

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.No.559/2002

Monday this the 2nd day of June, 2003.

C O R A M

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN  
HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

S.Attakoya,  
Executive Engineer (Civil),  
Lakshadweep, PWD Kalpeni  
Residing at :  
'Surambiyoda House',  
Kilthan Island,  
Lakshadweep.

; Applicant

[ By Advocate Mr.M.R.Rajendran Nair ]

Vs.

1. The Union of India represented by the Secretary to Government of India, Department of Urban Development, New Delhi - 110001
2. The Secretary, Department of Personnel and Training, Government of India, New Delhi - 110001
3. The Administrator, Union Territory of Lakshadweep, Kavarathi, Lakshadweep PWD, Circle Office Kavarathi.
4. The Superintending Engineer, Lakshadweep, PWD, Circle Office, Kavarathi

; Respondents

[By Advocate Mr.R.Prasanth Kumar (R 1 & 2)  
Mr.P.R.Ramachandra Menon (R 3 & 4) ]

The application having been heard on 2.06.2003, the Tribunal on the same day delivered the following :

O R D E R

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN.

This application is directed against the order dated 1.07.2002 by which first respondent has turned down the claim of the applicant for counting the period of his ad-hoc

officiation in the post of Executive Engineer (Civil) from 6.05.98 to 26.03.2001 on which date he was regularly appointed after D.P.C. and also for considering him for promotion as Superintending Engineer (Civil) in relaxation of the Recruitment Rules regarding the length of service. The factual matrix can be stated as follows :-

2. The applicant who commenced service as Junior Engineer became a direct recruit Assistant Engineer on 2.03.93. He acquired the qualification for the post of Executive Engineer by 14.10.97. However, a regular vacancy in the post of Executive Engineer arose only on 21.04.98 on the repatriation of the incumbent who was working on deputation. The applicant being the seniormost in the feeder grade was appointed on adhoc basis as Executive Engineer by order dated 21.04.98 (Annexure A-7). Applicant made several representations for regularisation of his adhoc appointment. Ultimately by order dated 26.03.2001, (Annexure A-15), he was appointed as Executive Engineer (Civil) in the scale of Rs.10000-15200 on a regular basis from the date he assumed charge of the post until further orders. The applicant made representation for ante-dating his regular appointment to the post of Executive Engineer and for consideration to the post of Superintending Engineer. In reply to the above representation, the applicant was told by the impugned order (Annexure A-1) that his promotion on 21.04.98 being only adhoc basis he is not entitled to get seniority with effect from that date and his regular promotion cannot be antidated. Regarding consideration for the

post of Superintending Engineer, it is stated that the applicant having not completed five years of regular service as Executive Engineer, he has not yet become eligible for promotion. The respondents admit that a clear vacancy of Executive Engineer arose in April, 1998 but contend that the applicant's regular promotion was not made immediately because DPC had to be held. As the DPC was held on 7.3.2001 which recommended the promotion of the applicant, the applicant was immediately promoted as Executive Engineer by order dated 26.03.2001 and therefore, no delay on their part in promoting him. Aggrieved by that the applicant has filed this Original Application seeking to set aside Annexure A-1 order and for a direction to the respondents to count the adhoc service of the applicant as regular service and to consider the applicant for promotion as Superintending Engineer in relaxation of the rules in preference to other mode of recruitment against vacancy which had arisen on 1.07.2001.

3. The respondents in their reply statement contend that, as per rules adhoc officiation as Executive Engineer would not count for seniority, that there was no intentional delay in convening the DPC for promotion of the applicant as Executive Engineer, that even if the adhoc service as Executive Engineer is counted as regular the applicant would not be eligible to be considered for promotion as the length of service required for promotion as Superintending Engineer is five years in the grade of Executive Engineer.

4. We have gone through the pleadings and materials placed on record and heard Shri Hariraj, learned counsel for applicant and Shri P.R.Ramachandra Menon, learned counsel for respondents 3 and 4. Undisputedly the applicant was appointed on adhoc basis as Executive Engineer by order dated 21.04.98 and he assumed charge on 6.05.98. It is also an undisputed fact that the applicant continued to officiate as Executive Engineer till he was regularly promoted after DPC by order dated 26.03.2001. There is no case for respondents that at that time when the applicant was appointed on adhoc basis, there was any person senior to him who was left out of consideration for promotion. Under such circumstances since the promotion of the applicant as Executive Engineer was made against a clear vacancy and the applicant continued to officiate till the formalities of DPC were completed and regular promotion order was issued, we are of the considered view that the applicant is entitled to count his service from the date of adhoc promotion as Executive Engineer. We are fortified in taking this view by the ruling of the Apex Court reported in 1990 (2) SCC 715, Direct Recruitment Class II Engineering Officer's Association Vs. State of Maharashtra & Ors., (Para 47 Clause A & B). The applicant therefore, is entitled to have his service as Executive Engineer from 6.05.98 counted for further promotion to the post of Superintending Engineer.

5. Having found that the applicant is entitled to have his services as Executive Engineer for seniority and promotion from 6.05.98, we have to examine whether on the date of filing this Original Application he had the eligibility for promotion as

Superintending Engineer. Five years of service as Executive Engineer is necessary for promotion as Superintending Engineer counting from 6.05.98. He did not complete five years of service on the date of filing this Original Application. Relaxation of the requirement of length of service cannot be claimed as of right and that too in favour of a particular individual. The power of relaxation is vested with the government to be exercised at its discretion in favour of a class of persons only. Therefore, the relief sought for a direction to respondents to promote the applicant as Superintending Engineer relaxing the rules cannot be granted.

6. From the reply statement it is seen that the post of Superintending Engineer has not been filled as yet. It is also seen that a proposal to appoint on deputation one Gajendra Kumar was not accepted by the UPSC and the UPSC has suggested that all sources as per the Recruitment Rule is to be tapped before filling up the vacancy. Now that the applicant has completed 5 years of service as Executive Engineer from 6.05.98, and as the post of Superintending Engineer which is vacant has not been filled we find that the applicant is entitled to be considered for promotion against that post by promotion which is the primary mode of recruitment.

In the light of what is stated above, the application is allowed in part, the impugned order Annexure A-1 to the extent it denies the applicant the benefit of seniority for the period of his adhoc officiation as Executive Engineer is set aside and we direct the respondents to consider the case of the applicant

for promotion to the post of Superintending Engineer now, against the existing vacancy as he has 5 years of regular service as on 6.05.2003. The respondents are directed to complete the above exercise and issue appropriate order within a period of three months from the date of receipt of a copy of this order. No order as to costs.

Dated, the 2nd June, 2003.



T.N.T.NAYAR  
ADMINISTRATIVE MEMBER



A.V.HARIDASAN  
VICE CHAIRMAN

vs