

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

R.A. No. 181/00008/2020 in O.A No. 181/00594/2019

Friday, this the 27th day of November, 2020.

CORAM:

**HON'BLE Mr. P. MADHAVAN, JUDICIAL MEMBER
HON'BLE Mr. K.V. EAPEN, ADMINISTRATIVE MEMBER**

1. K. Savad, 32 years,
S/o. Cheriyakoya V,
Multi-Skilled Employee (Technical),
Department of Port, Shipping & Aviation,
Union Territory of Lakshadweep, Kavaratti - 682 555.
Presently working as Port Assistant, Port Unit, Agathi,
Union Territory of Lakshadweep - 682 553.
Residing at : Kadappurathava House,
Kavaratti Island, Union Territory of Lakshadweep - 682 555.
2. B. Ismail, 34 years
S/o. Attakidave T.P.,
Multi-Skilled Employee (Technical),
Department of Port, Shipping & Aviation,
Union Territory of Lakshadweep, Kavaratti - 682 555.
Presently working as Port Assistant, Port Unit, Chethalat,
Union Territory of Lakshadweep - 682 553.
Residing at Biranthoda House, Kavaratti Island,
Union Territory of Lakshadweep - 682 555. - Review Applicants/
Respondent No. 4 & 5 in the O.A

[By Advocate Mr. Ajit G. Anjarlekar]

Versus

1. Abdul Salam Koya C.T., 53 years,
S/o. Cheriya Koya C.G.,
Tally Clerk (On working Arrangement as Welfare Officer),
Department of Port, Shipping & Aviation,
Union Territory of Lakshadweep, Kavaratti - 682 555.
Permanent Address: Cheruthottam House, Kalpeni Island,
Union Territory of Lakshadweep, Kalpeni - 682 557.
2. The Administrator Lakshadweep Administration,
Union Territory of Lakshadweep, Kavaratti - 682 555.
3. The Secretary Department of Port, Shipping & Aviation,
Union of Territory of Lakshadweep, Kavaratti - 682 555.
4. The Director of Department of Port, Shipping & Aviation,
Union Territory of Lakshadweep, Kavaratti - 682 555.
- Respondents/
Applicant and Respondent No. 1 to 3 in the O.A.

The Review Application having been considered on circulation, the Tribunal on 27.11.2020 delivered the following:-

O R D E R (By circulation)

Per: Mr. P. Madhavan, Judicial Member

This Review Application is filed by the Respondent Nos. 4 and 5 in O.A 594/2019 to review the order dated 16.09.2020 passed by this Tribunal. O.A No. 594/2019 was filed by the applicant therein stating that he was working as Tally Clerk and he is eligible to be promoted as Port Assistant as per Recruitment Rules and the respondents did not promoted him and, instead, they promoted respondent No. 4 and 5, who are MSE(T) with 10 years regular service. The above O.A was disposed of by this Tribunal holding that as per Lakshadweep Administration Group 'B' and 'C' Port (Shipping and Transport) Staff Recruitment Rules, 2010, the eligibility for promotion to the post of Port Assistant Grade-B from Tally Clerk is 8 years regular service failing which MSE(T) in the Grade Pay of Rs. 1800/- with 10 years regular service in the grade possessing minimum general education qualification of a pass in plus two or equivalent. The Tribunal considered the above and found that as per Recruitment Rules, 8 years regular service is sufficient for a Tally Clerk to be promoted to the post of Port Assistant. But the contention of the official respondents in the above O.A was that the applicant therein had no 8 years regular service "*in the grade*" of Tally Clerk and hence he was not eligible for appointment. The Tribunal found that 8 years regular service is sufficient and there is no mention in the Recruitment Rules that the applicant therein was eligible for appointment as Port

Assistant. Aggrieved by the above order Respondent No. 4 and 5 in the above O.A had filed this RA stating that there is error apparent on the face of record and according to them, 8 years regular service as Tally Clerk has to be read as 8 years regular service *in the grade* of Tally Clerk. According to them, the non-mentioning "*in the grade*" was a Draftsman's omission and the Tribunal is expected to read it as 8 years service in the grade of Tally Clerk. The Tribunal has not properly taken into account these aspects for the post of Port Assistant. Hence, seeks for a review of the earlier order.

2. We have considered the various aspects of this case and we have gone through the various orders passed in O.A 594/19 dated 16.09.2020. This Tribunal has carefully gone through the Recruitment Rules and found that as regards Tally Clerks in the Grade Pay of Rs. 1900/- needs only 8 years regular service for being promoted to the post of Port Assistant. This is crystal clear from the Recruitment Rules produced before this Tribunal.

3. The main contention in the RA is that the Tribunal ought to have read eligibility as 8 years regular service "*in the grade*" and the claim of the applicant in the O.A should have been rejected. According to them, the omission to include "*in the grade*" is only the mistake committed by the Draftsman and Tribunal has to read it accordingly.

4. RA is maintainable only, if the applicants herein had found a new and important matter or evidence which after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or made or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against

him, may apply for a review of judgment to the Court which passed the decree or made the order.

5. In this particular case, Review applicants were served with notice and they did appear in the O.A and it is admitted by the Review Applicants they thought that the official respondents will conduct the case properly and there is no need for appointing an Advocate to conduct the case. It is their case that the word "*in the grade*" was not included in the Recruitment Rules only because of an error committed by the Draftsman.

6. The apex court in ***State of West Bengal & Ors. v. Kamal Sengupta & Anr.*** - 2008 (2) SCC 735 has laid down the principles to be followed while reviewing the orders passed by the Administrative Tribunal as follows:

- “(i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a Civil Court under Section 114 read with Order 47 Rule 1 CPC.
- (ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.
- (iii) The expression 'any other sufficient reason' appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.
- (iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).
- (v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.
- (vi) A decision/order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a coordinate or larger Bench of the Tribunal or of a superior Court.
- (vii) While considering an application for review, the Tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.
- (viii) Mere discovery of a new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the Court/Tribunal earlier.”

7. We have gone through the judgment pronounced by this Tribunal and we do not find any reason to interfere with the earlier judgment of this

Tribunal dated 16.09.2020. The Tribunal has considered the Recruitment Rules properly and came to the conclusion that as far as Tally Clerk is concerned, 8 years regular service is sufficient for becoming eligible for the post of Port Assistant. There is no reason to add any word since the Rules are clear and unambiguous. There is no merit in the contention that the Draftsman committed a mistake and it should be read as "*8 years service in the grade*" as contended by the Review Applicants. This contention is not a sufficient ground for reviewing the order earlier passed. The Review Applicants have not been able to indicate any error, much less an error apparent on the face of the record for a review. The Review Application is liable to be rejected on this ground and is accordingly rejected. No order as to costs.

(Dated, 27th November, 2020.)

(K.V. EAPEN)
ADMINISTRATIVE MEMBER

(P. MADHAVAN)
JUDICIAL MEMBER

ax

Review Applicants' Annexures

Annexure RA(1) : A true copy of the Office Memorandum dated 24.03.2009 issued by the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, Ministries and Departments vide No. AB.14017/61/2008-Estt.(RR).

Annexure RA(2) : A true copy of the Lakshadweep Administration Group 'B' and 'C' Port (Shipping and Transport) Staff Recruitment Rules, 2010.

Annexure RA(3) : A true copy of the order dated 16.09.2020 in O.A. No. 181/00594/2019 passed by this Hon'ble Tribunal.

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