

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA No.181/00594/2019

Wednesday, this the 16th day of September, 2020

CORAM:

Hon'ble Mr. P.Madhavan, Judicial Member

Hon'ble Mr.K.V.Eapen, Administrative Member

Abdul Salam Koya C.T, aged 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
Mob No.9447079417.

Applicant

(Advocate: Mr.T.C.Govindaswamy)

Versus

1. The Administrator
Lakshadweep Administration,
Union Territory of Lakshadweep,
Kavaratti-682 555.
2. The Secretary
Department of Port, Shipping & Aviation,
Union Territory of Lakshadweep,
Kavaratti-682 555.
3. The Director
Department of Port, Shipping & Aviation,
Union Territory of Lakshadweep,
Kavaratti-682 555.
4. Shri K. Savad
Multi-Skilled Employee (Technical),
Department of Port, Shipping & Aviation,
Union Territory of Lakshadweep,
Kavaratti-682 555.
5. Shri B. Ismail
Multi-Skilled Employee (Technical),
Department of Port, Shipping & Aviation,

Union Territory of Lakshadweep,
Kavaratti-682 555.

Respondents

(Advocate: Mr.S.Manu)

This OA having been heard on 27th August, 2020, the Tribunal delivered the following order on 16.09.2020:

ORDER

P.Madhavan, Judicial Member

This is an OA filed seeking the following reliefs:

- (i) *Quash Annexure A1 to the extent it relates to respondents 4 and 5;*
- (ii) *Direct the respondents to consider the applicant by convening a review DPC for promotion as Port Assistant Grade-B/Signaller and direct further to promote the applicant as Port Assistant Grade-B/Signaller with effect from the date of Annexure A1, with all consequential benefits arising therefrom.*

2. In short, the applicant's case is as follows:

The applicant joined the Department of Port, Shipping & Aviation as Multi-Skilled Employee (Technical) [MSE (T)] on 13.7.1993. Thereafter, he was promoted as Tally Clerk with effect from 12.5.2011 in the scale of pay of PB-I with Grade Pay of Rs.1900/-. His next promotion was to be to the post of Port Assistant Grade B/Signaller PB-I with Grade Pay of Rs.2400/-. However, the applicant was denied promotion by the respondents and, instead, respondents 4 & 5 [who are MSE(T)] and who are juniors to the applicant were promoted. According to the applicant, this is arbitrary and the orders are liable to be set aside.

3. The Respondents have filed a detailed reply admitting the service particulars of the applicant. According to them, as per the Recruitment Rules, Tally Clerk is a promotion post of MSE (T), having 3 years' regular service in the grade with SSLC or equivalent qualification. According to them, promotion to the post of Port Assistant is from the following feeder categories:

- (a) Tally Clerk having 8 years' regular service;
- (b) Failing which, MSE (T) with 10 years' regular service in the grade having Plus Two or equivalent qualification from a recognized University.

4. According to the Respondents, the applicant was having only 7 years and 7 months' regular service in the post of Tally Clerk at the time of consideration and hence he could not be given promotion. The cut off date fixed by the DPC for selection to the post of Port Assistant for eligibility was 1.1.2019. Since there were no eligible candidates coming under the category of Tally Clerk, the DPC considered the category of MSE (T) (using the “failing which” Clause in the Recruitment Rules) and selected respondents 4 & 5 who were eligible for promotion.

5. The main contention put forward by advocate Sri T.C.Govindaswamy, learned counsel appearing for the applicant, is that, as per Annexure A3 Recruitment Rules notified on 31.1.2011, Schedule-V, Rule 12- deals with promotion to the post of Port Assistant. What is stated therein is, as follows:

“Promotion: from the grade of Tally Clerk in Grade Pay of Rs.1900 having 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 educational qualification of a pass in Plus 2 or equivalent from a recognized University/Board”. So, as per the Recruitment Rules, the DPC can consider MSE (T) candidates only when eligible Tally Clerks are not available.

6. On a plain reading of the Rules, it can be seen that there is no word or sentence ***“in the grade”*** after 8 years regular service in the case of Tally Clerk which is a higher post when compared to MSE(T). As regards MSE (T), it is specifically stated that, 10 years regular service, “in the grade”, is required. Hence, according to him, as regards Tally Clerk, only 8 years regular service is

sufficient for promotion. The applicant is having more than 26 years of regular service and , thus, he was eligible even at the time of considering the promotion.

7. The counsel for the respondents, on the other hand, contends that for both Tally Clerk and MSE (T), regular service in the required grade is necessary.

8. We have heard the rival contentions and perused the pleadings and annexures produced. From a plain reading of the Rule 12 of the Recruitment Rules, what we can gather is that MSE (T) employees can be promoted only if there are no eligible candidates from the grade of Tally Clerks with 8 years regular service. As per the Rules, only 8 years regular service is sufficient for promotion. There is no qualifying condition of “*in the grade*” as far as Tally Clerks are concerned. However, for MSE(T) employees, it is specified that they should have 10 years regular service in the grade for getting promotion.

9. In view of the above Rule position, as documented, we find merit in the case of the applicant. The applicant is having 26 years of regular service and is, therefore, eligible for consideration for promotion to the post of Port Assistant Gr.B/Signaller in the 3 vacancies considered by the DPC. The impugned order of promotion in Annexure A1 as far as respondents 4 & 5 are concerned is set aside. The Respondents are directed to conduct a review DPC and consider the name of the applicant for promotion, in the light of the points above, within a period of three months. Accordingly, the OA is allowed without any order as to costs.

(K.V.Eapen)
Administrative Member

(P.Madhavan)
Judicial Member

Annexures filed by the applicant:

- Annexure A1: True copy of Order bearing F.No.1/8/2016-PORT dated 06.08.2019, issued from the office of the 3rd respondent.
- Annexure A2: True copy of Office order bearing F.No.1/20/2010-Port dated 07.05.2011, issued by the 3rd respondent.
- Annexure A3: True copy of Recruitment Rules relating to the post of Port Assistant Gr.B/ Signaller in PB-1 plus GP Rs.2,400/- (Level-4 of the Pay Matrix), as contained in Schedule-V of the Lakshadweep Administration Group 'B' and 'C' Port (Shipping & Transport) Staff Recruitment Rules, 2010.
- Annexure A4: True copy of representation addressed to the 1st respondent Administrator dated nil.

Annexure filed by the respondents:

- Annexure R1(a): True copy of the minutes of the DPC meeting held on 22.7.2019.