

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

## Original Application No.181/00701/2019

**Friday, this the 13<sup>th</sup> day of November 2020**

## C O R A M :

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

Arun Jadhav,  
Executive Engineer (Project Management Unit),  
Lakshadweep Public Works Department,  
Union Territory of Lakshadweep, Kavaratti  
& Chief Technical Officer, Kavaratti Smart City Limited. ....Applicant

**(By Advocate Mr.S.Radhakrishnan)**

## versus

1. Union Territory of Lakshadweep,  
represented by the Administrator, UTL,  
Secretariat, Kavaratti,  
UT of Lakshadweep – 682 555.
2. The Secretary,  
Ministry of Home Affairs,  
North Block, Delhi – 110 001.
3. The Secretary,  
Union Public Service Commission,  
Dholpur House, Shajahan Road,  
New Delhi – 110 069.
4. The Secretary,  
Ministry of Housing & Urban Affairs,  
Nirman Bhawan, New Delhi – 110 011.

**(By Advocates Mr.S.Manu [R1]  
& Mr.Thomas Mathew Nellimoottil [R3])**

This application having been heard on 5<sup>th</sup> November 2020, the Tribunal on 13<sup>th</sup> November 2020 delivered the following :

**ORDER**

**Per : Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER**

In this matter the applicant is aggrieved by the inaction on the part of the respondents, especially by Respondent No.1 represented by the Administrator, Union Territory of Lakshadweep (UTL) in not filling up the sole vacancy of Superintending Engineer (SE) under Public Works Department (PWD) of the UTL Administration and continuing to man the post by way of adhoc promotion. The applicant submits that he is the senior most and only regular Executive Engineer (EE) under the UTL and had become eligible to be promoted as SE as early as in July 2013. He is also aggrieved by the inaction on the part of the respondents in not granting him the financial upgradation under the Modified Assured Career Progression Scheme (MACPS) with effect from 04.07.2018 on completion of ten years of regular service as EE.

2. The applicant was appointed as EE on a regular basis on 05.07.2008. As per the Recruitment Rules, on completion of five years of regular service in the grade of EE (Civil) he was eligible for promotion as SE (Annexure A-2). He has all the required qualifications, as he was recruited through the Union Public Service Commission (UPSC), possesses a degree of Civil Engineering etc. As such, he was eligible for promotion as SE on 04.07.2013. However, he states that the post of SE is being manned only through adhoc promotion ever since 2002. The officers who were senior to him were having disciplinary proceedings against them and were, therefore,

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not appointed to the post in a regular manner. They have since retired. At present, he is the only regular employee in the EE Grade and is also the only person having the required qualifications as per the Recruitment Rules. Keeping the post of SE manned with adhoc promoted officers is not just and is a wrong practice. This practice of adhoc appointments continuing for long periods has been deprecated by the Hon'ble Apex Court in many instances, especially in **Rattan Lal v. State of Haryana (1985) 4 SCC 43**. In addition, the inaction on part of the respondents in not giving him the benefit of MACP when he completed ten years of regular service on 04.07.2018 in the grade of EE is also arbitrary and violative of Article 14 of the Constitution of India as is the lack of a decision in filling up the post of SE by regular appointment.

3. The applicant claims that no departmental, disciplinary or criminal proceedings have been initiated or are pending against him. He submits that while he was holding the charge of SE, there was a complaint regarding non completion of a Sewage Treatment Plant (STP), before the inauguration of the Lakshadweep Government Guest House at Kozhikode. He had been asked to furnish details regarding this on 10.03.2017. After that there was no further movement on the subject. On 31.11.2018, on the retirement of his immediate predecessor he was the senior most EE available for the post of SE but was not given the appointment. Instead, a junior who himself was an adhoc EE, was promoted to the post as adhoc SE.

