

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A No. 493 /2010

*Tuesday*, this the 21<sup>st</sup> day of February, 2012.

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER  
HON'BLE Ms. K.NOORJEHAN, ADMINISTRATIVE MEMBER

K.P.Abdulkhader, S/o Ukkas,  
Karatholapura, Kavaratti,  
Cataloguer, Central Library,  
Kavaratti.

- Applicant

(By Advocate Mr Thampan Thomas)

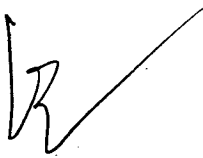
v.

1. The Administrator,  
Union Territory of Lakshadweep,  
Kavaratti.
  2. The Director,  
Department of Art & Culture,  
Union Territory of Lakshadweep,  
Kavaratti.
  3. The Director,  
Social Justice, Empowerment & Culture,  
Union Territory of Lakshadweep,  
Kavaratti.
  4. Union Government of India,  
represented by its Secretary,  
Ministry of Home Affairs,  
Personnel & Administration,  
New Delhi.
- Respondents

(By Advocate Mr S.Radhakrishnan for R.1 to 3)

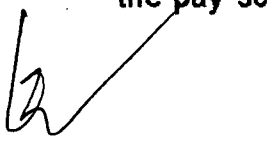
(By Advocate Mr Varghese P Thomas, ACGSC for R.4)

This application having been finally heard on 31.01.2012, the Tribunal on 21. 2. 2012 delivered the following:



**ORDER****HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER**

Capsulated facts of the case: The applicant was initially appointed as a Librarian in the Education Department of the Lakshadweep Administration in 1988. The Directorate of Social Welfare and Culture issued a circular to fill up the post of Classifier and Cataloguer on deputation from amongst Librarians having 5 years of service in the Government High School and the applicant was an aspirant for the post of Cataloguer and was so taken on deputation first and later on, he was absorbed on permanent basis in December, 1995. Sometimes in 1998, the post of Assistant Librarian and Classifier in the Central Library, Kavaratti were re-designated as Library & Information Assistant with the pay scale of Rs 1400 – 2300. The post of Cataloguer, which had earlier identical pay scale as of Classifier, however, was neither re-designated nor afforded higher pay scale. As such, the applicant preferred a representation and the Lakshadweep Central Library took up the matter vide letter dated 17-11-2000. There was, however, no positive response. In February 2002, the Ministry of Finance had issued an office Memorandum stating that as the Fifth Central Pay Commission recommended uniform implementation of OM dated 24<sup>th</sup> July 1990 (which was issued by the Nodal Ministry i.e. Ministry of Personnel in the wake of recommendations of the IV Pay Commission Recommendations,) the same was to be duly implemented. The applicant moved the respondents in this regard vide representation dated 26-12-2003 and this also did not evince any favourable response. Subsequently reminders were submitted by the applicant but these too could not have the desired effect. Hence, OA No. 255 of 2008 was filed by the applicant seeking a declaration that the applicant is entitled to the pay scale of Rs 5000 – 8000 and fitment in that scale from the date of Pay



Revision for Classifier, Library & Information Assistant.

2. OA No. 255 of 2008, was decided by the Tribunal on 22-09-2009, wherein, the following order was passed vide Annexure A-3 to this OA:-

"11. In view of the above the claim for parity with Classifier as contained in the OA is genuine and justifiable. Hence, this OA is disposed of with a direction to the respondents to consider the claim of the applicant, in the light of the above discussion and arrive at a judicious conclusion. In case of any plausible reason in distinguishing the two posts i.e. Classifier on the one hand cataloguor on the other, in such a fashion that grant of identical pay scale is not justified, (which reasons have not been reflected in the pleadings or during the course of arguments), the same be informed to the applicant and representation against the same called for from him and arrive at a final decision."

3. Respondents had considered the case of the applicant but had rejected the claim of the applicant for the following reason, vide the penultimate and the last para of the impugned Annexure A-4 Memorandum which reads as under:-

"The entry pay for department Librarians possessing minimum qualification of B.Lib along with the Graduate Degree may, w.e.f. 01.01.96, be raised to 5500-9000/- by merging the post of Library Information Assistant and Senior Library Information Assistant which are presently in respective pay scale of Rs.5000-8000 & 5500-9000/-.

Shri Abdulkader is informed that his case for enhanced pay scale of Rs.5000-8000 cannot be considered as he is not having required qualifications as per the Recruitment Rules."

