

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 465/2000

FRIDAY THE 21st DAY OF JUNE, 2002

C O R A M

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

K.P. Mony
Upper Division Clerk
Office of the Director of Census Operations
Lakshadweep. Applicant

By Advocate Mr. K.Karthikeya Panicker

Vs.

1. Union of India represented by
the Secretary
Ministry of Home Affairs
New Delhi.
2. The Registrar General of Census Operation
2/A Mansingh Road,
New Delhi.
3. The Director of Census Operations
Lakshadweep.
4. The Assistant Director of Census Operations
Lakshadweep. REspondents

By Advocate Mr. P.M.M. Najeeb Khan, aCGSC

The Application having been heard on 5.6.2002 the Tribunal
delivered the following on 21.6.2002.

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant an Upper Division Clerk working in the office of the third respondent filed this Original Application aggrieved by A-4 order dated 30.12.97 and A-8 order dated 7.1.2000 both issued by the 4th respondent by which his promotion to the post of Upper Division Clerk had been made regular from 30.12.97 and his representation dated 15.10.99 and 21.10.99 praying for promoting him on regular basis with retrospective effect had been rejected retrospectively.



2. Applicant submitted in the O.A. that as per the Recruitment Rules he was entitled for promotion as UDC w.e.f. 11.8.95 but the respondents had promoted him on regular basis only w.e.f. 30.10.97. Applicant was appointed as Lower Division Clerk on temporary basis through employment Exchange on 3.10.80 in the office of the third respondent. He filed O.A. 37/87 before this Tribunal for regularisation of his service. Pursuant to A1 order issued by the third respondent his services were regularised w.e.f. 11.8.87. By A3 order dated 30.11.90 of the 4th respondent he was promoted to the post of UDC on adhoc basis. When one Attakoya was retained as UDC on deputation applicant filed OA 263/97 before this Tribunal seeking a direction to the respondents to regularise his services as UDC w.e.f. 11.8.95. During the pendency of the OA by A-4 order dated 30.12.97 by the 4th respondent, the applicant's services were regularised w.e.f 30.12.97. In the light of the above OA 263/97 was disposed of by A5 order dated 17.9.99 permitting the applicant to submit representation for redressal of his grievance as to the date from which he was entitled to be promoted as UDC. Pursuant to A5 order applicant submitted A6 and A7 representations dated 15.10.99 and 21.10.99 before the 3rd respondent. By A8 order dated 7.1.2000 the representations were rejected. Aggrieved he filed this OA seeking the following reliefs:

(a) to call for the records leading to Annexure A4 and quash the same as far as it is concerned with the assignment of date of promotion

(b) to call for the records leading to annexure A8 and quash the same.

(c) direct the respondents to assign 11.8.95 as his date of regular promotion with consequential benefits.

(d) to declare that the applicant is eligible and entitled to be promoted on regular basis as Upper Division Clerk w.e.f. 11.8.1995.

(e) to issue any other order or direction as this Hon'ble Tribunal deems fit in the case with costs.



2.1 According to the applicant, as per A2 Recruitment a Lower Division Clerk with 8 years of service is eligible and entitled to be promoted to the post of UDC on regular basis and the applicant having completed 8 years regular service as LDC on 11.8.95 the respondents ought to have convened Departmental Promotion Committee and promoted him as UDC on regular basis w.e.f. 11.8.95. Denial of the same was unconstitutional and violative of the Fundamental Right guaranteed under Article 14 of the Constitution of India. According to him on completion of 8 years of regular service an LDC was entitled to be promoted as UDC and such a right vested on the applicant could not be taken away on administrative instructions or Govt. orders. Respondents ought to have convened DPC well in time and considered his case. For the delay on the part of the respondents to convene the DPC the applicant could not be penalised.

2. Respondents filed reply statement resisting the claim of the applicant. It was submitted that the applicant's claim for retrospective promotion was not liable to be granted in view of the rules and regulations and actual facts and circumstances of the case. As per Govt. of India Rules the date of regular promotion should be the date of DPC or the actual date of promotion whichever is later. There was no Rule for Govt. of India which advocates for the automatic award of regular promotion immediately on acquiring qualification as per the Recruitment Rules without observing other formalities. The adhoc promotion of the was not in accordance with the rules and not through DPC. It was specifically made clear in the order that the adhoc appointment would not confer on him any claim for regular appointment and that the adhoc promotion was for a limited period of two or three years till 1991 Census work was over.

