

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO. 472/2000

THURSDAY, THIS THE 25th DAY OF JULY, 2002.

C O R A M

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

T.K. Mullaakoya S/o late Badusha
Shipping Inspector
Port Department
UT of Lakshadweep
residing at Thottahakara, Kavaratti Island
U.T. of Lakshadweep.

Applicant

By M/s Shafik M. Abdulkhadir

Vs

1. Union of India represented by
the Secretary
Ministry of Home Affairs
North Block,
New Delhi-110 001
2. The Administrator
UT of Lakshadweep
Kavaratti.
3. The Port Officer
Department of Ports
UT of Lakshadweep
Kavaratti.

Respondents

By Advocate Mr.S. Radhakrishnan for R 2 & 3

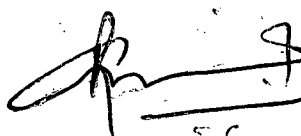
The Application having been heard on 28.6.2002 the Tribunal
delivered the following on 25.7.2002.

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant aggrieved by A1 order dated 11.2.2000
issued by the third respondent refusing to regularise the
services of the applicant in the post of Shipping Inspector
from the date on which he assumed charge as such has filed
this Original Application seeking the following reliefs:

- (i) To call for the records relating to Annexure A1
to A-8 and to quash A-1 being illegal and arbitrary
and to declare that the long and continuous adhoc
service of the applicant as shipping inspector is to
be counted as regular service as has been done in the
case of Port Assistants in Annexure A-7 and he is
entitled to count his adhoc service also as regular
service for all purposes including promotion.



(ii) To direct the respondents to consider the adhoc service rendered by the applicant in the post of Shipping Inspector with effect from 26.2.92 AN as regular service and to grant all other benefits of pay fixation and promotion on such basis.

(3) To issue such other appropriate orders or directions this Hon'ble Court may deem fit, just and proper in the circumstances of the case

4. To award the costs of this Original Application.

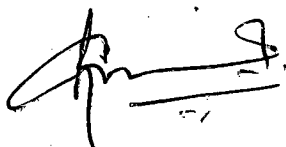
2.. At the time of filing of the O.A. the applicant was working as Shipping Inspector in M.V. Bharatseema and attached to the office of the Deputy Director (Supply and Transport) to assist in Shipping matters. He joined the Department in the year 1982 as a Tally Clerk under the 3rd respondent. After 10 years of service he was promoted as Shipping Inspector on adhoc basis in a leave vacancy in preparation of the regular incumbent's retirement as per Annexure A2 order dated 8.6.92. By A3 order dated 27.11.92 he was transferred and posted as Shipping Inspectors of M.V. Tippu Sultan. When a vacancy of Cargo Superintendent arose in the year 1994 he had also made a representation for the same but no positive reply was received from the respondents. By A5 order dated 14.10.99 his services were regularised as Shipping Inspector w.e.f. 29.6.99. Applicant submitted that another Departmental Promotion Committee meeting was held in the month of May which considered the category of Port Assistants Grade -B under the 3rd respondent and had by A-6 order regularised the services in Grade-A w.e.f. the date of their initial engagement in Grade-A on adhoc basis. He further submitted that this Tribunal had occasion to examine the system of conducting DPCs at will in Lakshadweep Islands and by A-7 order directed that when the DPC were not conducted at the proper time the individuals should not be made to suffer in A-7 order in O.A. 86/94 dated 1.12.94. The applicant made A-8 detailed representation to the second respondent on 2.11.99 for which he received A-1 reply



rejecting the claim made by citing instructions by the Government of India. The applicant claimed that he had acquired the qualifications required for the post of Shipping Inspector in 1985 and the respondents did not conduct the DPCs in proper time. as per Recruitment Rules for the next promotion post of Cargo Superintendent the feeder category was the cadres of Port Assistant and Shipping Inspector. As per A-6 persons who had joined much later than the applicant would be considered for promotion before the applicant. The respondents were following different standards for similar set of employees and was discriminating the applicant alone in the matter of regularising his long and continuous adhoc service. Hence he filed the Original Application seeking the above reliefs.

3. Respondents filed reply statement resisting the claim of the applicant. It was submitted that the adhoc appointment of Port Assistants Grade-A was made with effect from the date of their joining duty on adhoc basis based on the recommendations of the DPC subject to the approval from the Ministry. This was erroneous since as per the normal procedure and the instructions of the Govt. of India regular promotions would have only prospective effect and therefore this had to be reviewed. It was further submitted that as per the general policy of the Govt. of India the Court judgment in a particular case applied to the applicant therein only unless the Govt. issued general orders implementing and extending the judgment or ruling in a particular case. Respondents claimed that none of the grounds raised by the applicant were tenable and the O.A. was liable to be dismissed.

4. Applicant filed rejoinder.

A handwritten signature in black ink, appearing to be 'A. S.', is written over a horizontal line.

5. Applicant filed M.A. 624/2001 seeking a direction to the respondents to produce the files relating to the DPC held on 31.5.99 and 29.6.99 for promotion to the posts of Port Assistants Grade-A and Shipping Inspector. This MA was allowed by this Tribunal.

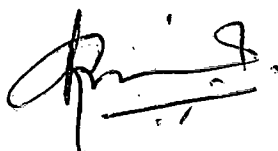
6. Heard the learned counsel for the parties.