4. The applicant has challenged the above order and has now sought the following reliefs:-

(i) To quash Annexure A4 office memorandum rejecting the claim of the applicant for a similar treatment as that of his colleagues.

(ii) To declare that the applicant is entitled for a pay scale of Rs.5000-150-8000 and fitment in that scale from the date of Pay Revision for Classifier, Library and Information Assistant.

(iii) To issue appropriate direction directing the respondents to pass orders

on the spirit of Annexure A3.

(iv) Costs and such other reliefs which may be granted as ancillary and incidental to the main relief.

5. Respondents have contested the O.A. According to them, since the applicant is not having the qualifications prescribed for upgradation and also not working in any of the categories of posts mentioned in the OM (dated 19-05-2009) of the Ministry, his case could not be considered for upgradation of the scale of pay. A person having no graduation or degree, working in a post for certain years will not get a right for considering him at par with those employees having graduation and B. Lib Degree or to be treated as Graduate. Classifier and Assistant Librarian working in the Department, who fulfilled the educational and other qualifications prescribed for direct recruits for the post of Library and Information Assistant were re-designated. This was done in the year 1994. The applicant became an employee of the Department only on 01-12-1995 (the period anterior to this date was only deputation and not regular appointment). Hence, the claims of the applicant to treat him at par with Classifier and Assistant Librarian has no merit. Thus, the benefit of pay upgradation given to the staff of the Department based on the orders of the Ministry could not be automatically extended on the applicant.

6. The applicant filed the rejoinder stating that there was a positive direction to the respondents vide order dated 22-10-2009 vide OA No. 255 of 2008. This had not been complied with and the department sat on appeal over the same and rejected the legitimate claim of the applicant.

7. In their additional reply, the respondents have stated that the applicant's claim for Rs 5000 – 8000 cannot be considered as he has not fulfilled the

requisite qualifications prescribed in the Recruitment Rules. The scale of pay attached to the post of Library Information Assistant having degree in Library Science was revised from Rs 5000 - 8000 to Rs 5500 - 9000 mainly based on the degree qualification by O.M. Dated 21-02-2002 (Annexure R-1(c) ). Since the applicant does not possess the degree in Library Science he is not eligible to get the higher scale. The applicant is also not entitled to any promotion as he does not have the required qualifications prescribed in the Recruitment Rules and since he is not eligible for promotion, he is also not entitled to the benefits of ACP. However, he is eligible to be considered for financial upgradation under the MACP scheme as the said scheme prescribed only completion of 10 years regular service without promotion and there is no requirement of any other criteria for getting the upgradation under the said scheme. Thus, the applicant could well claim the benefit under the MACP scheme if he is otherwise eligible.

8. The respondents have also contended that whereas the Classifier fulfills all the conditions prescribed in the Recruitment Rules, the Cataloguer, on the other hand, does not fulfill the qualifications prescribed in the Recruitment Rules of LIA.

9. In their additional reply, the respondents have further stated as under:-

"3. As per the existing Recruitment Rule amended on 8.8.94 the method of recruitment to the post of Library and Information Assistant (LIA) is by direct recruitment having the educational qualification of Bachelors degree in Library Science from a recognised University failing which by transfer/transfer on deputation from similar grade who possess the educational qualification prescribed in Column 8 (Bachelors Degree in Library Science). The applicant is working as Cataloguer having educational qualification SSLC with certificate course in Library Science. Hence the applicant does not qualify to hold the post of Library Information Assistant (LIA) as required in the RR. A true copy of the Recruitment Rule and



Notification of LIA dated 8.8.94 is produced herewith and marked as Annexure R(d). The revised scale of pay attached to the post of LIA is Rs.5000-8000 whereas the scale of pay of cataloguer is Rs.4500-7000 as per Vth CPC. Later as per letter O.M.No.71/3/2001-IC dated 21.2.2002 of Ministry of Finance, Department of Expenditure, New Delhi, Annexure R1(c) has revised the scale of pay of Librarians processing minimum qualification of B.Lib along with a graduate degree has raised to from Rs.5000-8000 to Rs.5500-9000/- with effect from 1.1.1996. Since the Cataloguer does not possess the required qualification and he is working in the scale of pay of Rs.4500-7000 he cannot be considered to the post of LIA and his claim is against the provision of the relevant Recruitment Rules."

10. To another contention of the applicant that two others not possessing the qualifications as per the Recruitment Rules, had been afforded higher pay scale and re-designated as Library and Information Assistant, the respondents have contended that the same was done before the amendment to the recruitment rules and prior to the appointment of the applicant. As the applicant's appointment is posterior to the amendment to the recruitment rules, he is not eligible for the higher pay scale.

