

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 370 of 2000
OA No. 371 of 2000
and
OA No. 474 of 2000

Wednesday, this the 19th day of June, 2002

CORAM

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

OA No. 370/2000:

1. M. Mullakoya,
Boat Driver, Kavaratti,
Lakshadweep.
2. B. Hamzath,
Boat Driver, Kavaratti,
Lakshadweep.
3. T.P. Khalid,
Boat Driver, Kavaratti,
Lakshadweep.
4. P.P. Kidave,
Boat Driver, Kavaratti,
Lakshadweep.

....Applicants

[By Advocate Mr. Thampan Thomas]

Versus

1. Union of India rep. by its Secretary,
Transport Department,
Transport Bhavan, New Delhi.
2. The Secretary, Department of Personnel
and Training (Ministry of Personnel,
Public Grievances and Pensions), New Delhi.
3. The Administrator,
Lakshadweep Administration,
Union Territory of Lakshadweep, Kavaratti.
4. Port Officer,
Office of the Port Officer,
Kavaratti, Lakshadweep.

....Respondents

[By Advocate Mr. P.R. Ramachandra Menon]

OA No. 371/2000:

1. A.P. Aboobacker,
Boat Driver, Kavaratti,
Lakshadweep.

....Applicant

[By Advocate Mr. Thampan Thomas]

Versus

1. Union of India rep. by its Secretary,
Transport Department,
Transport Bhavan, New Delhi.
2. The Secretary, Department of Personnel
and Training (Ministry of Personnel,
Public Grievances and Pensions), New Delhi.
3. The Administrator,
Lakshadweep Administration,
Union Territory of Lakshadweep, Kavaratti.
4. Port Officer,
Office of the Port Officer,
Kavaratti, Lakshadweep.

....Respondents

[By Advocate Mr. P.R. Ramachandra Menon]

OA No. 474/2000:

1. M. Attakoya,
Boat Driver, Kavaratti,
Lakshadweep.
2. K.P. Abdulkhader,
Boat Driver, Kavaratti,
Lakshadweep.
3. P.P. Syed Mohammed,
Boat Driver, Agati,
Lakshadweep.
4. B. Mohammed,
Boat Driver, Kavaratti,
Lakshadweep.

....Applicants

[By Advocate Mr. Thampan Thomas]

Versus

1. Union of India rep. by its Secretary,
Transport Department,
Transport Bhavan, New Delhi.
2. The Secretary, Department of Personnel
and Training (Ministry of Personnel,
Public Grievances and Pensions), New Delhi.
3. The Administrator,
Lakshadweep Administration,
Union Territory of Lakshadweep, Kavaratti.
4. Port Officer,
Office of the Port Officer,
Kavaratti, Lakshadweep.

....Respondents

[By Advocate Mr. P.R. Ramachandra Menon]

The applications having been heard on 19-6-2002, the
Tribunal on the same day delivered the following:

Common order in OA 370/00, OA 371/00 & OA 474/00

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

As the grievances of the applicants in all these three Original Applications, who are working as Boat Drivers on adhoc basis under the Lakshadweep Administration, being identical, i.e. seeking regularisation from the date of their respective adhoc appointments, these Original Applications were heard together and are being disposed of by this common order.

2. For the sake of convenience, the details as obtaining in OA No.370/2000 are being given.

OA No.370/2000:-

3. Applicants, four in number, aggrieved by A-4 order dated 25-1-2000 issued by the 4th respondent rejecting their claim for regularisation of the adhoc appointment, filed this Original Application seeking the following reliefs:-

"(i) to quash the order Annexure A4 F.No.1/22/98-Port dated 25.1.2000 and direct the respondents to regularise the applicants' service on adhoc basis from 11.1.95 and give all benefits to the applicants with retrospective effect."