7. The learned counsel for the applicant took us through the factual aspects and submitted that the refusal of the respondents to regularise the adhoc service rendered by the applicant in the post of Shipping Inspector and at the same time granting similar benefit to the cadre of Port Assistants who were also promoted on adhoc basis initially was absolutely illegal, arbitrary and tainted with a malafide intention to deprive the applicant the rightful claim of counting the adhoc service. The applicant who had already put in more than 8 years of service as Shipping Inspector was eligible to get the service counted for seniority and for all other purposes including further promotion. Respondents had not been conducting the Departmental Promotion Committee meeting at regular intervals prescribed by the rules. If the DPC had been held at the relevant time the applicant would have been promoted regularly long back. He cited the following judgment of the Hon'ble Supreme Court and orders of this Tribunal in support of his submissions.

(i) Anand Kumar Vs. Prem Singh and Others (2001 SCC L&S 742)

(ii) S.N. Dhingra and Others Vs. Union of India and Others (2001) 3 SCC 125)

(iii) P. Venugopalan Vs. Union of India represented by the Secretary, Ministry of Home Affairs, New Delhi (OA No. 86/94-Ekm Bench)



(iv) V.V. Abdul Rasheed Vs. The Administrator, UT of Lakshadweep, Kavarathi and another (O.A.No. 101/90 - Ekm Bench)

8. He submitted that the respondents were following double standards to employees belonging to two categories which were feeder categories for promotion to the category of Cargo Superintendents. Govt. of India OM should be made applicable to all the categories of employees working under the respondents. The respondents were treating equals unequally and thereby violated the mandatory provisions of equality enshrined in Article 14 and 16 of the Constitution of India.

9. The learned counsel for the respondents took us through the reply statement. He also produced two files containing the DPC proceedings for the posts of Port Assistant Grade-A and Shipping Inspector held on 6.5.99 and 29.6.99 respectively in compliance with the orders of this Tribunal in MA 624/2001.

10. 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. From A-5 order we find that the applicant and two others had been regularised w.e.f. 29.6.99 i.e. the date of meeting of the DPC. At the same time from A-6 dated 31.5.99 we find that 4 employees who were working on adhoc basis as Port Assistants Grade-A w.e.f. various dates on adhoc basis had been regularised w.e.f. retrospective dates of adhoc working.

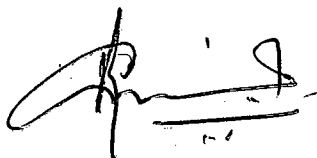
11. We find considerable force in the applicant's plea that by this action someone who had become Port Assistant on adhoc basis at a date later than the applicant would become



senior to him. This can have effect on the applicant in view of the fact that the post of Shipping Inspector and Port Assistant Grade-A form the feeder cadres for the post of Cargo Superintendent. By selectively giving regularisation with retrospective effect one set of employees would get undue advantage over others who had not been granted similar retrospective regularisation. The respondents should adopt uniform procedure in the matter of regularisation of adhoc promotees. Adopting different standards for different categories is clearly violative of the equality clause. Under these circumstances we are unable to sustain A-1 impugned order. The applicant in his A-8 representation dated 2.11.99 had specifically brought out the aspect of regularisation of Port Assistants with retrospective effect from the dates of their respective adhoc promotions. We find the said aspect had not been considered in A1 at all. Moreover, when both the cadres form the feeder cadre for promotion to the cadre of Cargo Superintendent both the feeder categories have to be treated alike.

12. We also perused the files containing the DPC proceedings for promotion to the posts of Port Assistants Grade-A and Shipping Inspector. We noticed that the recommendations of the Departmental Promotion Committee were similar in both the cases. We did not find anything in the proceedings which would justify adopting a different standard in the issue of A-5 order dated 14.10.99 than the one adopted in A-6 order dated 31.5.99.

13. In the light of the foregoing we are unable to sustain A-1 reply given to the applicant. Accordingly we, set aside and quash A1. We direct the second respondent to consider A-8 representation of the applicant afresh keeping



in view our above observations and pass appropriate orders and communicate the same to the applicant within a period of two months from the date of receipt of a copy of this order.

14. The Original Application stands allowed in part as above. No order as to costs.

Dated the 25th July, 2002.



K.V. SAHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

Kmn



APPENDIX

APPLICANT'S ANNEXURES

- A1 True copy of the OM F.No. 1/20/97-Port(1) dated 11.2.2000 issued by IIIrd respondent.
- A2 True copy of the order F No. 3/13/92-Port dated 8.6.92 issued by the 3rd respondent.
- A3 True copy of the order No. 1/5/92-Port dated 27.11.92 issued by the 3rd respondent.
- A4 True copy of the representation dated 21.7.94 submitted by the applicant before the 3rd respondent.
- A5 True copy of the order F NO. 1/20/97-Port dated 14.10.99 issued by the 3rd respondent.
- A6 True copy of the order F No. 1/27/94-Port dated 31.5.99 issued by the 3rd respondent.
- A7 True copy of judgment dated 1.12.94 of the Tribunal in OA 86/94
- A8 True copy of the representation dated 2.11.99 submitted by the applicant before the 2nd respondent.

Respondents' Annexures --Nil--