11. Counsel for the applicant argued that right from the beginning there had been parity in respect of the post of Cataloguer and Classifier and the pay scales were identical. The Tribunal in paragraph 9 and 10 of the earlier order dated 22-10-2009 had rendered a finding as under:-

"9. The above OM makes it clear that the purpose of the OM is to have uniform provisions in respect of all libraries and the V Pay Commission also recommended uniform implementation of the OM dated 24th July 1990. The post of Asst. Library & Information Assistant had been placed in the scale of Rs 1400 -2600 (by merging various pay scales from 1200 - 1800 at the minimum and 1400 -2600 at the highest) and the post is tenable by Direct Entry Graduate with Bachelor in Library Science/Promotional Grade for Library Clerks. In the said OM it has also been stated that in case the incumbents did not possess the qualifications, then their pay would be only in the pre-

revised scale and in their personal basis. It is perhaps on the basis of the above condition that the respondents contend that the applicant does not possess the qualifications.

10. But the question is when the post of classifier, which corresponds in all respects with the post of Cataloguer could be considered for upward pay revision, the reason to exclude the post of Cataloguer is not understood. A perusal of the Rules would go to show that the two posts have the same qualification requirements, same pay scale and functional responsibilities are also comparable, as both of them are in connection with the maintenance of library. The source of recruitment is also the same (from amongst the Librarians of the High Schools). Thus, whatever good grounds exist in including the post of Classifier for revision of pay and equation with that of Assistant librarian, when available with reference to Cataloguer also, the respondents cannot discriminate to exclude the same. It would have been a different matter, had the authorities considered the two posts differently for any purpose whatsoever, in which case the action on the part of the respondents could be justified. (See T. Aruna vs Secretary, A.P. Public Service Commission (2001) 9 SCC 54). That is not the case here. As regards qualification requirement to the post of Library Information Assistant, if the post is filled up on promotion basis, then there may not be any requirement as to possession of qualification as for direct recruitment. In any event, the respondents could well compare the situation with the post of Classifier and whatever grounds are attached to the post of Classifier could well be extended to the post of Cataloguer also."

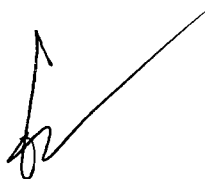
12. Counsel for the applicant also submitted that be it Classifier or Cataloguer posts, for appointment by promotion, the educational qualifications as for Direct Recruitment are not applicable. In this regard, Annexure A-5 recruitment rules refer. And, a few individuals in the case of Classifier who have no degree in Lib Science had been afforded the higher pay scale.

13. On the other hand, counsel for the respondents argued that the applicant's appointment as Cataloguer came to be in 1995, whereas the amendment to recruitment rules to the post of Library Information Assistant came into force as early as in 1994 itself as could be seen from Annexure R-1 (d). As per this Rule, the mode of recruitment to the post of Library Information Assistant is Direct recruitment or transfer/transfer on deputation from similar cadre who possess the Educational qualifications prescribed for Direct

Recruitment i.e. Bachelors Degree in Library Science of Recognized University or equivalent. The post cannot be filled up by promotion.

14. Arguments were heard and documents perused. The direction to the respondents as per the order in the earlier OA includes that the respondent shall consider the case of the applicant and if there be any plausible reason in distinguishing the two posts, i.e. Classifier on the one hand and Cataloguer on the other in such a fashion that grant of identical pay scale is not justified the same be informed to the applicant. Though in para 9 and 10 the Tribunal could come to a finding that the posts of Cataloguer and Classifier are comparable in all respects, the reason why, instead of passing an order on the basis of the finding, the above direction was given to the respondents was, as reflected in para 11 of the order that reasons for distinguishing the two posts had not been reflected in the pleadings or during the course of arguments. The order of the Tribunal had given an opportunity to the respondents to ascertain from the records of any such distinguishing feature, with such an intelligible differentia that the same would justify in making the two posts as not comparable. And, the respondents have tried to give the distinguishing feature in view of the following:-

- (a) The earlier Recruitment Rules provided for the post of Assistant Librarian which post could be filled up by either direct recruitment or by promotion. The feeder grade is Classifier or Cataloguer with certain number of years of service in that post. In case of promotion, the qualifications as meant for Direct Recruitment are not insisted. Those whose names were given by the applicant in the additional rejoinder, were appointees under the pre-amended Recruitment Rules and as such, in their cases, qualifications of Degree are not essential. These individuals by way of notification





dated 08-08-1994 vide Annexure R1(d) redesignated as Library and Information Assistant with immediate effect.

