

**Central Administrative Tribunal
Ernakulam Bench**

OA 466/2013

Thursday...., this the 23rd day of June, 2016

CORAM

HON'BLE MR.JUSTICE N.K.BALAKRISHNAN, JUDICIAL MEMBER
HON'BLE Mrs. P.GOPINATH, ADMINISTRATIVE MEMBER

Paridabi U.P.
W/o M.P.Attakoya
Grama Sevika
Women and Child Development Unit
Androth.
Residing at Ummathabiyyapura
Androth Island.

Applicant

(By Advocate : Mr.M.R.Hariraj)

Versus

1. Union of India, represented by the Secretary to Government of India, Ministry of Women and Child Development, New Delhi.
2. Administrator, Union Territory of Lakshadweep, Kavarathi – 673 555.
3. Director, Women and Child Development Department, Kavarathi, UT of Lakshadweep – 673 555.
4. C.E. Sarommabi, Women and Child Development Department, Kavarathi, UT of Lakshadweep – 673 555.
5. D.M. Zahirabi, LVEO, Women and Child Development Unit Office, Androth – 682 551.
6. K. Asmabi, LVEO, Women and Child Development Unit Office, Agathi – 682 553.



7. C.P. Badani, LVEO, Women and Child Development Unit Office,
Agathi – 682 553.

8. B. Havva, LVEO, Women and Child Development Unit Office,
Kadamat – 682 556. Respondents

By Advocate:

Mr.E.N.Hari Menon, ACGSC (R1)
Mr.S.Radhakrishnan (R2&3)
Ms.Nazeeba O.H (R5-8)

The Original Application having been heard on ^{1st} June, 2016, the Tribunal delivered the following order on ~~23rd June 2016~~

ORDER

By P. Gopinath, Administrative Member

Applicant is aggrieved by the refusal of the respondents to consider her for grant of ACP and MACP placements considering her length of service. She is further aggrieved by the move of the respondents to consider the party respondents in preference to her for appointment to the post of Mukhya Sevika in violation of the Recruitment Rules.

2. The applicant commenced service as adhoc Grama Sevika in the Border Area Project on 17.4.1982. She was appointed on ad-hoc basis because as per the rules governing the appointment to the post of Lady Village Extension Officer, the candidate had to have a training qualification. Respondents 5 to 8 were appointed to the post of Lady Village Extension Officer in the Department of Social Welfare and Culture in a subsequent selection. The Border Area Project and the Department of Social Welfare and Culture were different departments and the cadres of Grama Sevika and LVEO were being maintained separately. The post of LVEO was subsequently brought under the

Department of Women and Child Development. The Border Area Project Staff including the applicant were merged with the Department of Women and Child Development. The post of Mukhya Sevika is the promotion post of Grama Sevika and LVEO. The respondents are not qualified for being granted any promotion as they are not having the training qualification.

3. It is argued on behalf of the applicant that she is entitled to get her ad-hoc service prior to the training also reckoned as qualifying for ACP placement. As such, she is entitled to get her second financial up-gradation under the ACP scheme with effect from 17.4.2006, the date she completed 24 years of service. Even if the service after regularization in 1985 alone is reckoned, the applicant has completed 20 years of service in 2005. Hence, she is eligible for the second financial up gradation under the MACP scheme with effect from 2009. The applicant is also entitled to be considered as senior to the party respondents who commenced service subsequently, argues the counsel.

The main reliefs sought in this OA are to:-

(i) Direct the respondents to consider the applicant for grant of 2nd placement under Assured Career Progression Scheme with effect from 17.4.2006 or in the alternative to consider her for grant of 2nd placement under Modified Assured Career Progression Scheme with effect from 2009;

(ii) Also to consider the applicant for promotion as Mukhya Sevika in preference to respondents 5 to 8 or any other person not having training qualification.

