

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO. 544/2005

Thursday this, the 1st day of December, 2005.

CORAM:

HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

K.I.Akbar,
Technical Assistant (Agriculture),
District Panchayat,
Kavaratti.

Applicant

By Advocate Mr PV Mohanan

15

1. Union of India represented by its Secretary, Department of Agriculture, New Delhi.
2. The Administrator, Union Territory of Lakshadweep, Kavaratti.
3. The Director of Agriculture, Directorate of Agriculture, Union Territory of Lakshadweep, Kavaratti.
4. C.P.Hamza Koya, Training Associate, Krishi Vigyan Kendra, Kilthan, Union Territory of Lakshadweep, Respondents

By Advocate Mr TPM Ibrahim Khan, SCGSC (for R.1)

By Advocate Mr Shafik.M.A. (for R.2 & 3)

By Advocate Mr KK Ravindranath (for R.4)

ORDER

HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

This is an application filed by Shri K.I.Akbar, Technical Assistant (Agriculture) District Panchayat, Kavarathi, seeking deputation to the post of Coconut Development Officer in the Administration of the Union

Territory of Lakshadweep .

2. The applicant has been working as Technical Assistant in the scale of pay of Rs.4500-7000 (revised) since 1.1.96. The applicant along with similarly placed Agriculture Graduates had filed an O.A.1303/97 for implementation of higher pay scale of Rs.5500-9000. This Tribunal directed respondents therein to consider the case of the applicants for higher pay scale Rs.5500-9000 and to give speaking orders within a period of three months. The Secretary, Department of Agriculture disposed of the case with an order that there was no case for granting higher pay scales. Vide the impugned order at Annexure A-1(also R-2(a)), one vacancy of the post of Coconut Development Officer in the D/o Agriculture of Lakshadweep Administration was notified by the Government of India, specifying various eligibility criteria for the aspirants like pay scales status , residency period in the feeder category, qualifications etc. The applicant in this O.A. and a few others including the 4th respondent in this application submitted their applications to their superiors for the above post. The application submitted by the applicant was not forwarded by the 2nd respondent to the Ministry, as he was not holding any post in the required pay scale as prescribed by the Recruitment Rules(the Rules ,for short). An interview was fixed by the 1st respondent to be held on 4.7.2005 and the 4th respondent was invited to attend the same. The applicant submitted A-4 representation requesting for considering his case for selection. Unable to get any relief from the respondents, he has filed this O.A.

3. The applicant seeks the relief a of direction to the respondent No.1 to consider the candidature of the applicant for selection and appointment to the category of Coconut Development Officer on transfer on deputation and appoint him to that post with all consequential benefits.

4. He adduces the following grounds to sustain his case.
 - i) He has a fundamental right to be considered for selection under Article 16-1 of Constitution of India as interpreted by the Apex Court in Ajith Singh case (AIR SC 1999 SC 3471)
 - ii) The 4th respondent is actually ineligible for consideration.
5. Respondents counter the applicant with the following arguments.
 - i. The party respondent is fully eligible to be considered for the post notified.
 - ii. The applicant is not eligible to be considered as he is not in the pay scale prescribed for consideration.
6. We have heard Shri P.V.Mohanan, learned counsel for the applicant and Shri TPM Ibrahim Khan, learned SCGSC and perused the documents supplied.
7. The points to be considered are the following.
 - i) Can the impugned order be called as such.
 - ii) What are the eligibility criteria fixed for the above post and does the applicant fulfill them.
 - iii) Does the ineligibility of the respondents advance the case of the applicant.
8. As to the question whether the impugned order can be called as such, it is seen that it is only a notification issued by the respondents to fill in the post of Coconut Development Officer. In fact, the grouse of the applicant is not that A-1 document suffers from any legal infirmity or is legally unsustainable or that any of the eligibility conditions are illegal or unsustainable. In fact, he himself has made an application in pursuance of the above notification. His grouse is that, the party respondent is being considered whereas he himself has been kept out of such.

consideration. In fact, he has gone to great lengths to show how the party respondent is ineligible for consideration. That does not make ipso facto the A-1 document any impugnable . Hence, we find that, A-1 document cannot be called an impugned document.