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Out of the two posts of UD Clerks, one was permanent and the other post was not regular as it was created specifically for 1981 Census and later revived for 1991 Census after keeping in abeyance for few years. The Staff Inspection Unit had started its study in the Directorate of Census Department in various States/UTs in July, 1993 and the final report was received in the Directorate for implementation on 20.12.97. The work study started with the issue of R2 letter dated 5.7.93. After the commencement of work study by Staff Inspection Unit it was not advisable to take up the promotion on regular basis till the final report of SIU. In the meantime however, steps were taken to convene the Departmental Promotion Committee to consider the case of the applicant but for reasons beyond control the DPC could not be convened. The members of the DPC other than Assistant Director of Census Operations were stationed at Kavaratti Island, it was all the more difficult to convene the meeting as and when required within a short notice. After shifting the Directorate from Cochin to Kadmat Island the Directorate was compelled to reconstitute the DPC with the members stationed at Kadmat. The approval of the Registrar General of Census was received in the Directorate on 22.10.96 by R3 letter dated 15.10.96. Later there was a direction to reduce the number of UD Clerks to one vide R-4 letter dated 8.12.97. In one post the applicant was officiating on purely adhoc basis and in the other post one deputationist from Lakshadweep Administration was working. However, when the final order of Staff Inspection Unit was implemented abolishing one post of UDC one of the incumbents had to be reverted from the post of UDC. On completion of the term of the deputationist in the post of UDC he was repatriated to his parent Department and the applicant was promoted to the post of UDC on regular basis w.e.f. 31.12.97. Meanwhile

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apprehending reversion the applicant filed O.A. 263/97 to retain him in the post of UDC. However, during the pendency of the Application, the applicant was promoted on regular basis w.e.f. 3.12.97. Pursuant to the direction of the Tribunal in O.A. 263/97 the applicant submitted representations dated 15.10.99 and 21.10.99 before the 4th respondent. Relying on the instructions of the Department of Personnel & Training dated 6.12.85 it was submitted that the appointing authority was left with the choice of retaining the date of promotion of the applicant prospectively as on 30.12.97 i.e. the date of the DPC and the actual order of promotion as well. This also helped the Department not to reopen the old cases which were already settled as per rules. Therefore, the applicant was given A-8 OM dated 7.1.2000.

4. Applicant filed rejoinder and respondents filed additional reply statement.

5. Heard learned counsel for the parties.

6. Shri K. Karthikeya Panicker, the learned counsel for the applicant took us through the factual aspects of the case and submitted that it was due to the respondents' inaction that the applicant's regular promotion was delayed and that as per the Recruitment Rules he was eligible and entitled to be promoted on completion of 8 years of service as LDC and as the applicant was not responsible for the delay, the applicant could not be penalised and the reliefs sought for were liable to be granted. He also submitted that a right vested on the applicant by virtue of statutory Recruitment Rules could not be taken away by administrative instructions or Government orders. He cited the judgment of the Hon'ble Supreme Court in Syed Khalid Rizvi and Others Vs Union of

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India and Others and Krishna Behari Srivastava Vs. State of U.P. and another and Ramesh Prasad Singh and Others Vs. Union of India and Others (1993 (3) Suppl. SCC 575) in support of his submission.

7 The learned counsel for the respondents took us through the factual aspects and reiterated the points brought out in the reply statement.

8. We have given careful consideration to the submissions made by the learned counsel for the parties, and the rival pleadings and have also perused the documents brought on record.