4. In the reply statement filed by the first respondent – UOI, it is submitted that the applicant was appointed as Gram Sevika in the Border Area Project on 17.4.1992 on ad-hoc basis. The Border Area Project staff including the applicant were merged with the Deptt. of Women & Child Development,

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Kavaratti. The order issued by Union Territory dated 16.5.2011 says that these employees will work under the Deptt. of WCD and their services will be used for the strengthening of various schemes implemented by the Directorate of WCD including ICDS. The post of Gram Sevika is not a post approved under ICDS Scheme. The ICDS functionaries borne on the cadre of States/UTs are Director, DPO, CDPO/ACDPO, Supervisor and honorary workers at the Anganwadi level like Anganwadi Workers and Helpers. The integrated Child Development Services (ICDS) Scheme is a centrally sponsored scheme implemented through State Governments/UTs. As per guidelines, even though the Central Govt provides funds up to 90% of cost towards the honorarium of Anganwadi Workers(AWWs) &Anganwadi Helpers (AWHs) and also salary and allowances of the staff appointed for implementation of ICDS Scheme, the staff is born on appropriate cadre of the States/UTs in the appropriate corresponding State pay scales. The State Government is responsible for recruitment, promotion, transfer and all other administrative matters pertaining to the staff working under the ICDS Scheme. The Govt of India does not provide any funds towards pension or other terminal benefits of the employees appointed by the States/UTs for implementation of ICDS Scheme. The post retirement benefits are available to State Govt Employees from the funds of State Govt and Govt of India does not provide any funds for these benefits for any employee in any of the States/UTs under the ICDS Scheme.

5. In the reply statement filed by respondents 2 & 3, it is submitted that respondents No. 5 to 8 are regular employees of the Department of Women & Child Development having more than 9 years of service. Benefits under

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ACP/MACP are their entitlement as per prevailing rules. The applicant was an employee under the Boarder Area Project of Lakshadweep State Social Welfare Board, an autonomous body. Now the BAP project has been merged with the Department of Women and Child Development and the remaining employees have been maintained by Department of Women & Child Development so as to avoid their retrenchment and also with a view to strengthen the various schemes being implemented under the Department of WCD, including ICDS. Payments of salaries etc of these employees are being met by the Department for the time being from the Grant-in-Aid provided by the Government. Annexue A2 is the Recruitment Rules for the post of LVEOs under the Department of erstwhile Social Welfare & Culture, now renamed as the Department of Women & Child Development and not for the post of Gramasevika under Border Area Project.

The applicant was appointed as Gramasevika on adhoc basis as per Recruitment Rules attached to the said post under BAP with qualification (1) SSLC or equivalent examination (2) Gramasevika/Balasevika training from a recognized institution. Annexure A2 RR for the post of Lady Village Extension Officer (LVEO) under the Department was amended during 1983. This RR has no relevance to the post of Gramasevika of Boarder Area Project under Lakshadweep State Social Welfare Board (LSSW Board). Therefore, Annexure A2 RR for the post of LVEO is not applicable to the post of Gramasevika under BAP. Hence the selection and appointment under Border Area Project has nothing to do with the selection and appointment under the erstwhile Department of Social Welfare & Culture or the Department of WCD. The

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BorderArea Project and the erstwhile Department of Social Welfare & Culture were different entities.

It was argued that respondents 5 & 8 were recruited by the erstwhile Department of Social Welfare & Culture during 1983 and 1984 on the basis of Recruitment Rules attached to the post of LVEOs. They were not appointed on the basis of RR for the post of Gramasevikas of Border Area Project as averred by the applicant. Their regularization, etc were done as per the recommendations of concerned DPC. It was submitted by the respondents that the 4th respondent was not a member of the Interview Board for the selection of LVEOs or the DPC/ Screening Committee member for awarding ACP/MACP. The staff under Boarder Area Project came into being under Lakshadweep State Social Welfare Board, an autonomous body of Central Social Welfare Board, in the year 1978. The Central Social Welfare Board, New Delhi and Lakshadweep Administration shared the funds for the Boarder Area Project in the ratio of 2:1. Since the Central Social Welfare Board stopped its share of funding towards these Projects after 31.03.2005, all Boarder Area Projects across the country were wound up. To avoid retrenchment and hardship to the employees under this Project in Lakshadweep, a decision was taken by Annexure A5 Office Order dated 16.05.2011 to utilize the service of the BAP staff, including the applicant, for strengthening the various schemes and programs being implemented by the Directorate of Women & Child Development, including ICDS, and to meet the cost of their salaries from the Grant-in-Aid provided by the Department. It is also decided to absorb them under the Department of Women & Child Development, including ICDS in a