9. As to the point what are the eligibility criteria fixed for the above post and whether the applicant fulfills them, the A-1 document lays down the eligibility criteria on pay status as follows - (which are actually a reproduction from the rules submitted by respondent vide R-2(b) document).

- only officers holding analogous posts;
- or
- having three years regular service in posts in the scale of pay of Rs.6500-200-10500;
- or
- having five years regular service in posts in the scale of pay of Rs.5500-9000 or equivalent.
- The educational qualifications prescribed are a post graduate degree in any field of Agricultural Science.
- The mode of recruitment prescribed is :
"by promotion/transfer on deputation (including short term contract) failing which by direct recruitment."

10. It is immediately seen that the applicant fulfills the criterion of educational qualifications prescribed. When it comes to the question of pay status, he does not fulfill any of the three prescribed alternative criteria mentioned above, as he is admittedly in the pay scale of 4500-7000, whereas the minimum of the three pay scales prescribed in the alternatives is 5500-9000. Thus, he fails to fulfill this criterion straight away. He is trying to build up a case to sustain his case that the 5th Pay Commission

recommended a higher scale of pay of Rs. 5500-9000. As already noted, he moved this Tribunal to consider his case among others for this pay scale and ultimately, the Government declined the request saying that, there is no case for grant of higher pay scale as the Commission had not given any recommendation. Another O.A.519/2003 is pending before this Tribunal in which one of the reliefs asked for is grant of the above mentioned pay scale of 5500-9000. The relevant point to be noted is that the eligibility criteria is the experience of 5 years regular service in the pay scale of 5500-9000 on the date of application. For the applicant, this prescribed scale is still in the adjudicatory stage. Even if the same is allowed, it has to be so allowed retrospectively for a period of five years ending with at least the date of the notification which is 18.2.2003, which would effectively mean a retrospective conferring of the pay scale for a period of about 7 years and more as on date. Promotions cannot be considered for such conjectural cases. If such a leeway is allowed on adjudication in this case, it would be causing great prejudice against existing eligible cases as per the rules. The applicant is however right that as laid down by the Hon'ble Apex Court right of consideration is a fundamental right but, such right is vested only on eligible candidates within the zone of consideration unlike him. Hence, we find that, the applicant is ineligible to be considered for the post.

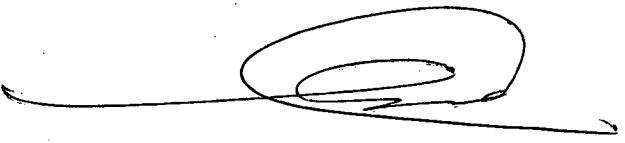
11. As to the point whether the ineligibility of the respondents advances the case of the applicant, it was already noted that the applicant has gone to great length to prove the ineligibility of the respondents. In fact, it is a pointless exercise. It is gathered from the respondents that a total of six applications from qualified hands were forwarded. R-4 is just one of them. It is true that, this Tribunal had granted an interim relief

that, if the official respondents propose to appoint R-4, the same will be kept in abeyance. Nothing is officially known about the final decision on selection. As mentioned above, the Rules envisage the mode of recruitment as promotion/transfer on deputation failing which by direct recruitment. It is possible that the selection authorities could find the R-4 or any one among the other five candidates as the suitable candidate. It is equally possible that none of them is found suitable and direct recruitment could be resorted to. The long and short of it is that the fact of R-4 being ineligible does not make the applicant eligible for consideration for promotion much less eligible for promotion because he does not fulfill the eligibility criterion of pay status to start with. For these reasons, we find that the ineligibility of party respondent is irrelevant to adjudicate the present O.A.

12. In sum, we find that the impugned order is not really impugnable, the applicant is ineligible to be considered for the post and that the ineligibility of party respondent is irrelevant to adjudicate the present O.A. Hence, we dismiss the O.A. with no costs.

Dated, the 1st December, 2005.


N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER


K.V.SACHIDANANDAN
JUDICIAL MEMBER