

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
O.A. NO. 525/2011

Dated this the 5th day of March, 2013

CORAM

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Mrs.KNOORJEHAN, ADMINISTRATIVE MEMBER

- 1 M.C Koya, Police Constable No.373, Police Station, Agatti
S/o.P.I Sayed Mohammed Koya, Residing at Melachadam House
Kalpeni Island, Lakshadweep, Pin - 682 557
- 2 B.Kasim, Police Constable No.385, Police Station, Kavaratti
S/o.K.K Kunhiseedikoya, Residing at Bammathara House
Androth Island, Lakshadweep, Pin - 682 551
- 3 K.K Mohammed Aboo Salih,Police Constable No.389,
Police Station, Kavaratti, S/o.K.Sayed Ismail
R/o Kolikkatt House, Androth Island, Lakshadweep, Pin-682 551
- 4 P.Koyamma, Police Constable No.370, Police Station, Androth
S/o.P.I Seyad Mohammed, Residing at Palliyate House
Androth Island, Lakshadweep, Pin - 682 551
- 5 L.Koya, Police Constable No.372, Police Station, Androth
Residing at Lavanakkal House, Androth Island
Lakshadweep, Pin - 682 551
- 6 C.N Shafeequl Alam, Police Constable No.384, Police Station,
Androth, S/o.Late M.K Koya, Cheriyannallala House
Kalpeni Island, Lakshadweep, Pin - 682 559
- 7 M.Farook, Police Constable No.388, Police Station, Kadamath
S/o.Mohammedkoya, Residing at Marakkanakkal House
Amini Island, Lakshadweep, Pin - 682 552
- 8 P.B Kamaludheen, Police Constable No.390, Police Station,
Amini, S/o.A.B Attakoya, Residing at Poyiilath Biyyouth House
Androth Island, Lakshadweep, Pin - 682 551
- 9 A.C.Ayoob, Police Constable No.376, Police Station, Kilthan
S/o.Late Yousef, Residing at Ammipurachetta House
Kilthan Island, Lakshadweep, Pin - 682 558

10 A.Valiyabi, Women Police Constable No.396, Police Station, Kavaratti, D/oLate B Cheriyakoya, Residing at Asharoda House Amini Island, Lakshadweep, Pin - 682 552

11 P.K Safiyabi, Women Police Constable No.400, Police Station, Kavaratti, D/o.Late K.Kalid, Pokkayoda Hose, Kalpeni Island, Pin - 682 553

12 U.Raziya Beegum, Women Police Constable No.392, Police Station, Agatti, D/o.Hathee Umbiyoda House Agatti Island, Lakshadweep, Pin - 682 553

13 P.Basheer, Police Constable No.392, Police Station, Agatti S/o.Late. Nallakoya, Puthiyath House, Androth Island Lakshadweep, Pin - 682 551

..... Applicants

(By Advocate Mr.M.V.Thamban)

Vs.

1 The Administrator, Union Territory of Lakshadweep Kavaratti - 682555.

2 The Superintendent of Police, Union Territory of Lakshadweep Kavaratti - 682555.

..... Respondents

(By Advocate Mr.S.Radhakrishnan)

ORDER

HON'BLE MRS. K.NOORJEHAN, ADMINISTRATIVE MEMBER

The applicants are aggrieved by the order of the respondents in granting the benefit of their 1st financial upgradation under the ACP Scheme on a later date under the pretext that they did not qualify the promotion test.

2 Brief facts of the case as stated by the applicants are that they all are working as Police Constables under the 2nd respondent. They joined the service on 31.3.1994. On introduction of Assured Career Progression Scheme they were entitled to get the 1st financial upgradation under the ACP Scheme on completion of 12 years regular service, i.e with effect from

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31.3.2006. According to the applicants they were denied the benefit of the scheme under the pretext that they did not qualify the promotion test conducted by the respondents on 21.2.2004. Thereafter the respondents did not conduct the test in time. After 21.2.2004 the respondents conducted the test only on 13.4.2007 and published the result on 7.2.2008 in which they were declared as passed. According to the applicant there is culpable negligence on the part of the respondents in conducting the test and in publishing the result. Therefore the applicants were made eligible for the 1st ACP only w.e.f 7.2.2008. It is further submitted that the 160 Constables who qualified in the promotion test conducted by the respondents and 8 constables over 40 years of age who appeared in the promotion test and failed were awarded the first financial upgradation w.e.f 31.3.2006. However, the applicants herein who failed in the promotion test conducted on 21.2.2004 were denied the benefit under the Scheme w.e.f 31.3.2006. It is further submitted that they participated in the departmental promotion test on 13.4.2007 and all of them were declared successful. However, they were granted the benefit of the scheme only from the date of publication of the result on 7.2.2008. They averred that due to the delay in conducting the test and publishing the result, the applicants lost about 2 years in getting the monetary benefits. Anxx.A4 representation submitted by the applicants did not yield any positive response. It is the case of the applicants that the respondents should have extended the benefit under the scheme from the date of the examination i.e 13.4.2007 instead of the date of publication of result.

