

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.485 of 1994

Monday, this the 9th day of January, 1995

CORAM

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

HON'BLE MR P SURYAPRAKASAM, JUDICIAL MEMBER

1. Murugan.B, S/o Bhagavath Pillai,
Engineering Assistant (Civil),
Lakshadweep Harbour Works, Kavarathi.
2. C.S. Krishnamoorthy, S/o CN Sundara Raman,
Engineering Assistant,
Lakshadweep Harbour Works, Kavarathi. ...Applicants

By Advocate Mr MR Rajendran Nair.

Vs

1. Union of India rep. by
Secretary to Government of India,
Ministry of Surface Transports,
New Delhi.
2. The Chief Engineer and Administrator,
Andaman Lakshadweep Harbour Works,
Port Blair- 744 101.
3. The Additional Chief Engineer,
Lakshadweep Harbour Works,
Karaparambu, Kozhikode. ...Respondents

By Advocate Mr TPM Ibrahim Khan, Senior CGSC.

O R D E R

PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

Applicants are working as Engineering Assistants in the Lakshadweep Harbour Works. According to Rules, R-1, Engineering Assistants who have completed five years of service and who have not been promoted to the next scale of Inspector of Works for want of vacancies will be allowed the pay scale of Rs 1600 - 2660 on a personal basis on completion of five years of service in the entry grade subject to rejection of the unfit..

2. Applicants were initially appointed on 1.8.81 on a temporary ad hoc basis under Regular Establishment. Their services were extended from time to time, and finally 'converted' (A-V) and 'transferred' to Regular Establishment with effect from 15.3.83 (FN) which is stated to be a 'Regular appointment'. Their grievance is that they have completed five years of service in the entry grade, but they have been given the higher scale of ₹ 1600 - 2660 on a date subsequent to the date of completion of five years of service in the entry grade, ignoring the period of temporary service.

3. According to respondents, the Recruitment Rules, R-7, for Inspector of Works prescribes five years of service in the grade rendered after appointment thereto on a regular basis for qualifying for promotion. Respondents, however, state that the Scheme R1 is intended to give relief to those who have not been promoted as Inspector of Works. Respondents argue that since the question of affording relief to the applicants under R-1 arises only if they fail to get promoted under the Recruitment Rules, such relief can be given only after completion of five years service in the grade rendered after appointment thereto on a regular basis, as stated in the Recruitment Rules.

4. Learned counsel for the applicants relied on Kailash Chandra Rajawat Vs Union of India and another (AIR 1993 SC

2462). A Division Bench of the Supreme Court held:-

"4. The learned counsel for the respondents has defended the present appeal on the ground that the period of temporary service of the applicant cannot be allowed to be taken into account for calculating the five years' eligibility period. Reliance has been placed on the observations in paragraph 47(A) in Direct Recruit V. State of Maharashtra (AIR 1990 SC 1607).

"5. We have examined the above noted judgment with the assistance of the learned counsel and are of the opinion that the observations referred to above do not help him. In that case, the observations relied upon were made with reference to stop-gap arrangement of an employee for a short period and in the present case we are concerned with temporary appointment and not a stop-gap appointment. We are further of the view that the case before us is directly covered by the ratio in Baleshwar Dass V. State of U.P., (AIR 1981 SC 41) ... The period spent by the appellant, as temporary duty, prior to his regularisation was required to be taken into consideration for considering his eligibility for promotion and when so taken, it is apparent that the appellant possessed the requisite experience ..."

Respondents relied on a Constitution Bench decision of the Supreme Court in State of West Bengal and others V. Aghore Nath Dey and others (1993) 3 SCC 371 in which it was clarified:

"In the present case, all the writ petitioners are persons who were given ad hoc temporary appointments for a fixed period, which was extended from time to time till their regularisation on February 26, 1980, and that too by relaxation of the condition of selection by the Public Service Commission, which was an express

condition of their ad hoc appointment and a requirement for regular appointment under the rules. Assuming the relaxation made in their case by the State Government on February 26, 1980 to be valid, as the same is not disputed before us, they could be treated as regularly appointed only with effect from February 26, 1980 when the relaxation was given to them, and an order was made simultaneously absorbing them in the cadre of Assistant Engineers, also framing a rule at the same time under Article 309 providing for fixation of their seniority only from that date. Accordingly, there is no foundation for the claim that they could be treated on a par with the direct recruits, regularly appointed prior to February 28, 1980... the period of ad hoc service of writ petitioners (respondents) on the post of Assistant Engineer prior to February 26, 1980, cannot be counted for reckoning their seniority."

5. Learned counsel for applicants stated that the Scheme R-1 was intended as a measure to give relief to those who are stagnating at a particular level. When the period prior to regular appointment is counted for grant of increments, the stagnation may arise even prior to a date on which they become eligible for promotion under the Recruitment Rules. As such, learned counsel for applicants argued that the Scheme R-1 could not be read with reference to the Recruitment Rules, R-7, and had to be considered on the basis of what is required in R-1, namely, five years service in entry grade. Therefore, the period of service

in the lower grade prior to the date of regular appointment should also count for considering a person for promotion on personal basis under R-1. Learned counsel for applicants also stated that since the applicants are appointed, though on ad hoc basis, in the regular establishment, the ad hoc service should be reckoned at least for the purpose of promotion on personal basis.

6. The relief sought in this case is more in the nature of a policy decision than a matter of interpretation of rules. We consider that the administration should examine the matter afresh. Applicant has made a representation A-VIII to the second respondent, and it is under consideration. Applicant may make a further representation setting out his case in greater detail, inviting attention to the various decisions of the Supreme Court in this regard. If such a representation is made within three weeks to the first respondent enclosing copies of various judgments referred to by the learned counsel and a copy of this order, the first respondent shall pass appropriate orders within three months of its receipt.

7. Application is disposed of as above. No costs.

Dated the 9th day of January, 1995.


P. SURYAPRAKASAM
JUDICIAL MEMBER


P. VENKATAKRISHNAN
ADMINISTRATIVE MEMBER

List of Annexures

Annexure A.V : True copy of the office order No.297/83 dated 11.4.1983 issued by the Deputy Chief Engineer to the applicant.

Annexure VIII: True copy of the representation dated 30.10.93 submitted by the applicant to the 2nd respondent.

Annexure R.1: True copy of the letter No.A-11014/3/91-PE11 dated 26.2.93.

Annexure R.7 : Copy of the relevant extract of the Recruitment Rules.