowed as above. No order as to costs." (Emphasis supplied)

10. Thereafter, the draft seniority list dated 16.04.2013 (Para 8 supra) was revised to implement K. Selvaraji judgment and another draft seniority list of UDC as of 01.11.1989 was issued on 22.08.2013. This list showed names as under:

S. No.

Name S/Sh.

Date of Birth

Post held in parent department on regular basis with scale and pay

Date of absorption in the grade of UDC in CAT

(1)

(2)

(3)

(6)

(8)

1 to 19

Xxx xxx xxx

20

K.Selvaraji,

B.Sc.

05.06.1955

LDC 20.01.1981 NBR 10.02.1987 - UDC

01.11.1989 UDC

21 to 25

Xxx xxx xxx

26

D.V.Lokeshwara Rao,

BA

30.05.1951

Examiner

05.04.1975 250- 430, Asstt. SO = UDC

24.02.1989 - (1230- 2330)

01.11.1989 UDC

27 to 41

Xxx xxx xxx

42

Sheo Kumar,

B.A.

01.01.1961

Copiest - 03.07.1981 (Rs.354- 550)

(Rev. 950-1500 w.e.f. 01.01.1986) Appeals Clerk - 04.08.88

(Rs.1200-2040)

01.11.1989 UDC

43

T.N.Kushwaha,

BA

01.08.1957

Copiest - 09.01.1980 (Rs.200- 320)

(Rev. 950-1500 w.e.f. 01.01.1986) Suit Clerk - 23.5.89 (Rs.1200-2040)

01.11.1989 UDC

44

V.K.Srivastava,

MA

16.08.1956

Copiest - 01.02.1980 (Rs.200- 320)

(Rev. 950-1500 w.e.f. 01.01.1986) Suit Clerk - 01.09.1989 (Rs.1200-2040)

01.11.1989 UDC

45 to 74

Xxx xxx xxx

CAT, Allahabad issued a letter dated 03.09.2013 to five officials including applicant, Sh. T.N. Kushwaha and Sh. V.K. Srivastava asking for objection, if any, on said seniority list by 05.09.2013. Applicant has pleaded that just two days time was not reasonable/sufficient opportunity to submit objections. Applicant sought more time to submit the objection, which was allowed. He submitted his objection on 09.09.2013.

11. Applicant pleads that judgment in Khushal singh and in K. Selvaraji are judgment in "rem" and he being similarly placed, the benefit of these two judgments needs to be extended to him also and he needs to be granted seniority as UDC w.e.f. the date of NBR, i.e., 04.08.1988. Accordingly, applicant has pleaded that he needs to be placed above Sh. D.V. Lokeshwara Rao. It is pleaded that Sh. D. V. Lokeshwara Rao was promoted as UDC in his parent department w.e.f. 24.02.1989, i.e. later to applicant.

Applicant made another representation dated 09.09.2013 seeking this benefit. Applicant pleads that this was ignored and draft seniority list of UDC issued on 22.08.2013 was finalised and issued on 16.12.2013. Applicant is aggrieved with this seniority list for UDCs.

12. Thereafter, the draft seniority list of Assistant was also issued on 30.12.2013. Applicant pleads that since his seniority for UDC was wrong, this injustice was carried forward and he suffered in Assistant list also. Applicant pleads that he needs to be placed above Sh. Ravinder Kumar in the list of Assistants. This list reads as under:

S. No.

Name S/Sh.

Date of Birth

Post & Date of joining C.A.T.

Date of regular appointment/ promotion/ absorption as Assistant

(1)

(2)

(3)

(6)

(7)

1 to 23

Xxx xxx xxx

24

K.Selvaraji,

B.Sc.

05.06.1955

01.10.1985 LDC 10.02.1987 UDC 01.11.1989 (Absorbed as UDC)

01.10.1992

25 to 34

Xxx xxx xxx

35

Ravinder Kumar

30.07.1960

31.08.1990 UDC 01.01.1993 (Absorbed as UDC)

01.10.1994

36

D.V.Lokeshwara Rao,

BA

30.05.1951

01.08.1986 UDC 01.11.1989 (Absorbed as UDC)

01.10.1994

37 to 62

Xxx xxx xxx

63

Sheo Kumar,

B.A.

01.01.1961

01.02.1988 LDC 01.11.1989 (Absorbed as UDC)

01.01.1999

64

T.N.Kushwaha,

BA

01.08.1957

18.11.1987 LDC 01.11.1989 UDC (Absorbed as UDC)

01.01.1999

65

V.K.Srivastava,

MA

16.08.1956

02.03.1988 LDC 01.11.1989 UDC (Absorbed as UDC)

01.01.1999

UDC

66 to 151

Xxx xxx xxx

12.1 Applicant made another representation dated 16.01.2014 against draft seniority list of Assistants. This is not decided yet.

12.2 Applicant is also aggrieved that this wrong fixation of seniority as Assistants which is the result of wrong fixation as UDC, may adversely affect his chance for further promotion.