3 The respondents contested the OA by filing reply. In their reply the respondents submitted that the applicants could not be extended the benefits under the ACP scheme along with other eligible police constables earlier as they failed in the promotion test conducted in the year 2004. Those who did not fulfill the prescribed conditions for promotion to the next higher rank were not entitled to the benefit of 1st financial upgradation

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as per the terms stipulated in the Anxx.A1 order. Those who had qualified in the promotion test were considered for the benefit under the scheme. It is further submitted that the Recruitment Rules for promotion to the rank of HC in the organisation was amended by notification dated 25.3.2000. By virtue of the amendment, those who attain the age of 40 years are entitled for the benefit under the ACP scheme irrespective of their qualifying the departmental promotion test prescribed in the original RR. The applicants, except 5&13, were granted the benefit under the scheme w.e.f 7.2.2008 on the basis of their qualifying the test. Applicant No.5 was granted the benefit w.e.f 7.12.2006 on the basis of his attaining the age of 40 years and applicant No.13 was granted the benefit w.e.f.3.1.2008, when he attained the age of 40 years. The representations submitted by the applicants to grant the benefit from the date of examination were placed before the DPC which turned them down. It is further submitted that mere completion of the qualifying service is not the only criterion for the benefit under the scheme but they should have to qualify in the promotion test to the appropriate rank as per the relevant recruitment rules.

4 The applicants filed MA No.422/2011 for condonation of delay in filing the OA. Heard the learned counsel for the parties and perused the objection raised therein. The M.A is allowed.

5 We have heard the learned counsel for the parties in detail and perused pleadings and the records.

6 The learned counsel for the applicants argued that the applicants participated in the departmental promotion test conducted on 13.4.2007 and all of them were successful. However, they were granted the benefit of the scheme only from the date of the publication of the result i.e on 7.2.2008, therefore, there is a culpable negligence on the part of the respondents in conducting the test, publishing the result and fixing the date for granting the benefit. On the other hand the counsel for the respondents refuted the argument and submitted that the failure of the applicants to qualify in the



test conducted in 2004, resulted in non-grant of first ACP on completion of 12 years on 31.03.2006.

7 It is true that the applicants had completed 12 years continuous service in the cadre of Constable on 31.3.2006. It is also a fact that they participated in the promotion test conducted by the respondent on 21.2.2004 and did not qualify the same. Those who had qualified in the test to the next higher rank were granted the benefit of 1st financial upgradation as per the conditions stipulated in Anxx.A1 order. In this case the rule clearly makes it mandatory for the applicant to fulfill all the conditions specified in Anxx.A1 order. Therefore, they are entitled for the first financial upgradation on completion of 12 years of regular service in a grade provided they meet the other conditions stipulated in the order supra. As regards applicants 5 and 13, they, having attained 40 years of age were exempted from taking the test as per amended Recruitment Rules dated 25.03.2000. In this view of the matter it cannot be said that there had been discrimination in granting benefit under the ACP scheme to the applicants.

8 It is an admitted fact that the departmental promotion test was again conducted on 13.4.2007 in which the applicants except applicants No.5 and 13 participated and declared passed. The result of the test was published by the respondents only on 7.2.2008. The request of the applicants to antedate there ACP benefit to the date when test was conducted was rejected by the next DPC which refused to review the decision by the earlier DPC. The applicants submitted that their senior batches were granted the benefit of the scheme w.e.f the date of the test and the applicants are denied the same, thereby they are discriminated. In this case we find that the respondents have taken a considerable time to hold the test in 2007 when the last was conducted in 2004. Logically the next test should have been held in 2005 and the result published well before 31.03.2006. Admittedly there was a delay of about 10 months in publishing



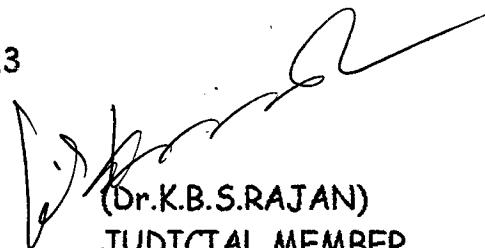
the result also. This adversely affected the interests of the applicants. They stand to lose the benefit of the higher pay scale under the scheme for close to 2 years, counting from 31.03.2006 when they completed 12 years of service. In this view of the matter, it cannot be conceded that there was no delay in holding the test and publishing the result of the same. Moreover, representations submitted by the applicants to grant the benefit from the date of examination could have been considered by DPC, if such concession was granted earlier as contended by the applicants. Therefore, the O.A succeeds.

9 In facts and conspectus of the case, we direct the respondents to grant the benefit of the 1st financial upgradation under the ACP scheme to the applicants except applicants No.5 and 13 from the date of examination i.e 13.4.2007 instead of 7.2.2008.

10 O.A is allowed. Under the above circumstances, there shall be no orders as to cost.

Dated, 05th March, 2013


(K.NOORJEHAN)
ADMINISTRATIVE MEMBER


(Dr.K.B.S.RAJAN)
JUDICIAL MEMBER

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