

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 565 of 1999

Monday, this the 20th day of August, 2001

CORAM

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER
HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. C.N. Pathummabi,
Mukhiasevika,
Integrated Child Development Service
Department, Kavaratti.Applicant

[By Advocate Mr. N. Haridas (rep.)]

Versus

1. Union of India, represented by its
Secretary, Ministry of Home Affairs,
North Block, New Delhi.

2. Administrator,
Union Territory of Lakshadweep,
Kavaratti.

3. Secretary (Welfare),
Union Territory of Lakshadweep,
Kavaratti.

4. Collector-cum-Development Commissioner,
Union Territory of Lakshadweep, Kavaratti.

5. C.N. Beefathummabi,
Assistant Child Development Project Officer,
Kavaratti, Union Territory of Lakshadweep.

6. M.K. Hajarommabi,
Social Welfare Inspector, Kavaratti,
Union Territory of Lakshadweep.Respondents

[By Advocate Mr. S. Radhakrishnan (R1 to R4)(rep.)]

[By Advocate Mr. B. Narasimhan (R5)(not present)]

The application having been heard on 20-8-2001, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

The applicant seeks to quash A-13 and A-16, to declare
that she is senior to respondents 5 and 6 in the post of
Mukhiasevika and to direct respondents 2 and 3 to assign her

seniority in the post of Mukhiasevika with effect from 1-12-1978.

2. The applicant joined service under the Lakshadweep Administration as Lower Division Clerk with effect from 12-2-1971. She was later appointed as Village Extension Officer. She joined duty in that post on 19-4-1973. She was the seniormost among both the Village Extension Officers and Lady Village Extension Officers. Three posts of Mukhiasevikas were created as per order dated 12-10-1978. The recruitment rules for the said post were framed by the 2nd respondent in the year 1978. As per A3 recruitment rules, the post of Mukhiasevika is a Group C post and the method of appointment is by selection in the case of promotion. As per A5, the applicant was also selected to the post of Mukhiasevika, but shown as Sr.No.3 though she was the seniormost among the Lady Village Extension Officers. Her representation for giving seniority above the private respondents has been turned down as per A-13. A-16 is the order promoting the 5th respondent as Assistant Child Development Project Officer from the post of Mukhiasevika. A-13 and A-16 are bad in law and liable to be quashed.

3. Official respondents resist the OA contending that all the questions have already been considered by this Bench of the Tribunal in TAK No. 6/87 to which the applicant was also one of the parties [R2(a)]. If the applicant was aggrieved, she ought to have taken up R2(a) order in appeal. The selection was made on the basis of the assessment made by the Departmental Promotion Committee. The applicant is estopped from making any contention against R2(a) order.

4. The learned counsel appearing for the applicant argued that the Departmental Promotion Committee ought to have met in the year 1978 itself and in that case the applicant would have been selected she being the only eligible hand at that time. That aspect has already been considered by this Bench of the Tribunal in TAK No. 6/87 [R2(a)]. There it has been held that there is nothing wrong with the Departmental Promotion Committee proceedings. The applicant herein is the 5th respondent in TAK No. 6/87.

5. The learned counsel for the applicant submitted that the yearwise vacancies ought to have been taken by the Departmental Promotion Committee while conducting the selection and as far as the applicant is concerned, the vacancy available in the year 1978 should have been taken into consideration. There is no dispute as to the fact that three posts of Mukhiasevikas were created only in October, 1978. The recruitment rules for the said post came into force with effect from 1st of December, 1978. The first Department Promotion Committee meeting was convened in the year 1982. The selection made by that Departmental Promotion Committee was cancelled and the Departmental Promotion Committee met again and prepared another select list, i.e. A5. That was under challenge in TAK No. 6/87. The applicant therein had claimed that she is senior to respondents 3 to 5 therein. Respondent No.5 therein is the applicant herein. In the order in TAK No. 6/87 it is stated that the selection to the post of Mukhiasevika is not based on seniority alone, but by a comparative assessment of merit by the DPC taking into account the seniority also. It is further stated therein that to fill up the vacancies respondents 4 and 5 herein and the applicant were recommended in the order of selection and that persons who are assigned rank Nos. 1 to 3 alone were appointed. If the applicant

herein was really having a grievance, in TAK No. 6/87 she could have very well raised the question of seniority now agitated in this OA. She has not done so. The learned counsel for the applicant submitted that a representation was submitted before the Department and that is why the available contention was not raised by the applicant herein in TAK No. 6/87. Just because the applicant herein had approached the Department, that will not stand in the way of her in raising all the pleas available to her in TAK No. 6/87. Official respondents have specifically stated that in TAK No. 6/87 the applicant has not raised this plea and the order in TAK No. 6/87 has become final. A plea which ought to have been raised, if not raised cannot be permitted to raise in a subsequent proceeding.

6. R2(b) says that the panel should be drawn up to the extent necessary by placing the name of the "Outstanding Officers" first, followed by the officers categorised as "Very Good" and followed by the officers categorised as "Good" and that the inter se seniority of officers belonging to any one category would be the same as their seniority in the lower grade. There is no dispute as to the fact that respondents 5 and 6 were categorised as "Very Good", while the applicant was categorised as "Good". That being so, in the light of R2(b) also, the applicant cannot claim seniority over and above the private respondents. In A-13 it has also been stated that as per instructions, where promotions are made on the basis of selection by a Departmental Promotion Committee, the seniority of such promotees shall be in the order in which they are recommended for the promotion by the Committee. There is no attack against R2(b).

7. The first relief sought by the applicant she will be entitled to only if she is entitled to the declaration that she

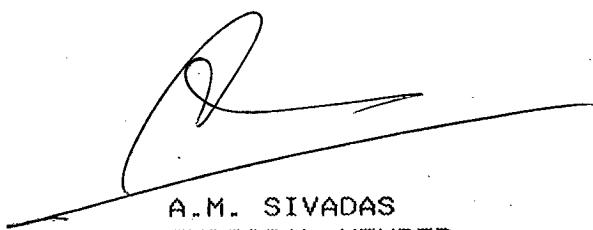
is senior to respondents 5 and 6 in the post of Mukhiasevika. As this aspect has already been concluded by R2(a), the applicant is not entitled to the declaration sought for. As the applicant is not entitled to the declaration sought for, the applicant is not entitled to get the first relief, i.e. quashing of A-13 and A-16. The third relief is only consequential to the second relief.

8. Accordingly, the Original Application is dismissed. No costs.

Monday, this the 20th day of August, 2001



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

ak.

List of Annexure referred to in this order:

1. A3 True copy of Lakshadweep Administration (Recruitment to the Post of Mukhiasevika in the Department of Social Welfare & Culture, ICDS Scheme) Rules, 1978 framed by the 2nd respondent as per Notification F.No. 4/3/78-SW dated 1-12-1978 issued by the 2nd respondent.
2. A5 True copy of Order F.No. 9/5/79-SWC dated 18-9-1983 promoting respondents 5 & 6 and the applicant to the posts of Mukhiasevikas issued by the 4th respondent.
3. A-13 True copy of Order F.No. 12/8/96-ICDS dated 18-9-1998 issued by the 2nd respondent to the applicant.
3. A-16 True copy of Order F.No. 1/11/97 dated 14-9-1998 issued by the 3rd respondent to the 5th respondent.
4. R2(a) True copy of the Office Memorandum F.No. 9/16/80-SWC dated 3-4-82 issued by the 4th respondent.
5. R2(b) True copy of Office Memorandum F.No. 9/CA/2/80-LSSWAB dated 4-2-80 issued by Lakshadweep State Social Welfare Advisory Board