

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE OF DECISION : 30.3.90

P R E S E N T

HON'BLE SHRI N.V KRISHNAN, ADMINISTRATIVE MEMBER

&

HON'BLE SHRI N.DHARMADAN, JUDICIAL MEMBER

ORIGINAL APPLICATION NO.484/89

A.T Kuncheria .. Applicant

v.

Administrator,
Lakshadweep U.T,
Kavaratti, Lakshadweep .. Respondent

M/s. K.Vijayan &
P.K Madhusoodhanan .. Counsel for the
applicant

Mr.P.V.M Nambiar, SCGSC .. Counsel for the
respondent

O R D E R

Shri N.Dharmadan, Judicial Member

The applicant's grievance is that the respondents are not confirming him as Upper Division Clerk and giving further promotion to the higher cadre on the basis of his ranking in the seniority list of the Upper Division Clerks after his transfer from Andaman and Nicobar Islands to the Lakshadweep Administration.

2. The case of the applicant in brief is as follows. While working as a regular Upper Division Clerk in the Andaman and Nicobar Islands his father-in-law, who was working in the Indian Army, sent Annex.I representation for transferring the applicant and his wife from the Andaman and Nicobar Islands to the Lakshadweep Administration. This request was granted by Annexure-V memo. The relevant portion of the said memo reads as follows:-

"Therefore they will rank below all the incumbents in the respective grades in this Administration on the dates of their joining duty in this Administration. Accordingly the seniority of the above petitioners, who were transferred to the services of this Administration from Andaman Administration on requests, in the

cadre of L.D Clerk/U.D.Clerk is fixed with effect from the dates of their joining duty in this Administration in the respective grades, as provided in the Office Memorandum referred to above".

3. According to the applicant he was a confirmed Lower Division Clerk who had been promoted to the next grade while he was working in the Andaman and Nicobar Islands as per the existing rules. There was no change after his transfer to the Lakshadweep with regard to the post which was held by him. He had been assigned Sl.No.35 in the seniority list of Upper Division Clerks, but he has not been given the confirmation. Therefore, he filed representations (Annexures 6 and 7); but they have not been considered by the respondents. Hence he has filed this application under Section 19 of the Administrative Tribunals Act, 1985.

4. The question to be considered in this case is whether the applicant who was an Upper Division Clerk while working in Andaman and Nicobar Islands should again sit for the test for getting confirmation as Upper Division Clerk prescribed under the rules of the Lakshadweep Administration after his transfer to that place without making specific provision for the same in the order of transfer itself. Admittedly, in the order of transfer there is no mention that the applicant's eligibility for confirmation as Upper Division Clerk depends on the test as provided for under col.12 of the Schedule to the Rules dated 27th June, 1961(Ext.R-9). The relevant portion of col.12 of the Schedule prescribing the special test qualification is extracted below:-

h/s
" Promotion on the basis of seniority from the post of Lower Division Clerk, having three years service in the grade and a pass in special tests that may be prescribed

by the Administrator from time to time, subject to 25% of the posts being earmarked for a competitive examination limited to L.D.Cs".

5. Ext. R-6 communication sent by the Lakshadweep Administration to the Govt. of India in connection with the applicant's representation contains the following statement which is relevant for deciding the issue:-

"(a) Passing of the departmental test is basically a pre-requisite for the L.D Clerks of this Administration to be promoted as U.D Clerks. Shri A.T.Kuncheria was already a U.D Clerk (Designated as Higher Grade Clerk under the A&N Administration) promoted as such on the basis of the recommendation of the Departmental Promotion Committee constituted for the purpose by the Andaman & Nicobar Administration.

(b) Since at the time of transfer of Shri A.T. Kuncheria to this Administration it was agreed upon that his confirmation would depend upon his seniority under Lakshadweep Administration and he would be ranked below all direct recruits or promotees selected on the same occasion and he was ranked Sl.No.35 in the seniority list of U.D Clerks, it does not appear to be proper to ask him to pass the departmental test which is a pre-requisite for L.D Clerk for promotion to the post of U.D Clerk etc. especially when passing of such departmental examination was not laid down as a condition for confirmation at the time of his permanent transfer to Lakshadweep Administration".

6. The stand of the Lakshadweep Administration with regard to the applicant's right to get confirmation is made clear in the aforesaid statement in Ext.R-6. The Government of India should have accepted the claim of the applicant in the light of the clear statement in Ext R-6 especially when there is provision in Ext R-8 rules for granting exemption from passing the tests which reads as follows:-

"Where the Administrator, Union Territory of Lakshadweep is of the opinion that it is necessary or expedient so to do, he may, by order for reasons to be recorded in writing, relax any of the provisions of these rules, with respect of any class or category of persons except rule 4 of the rules".

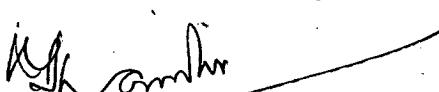
7. In the counter affidavit filed by the respondents it was indicated that the Lakshadweep Administration is considering the case of the applicant as to whether exemption as per the Recruitment Rules can be granted to the applicant and that the matter has been referred to the Ministry of Home Affairs as per Ext. R-10 and it is pending for consideration.