(b) Since the applicant's appointment as Cataloguer was posterior to the Revision of Recruitment rules for the post of Library Information Assistant, in which there is no element of promotion, the applicant, in order to gain the higher pay scale of LIA ought to possess necessary qualifications as for a direct Recruitment.

(c) There is a distinguishing feature based on the dates of appointment to the post of Cataloguer or Classifier. Those who were inducted prior to the amendment to the Recruitment rules formed one class and those who were recruited posterior to the amendment to the Rules formed a distinct class. In so far as classifier/cataloguer/Asst. Library Assistant inducted in to that category prior to the amendment, they could be re-designated, irrespective of possessing qualifications as for a direct Recruit, as LIA, whereas after the introduction of the amendment to the Rules, there being no element of promotion in the post of LIA, possession of qualifications prescribed is a must.

15. The matter has to be dealt with under two different aspects – (a) Comparison of the applicants' case with others in the erstwhile Classifier's post. and (b) Comparison of the two posts of Classifier and Cataloguer.

16. As regards (a) above, it is seen that the classifiers with whom the applicant is making comparison had all been appointed/absorbed prior to the coming into force of the Revised Recruitment Rules and were also promoted



i.e. prior to 08-08-1994. However, by the time the applicant has been absorbed in end 1995, the revised Recruitment Rules have come into existence. The revised rules do not include the category of Cataloguer

17. As regards comparison between Classifier and Cataloguer, as contained in the order dated 22-10-2009 in OA No. 255 of 2008, the respondents were to ascertain any such distinction between the two posts to make them as non comparable. They had come out with the distinction as contained in para 14 above. The respondents have failed to consider the following vital aspects:-

(a) Admittedly, the two posts were hitherto identical in all aspects.

(b) These posts carried same educational qualifications and pay scales, vide Recruitment Rules at Annexure R-1 to the Additional Reply filed by the respondents in OA No. 255 of 2008. (In fact, the two posts have been respected as one by clubbing them together, as Serial No. 2(a) and (b).)

© The functional responsibilities, as contained in Annexure A-1 are identical /corresponding.

(d) Source of recruitment is one and the same as is evident from the Recruitment Rules, as also from Annexure R-1 to the reply.

(e) Subsequently also, there has been uniformity in respect of service conditions of these two posts till the artificial distinction is created.

18. The Apex Court has in the case of Union of India vs P.K. Roy, (AIR 1968 SC 850) has referred to four factors which are held to be determinative of the issue of equivalence of posts. And, the Apex Court in the case of S.P. Shivprasad Pipal v. Union of India (1998) 4 SCC 598 has explained as to the authority competent to classify the posts. Referring to the above two decisions along with other related decisions, the Apex Court in the case of SAIL vs Dibyendu Bhattacharya (2011) 11 SCC 122 has held as under:-



"24. In *Union of India v. P.K. Roy* (AIR 1968 SC 850) this Court accepted the factors laid down by the Committee of Chief Secretaries which was constituted for settling the disputes regarding equation of posts arising out of the States Reorganisation Act, 1956, wherein the following four factors had been held to be determinative of the issue of equivalence of posts:

1. the nature and duties of a post;
2. the responsibilities and powers exercised by the officer holding a post, the extent of territorial or other charge held or responsibilities discharged;
3. the minimum qualifications, if any, prescribed for recruitment to the post; and
4. the salary of the post.

x x x x x

28. In *S.P. Shivprasad Pipal v. Union of India* this Court held as under:

"5. ... it is not open to the court to consider whether the equation of posts made by the Central Government is right or wrong. This was a matter exclusively within the province of the Central Government. Perhaps the only question the court can enquire into is whether the four principles cited above had been properly taken into account. This is the narrow and limited field within which the supervisory jurisdiction of the court can operate."

19. In view of the above, the respondents have to give a fresh look into the matter keeping in view the identity/similarity between the two posts as contained in para 17 above and the dictum of the Apex Court as narrated in para 18. It is certainly hoped that the respondents would take a dispassionate decision and act accordingly. Time calendared for the same is four months from the date of communication of the order.

20. No costs.

  
K.NOORJEHAN  
ADMINISTRATIVE MEMBER

  
Dr K.B.S.RAJAN  
JUDICIAL MEMBER