13. Applicant also relied upon the Rule 5 of the CAT (Group B&C Misc. Posts) Recruitment Rules 1989. This rule reads as under:

"5. Absorption/regularisation 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, caretaker, Upper Division/ 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 fulfil the qualifications and experience laid down in these rules and who are considered suitable by Departmental Promotion Committee shall be eligible for absorption/regularisation in the respective grade subject to condition that such persons exercise their option for the absorption and that their parent Departments do not have any objection to their belong 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 in the parent Department shall not be disturbed.

(3) The suitability of persons for absorption may be considered by a

Departmental Promotion Committee."

14. In view of foregoing, applicant seeks relief to be placed above Sh. D.V.Lokeshwara Rao in the list of UDC and above Sh. Ravinder Kumar (who is already above Sh. D.V.Lokeshwara Rao) in the list of Assistant. Consequential benefits including arrears are also sought.

15. Per contra, official respondents opposed the OA. Private respondents neither submitted counter reply nor were they represented in the hearing.

16. Respondents pleaded that applicant had challenged the seniority of only two officials, namely, Sh. T.N.Kushwaha and Sh. V.K.Srivastava in OA No.794/2007 (para 4.1 supra) as was shown in the final seniority list of UDC circulated on 31.08.2005/ 02.09.2005. However, this list had also shown the name of Sh. D. V. Lokeshwara Rao, who was placed even further above these two officials. Applicant had never challenged the seniority of Sh. D.V.Lokeshwara Rao at that time, even though he had the opportunity.

Once OA No.794/2007 was allowed, seniority list was revised and applicant was placed above Sh. T.N.Kushwaha and Sh. V.K.Srivastava and he continued to be below Sh. D.V. Lokeshwara Rao (para 5 supra). This was accepted by him at that point of time, as he never challenged it.

Accordingly, following the principle of constructive res judicata as well as limitation, applicant cannot now claim seniority above Sh. D. V. Lokeshwara Rao in the list of UDC.

17. Further, even though Sh. D. V. Lokeshwara Rao was holding the post of UDC in Hon?ble High Court of Andhra Pradesh w.e.f. 24.02.1989 which carried a pay scale of Rs.1230-2330 which is higher than that of Appeal Clerk (Rs.1200-2040), he held the post of UDC in CAT w.e.f. 01.08.1986. Sh. Ravinder Kumar was holding the post of UDC w.e.f. 14.12.1988 in his parent department. They had both joined CAT as UDC.

As against this, applicant was working as LDC in his parent department and joined CAT as LDC. He was granted pay protection in the pay scale of LDC in CAT when he was granted NBR in the post of Appeal Clerk (in pay scale of Rs.1200-2040). Therefore, applicant cannot claim seniority above Sh. D. V. Lokeshwara Rao.

18. Further, for determining the two posts as analogous, Hon?ble Apex Court had given four factors as under to ascertain equivalence (UOI vs. P.K.Roy):

"(i) the nature and duties of a post

(ii) the responsibilities and powers exercised by the officer holding a post; the extent of territorial or other charge held or responsibilities discharged

(iii) the minimum qualifications, if any, prescribed for recruitment to the post and

(iv) the salary of the post."

Therefore, pay scale alone cannot be a determining factor. The post of Appeal Clerk in District Court cannot be equated to that of UDC in CAT.

18.1 In this regard, respondents drew attention to another judgment by Hon^{ble} Apex Court in the case of R.S.Makashi & ors. vs. I.M.Menon and ors. reported in 1982 AIR 101, where it has been clearly held by Hon^{ble} Apex Court as under:

"When personnel drawn from different sources are being absorbed and integrated in a new department, it is primarily for the Government or the executive authority concerned to decide as a matter of policy how the equation of posts should be effected. The courts will not interfere with such a decision unless it is shown to be arbitrary, unreasonable or unfair, and if no manifest unfairness or unreasonableness is made out, the court will not sit in appeal and examine the propriety or wisdom of the principle of equation of posts adopted by the Government."

18.2 In this regard, respondents also drew attention to the case of Vice Chancellor L.N.Mithila University vs. Dayanand Jha, wherein at para 8 of the judgment, the Court has held as under:

"8. XXXXXXXX Learned Counsel for the respondent is therefore right in contending that equivalency of the pay scale is not the only factor in judging whether the post of Principal and that of Reader are equivalent posts. We are inclined to agree with him that the real criterion to adopt is whether they could be regard to equal status and responsibility. XXX the true criterion for equivalence is the status and the nature and responsibility of the duties attached to the two posts. XXXX"

19. In respect of fixation of seniority of UDC, including that of applicant, several representations were received. A Committee was constituted with the approval of competent authority. In regard to applicant's grievances, this Committee observed as under:

"it is seen that the applicant had been working as Appeal clerk in the scale of 1200-2040 but had never been promoted as UDC. Holding of a pay scale will not amount to holding of a regular or analogous post. By no stretch of imagination, the post of Appeal Clerk can be equated to the post of UDC. Hence, his seniority has been rightly fixed at Sr. No.42 and cannot be given the benefit of judgment in the case of Shri Khushal Singh, whose case is distinguishable as he who had been regularly promoted in his parent department on 6.10.87 as UDC and by virtue of Court orders has been assigned seniority from that date."

