

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA No.181/01028/2018

Wednesday, this the 30th day of September, 2020

CORAM:

Hon'ble Mr. P.Madhavan, Judicial Member

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

Abdul Saleem K.V.,aged 53 years,
S/o Shri Thankal Koya Pattakal,
working as Agriculture Supervisor,
Agricultural Demostration Unit,
Department of Agriculture, Kalpeni-682 557,
Union Territory of Lakshadweep, and
residing at Kakkavathiyodam House,
Union Territory of Lakshadweep,
Kalpeni-682 557

Applicant

(Advocate: Mr.N.Unnikrishnan)

Versus

1. Union of India represented by
the Secretary, Government of India,
Ministry of Home Affairs,
North Block, Central Secretariat,
New Delhi- 110 001.
2. The Administrator,
Union Territory of Lakshadweep,
Kavaratti-682 555.
3. The Secretary,
Department of Agriculture,
Union Territory of Lakshadweep,
Kavaratti-682 555.
4. The Director of Agriculture,
Union Territory of Lakshadweep,
Kavaratti-682 555.
5. The Director (Services),
Union Territory of Lakshadweep,
Kavaratti 682 555.

6. The Departmental Promotion Committee represented by the Chairman (Collector-cum-Development Commissioner), Union Territory of Lakshadweep, Kavaratti-682 555.

7. Marjan P.S, aged 26 years, D/o Abdulla A.C., Puthiya Surambi House, Kiltan Island, Union Territory of Lakshadweep-682 558.

8. Aneesa Beegum M.M., aged 27 years D/o Cheriyakoya P., Maseeda Manzil, Kadmath Island, Union Territory of Lakshadweep-682 556.

9. Nusrath Beegum C.H, aged 27 years, D/o Sri Mohammed Shafi, Chadipura House, Kiltan Island, Union Territory of Lakshadweep-682 556. Respondents

Advocates:

Sri Anil Ravi (R1)
 Sri S.Manu (R2-6)
 Sri Ajit G.Anjarlekar for impleading respondents
 Sri K.P.S.Suresh for impleading respondents

This OA having been heard on 21st September, 2020, the Tribunal delivered the following order on 30th September, 2020:

ORDER

P.Madhavan, Judicial Member

This is an OA filed seeking the following reliefs:

- (i) *Call for the records leading to denial of promotion of the applicant to the post of Agriculture Demonstrator in existing vacancies;*
- (ii) *Declare that the applicant is entitled to be promoted as Agricultural Demonstrator without further loss of time;*
- (iii) *Issue appropriate order or direction to the respondents to promote the applicant to the post of Agriculture Demonstrator in existing vacancies as per Annexures-A1 and A2 within a reasonable time.*

2. Applicant's case is that he is working as Agriculture Supervisor in Agriculture Demonstration Unit, Union Territory of Lakshadweep. He joined the Agriculture Department as Field Man in the year 1989 and was promoted to the post of Junior Technical Assistant/Agriculture Supervisor w.e.f. 1.3.1994. He is the senior most Junior Technical Assistant/Agriculture Supervisor as per Seniority List dated 27.3.2013 issued by the 4th respondent. The name of the applicant appears at S.No.1. He is a Diploma holder in Agricultural Science from the Kerala Agricultural University, Vellanikkara, Thrissur and he is fully qualified for promotion to the post of Agriculture Demonstrator. According to the applicant, he is aggrieved by the denial of promotion and non-consideration of his case for promotion by the respondents even though there existed vacancies for the last 5 years. As per the amended Lakshadweep Administration (Group-C & D posts) Recruitment Rules published on 13th May 2010, the method of appointment to the post of Agriculture Demonstrator is 50% by promotion and 50% by direct recruitment and if both fail, by deputation. The qualification prescribed for promotion is Agriculture Supervisor & similar category post having Diploma in Agriculture with 5 years regular service in the grade in the Agriculture Department under Lakshadweep Administration. In case of non-availability, combined service of 13 years regular service in the post of Agriculture Supervisor/Junior Technical Assistant/Lab Technician/Agriculture Field Man is prescribed. According to the applicant, he is fully qualified for the post and the respondents are not giving him the promotion.

3. While the case was pending, party respondent R7 was impleaded. The official respondents filed a detailed reply and also an additional reply and the applicant's had filed rejoinder and an additional rejoinder as well. According to the respondents, there is no dispute regarding the service particulars of the applicant

and there is also no dispute regrading the seniority of the applicant. They would contend that promotion is not a right and he cannot insist on getting promotion and the Tribunal cannot order promotion of the applicant. Applicant has only a right to be considered for promotion.