4. Facts which are not in dispute are as following. Applicants were working in Port Department in the Union Territory of Lakshadweep from 11-3-80. They entered in the service as Lascars. They were promoted as Boat Drivers on adhoc basis by A-1 order dated 11-1-95. They were making representations to regularise their adhoc appointment with effect from the date of joining on adhoc promotion. A-2 order dated 8-12-1999 was issued by the 3rd respondent regularising them in the posts of Boat Driver with effect from 27-10-99, i.e. the date of sitting of the Departmental Promotion

Committee, in which it was stated that their appointment was purely temporary and they would be on probation for a period of two years from the date of their regular appointment. Applicants filed a petition dated 8-12-99 to regularise their adhoc appointment with effect from the date of their joining duty in the Port on adhoc basis. A-3 reply dated 24-12-99 was given to them by the 3rd respondent in which it was stated that their request was under consideration. By A-4 office memorandum dated 25-1-2000 their request to regularise their adhoc appointment from the date of their joining duty was not acceded to. Aggrieved, they filed this Original Application seeking the above reliefs. Applicants further submitted that they were made to work for a long period on adhoc basis and their promotions were blocked. They were not responsible for the delay in convening the Departmental Promotion Committee by the department and the action of the authorities had adversely affected the promotion and the entitlement of other benefits attached to it. Adhoc appointment of the Port Assistant Grade 'A' was regularised with effect from 1985, 1987 etc. and if they could be regularised, the applicants could also be regularised from an earlier date.

5. Respondents filed reply statement resisting the claim of the applicants. It was submitted that the department could not submit the proposal before the Departmental Promotion Committee earlier for want of Confidential Reports of the applicants. Relying on the Government of India's OM No. 22011/3/76-Estt(D) dated 24-12-1980 and 20-5-1981, it was submitted that while promotions would be made in the order of consolidated select list, such regular promotion would have only prospective effect in the case where the vacancy related to an earlier year. The general principle was that the promotion of the officers included in the panel would be

regular from the date of validity of the panel or the date of their actual promotion whichever was later. The Departmental Promotion Committee recommended the regular appointment of the applicants in their meeting held on 27-10-1999, which was also the date of the panel. The department regularised the adhoc appointment of the applicants with effect from 27-10-1999, i.e. the date of sitting of the Departmental Promotion Committee. Regarding the regularisation of the adhoc appointment of Port Assistants Grade 'A' with effect from the date of their joining duty on adhoc basis on the recommendation of the Departmental Promotion Committee, it was submitted that the same was erroneous and as per the normal procedure and existing instructions, the adhoc promotion would have only prospective effect even in the cases where the vacancy related to an earlier year and therefore, the said case was to be reviewed.

6. Applicants filed a rejoinder and the respondents filed additional reply statement.

7. Heard the learned counsel for the parties.

8. The learned counsel for applicants took us through the factual averments and submitted that applicants in these 3 Original Applications were working for varied periods on adhoc basis as Boat Drivers from 1987 onwards in some cases (OA No.371/2000), and not regularising them from their respective dates of adhoc promotions and treating the adhoc service as regular would delay their further promotions as the adhoc service could not be counted as regular service wherever minimum service in the lower grade was stipulated for promotion. She cited the orders of this Bench of the Tribunal in OA No.101/90 dated 22-3-1991, OA No.887/93 dated 19-10-1993 and OA No.86/94 dated 1-12-1994 in support.

9. The learned counsel for respondents submitted that the Departmental Promotion Committee could not meet earlier as the Confidential Reports of the applicants were not available.

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.

11. The main reason given by the respondents for not convening the Departmental Promotion Committee meeting was that the Confidential Reports of the applicants were not available. Learned counsel for respondents submitted that the Confidential Reports were delayed as far as the applicants were concerned because the applicants did not give their self-assessment. Applicants' case is that it was a failure of the respondents to maintain the Confidential Reports in time and had they done their duties properly, the Departmental Promotion Committee could have been held in time and the applicants would not have suffered.