20. Respondents also pleaded that the applicant cannot be given the benefit of judgment in the case of Shri Khushal Singh, whose case is distinguishable as he had been regularly promoted in his parent department on 06.10.1987 as UDC and by virtue of Court orders in his favour, has been assigned seniority from that date whereas the post held by applicant i.e. Appeal Clerk may not be equated to the post of UDC. Equivalence of two posts cannot be judged by the sole fact of

equal pay scale.

20.1 In regard to treating the two posts as analogous, Ministry of Home Affairs had also issued an OM dated 07.03.1984. It was pleaded that in keeping with this OM and the nature of duties of Appeal Clerk in District Court and UDC in CAT, the two posts cannot be treated as analogous.

21. It was pleaded that OA is without merit and needs to be dismissed.

22. Matter has been heard at length. Sh. A.K.Pandey with Sh. Krishan Kumar Mishra, learned counsel represented the applicant. Sh. Gyanendra Singh and Sh. Rajinder Nischal, learned counsel represented the respondents.

23. Applicant is claiming benefit of NBR which was granted w.e.f. 04.08.1988 in his parent department for the post of Appeal Clerk while he was still actually working as LDC in CAT. He was actually promoted as UDC in CAT on 15.02.1990. He is also claiming seniority in the post of UDC in CAT from 04.08.1988. Towards this end, he claims benefit of Khushal Singh judgment by Hon^{ble} Apex Court in 1999. In compliance of SI Roop Lal, DOP&T had amended the relevant OM on 27.03.2001 (para 6 supra).

It is noted that while Khushal Singh sought the benefit of SI Roop Lal judgment, the applicant never sought this benefit even though he had filed OA No.794/2007 much later of issuance of amendment to OM and grant of NBR. He only claimed seniority above two other employees, who also belonged to his parent department (para 4.2 supra). This OA was allowed and he was made senior to these two employees (para 4.3 & 5 supra). A close reading of Khushal Singh judgment also indicates that it is "in personam" and not "in rem" (para 6 supra).

Prior to filing of OA No.794/2007, Sh. D.V.Lokeshwara Rao was already shown senior to applicant, yet he did not claim seniority above Sh. D.V.Lokeshwara Rao. On compliance of direction in OA No.794/2007, while the applicant was made senior to Sh. T.N.Kushwaha and Sh. V.K.Srivastava, he continued to be junior to Sh.D.V.Lokeshwara Rao (para 5 supra). This was never challenged by applicant. This claim of seeking seniority above Sh. D.V.Lokeshwara Rao is, therefore, barred by constructive res judicata.

24. The judgment in K. Selvaraji is with respect to his seniority vis-a-vis private respondents. The benefit granted to him was also implemented. A close reading of direction by Tribunal reveals that it was in the nature of "in personam" and not "in rem" (para 9 supra). The applicant never sought the benefit sought by K. Selvaraji.

It is noted here that Shri K. Selvaraji was shown junior to applicant earlier (para-5 supra). Once Shri K. Selvaraji agitated the matter (para-9 supra) and his OA was allowed on 26.03.2013, the seniority list of UDC was revised and Shri K. Selvaraji was shown senior to the applicant herein (para-10 supra) as per list issued on 22.08.2013. It is only thereafter that the applicant herein agitated the matter by filing this OA in the year 2014 which got transferred to Principal Bench

in 2016.

25. It thus follows that the applicant was satisfied with the final seniority list of UDC issued on 07.12.2010 (para 5 supra) wherein Sh. D.V. Lokeshwara Rao is senior to applicant. This is reflected also as per applicant's own averment made in para 14 of instant OA and reproduced in para 5 supra.

26. The applicant's grievance appears to have generated only because two other employees agitated and got certain benefit later (Khushal Singh and K. Selvaraji) and hence the instant OA.

In this connection, the Tribunal also notes that due to passage of time, many more promotions beyond UDC, have already taken place in respect of applicant and others to posts many levels higher than UDC, and as such this long settled position cannot be disturbed at this stage, when it was not agitated at material point of time (para 23 and 24 supra) and is also reflected in applicant's averment in this OA (para 25 supra).

27. In this context, Hon'ble Apex Court has ruled as under in Ratan Chandra Sammanta and Ors. v. Union of India and Ors., [AIR 1993 SC 2276]:

".....Delay itself deprives a person of his remedy available in law. In absence of any fresh cause of action or any legislation a person who has lost his remedy by lapse of time loses his right as well. From the date of retrenchment if it is assumed to be correct a period of more than 15 years has expired and in case we accept the prayer of petitioner we would be depriving a host of others who in the meantime have become eligible and are entitled to claim to be employed....."

28. In view of foregoing, the applicant's claim now for seniority above Sh. D.V.Lokeshwara Rao as UDC is not only belated but also barred by constructive res judicata (para 23 supra).

29. Seniority list of Assistants and Section Officers is a fall out of the UDC seniority list. Once UDC list is upheld, the challenge to Assistants and Section Officers lists cannot survive.

30. In view of foregoing, OA is belated, barred by constructive res judicata and without any merit at this stage and is liable to be dismissed. The Tribunal accordingly dismisses it. No costs.