

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.534/2006

Friday this the 14th day of September, 2007

CORAM

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

M.Pathummabi,
Superintendent,
Science & Technology Department,
Union Territory of Lakshadweep,
Kavaratti.

....Applicant

(By Advocate Mr. N. Nagaresh)

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1 Secretary (Administration)
Union Territory of Lakshadweep,
Secretariat, Kavarati.

2 Administrator,
Union Territory of Lakshadweep,
Kavaratti.

.....Respondents

(By Advocate Mr.S.Radhakrishnan)

This application having been finally heard on 24.8.2007, the Tribunal on 14.9.2007 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant has been holding the substantive post of Accountant with effect from 10.7.1992. She and eight others were given adhoc promotion to the post of Superintendent on different dates based on their respective seniority positions in the cadre of Accountants. The applicant was promoted as Superintendent on ad hoc basis and posted in the Planning and Statistic Department at Kavaratti w.e.f. 7.4.1997. However,

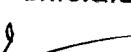
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due to certain domestic problems, she sought reversion to her substantive post of Accountant from the ad hoc post of Superintendent and a posting in her native Island of Kalpeni. Accordingly, she was reverted as Accountant and posted in the Government High School, Kalpeni on 27.11.2000. Vide Annexure A1 Office Order dated 27.7.2005, the respondents reviewed the officiating promotions already given to the Accountants as Superintendents and decided to regularize their promotions from the date the DPC met and decided to do so i.e., with effect from 22.1.2002. The DPC recommended to grant regular promotion as Superintendents to all the nine substantive Accountants including the applicant. One of those substantive Accountants who was working as Superintendent on adhoc basis and granted regularization in the said post w.e.f. 22.1.2002 had already retired by the time the Annexure A1 order was issued. Since the applicant has already been reverted as Accountant on her request and was working in that capacity as on the date of the DPC meeting, she was not promoted as Superintendent on regular basis from 22.1.2002, whereas three Accountants junior to her but working as Superintendents on ad hoc basis on the said date have been regularized as Superintendents with effect from the said date by the same Annexure A1 Office Order. In the case of the applicant, it was mentioned in the Annexure A1 Office Order that she would be eligible to the post of Superintendent only from the date she occupies that post for which separate orders would be issued. Subsequently vide Annexure A2 Office order dated 3.3.2006, the applicant was promoted to the post of Superintendent on regular basis against the vacancy which had arisen on the promotion of one Shri P.V.Thangakoya as Block Development Officer.



2 When the Annexure.A1 Office order dated 27.7.2005 was issued without giving her promotion as Superintendent on regular basis from 22.1.2002, ie., the date from which some of her seniors and juniors who have been working as Superintendents on ad hoc basis were regularized, the applicant made the Annexure.A3 representation requesting for an early posting. Again, when she was given the regular promotion as Superintendent vide Annexure.A2 office order dated 3.3.2006, she made the Annexure.A6 representation to consider her also for the post of Superintendent with effect from 22.1.2002 and pass necessary orders at the earliest. The respondents have not considered her aforesaid representation and, therefore, she has approached this Tribunal filing the present OA seeking a direction to the respondents to promote her also as Superintendent with effect from 22.1.2002 and grant the consequential benefits of pay fixation in the scale of Rs. 5500-175-9000 from the said date itself.

3 The respondents in their reply stated that along with many other regular Accountants, the applicant was also promoted as Superintendent on adhoc basis and posted in the Planning Department, Kavarathi on 7.4.97. However, on the basis of her Annexure R.1 representation dated 12.9.2000 expressing her willingness to work in the lower post of Accountant and posting in the PWD Sub Division, Kalpeni, the respondents reverted her as Accountant vide Annexure R.2 Office Order dated 31.10.2000 and posted her in GHS, Kalpeni vide Annexure R.3 Office order dated 31.10.2000. Since then, she has been working there as Accountant. The DPC had considered the regular promotion of 9 officials out of which all others except the applicant were officiating in the



