

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 514 of 2007

FRIDAY...., this the 16th day of July, 2009

C O R A M :

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

M.P. Muthukoya,
S/o. Late P. Cheriyakoya,
Primary School Teacher,
Govt. Junior Basic School (Centre),
Agatti Island, Union Territory of Lakshadweep ... Applicant.

(By Advocate Mr. M.V. Thamban)

v e r s u s

1. The Director of Education,
Union Territory of Lakshadweep,
Kavaratti.
2. The Administrator,
Union Territory of Lakshadweep,
Kavaratti.
3. Union of India,
Represented by the Ministry of Personnel,
Public Grievances and Pensions,
Department of Personnel & Training,
New Delhi.
4. Departmental Promotion Committee
for Group 'C' Posts under Lakshadweep
Administration, U.T. of Lakshadweep,
Kavaratti.

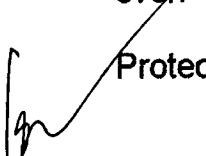
... Respondents.

(By Advocate Mr. S. Radhakrishnan for R-1, 2 & 4)
Mr. M. M. Saidul Mohammed, acase (R3)

The Original Application having been heard on 09.06.09, this Tribunal
on 10.07.09. delivered the following :

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicant herein is a physically challenged person (vide Annexure A-1 certificate) and had been, vide Annexure A-2, appointed as early as in 1989 as a primary school teacher, under the quota for physically handicapped persons. Reservation for physically handicapped persons in the promotional post to the extent of 3% (1% each for visually handicapped, hearing impairment and orthopaedically handicapped) has been provided for vide Annexure A-3 order dated 20-11-1989. Norms for effecting such appointment by promotion of physically challenged individuals have been specified in Annexure A-4 order dated 18-02-1997. The need to follow strictly the reservation policy for physically challenged individuals had been reiterated vide Annexure A-5 order dated 24-07-1998. While other departments (for example, Department of Agriculture, vide Annexure A-6) have religiously implemented the policy on reservation for physically challenged persons, in the Education department the same had not been followed. The applicant, who is the affected individual due to this inaction on the part of the respondents, moved representations, vide Annexure A-7 and A-8. This inaction on behalf of the Administration having been perpetuated even after the enactment of the Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995, the applicant



moved this Tribunal by OA No. 1019/2003, which was disposed of by an order dated 19-12-2003, vide annexure A-9, observing as under:-

"3. we dispose of this application directing the 2nd respondent to consider Annexure A-8 representation in the light of the rules and instructions on the subject and dispose it of with a speaking order keeping one vacancy either existing or would arise immediately after an order on his representation is served on the applicant..."

2. Pursuant to the above order, the Respondents had passed Annexure A-10 order dated 09-07-2004 holding that one vacancy has to be kept reserved for Physically handicapped candidate and the Department of Education shall refer the case of all eligible physically handicapped candidates including the applicant to the Departmental Promotion Committee for recommending suitable candidates for promotion as per Recruitment Rules.
3. Though the above order was passed by the administration, as no further action was taken, the applicant moved OA No. No. 549/2006 and this Tribunal, vide order dated 2nd August 2006 (Annexure A-14), after taking judicial note of the aforesaid Annexure A-10 order dated 09.07.2004 of the administration, directed the respondents to convene a DPC within three months from that date and duly consider the case of the applicant alongwith other eligible candidates. The DPC was no doubt convened but it was recorded in the minutes of DPC that there has

been no post identified which could be tenable by a physically challenged individual, vide Annexure A-15 order (impugned herein). Consequently none had been appointed under the quota reserved for physically challenged individuals. The convening of DPC as directed vide Annexure A-14 had been taken as compliance of the order of this Tribunal and thus, contempt petition filed was closed, vide Annexure A-16 order dated 11th April 2007. Being aggrieved by Annexure A-15 order, the applicant has moved this Tribunal through this OA seeking the following reliefs:-

- i) to call for the records leading upto Annexure A-17 and quash Annexure A-15.
- ii) To direct the respondents to identify the post of Headmaster of Junior Basic School under U.T. of Lakshadweep against which one handicapped could be promoted.
- iii) To issue a declaration that the applicant is entitled to the benefit of reservation for promotion to the extent of 3% of the vacancies of Headmaster, Junior Basic Schools set apart for the physically handicapped teachers and promotion with retrospective effect from the date of Annexure A-3 or at least from the date of his original appointment or from the date of Annexure A-4 or A-5 with all consequential benefits including arrears of salary.