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4. In their reply, the Lakshadweep Administration submits that the post of SE of Lakshadweep PWD is an important post under the UTL Administration. It is a sole post that can be filled up only with the concurrence of the UPSC. Keeping the post vacant for long periods will affect the administrative efficiency and functioning of the department of LPWD. To avoid delay which usually occurs during the process of a regular promotion or transfer on deputation which requires the concurrence of UPSC, the Administration has been resorting to adhoc appointment to the post as and when deemed necessary. Further, it is submitted that it is mandatory to have vigilance clearance, as well as an integrity certificate, for considering for promotion to the post even in the case of adhoc appointments. This is also applicable while considering the awarding of financial upgradation under MACPS. While it is true that the applicant had become eligible for promotion as SE on 05.07.2013, there were still two officers seniors to him who were eligible for promotion to the post. However, since both these officers were having disciplinary proceedings against them, the applicant was given adhoc promotion and appointment to the post of SE with effect from 01.04.2015. It is also accepted that the applicant was eligible for financial upgradation under MACP Scheme on 04.07.2018. However, in this matter, since the UTL Administration had instructed the SE, Lakshadweep PWD to initiate disciplinary proceedings against various delinquent officials, including the applicant, in two separate cases, the applicant was not considered for granting the upgradation under MACP Scheme.

5. The respondents have given a few details regarding the two cases involving the applicant mentioned by them. One of them relates to the period, when the applicant was holding the charge of SE, LPWD. The PWD had executed the work of construction of Lakshadweep Government Guest House at Kozhikode. After the completion of work and inauguration of the Guest House, it was noticed that the construction had been completed without a Sewage Treatment Plant (STP) though it was included in the original plan. Thus, the operation of the Guest House had to be stopped after it was inaugurated and it could be restarted only after the STP was constructed. The then Director, Vigilance had conducted a preliminary inquiry in which he mentioned that “there was sheer carelessness to the extent of madness and dereliction of duty, gross misconduct, and unpardonable wrong doing” committed by the whole team ie., the SE, EE, AE, JE and Architect. On the basis of the inquiry report, the Administrator had ordered to initiate a formal inquiry against the delinquent officers. This decision was taken in December, 2018. It was a fact that the applicant was the SE during the period of construction of the Government Guest House. Apart from this case, the Administrator had ordered to initiate another departmental inquiry under Rule 14 of the CCS (CCA) Rules, 1965 against the AE (Stores) and EE, LPWD, Kochi on the alleged gross irregularities related to the awarding of supply orders to M/s.Kerala Enterprises and M/s.Reema Enterprises by LPWD, Kochi during 2009-2014. This decision of the Administrator taken in January, 2019 has also affected the applicant as he was the EE, LPWD, Kochi during the relevant period. The

respondents further submit that the Department of LPWD has taken up the process of issuing charge sheets on the applicant for the aforementioned cases. The delay is only caused as one case involves retired employees for which the concurrence of Ministry and Presidential sanction is also required. Thus, due to the contemplation of the departmental inquiry and proposed issuing of charge sheet, the Administration is not in a position to consider the applicant either for regular promotion as SE or for grant of financial upgradation under MACPS. Though the applicant had mentioned only one case in the O.A filed by him, he is actually involved in these two cases and the initiation of the departmental proceedings is in process.

6. In a rejoinder the applicant has submitted that the last regular SE of LPWD retired from service on 2002 and thereafter there has been no regular promotion to the post. He had become eligible on 05.07.2013 but two E.Es senior to him were still in service at that time. However, they could not be promoted on a regular basis apparently due to the pendency of criminal and disciplinary proceedings against them. He was therefore given adhoc promotion as SE on 20.03.2015. The applicant points out that the respondents have submitted that since disciplinary proceedings were pending against these senior officers, they could not fill up the post on a regular basis. He submits in his rejoinder that this very contention is illegal, since the respondents have admitted that he was eligible to be promoted as on 05.07.2013 and at that specific time there were no disciplinary proceedings or any other proceedings pending against him. He submitted

that the respondents ought to have adopted sealed cover proceedings as per the guidelines in the case of the two senior officers and promoted him as he was the third eligible candidate in the feeder category.

7. Further, the applicant submits that the UTL Administration in their reply have stated that there was a decision by the Administrator in December 2018 to initiate a formal inquiry against the delinquent officials in the STP matter. However, even though the disciplinary authority of the EE is the Administrator, no memo or notice has been issued till date to him. The Preliminary Inquiry Report of Director, Vigilance on the STP matter has also not been served on any of the officers till date. A report which arrived at the conclusion that there was carelessness to the extent of madness and dereliction of duty, gross misconduct and unpardonable wrong doing committed by the whole team has not been furnished to any of the officers mentioned including him, the adhoc SE during the period. Apart from that, the then adhoc EE was given a further adhoc promotion to the post of SE. This adhoc EE was also issued with a Vigilance Clearance Certificate when he was promoted as adhoc SE, though he was the adhoc EE at the time of inauguration of Government Guest House at Kozhikode. In addition, the concerned JE was allowed to go on voluntary retirement in compliance with Court directions and was granted all the terminal benefits including pension and leave encashment. Thus, the Preliminary Inquiry Report was not taken note of in the case of any of the officials of LPWD. In addition, the applicant submits that the contract for the Government Guest House did not