12. To our specific query to the learned counsel for respondents as to whether Confidential Reports are maintained at all for Group 'D' staff, it was submitted by him, on instructions, that generally for Group 'D' staff no Confidential Reports are maintained, but as the applicants in these Original Applications were working as Lascars, even though Group 'D', for them the Confidential Reports were maintained. We find also from the Recruitment Rules for the post of Boat Drivers, which also showed the Recruitment Rules for Group 'D' staff of Lascars under the Lakshadweep Administration, that the educational qualifications prescribed

for Group 'D' staff was Class-IV. For the post of Boat Driver also the educational qualification prescribed was Class-IV. As the qualification prescribed for Lascars was Class-IV, we fail to understand as to how they can give their self-assessment for the purpose of Confidential Reports. We are also aware that generally under the Government of India for Class-IV staff no Confidential Reports are maintained. We note that in the Recruitment Rules, the method of filling up of the posts of Boat Driver is shown as 'selection' as well as 'Trade test before a Board of Officers'. We are also of the view that the respondents would have definitely satisfied themselves about the fitness of the applicants before they were promoted on adhoc basis as Boat Drivers. The fact is also that after their promotions they had been continued all these years and all of them had been found fit and empanelled in 1999 and they had been promoted with effect from 1997. It had also come out that their posting as Boat Drivers on adhoc basis had been done strictly in the order of their seniority as Lascars.

13. Learned counsel for applicants submitted that the respondents had been regularising the services of certain categories of staff from the date of their adhoc promotions, but in the case of the applicants they had refused to do the same. In this connection, apart from the Port Assistants' case, the learned counsel for applicants also cited the cases of Compositor Grade-II and Copy Holder under the Lakshadweep Administration by orders dated 14-3-2000 enclosed as A-9 and A-10 in OA No.371/00. Respondents did not deny this. Learned counsel for applicants also cited the orders of this Tribunal in OA No.101/90, OA No.887/93 and OA No.86/94 in support of the reliefs sought.

14. During the course of the arguments, the learned counsel for applicants also relied on a note purported to have been prepared by the 4th respondent recommending regularisation of the applicants from their respective dates of adhoc appointment as Boat Drivers. However, we agree with the submissions of the learned counsel for respondents that a record which had not been produced in the pleadings could not be relied on at the time of hearing.

15. Thus the position that emerges is the applicants' regularisation as Boat Drivers had been delayed for no apparent reason and due to basically the delayed action by the respondents. Thus, on the facts and circumstances of the case, we find that the applicants in these Original Applications have a genuine cause for grievance that their services from 1995 onwards as Boat Drivers would get ignored if they are not regularised from their respective dates of promotion. It has also come out that the Boat Drivers were working under the Port Assistants and the Port Assistants had been given the benefit of regularisation from retrospective dates. Keeping all the above aspects in view and also the orders of this Tribunal in the three Original Applications relied on by the learned counsel for applicants as also the fact that applicants had been promoted on adhoc basis strictly in the order of their seniority and by the retrospective regularization it would not affect anybody as there is no direct recruitment in this category and in the interest of justice, we are of the view that the 3rd respondent should be directed to consider the matter of their regularisation from their respective dates of adhoc working afresh.

16. Accordingly, we set aside and quash A-4 office memorandum issued by the 4th respondent rejecting the representations submitted by the applicants for regularization from the respective dates of their adhoc appointment as Boat Drivers. We direct the 3rd respondent to consider the matter afresh keeping the factual position as brought out in the above paragraphs and communicate the result of the consideration to the applicants within a period of three months from the date of receipt of a copy of this order.

OA No.371/2000:-

17. In this Original Application, there is only one applicant. He was promoted as Boat Driver on adhoc basis with effect from 11-3-1987. He was regularized as Boat Driver with effect from 27-10-1999, by A-6 order dated 8-12-1999. His request for regularization had been rejected by A-7 order dated 25-1-2000. He sought the following reliefs:-

- "(i) to quash the order Annexure A7 F.No. 1/22/98-Port dated 25.1.2000 and direct the respondents to regularise the applicant's service with effect from the adhoc promotion as Boat Driver from 11.3.87 and to extend all the benefits consequent of regularisation with retrospective effect."