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phased manner, for which it was recommended to create posts in the next Plan of the Department. So far no sanction has been received from the Govt of India. There are no posts of Gramsevika, Craft Teachers etc under the Department of WCD. The applicant would be absorbed against the post of LVEO or Mukhyasevika only when some posts become vacant under the Department and necessary amendments are made to the concerned LVEO Recruitment Rules to accommodate the applicant. The absorption of applicant against the next vacant post of LVEO is feasible as the requisite qualifications are (1) SSLC or equivalent examination; (2) LVEO training or any other training in the manner and period to be decided by the Administration. The applicant when recruited had SSLC qualification and the training qualification can be imparted on absorption. The absorption would be feasible if the same does not impede the chances of promotion of any available feeder cadre of LVEO. The applicant was an employee of Border Area Project and the LSSW Board granted her the 1st ACP. Applicant ought to be given 2nd ACP/MACP by the LSSW Board have claimed her further financial up-gradation subject to her eligibility w.e.f. 2009 under the BAP itself before its attachment to WCD/ICDS in 2011. Department of Women & Child Development who were utilizing the service of the BAP Staff, including the applicant from the year 2011.

6. Respondents 2 & 3 in their reply statement submit that all efforts are on to allow service benefits entitled to the applicant and her counterparts, including ACP/MACP without delay subject to availability of funds under Grant-in-Aid. Mukhyasevika under BAP was the promotion post for the post of Gramasevikas under BAP was the promotion post for the post of Gramasevikas

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under BAP. LVEOs under the Department of Women & Child Welfare are feeder posts for promotion to the post of Mukhyasevikas available under the Department. Gramasevikas of BAP are not the feeder to the post of Mukhyasevika belonging to the Department of WCD. The BAP staff are treated as surplus employees in the Department of Women and Child Development. Their merger and absorption are subject to availability of appropriate new posts. However, there was no GOI ban on absorption of applicant in a similarly placed post in the Island Administration. Party respondents 5 to 8 were selected as LVEOs in the Social Welfare and Culture during 1983-1984 after due selection process. The service was regularized from the date of joining. Now they are having more than 29 years of regular service. Department of Social Welfare and Culture is now named as Department of Women and Child Development. Applicant in the OA who came from another autonomous body and is not absorbed against any post can not claim any seniority against these Respondents who are directly appointed as per prevailing RR and who has undergone training as mentioned in Recruitment Rules.

7. Heard learned counsel appearing for the parties and perused the records. Annexure A13 D.O. letter dated 31.12.2004 of Secretary, Department of Women & Child Development, in para 2, clearly states:-

"2. A decision has now been taken that Central Social Welfare Board will stop meeting its share towards these Projects after 31.03.2005. In the circumstances either the Projects are to be closed and the employees to be declared surplus or the employees are absorbed in ICDS or similar type of State Government programmes. I have reviewed the status report of the ICDS projects as on 31.03.2004 and found that a number of vacancies

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are there in the existing ICDS projects in your State. In addition, new ICDS projects are to be sanctioned in your State. Thus a substantial number of posts of different categories will be available against which the project employees could be adjusted."

3. I, therefore, would like to request you to kindly give personal attention to this subject and make arrangements to close down the above projects and adjust/absorb the project employees in the ongoing State Government programmes or ICDS positively by 31.03.2005 failing which we will have to face litigations and other administrative problems as the Central Social Welfare Board won't be meeting its share after 31.03.2005."