include the construction of the STP. It was only two months after the inauguration that the contract was given for constructing the same. He submits that the non construction of the STP cannot be termed as sheer carelessness to the extent of madness by any stretch of imagination by any reasonable human being. However, with regard to the other case, the applicant has not brought out any additional information in the rejoinder relating to the alleged irregularities in awarding of supply orders when he was EE during 2009-2014.

8. Further, the applicant submits in his rejoinder that there have been no further proceedings in the above matters, inspite of the fact that Rule 9 permission was sought from the President of India to initiate departmental proceedings against persons who retired as early as on 31.10.2017 and 31.07.2019 (Annexure R-1[e]). For the last four years no action has been taken and no charge sheet has been issued.

9. The applicant contends that what has to be taken into consideration is whether any proceedings were pending against him on the date of occurrence of vacancy. The vacancy of SE came into existence in 2002 and he was qualified on 05.07.2013. Till date, no proceedings are pending against him. He will retire on superannuation on 31.07.2024 and delay in promotion is against his fundamental rights guaranteed under the Constitution of India. The applicant has relied on the following cases decided by the Hon'ble Apex Court :

(1) **Union of India & Ors. v. K.V.Jankiraman & Ors. (1991) 4 SCC 109** in which the Hon'ble Apex Court has observed that *“pendency of preliminary investigation prior to the stage of issuance of charge memo, charge sheet will not be sufficient to enable the authorities to adopt the sealed cover procedure.”*

(2) In **Union of India & Ors. v. Sangram Keshari Nayak 2007 (6) SCC 704** the Hon'ble Apex Court has stated that *“the right to be promoted to the next higher post can, thus, be curtailed only by reason of valid reasons. Such a rule again, however, cannot be construed in a manner so as to curtail the right of promotion more than what was contemplated by law.”*

(3) In **Coal India Ltd. v. Saroj Kumar Mishra (2007) 9 SCC 625** the Hon'ble Apex Court held that *“a right of promotion can be withheld or kept in abeyance only in terms of valid rules. Rules operating in the field do not provide that only because some allegations have been made as against an officer of the company, the same would itself justify keeping a valuable right to be considered for promotion of an employee in abeyance. When a question of that nature comes up for consideration before a superior court, the extant rules operating in the field must necessarily be construed in the light of the constitutional scheme of equality.”*

10. In addition to the above said judgments, the DoP&T vide its O.M.No.22011/4/91-Estt.(A) dated 14.09.1992 has clarified that at the time of consideration of cases of Government servants for promotion, the details of the Government servant in the consideration zone for promotion falling under the following category should be specifically brought to the notice of the DPC :

- (i) Government servants under suspension.
- (ii) Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending and
- (iii) Government servants in respect of who prosecution for a criminal charge is pending.

11. As the applicant does not fall in any of these categories, it is submitted that the UTL Administration is intentionally delaying sending a request to the UPSC to convene the DPC for a regular promotion to the post of SE. The Hon'ble Apex Court in the above cited judgments have stated in so many words that the crucial date is the date of occurrence of vacancy and not the date of convening of DPC. He submits that the date of convening of DPC can be extended or prolonged according to the sweet will of the Administration just for the purpose of denying the legitimate promotion to an eligible candidate. He submits that this is clearly illegal and a positive directions from this Tribunal is warranted. Further, the MACPS has been denied to him unfairly since the Administrator had instructed the SE, LPWD to initiate disciplinary proceedings against the delinquent officers including him only on 12.12.2018 and 21.01.2019, whereas his eligibility date fall much before that, on 04.07.2018, and on that relevant date no charge sheet has been issued. Thus, it is highly illegal, unjust and arbitrary to deny him financial upgradation under the MACPS.