18. Following our order in OA No.370/2000, we set aside and quash A-7 order and we direct the 3rd respondent to consider the applicant's request for regularization from the date of his adhoc appointment as Boat Driver afresh and pass a detailed order and communicate the same to the applicant within a period of three months from the date of receipt of a copy of this order.

OA No.474/2000:-

19. In this Original Application, there are four applicants, all working as Boat Drivers on adhoc basis with

effect from 1990 (1st, 2nd and 3rd applicants) and 1995 (4th applicant). They sought the following reliefs through this Original Application:-

- "(i) to quash the orders Annexure-A1 order No. F.1/4/96-Port dt. 8.12.99 Port and Annexure-A3 F.No.1/22/98-Port dated 25.1.2000 and direct the respondents to regularise the adhoc appointment of the applicants with effect from their joining the post on adhoc basis and give all benefits to the applicants with retrospective effect."

20. Applicants in this Original Application were regularized with effect from 27-10-1999 by A-1 order dated 8-12-1999. Their representations for regularization with effect from the date of their respective adhoc promotion were rejected by A-3 order dated 25-1-2000.

21. Following our order in OA No.370/2000, we set aside and quash A-3 order dated 25-1-2000. We direct the 3rd respondent to consider the matter afresh keeping in view our observations and directions in OA No.370/2000 and pass a detailed order and communicate the same to the applicants within a period of three months from the date of receipt of a copy of this order.

22. All the three Original Applications, viz. OA No.370/2000, OA No.371/2000 and OA No.474/2000, are disposed of as above with no order as to costs.

Wednesday, this the 19th day of June, 2002

Sd/-
K.V.SACHIDANANDAN
JUDICIAL MEMBER

Sd/-
G.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

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A P P E N D I X

OA 370/2000

Applicant's Annexures:

1. A-1: True copy of the Order No.1/1/95-Prat(2) dated 11.1.95 issued by the 4th respondent.
2. A-2: True copy of the order No.1/4/96-Part dated 8.12.99 issued by the 4th respondent.
3. A-3: True copy of the Office Memorandum No.F.1/22/98-Part dated 24.12.99 issued by the 3rd respondent.
4. A-4: True copy of the office Memorandum F.No.1/22/98-Part dated 25.1.2000 issued by the 4th respondent.
5. A-5: True copy of the order F.No.1/27/94-Part dated 31.5.99 issued by the 4th respondent.

OA 371/2000

Applicants' Annexures:

1. A-1: True copy of the order No.F1/4/96-Part dated 8.12.99 issued by the 4th respondent.
2. A-2: True copy of the office Memorandum No.F.1/22/98-Part dated 24.12.99 issued by the 3rd respondent.
3. A-3: True copy of the office Memorandum F.No.1/22/98-Part dated 25.1.2000 issued by the 4th respondent.
4. A-4: True copy of the order F.No.1/27/94-Part dated 31.5.99 issued by the 4th respondent.

OA 474/2000

Applicant's Annexures:

1. A-1: True copy of the order No.1/19/90-shipping dated 27.5.82 issued by the 4th respondent.
2. A-2: True copy of the order No.F.1/3/87-Part(3) dated 11.3.87 issued by the 4th respondent.
3. A-3: True copy of the representation dated 11.8.98 submitted by the Applicant to the 3rd respondent.
4. A-4: True copy of the Office Memorandum No.1/19/97 dated 14.10.98 issued by the 4th respondent.
5. A-5: True copy of the representation dated 20.20.99 submitted by the applicant to the 4th respondent.
6. A-6: True copy of the order No.1/4/96-Part dated 8.12.99 issued by the 4th respondent.
7. A-7: True copy of the office Memorandum F.No.1/22/98-Part dated 25.1.2000 issued by the 2nd respondent.
8. A-8: True copy of order F.No.1/27/94-Part dated 31.5.99 issued by the 4th respondent.
9. A-9: True copy of the Order F.No.1/2/98-press(K)/374 dated 14.3.2000 issued by the 3rd respondent.
10. A-10: True copy of the Order F.No.1/31/94-press(K)/374 dated 14.3.2000 issued by the 3rd respondent.

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