4. Counsel for the respondents has filed a Statement on behalf of the respondents in which he has given the particulars of those who have been appointed under the physically handicapped quota and others who have obtained the physical disability during the course of employment and has also furnished the details of yet another individual Shri

Nazarullakhan who has also filed OA No. 52/08. The said OA has not come up for hearing so far.

5. Counsel for the applicant argued that on two occasions, the CP had to be closed on the ground that some action has been taken by the respondents. In the DPC held in 2007, the applicant was the first candidate. The respondent should fill up any one of the existing vacancies with retrospective effect and afford promotion to the applicant with all consequential benefits.

6. Counsel for the respondents submitted that OA 52/08 also relates to filling up post under the physically handicapped quota. He has already filed a statement giving out the details of persons who are covered under the Physically Handicapped category. However, the applicant being one who had been earlier appointed under the Physically Handicapped quota has been considered and promoted to the post of Head master, on 10-01-2008 against a vacancy caused in May 2007.

7. Arguments were heard and documents perused. The fact remains that the applicant has been appointed under the P.H. quota and provision exists for reservation for P.H. in the promotion vacancies only. Filling up of the vacancy under this quota would be feasible only when suitable post is identified. In the case of Primary Teachers, the only



avenue is Headmaster's post and rightly as early as in 2004 it was so decided to have one post earmarked for being filled by promotion under P.H. quota. The question is whether the applicant has any right to claim retrospective promotion.

8. Retrospective promotions could be justified and valid where sealed cover procedure is followed; or juniors were promoted to the exclusion of the seniors; or the like. In the instant case, though there was a mandate that posts are to be identified for being in filled up by P.H. and due to inaction on the part of the respondents, the identification was done on time, whether any accrued or vested interest of the applicant has been infringed, is the question. In the case of **Baij Nath Sharma v. Hon'ble Rajasthan High Court at Jodhpur, (1998) 7 SCC 44** the Apex Court has held as under:

"6. The appellant could certainly have a grievance if any of his juniors had been given promotion from a date prior to his superannuation. It is not the case here. From the promotional quota, four promotions were made only on 30-12-1996, i.e., after the appellant had retired. Those promoted were given promotions from the dates the orders of their promotions were issued and not from the dates the posts had fallen vacant. It is also the contention of the High Court that these four officers, who were promoted to the RHJS, were senior to the appellant as per the seniority list. The question which falls for consideration is very narrow and that is, if under the rules applicable to the appellant promotion was to be given to him from the date the post fell vacant or from the date when order for promotion is made. We have not been shown any rule which could help the appellant. No officer in the RJS has been promoted to the RHJS prior to 31-5-1996 who is junior to the appellant."



9. The above would go to show that when such a retrospective promotion had not been afforded to any one and when no juniors had been promoted to the exclusion of seniors, the senior, when promoted cannot claim retrospective effect of promotion from the date the vacancy was available. The same situation holds good here.

10. In view of the above as the applicant has already been granted promotion to the post of Headmaster under the promotion quota w.e.f. 10-01-2008 his grievance to a substantial extent having been redressed he is not entitled to any further relief. The O.A. is disposed of with the above observation. No costs.

(Dated, the 10th July, 2009)


(K. NOORJEHAN)
ADMINISTRATIVE MEMBER


(Dr. K B S RAJAN)
JUDICIAL MEMBER

CVR.