12. We have heard Shri.S.Radhakrishnan, learned counsel for the applicant as well as Shri.R.Sreeraj learned counsel appearing for Shri.S.Manu, Standing Counsel for the Lakshadweep Administration. Learned counsel for the applicant has furnished an additional document at Annexure A-14 by which it appears that on 09.10.2020 the Secretary (Works) of Lakshadweep Administration has issued an order in the matter of the construction of Government Guest House at Kozhikode, Kerala. By this

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order they have come to the conclusion that there was negligence on the part of the applicant, Shri.Arun Jadhav, in not obtaining Administrative Approval & Expenditure Sanction for the construction of a STP from the competent authority. However, since there was no financial gain or material gain or no financial loss to State exchequer by not including the STP, and it being on oversight/negligence, the Administrator, UTL has ordered that Shri.Arun Jadhav be issued with a 'recorded warning'. Learned counsel has argued that as the matter is now settled with the issue of a recorded warning, it should be considered as closed. In addition, he brought to our notice a copy of the O.M.F.No.11012/12/2016-Estt.A-III dated 06.12.2016 issued by the Department of Personnel & Training stating that "*warning letter of caution, reprimands or advisories administered to Government servants do not amount to a penalty and, therefore, will not constitute a bar for consideration of such Government servants for promotion.*"

13. We have carefully considered all the above contentions and have also gone through the documents provided by the applicant and the respondents. We note that essentially there are two issues to be considered. First, whether there has been an inordinate delay in consideration of the applicant for promotion as SE and if there was such a delay, whether there was a reasonable justification for the same? The second issue to be considered is whether he should have got his second financial upgradation under the MACPS in the normal course on completion of ten years of regular service in the grade of EE with effect from 04.07.2018?

14. As regards the first issue, based on the information and documents provided, as well as the reasoning in cited cases including K.V.Jankiraman (supra), Sangram Keshari Nayak (supra) and Saroj Kumar Mishra (supra), we find that the inordinate delay by the respondents in initiating the process of promotion to SE was not justified. It is clear to us that even when two seniors of the applicant were still in service, there was nothing in the Rules, Instructions or Office Memorandums that prevented a DPC from being convened and sealed cover procedure, if applicable, being adopted. There is also no dispute that the applicant was eligible to be a SE with effect from 05.07.2013 on completion of five years qualifying service in the grade of EE. In Saroj Kumar Mishra (supra) the Hon'ble Apex Court had held that *“Although an employee of a State is not entitled to promotion to a higher post as a matter of right, he is entitled to be considered therefor in terms of Article 16 of the Constitution of India. A right of promotion can be withheld or kept in abeyance only in terms of valid rules. Rules operating in the field do not provide that only because some allegations have been made as against an officer of the company, the same would itself justify keeping a valuable right to be considered for promotion of an employee in abeyance. When a question of that nature comes up for consideration before a superior court, the extant rules operating in the field must necessarily be construed in the light of the constitutional scheme of equality.”*

15. Further, in **P.N.Premachandran v. State of Kerala & Ors. (2004) 1 SCC 245** the Hon'ble Apex Court has observed that “*It is not in dispute that the posts were to be filled up by promotion. We fail to understand how the appellant, keeping in view the facts and circumstances of this case, could question the retrospective promotion granted to the private respondents herein. It is not disputed that in view of the administrative lapse, the Departmental Promotion Committee did not hold a sitting from 1964 to 1980. The respondents cannot suffer owing to such administrative lapse on the part of the State of Kerala for no fault on their part.....*” We note that in this case the Hon'ble Apex Court has allowed promotion from a retrospective date in case the DPC was not convened due to administrative lapses.

16. In this matter, we find that the UTL Administration has not taken the required steps under the Rules to convene the DPC under the Chairmanship of the Chairman/Member UPSC inspite of the fact that there was no bar for them to do so in the light of the DoP&T's O.M and instructions as well as various directions considering such situations by the Hon'ble Apex Court. Admittedly, even if there were seniors still in service with disciplinary proceedings against them, there is a laid out procedure that could have been undertaken given under the Office Memorandum/guidelines of the DoP&T. As regards the allegations against him, we see that there has been no charge sheet/charge memo issued in the two cases. In the matter of the non construction of the STP at the Government Guest House, Kozhikode, the

case has been closed with a recorded warning being issued which apparently, as per instructions, does not stand in the way of promotion. As regards the other matter relating to the irregularities for awarding of supply orders to two companies by the LPWD, Kochi when the applicant was functioning as EE during 2009-2014, we do not see much enthusiasm on the part of the respondents (UTL Administration) as well as the applicant in providing further details. Be that as it may, we presume that here too there has been no further action in this regard and that no charge sheet/charge memo has been issued. If that be the case, it does not prevent the convening of a DPC in the light of the instructions governing such situations.