Applicant brings to our notice OA 44/2015 wherein a similar BAP Craft Teacher's case was decided. In para 6 of the OA, the second respondent, Secretary, Women & Child Development, UT of Lakshadweep admits thus:-

"The Border Area Projects were established by the Central Social Welfare Board, New Delhi in different States in the 50's and 60's. These were set up as a pilot Project to provide comprehensive services to women and children in the Project catchment areas. The Border Area Projects were started in border areas of different States/UTs after Chinese aggression in order to ensure emotional and cultural integration of the Border Area population with the rest of the country in Lakshadweep, the Border Area Project was sanctioned by the Central Social Welfare Board during the year 1978 and established two projects Amini and Androth in the respective islands. The salaries of the Project employees are provided as per the State Govt. Scale of pay and other allowance. The expenditure is met by Central Social Welfare Board and State Govt. (U.T. Administration) in the ratio of 2:1

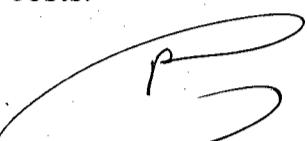
The Ministry of Human Resource, Women and Child Development, New Delhi vide 00. Letter No.12 1/2001-CSWB dated 31.12.2004 (Annexure 1) has requested us to make arrangements to close down the above Projects and adjust/absorb the project employees in the ongoing State Govt. Programmes or ICDS positively by 31.03.2005. The U.T. Of Lakshadweep Administration has been allowed to continue the Programme beyond 31.03.2005 and the Administration will bear the 100% of the cost of the Project vide letter No.F.12 1/2001CSWB dated 26.05.2005 (Annexure II) of the Government of India, Ministry of Human Resources Development, Department of Women and Child Development, New Delhi. Accordingly the Administrator, U.T. of Lakshadweep ordered to merge the Border Area Project staff including the Client with the Department of Women & Child Development and their salary and other benefits (100%) is being met by the Department from Grant in aid with effect from 1.04.2005 onwards vide Office Order F.No.28/1/2010-WCD dated 16.05.2011 (Annexure III). All establishment matters, disbursement of salary, maintenance of SR, granting leave etc. Staff is being done by the Department of Women and Child Development."

8. Hence the respondent had been issued clear directions to absorb the applicant as early as 2004. Applicant in the rejoinder brings out that there are four vacancies of Mukhya Sevikas in Women & Child Development Department. Just as K. Ayashabi who was a Mukhya Sevika in BAP Project was absorbed as Mukhya Sevika in the Department of Women & Child Development, the applicant also argues for being absorbed in a similar manner in a similar post. Hence despite specific orders of the GOI and the subsequent above stand of the third respondent, which appear to be mere words in paper, no attempt was made to regularly absorb the applicant in the transferred department since the Central Social Welfare Board stopped its funding on 31/3/2005. Even if applicant was declared a surplus staff, there would have been opportunities in the last 10 years, since the suspension of the erstwhile project, to absorb the applicant in a similarly placed suitable post. It appears the existence of the applicant was forgotten after the closure of the BAP project. From the arguments, it appears that the usage of the services of the applicant in Women & Child Development Department was a bounty that was given to avert retrenchment, without the available service benefits.

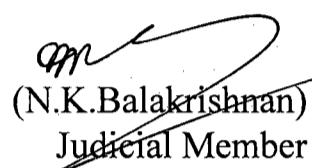
The Administration was fully aware that the responsibility of the applicant's payment of salary and emoluments as a erstwhile BAP staff was on the Administration as it had taken a conscious decision to use the staff in the Dept of Women & Child Development Programmes. The respondent had taken a conscious decision in this regard and, hence provision for their absorption and second MACP is also required to be made by the Island Administration.

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Whereas the 2nd MACP should be paid within 30 days, the applicant be absorbed against a suitable vacancy of Mukhya Sevika, as directed by GOI while winding up the BAP project, without affecting the seniority and chances of promotion of the feeder cadre staff of the Department of Women & Child Development. With the above order, the OA is disposed of. No order as to costs.



(P. Gopinath)
Administrative Member



(N.K. Balakrishnan)
Judicial Member

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