post of Superintendent. According to the respondents, though the DPC recommended the promotion of the applicant also, she was not promoted from the same date others including her juniors have been promoted as she was not working on ad hoc basis in the said post on the date when the DPC meeting was held on 22.1.2002 and since such a promotion could be granted to her only from the date she occupies the charge of the post of Superintendent, a separate promotion order was issued. They have also submitted that the applicant was enjoying the posting in her native place as Accountant and since there was no vacancy of Superintendent available on the date the DPC meeting has been held, she was accommodated only in the next available vacancy which has arisen in the month of January, 2006 consequent upon the promotion of Shri PV Thangakoya, Superintendent as Block Development Officer.

4 The applicant filed a rejoinder reiterating her contentions in the original application. She has also submitted that an official may decline ad hoc promotion on family circumstances which cannot affect his/her right for regular promotion and that she being senior to some of them who have been promoted on regular basis, she ought to have been given posting in preference to her juniors.

5 We have heard Advocate Mr. N.Nagaresh for the applicant and Advocate Mr.S.Radhakrishnan for the respondents and have gone through the pleadings carefully. Undisputedly applicant was senior to some of the Accountants whose services have been regularized as Superintendents w.e.f 22.1.2002. It is a fact that while she was working as Superintendent on ad hoc basis, she sought reversion to her substantive post of Accountant and got herself posted in her native Island vide the

Annexure.R.2 order dated 31.10.2000. Thereafter, only on 22.1.2002 that the DPC met and considered the cases of the applicant and other Accountants senior and junior to her for regular promotion to the post of Superintendents. The DPC has rightly recommended the name of the applicant also for promotion as Superintendent, but the respondents did not offer the promotional post to her on the ground that there was no vacancy available on the relevant date but at the same time regularizing at least 3 of her juniors as Superintendents. The respondents have waited for the next vacancy to occur in the post of Superintendent ie., till 24.3.2006 for promoting the applicant. When the applicant was recommended by the DPC for promotion on regular basis, the respondents ought to have promoted her in preference to her juniors. The justification given by the respondents in denying regular promotion to the applicant and preferring her juniors that the applicant has sought reversion from the ad hoc post of Superintendent to her substantive post of Accountant and her juniors have been continuing as Superintendents on ad hoc basis are not valid and reasonable. Reversion to the substantive post on request from the promotional post held on ad-hoc basis cannot be a reason for unilaterally denying promotion on regular basis.

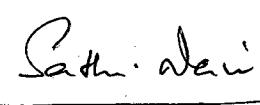
6 We, in the above facts and circumstances of the case, hold that the applicant on having recommended by the DPC was entitled to have been promoted as Superintendent on regular basis earlier than her juniors or at least from the same date they have been promoted. The respondents are, therefore, directed to treat the applicant as promoted as Superintendent on regular basis with all consequential benefits such as seniority and fixation of pay in the higher scale of Rs. 5500-175-9000 w.e.f
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22.1.2002. Since the Annexure A1 order dated 27.7.2005 was issued for the regular promotion of the officials except the applicant, who were already officiating as Superintendents, the applicant would be entitled for the payment of actual pay and allowances attached to the post of Superintendent only from the date of issue of the said order i.e., 27.7.2005. The respondents, are, therefore, directed to issue necessary orders promoting the applicant as Superintendent in the scale of pay of Rs. 5500-175-9000 on regular basis w.e.f 22.1.2002 and fixing her pay notionally from the same date. They are also directed to pay the upto date arrears of pay and allowances from 27.7.2005 in the above scale. The aforesaid directions shall be complied with, within a period of 2 months from the date of receipt of this order, failing which the applicant will be entitled for interest on arrears at 10% per annum after the expiry of the said period of two months till the date of actual payment. There shall be no order as to costs.

Dated this the 14th day of September, 2007


GEORGE PARACKEN
JUDICIAL MEMBER

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SATHI NAIR
VICE CHAIRMAN