4. According to the respondents, there existed 17 posts of Agriculture Demonstrator as on 13.5.2010. But subsequently when State Land Use Board was abolished, one post was also abolished and only 16 posts are available now as Agriculture Demonstrator. There exists 6 vacancies of Agriculture Demonstrator (on promotion) as on 1st April, 2016. According to the official respondents, the applicant is presently working under the District Panchayat and as per Notification dated 7.3.2012, the Administrator of Union Territory had transferred all schemes and programmes along with employees to District Panchayat and Village Panchayat. According to the said order, the posts transferred to the the District Panchayat and Village Panchayat came under the control of the District Panchayat and Village Panchayat. The applicant is working under the District Panchayat. The Agriculture Demonstration Unit was also transferred to the District Panchayat. According to the respondents, as per the existing norms, 5 years' ACRs are necessary for determining the benchmark for promotion by the DPC. Since the preparation of ACRs is delegated to the Panchayats, the ACRs of the employees for promotion could not be obtained and it is only because of that, the DPC could not consider the promotion of the promotees. According to them, a notification for direct recruitment was published and selection is underway. According to them, the said direct recruitment will not affect the rights of the applicant or similarly situated others, as 50% of the vacancies alone can be given to direct recruitment. The respondents also allege that the service of the applicant is not fully unblemished. An occasion had arisen in 2014 wherein a memo was issued to the applicant for

lack of performance. The respondents also produced Annexure R2 order of the Administrator transferring the schemes and Agriculture Field Units to District Panchayats, for reference. The applicant has also produced various representations he had given to the respondents seeking promotion. They also contend that the applicant was given ACP and MACP benefits and he is drawing more than the pay attached to the post of Agriculture Supervisor as on date. There is no justification for the grievance raised by the applicant.

5. R7 who was selected as a direct recruit has filed objections stating that the appointment of direct recruits will not affect the promotions and there is no reason for granting a stay.

6. The counsel appearing for the applicant, official respondents and the counsel appearing for R7 were heard.

7. The main contention put forward by the applicant is that there is no justification for the respondents not to consider him for promotion. It is the duty of the respondents to collect the necessary ACRs from the reporting authority and conduct the DPC every year. The respondents have failed in doing their duty and he is denied an opportunity for being considered for promotion for the last 5 years. As per the Recruitment Rules, he is having the requisite service in the grade and he is also having the qualification prescribed for the post for the candidates for promotion. 50% of the vacancies are reserved for promotees and the respondents are not filling up the same. Even according to the additional reply filed by the respondents, there existed 6 vacancies for promotees as on April 2016. There is no reason for not considering him for promotion.

8. The counsel for respondents, even though admits the service particulars and eligibility of the applicant, mainly rely on the contention that the ACR and APAR are not received and it is only because of that, the case of the applicant cannot be

considered.

9. We have heard both sides and perused the pleadings on both sides. As per the Recruitment Rules, the applicant is an Agriculture Supervisor who is having a Diploma and is eligible to be considered for promotion. He is also having the requisite service in the grade of Agriculture Supervisor and there is no reason why he is not considered for promotion to the post of Agriculture Demonstrator in this case. The non-receipt of ACRs/APARs from the District Panchayat is not a sufficient reason to deny consideration for promotion. Every employee has a fundamental right for being considered for getting a promotion which is duly provided under the Rules.

10. In view of the above circumstance, we hold that the applicant herein is entitled to be considered for promotion as per Recruitment Rules in force. The applicant is also seeking a direction to the respondents to consider his case on the basis of the Recruitment Rules and to grant promotion. The applicant has clearly shown that he is entitled to get such a direction as he has a right to be considered for promotion.

11. In the result, we hereby direct the respondents to convene DPC for promotion within a period of three months and consider the name of the applicant for promotion to the post of Agriculture Demonstrator, if he is found otherwise eligible. The respondents shall complete the exercise by calling the ACRs and APARs, if necessary, from the Panchayats and see that the exercise is completed within a period of three months from the date of receipt of a copy of this order. OA is disposed of accordingly.

(K.V.Eapen)
Administrative Member

(P.Madhavan)
Judicial Member

Annexures filed by the applicant:

Annexure A1: True copy of the Office Memorandum F. No. 2/7/92-Agri/71 dated 27.03.2013 and Provisional Seniority List of Junior Technical Assistant appended therewith.

Annexure A2: True copy of the Extract of Lakshadweep Administration (Group C & D Posts) Recruitment Rules, 2010 published by Notification F. No. 3/1/2010-Agri dated 13.05.2010.

Annexure A3: True copy of representation dated 6.8.2014.

Annexure A4: True copy of Representation dated 14.12.2015.

Annexure A5: True copy of the Notification No.01/7/2017-Agri/585 dated 28.06.2017.

Annexure A6: True copy of the representation dated 12.08.2018 before the 3rd respondent.

Annexure A7: Copy of the Check List No.F.No.1/07/2017-AGRI/960 dated 29.1.2019.

Annexure A8: Copy of the judgment dated 29.3.2019 in O.P.(CAT) No.97/2019.

Annexure A9: Copy of the reply letter dated 28.1.2014 submitted to the Research Officer (AC).

Annexure A10: Copy of the letter F.No.1/3/2015-AGRI/KLP dated 7.8.2019.