**17. We, therefore, find merit in the contention of the applicant that there has been unjustified and inordinate delay in considering his case for promotion to the post of SE. We direct the respondents to immediately initiate necessary steps including convening of a DPC Meeting to consider his candidature for promotion as per rules and eligibility. This exercise shall be completed within a period of six months from the date of receipt of a copy of this order.**

18. As regards the second issue which relates to the grant of second financial upgradation under MACPS with effect from 05.07.2018, it has been established that, as of that date, there were no allegations or charges or inquiries brought against the applicant. Indeed, even the decision to start a departmental inquiry was taken by the Administrator in the two cases

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mentioned only as late as December, 2018 and January, 2019, both of which are after the eligibility date ie. 05.07.2018. **As such, we also find that there has been unjustifiable delay in grant of second financial upgradation under the MACPS to the applicant with effect from 05.07.2018, when he had completed ten years of regular service as EE. We, therefore, direct the UTL Administration to consider taking the necessary steps keeping in view the final decision which will be taken by the DPC in the matter relating to his promotion as SE.**

19. The O.A is accordingly disposed of with the directions as above. We do not order any costs on the parties.

(Dated this the 13<sup>th</sup> day of November 2020)

**K.V.EAPEN  
ADMINISTRATIVE MEMBER**

**P.MADHAVAN  
JUDICIAL MEMBER**

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**List of Annexures in O.A.No.181/00701/2019**

1. **Annexure A-1** – A copy of the joining report dated 05.07.2008.
2. **Annexure A-2** – A copy of the Lakshadweep Administration (Public Works Department) Superintending Engineer (Civil) Recruitment Rules, 1991.
3. **Annexure A-3** – A copy of the provisional seniority list of EE in LPWD dated 21.10.2014.
4. **Annexure A-4** – A copy of the order F.No.12/68/2001 Services (Vol.III)/986 dated 20.03.2015.
5. **Annexure A-5** – A copy of the order F.No.7/2/98-C1-Vol.II/1165 dated 14.07.2015.
6. **Annexure A-6** – A copy of the order F.No.1/7/2017-CB@/766 dated 09.03.2017.
7. **Annexure A-7** – A copy of the O.M.F.No.5/6/2017-CVO/143 dated 10.03.2017.
8. **Annexure A-8** – A copy of the order F.No.9/7/93-C1-Vol.II(Part)/1485 dated 31.07.2018.
9. **Annexure A9** – A copy of the letter F.No.1/10/2015-DB1/693 dated 31.05.2017.
10. **Annexure A-10** – A copy of the order F.No.12/68/2001-Services (Vol.IV)(1)/5162 dated 12.12.2018.
11. **Annexure A-11** – A copy of the representation dated 30.08.2018 submitted by the applicant to the Administrator, UTL.
12. **Annexure A-12** – A copy of the representation dated 07.02.2019 submitted by the applicant.
13. **Annexure A-13** – A copy of the representation dated 01.01.2019 submitted by the applicant.
14. **Annexure A-14** – A copy of the order F.No.4/1/2019-SE(1)/2081 dated 09.10.2020.
15. **Annexure R-1(a)** – A copy of the seniority list of EE in LPWD F.No.6/1/91-CI/166 issued on 28.01.2016.

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**16. Annexure R-1(b)** – A copy of the order F.No.12/68/2001-Services (Vol.III)/986 dated 20.03.2015.

**17. Annexure R-1(c)** – A copy of the letter F.No.5/6/2017-CVO/10 dated 27.12.2018 of the Director (Vigilance).

**18. Annexure R-1(d)** – A copy of the letter F.No.5/18/2017-CVO/63 dated 31.01.2019 of the Director (Vigilance).

**19. Annexure R-1(e)** – A copy of the letter F.No.12/55/2019-Services dated 03.12.2019.

**20. Annexure R-1(f)** – A copy of the OM F.No.5/6/2017-CVO/143 dated 10.03.2017.

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