8. The transfer of the applicant to the Lakshadweep was approved and accepted by the Lakshadweep Administration as per Annexure-IV proceedings dated 25.3.1970 without any conditions as the bottom-most officer in the cadre. He has also been assigned Sl.No.35 in the seniority list of Upper Division Clerks. But he was not confirmed. Till 1987 the applicant was never informed that he should sit for the departmental test for getting confirmation as Upper Division Clerk and for further promotion and consideration by the D.P.C. If as a matter of fact the promotion to the post of Upper Division Clerk will only be granted after passing the departmental test, it should have been informed to the applicant either at the time when his transfer to the Lakshadweep Administration was sanctioned as per Annexure-IV proceedings or at any time subsequently, but before assigning him a rank in the seniority list. After having placed him in the seniority list by giving Sl.No.35, there is no legal justification in not confirming him in the post of Upper Division Clerk and denying further promotion to the applicant.

9. The respondents have not brought to our notice any rule which makes it obligatory for a transferee employee who is fully qualified while working in the Andaman and Nicobar Islands from where he was transferred

to Lakshadweep Administration for confirmation as Upper Division Clerk without passing any qualifying test, to sit for such a test after transfer for getting confirmation to the post in Lakshadweep. Ext R8 is the existing general rules of the Lakshadweep Administration which do not specifically deal with the case of the applicant. If these rules govern the matter, the Administration ought not have sent Ext R6 communication to Government of India recommending the case of the applicant favourably as indicated above. Since the applicant was waiting for a long time for getting confirmation in the post of Upper Division Clerk and the Government of India is not passing any orders, interest of justice demands interference by this Tribunal in this case.

10. On a careful examination of the facts and circumstances of the case, we are fully satisfied that the applicant deserves to be confirmed as Upper Division Clerk in the Lakshadweep Administration with effect from the date of his inclusion in the seniority list and he is also eligible for further promotion on that basis if he is eligible as per rules. Accordingly we allow this application and direct the respondents to confirm the applicant as Upper Division Clerk under the Lakshadweep Administration from the date of his inclusion in the seniority list of the Upper Division Clerks and grant him all consequential benefits in accordance with law. There will be no order as to costs.


(N.DHARMADAN)
JUDICIAL MEMBER

30.3.90.


3/9/90
(N.V KRISHNAN)
ADMINISTRATIVE MEMBER

6.8.91

14

Mr TA Rajan for the petitioner - by Mr MC Cherian
Mr TPM Ibrahim Khan by Mr Safiq for respondents.

The learned counsel for the respondents seeks
some time to file reply. Granted. He may do so within 4 weeks
with copy to the other side. Call on 3.9.91.

DR

DR

6.8.91

NVK & ND

②

Mr TA Rajan for petitioner
Mr. Safiq for respondents

Mr. Counsel for the respondents states
that the reply has not yet been filed.
He seeks 3 weeks time. Time granted.

call on 24/9/91

DR

319/91

NVK & ND

Mr TA Rajan for the applicant.
Mr TPM Ibrahim Khan for the respondents by Mr Safiq.

(10)

At the request of the learned counsel for the applicant,
call on 16.10.91. (16-10-91)

DR
16/10/91

DR

24.9.91

NVK & ND

⑧

Mr TA Rajan for applicant
Mr Safiq for respondents

At the request of the learned counsel
for the applicant call on 12.11.91

DR

DR

16/10/91

12.11.91

SPM&ND

Mr. TA Rajan
Mr. Shefiq.

List before Court II on 5.12.91.

12.11.91

NVK & ND

Mr. T. A. Rajan for petitioner
and Shefiq for respondent

The learned Counsel for the
applicant stated that rejoinder has been
filed. He seeks time for argument.

Call on 2.1.92 *by L*

5/12/91

NVK & ND

② Mr. TA Rajan
Mr. Shefiq for Respondent

At the request of the learned Counsel
for the respondent, Call on 20/1/92

2/1/92

NVK & ND

(16)

Mr TA Rajan
Mr TPM Ibrahim Khan by proxy.

Heard. We have given a direction to the respondents to confirm the applicant as UDC under the Lakshadweep Administration from the date of inclusion in the seniority list and grant him all consequential benefits in accordance with law. Respondents have already confirmed that the applicant is as UDC, admittedly by Annexure 6. The applicant contends that as consequential benefits of promotion has not been given, this amounts to contempt.

2 The respondents have filed reply stating that the ~~law~~ law requires that the applicant should have passed in the examination. As he has not passed the examination, he has not been promoted. This is in conformity with our direction that consequential benefits should be given only in accordance with law.

3 We, therefore, find there is no substance in the case and hence notice to the respondents is discharged. However, we make it clear that in case the applicant is aggrieved by not having promoted, it is open to him to take such legal steps as may be advised.

- 20.1.92