Annexure A11: True copy of Office Order F.No.1/07/2017-Agri/1534 dated 05.11.2019 along with Final Check List.

Annexure A12: True copy of Letter F. No.76/11/2017-Agri (Stat) (4) /1561 dated 22.11.2019.

Annexure A13: True copy of Circular F.No.01/10/2016-Agri dated 17.01.2020.

Annexure A14: True copy of Order F.No.1/6/2019-Agri./1367 dated 13.08.2019.

Annexure A15: True copy of Office Memorandum No.28036/8/87-Estt (D) dated 30.03.1988.

Annexure A16: True copy of Office Memorandum No.28036/1/2012-Estt (D) dated 03.04.2013.

Annexure A17: True copy of Notice Letter dated 11.07.2019 issued to the respondents.

Annexures filed by respondents:

Annexure R2(a): True copy of the order F.No.7/2//2008 Agri dated 24.12.2008 issued by the 4th respondent

Annexure R2(b): True copy of the Office Order F.No. 7/1/2014-Agri/67 dated 23.2.2016 issued by the 4th respondent.

Annexure R2(c): True copy of the recruitment rule notified as per notification dated 13.5.2010.

Annexure R2(d): True copy of the circular F.No.2/1/2012-DOP Vol.I/439 dated 9.5.2013.

Annexure R2(e): True copy of the officer memorandum F.No.1/1/2014-Agri/18 dated 11.1.2017 issued by the 4th respondent.

Annexure R2(f): True copy of the office note F.No.1/ACR/2014-Agri dated 21.1.2014.

Annexure R2(g): True copy of the notification F.No.2/1/2012-DOP dated 7.3.2012 issued by the Secretary (Panchayath) along with the Annexures.

Annexure R2(h): True copy of the office order F.No.3/4/2014-DP(Agri)/264 dated 30.3.2015.

Annexure R2(i): True copy of the order F.No.2/1/2012-DOP Vol.I/439 dated 9.5.2013 issued by the Secretary Panchayath.

Annexure MA1: True copy of the Employment Notice dated 28/06/2017 issued by the 4th respondent in O.A vide F.No.01/07/2017-Agri/885.

Annexure MA2: True copy of the Employment Notice dated 21/02/2019 issued by the:-by 4th respondent in O.A vide F.No.01/08/2017-Agri/1031

Annexure MA3: True copy of the Employment Notice dated 28/06/2017 issued by the 4th respondent in O.A vide F.No.01/11/2017-Agri/884.

Annexure MA4: True copy of the Office Order dated 05/11/2019 issued by the 4th respondent in O.A vide F.No.01/07/2017-AGRI/1534.

Annexure MA5: True copy of the Notice dated 14/08/2019 issued by the 4th respondent in O.A vide F.No.01/08/2017-AGRI/1371.

Annexure MA6: True copy of the relevant part of the notice dated 02/09/2019 issued by the 4th respondent in O.A vide F.No.01/11/2017-AGRI/1410 pertaining to the revised checklist and rejection list of Multi Skilled Employee (Agri).

Annexure MA7: True copy of the Circular dated 17/01/2020 issued by the 4th respondent in O.A vide F.No.01/10/2016-Agri.

Annexure MA8: True copy of the Office Order dated 12/05/2020 issued by the 4th respondent in O.A vide F.No.01/08/2017-Agri/231.

Annexure MA9: True copy of the Office Order dated 30/05/2020 issued by the 4th respondent in O.A vide F.No.01/11/2017-Agri.

Annexure MA10: True copy of the notice dated 8.7.2020 issued by the 4th respondent in OA vide F.No.01/11/2017-Agri/323.

Annexure MA11: True copy of the representation dated 09.06.2020 submitted by the 1st Misc. applicant.

Annexure MA12: True copy of the representation dated 24/06/2020 submitted by the 1st Misc. Applicant.

Annexure MA13: True copy of the representation dated 02/07/2020 submitted by the 1st Misc. Applicant.

Annexure MA14: True copy of the Office Order dated 13.5.2020 issued by the 4th respondent in O.A vide F.No.01/11/2017-Agri/.235 (relevant page).

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Annexure MA1: True copy of the Selection List for Agri. Demonstrators dated 17.1.2020 issued by the 4th respondent in OA vide F.No.01/10/2016-Agri under the direct recruitment mode through open competitive examination.

Annexure MA2: True copy of the Employment Notice dated 28.6.2017 issued by the 4th respondent in OA vide F.No.01/07/2017-Agri/885 pertaining to the appointment of Agriculture Demonstrator under the direct recruitment mode through open competitive examination.

Annexure MA2: True copy of the Employment Notice dated 21.02.2019 issued by the 4th respondent in OA vide F.No.01/08/2017-Agri/1031..

Annexure MA3: True copy of the judgment dated 29.3.2019 by Hon'ble High Court in OP (CAT) No.97/2019.

Annexure MA4: True copy of representation dated 1.7.2020.