9. It is not in dispute that the applicant had completed 8 years of service as Lower Division Clerk on 11.8.95. The question before us is does the applicant have a legal right for promotion as Upper Division Clerk on completion of 8 years of service in terms of the Recruitment Rules. It is now well laid down that it is for the authorities concerned to decide which posts need to be filled up and at what time. The Government servant has only a right for being considered for promotion and does not have a right for promotion per se, just because a vacancy exists. In this particular case the vacancy was available but a study was being carried out by the Staff Inspection Unit. At the same time they were operating both the posts of Upper Division Clerks on adhoc basis one by the applicant and another on deputation basis. This action of the respondents would indicate that the respondents were taking care to ensure that the applicant did not suffer monetarily. Further we also find that the respondents had initiated action to convene the Departmental Promotion Committee in 1996. The DPC could meet on 30.12.97

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and considered the applicant for promotion and recommended and the applicant was promoted as UDC from that date. Respondents have referred to Govt. of India instructions contained in OM dated 24.12.80, 20.5.81 and 6.12.85 and submitted that according to these OM while promotions could be made in the order of select list, such promotions would have only prospective effect even in cases where the vacancy related to an earlier year. Further according to them Govt. of India instructions contained in OM dated 6.12.85 promotions would be regular from the date of meeting of the DPC or from the date of actual promotion whichever was later. According to the applicant, the instructions contained in these OMs of the Govt. of India had no applicability in the facts of the case. According to him on the basis of the Recruitment Rules he had a statutory right to be promoted on regular basis on completion of 8 years of service as LDC. We have carefully gone through A-2 Recruitment Rules relied on by the applicant. Col. 12 of A-2 Recruitment Rules reads as under:

"In case of recruitment by promotion/deputation/transfer, grades from which promotion, deputation, transfer to be made.

Promotions: Lower Division Clerks/Typists in the respective offices with 8 (eight) years regular service in the grade Rs. 950-1500.

10. On a careful consideration of the above we are unable to subscribe to the view of the learned counsel for the applicant that the above gave a statutory right for promotion on completion of 8 years. In our view, the above only lays down that a Lower Division Clerk becomes eligible for consideration for promotion on completion of 8 years of service. It cannot be stated that on completion of 8 years

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a LDC has to be promoted as UDC. Thus we reject the applicant's ground that he had a statutory right for promotion on completion of 8 years of service.

11. The applicant has no case that somebody junior to him had been regularised ahead of him by which the applicant's right for consideration has been infringed.

12. We have carefully gone through the judgment relied on by the learned counsel for the applicant. In our view in the facts of this case the ratio of the judgment relied on by the applicant has no applicability.

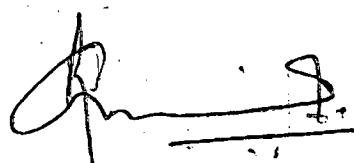
13. In the result, we hold that the applicant is not entitled for the reliefs sought for through this O.A. Accordingly finding no merit we dismiss this Original Application with no order as to costs.

'Dated the 21st June, 2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER

kmn



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

APPENDIX

APPLICANT'S ANNEXURES

A1 True copy of the order No. 2/1/85-Estt/140 dated 21.3.88 issued by the 3rd respondent.

A2 True copy of the notification No. 41-38/82-Ad.I dated 11.9.84 issued by the 2nd respondent.

A3 True copy of the Order No. 2/14/90 estt/2346 dt. 30.11.90 issued by the 4th respondent.

A4 True copy of the order No. 2/7/96 Estt/155 dated A 30.12.97 issued by the 4th respondent.

A5 True copy of the order dated 17.9.99 in OA No. 263/97 issued by the Tribunal.

A6 True copy of the representation dated 15.10.99 before the 3rd respondent

A7 True copy of the representation dated 21.10.99 before the 3rd respondent.

A8 True copy of the OM No. 2/2/97 Estt/7 dated 7.1.2000 issued by the 4th respondent.

RESPONDENTS' ANNEXURES

R1 True copy of the sanction letter No. 2/5/89-RG (AD.II) dt. 6.8.96

R2 True copy of the Registrar General's letter NO. 2.3.93-Ad.II dated 5.7.93

R3 True copy off the Approval of RGI dt. 15.10.96 the Head of the Deptt. for the DPC received in the directorate NO. 12/5(5)/96-Ad.IV

R4 Final order of SIU vide RG's letter NO. 23/1/96-Ad.II dated 8.12.97

R5 True copy of the continuation sanction of deputation NO. 11/6/94-AD.IV dated 2.1.97

R6 Letter No. 12/5/94-AD.IV of the RGI dated 6.12.94