

Central Administrative Tribunal  
Ernakulam Bench

OA 546/2013

.....Monday.....this the 29<sup>th</sup> day of February, 2016

CORAM

Hon'ble Mr.Justice N.K.Balakrishnan, Judicial Member  
Hon'ble Mrs.P.Gopinath, Administrative Member

P. Mohammedkoya  
Upper Division Clerk,  
Office of the Shipping and Transport  
Willingdon Island, Kochi -682 003.

Applicant

(By Advocate: Mrs.K.P.Geethamani)

*Versus*

1. Union of India, rep. by its Secretary,  
Ministry of Home Affairs,  
Govt. of India, New Deihi.
2. Union Territory of Lakshadweep,  
represented by its Administrator  
Office of the Lakshadweep Administration  
Kavaratti Island - 682 555.
3. The Director of Services,  
Union Territory of Lakshadweep,  
Kavarathi - 682 555.
4. The Departmental Promotion Committee  
for Promotion to the Post of Accountant/  
Superintendent/Head Clerk/Assistant  
Represented by its Chairman  
Union Territory of Lakshadweep,  
Kavarathi - 682 555.

Respondents

By Advocate:

Mr.S.Jamal, ACGSC (R1)  
Mr.S.Radhakrishnan (R2-4)

The OA having been finally heard on 28<sup>th</sup> January, 2015, this Tribunal  
delivered the following order on 29<sup>th</sup> February 2016:-



ORDER

By P.Gopinath, Administrative Member,

Through this OA, applicant seeks a direction to the respondents to pass order on Annexue A4 representation regularizing his service in UDC post w.e.f. 09.03.1997 with all consequential benefits like promotion to higher post of Superintendent, counting his UDC cadre seniority from 9.3.1997 onwards.

2. The applicant was initially appointed as LDC under the Lakshadweep Administration on 8.3.1989. He was promoted as UDC on ad-hoc basis w.e.f. 29.11.1995. As per Recruitment Rules for UDC, the applicant became eligible for regular promotion on 9.3.1997. But his adhoc appointment as UDC was regularized with effect from 26.8.2000, the date of the DPC. Projecting his grievance, the applicant filed a detailed objection to the 2<sup>nd</sup> respondent (Annexure A4) to which no reply has been received. As per the service rules, DPC has to be convened at an interval of every six months. In between December 1993 and 28.8.2000, no DPC was convened for making promotion to the post of UDC. The DPC which met on 26.8.2000 considered the applicant for regularization against one of the vacancies which arose in the year 1998. According to the applicant, he is entitled to get regulaization in UDC cadre w.e.f. 09.03.1997. It is because of the delay in convening DPC that the applicant was denied regulaization as UDC with effect from 09.03.1997. The applicant has relied on two decisions of the Tribunal rendered in OA 84/1994 and OA No.127.2010 to contend that no benefit can be denied to an employee only because of the administrative delay. It is stated in the OA that the next promotion to the post of Superintendent is on the anvil and all the 14 persons

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shown in the list prepared in pursuance to the proposal are juniors to the applicant. This, according to the applicant, has adversely affected his promotional prospect.

3. The respondents' stand is that the claim of the applicant is a stale one. The applicant had not raised his claim either in 1997 when he was stated to have acquired eligibility or in 2000 when his promotion was regularized. The OA was filed 13 years after the regularization of the applicant as UDC. Hence OA is barred by the law of limitation. Relying on a decision of the Apex Court in *(2008) 10 SCC 115 C. Jacob Vs. Director of Geology and Mining & Another*, the respondents underlined the need to deprecate the practice of reviving a stale claim, which may give rise to a fresh cause of action. The applicant himself admitted that he had become fully qualified for regular promotion w.e.f. 9.3.1997 but had been given adhoc promotion w.e.f. 29.11.1995. All those placed above him are seniors in the LDC grade, hence there is no merit in the claim of the applicant. It is further contended that the DPC dated 26.8.2000 effected promotions to 9 vacancies of 1995, 8 vacancies of 1996, 13 vacancies of 1997, 12 vacancies of 1998, 13 vacancies of 1999 and 3 vacancies of 2000. from the seniority list, it can be seen that all the promotees from seniority number 329 (Annexure A3) were given date of regular appointment in the grade in August, 2000. It would not be prudent to unsettle the seniority position lest it should adversely affect the seniority position of several persons. The seniority position settled in 2000 cannot be unsettled after a span of 13 years, and that too from a date 16 years prior to filing of OA, contend the respondents.

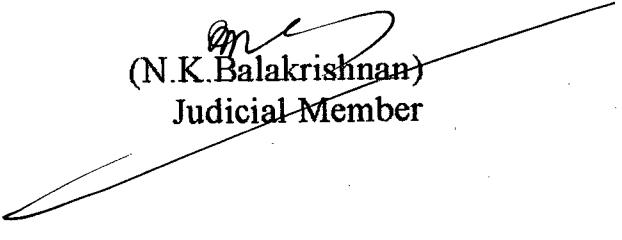
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4. Applicant is claiming relief for UDC promotion from 1997 but approaches the Tribunal in 2013 i.e after 15 years. The provisional seniority list was published in July 2010 and the applicant, after three years, is trying to unsettle the settled position in the year 2000. The dictum doing the right thing at the right time is applicable to the applicant also. Annexure A2 DPC Minutes produced by the applicant shows that all promotions have been made in ascending order with the LDCs of the earlier years being promoted before LDCs of later years. No discrimination has been shown by the respondent in the DPC so held. This DPC has promoted 68 persons in strict order of seniority and unsettling this settled position of promotion in the year 2000 by giving the applicant alone benefit with effect from 1997 would be unsettling 40 persons senior to the applicant promoted by the DPC, 13 years prior to filing of OA.

5. In Annexure A3 Seniority List, applicant appears at Serial No. 55. Persons from S.No. 31 onwards have been promoted in order of seniority in the DPC and no junior has been promoted before the applicant. The applicant appears to have slept over this matter and approached the Tribunal too late thus invoking the sit back theory by seeking relief specifically for promotion as UDC w.e.f. 09-03-97. The applicant will be considered in turn in order of seniority only. OA is dismissed both on account of delay and merit.

  
(P.Gopimath)  
Administrative Member

aa.

  
(N.K.Balakrishnan)  
Judicial Member