

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 570/2007

This the 18th day of November, 2009.

C O R A M

**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

P.Shaikoya
Asst. Sub Inspector (Wireless)
Police Station Chethalath
Ut. Of Lakshadweep.

Applicant

By Advocate Mr. M.V. Thambran

Vs.

1 The Superintendent of Police
 U.T. Of Lakshadweep
 Kavaratti.

2 The Administrator
 U.T. Of Lakshadweep
 Kavaratti.

3 Union of India
 represented by the Secretary
 Ministry of Home Affairs
 New Delhi.

Respondents

By Advocate Mr.S. Radhakrishnan for R 1-2
Advocate Mr. Sunil Jacob Jose, SCGSC for R-3

The Application having been heard on 10.6.2009 the Tribunal delivered the following

O R D E R

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant, a Police Constable in the Lakshadweep Islands is aggrieved by the denial of promotion as SI(Wireless) despite occurrence of vacancy.

2 The applicant, a native of the Androth Island entered service as Constable in the Police Force of Lakshadweep Islands in the year 1970 and retired as ASI(Wireless) on 30.9.2007. According to the applicant, he was at Rank No. 4 in the seniority list of ASI (Wireless). The persons at Sl. Nos. 1 to 3 were already promoted as SI (Wireless) against general quota. One post of SI(Wireless) became vacant when Shri U.P. Mohammad was promoted as Inspector (Wireless). As per the reservation roster, 1st and 4th vacancies are reserved for SC/ST. According to applicant, he should have been promoted either on the basis of seniority or on the basis of reservation roster. In any case, one post of SI(Wireless) has been lying vacant from 4.8.2005 onwards. Hence, the applicant moved this Tribunal through O.A. 330/07 which was disposed of directing the 1st respondent to consider the representation of the applicant and pass a speaking order within a period of two months. Pursuant to the direction, the respondents rejected the representation on the ground that there is no post of SI(Wireless Operator) as one post was re-designated as SI (Band) (A-4). Hence, the applicant filed this O.A. seeking to declare that he is entitled to be promoted as SI (Wireless) against the 4th reservation point on the basis of his seniority. The applicant has mainly urged the following grounds that (i) he was stagnating in the post of ASI from 1978 onwards, (ii) he was the senior most among the ASI (Wireless) being at Sl. No. 4 in the seniority list, to be promoted as SI (Wireless), (iii) the contention of the respondents that one post of SI (Wireless) was already designated in 1990 as SI(Band) (iv) there is no provision to appoint a retired Head Constable as Band Master in the rank of SI and (v) the post should have been filled on the basis of the Recruitment Rules in force.

3 The respondents in their reply statement submitted that it is true that there were three posts of SI(Wireless) but out of the three posts, one post was re-designated as Sub Inspector (Band) as per Annexure R-1(c) dated 13.7.90. As such, there were only 2 posts of SI (Operator/Technical)

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occupied by seniors of the applicant. The applicant has not challenged the same. They defended the order at Annexure A-4 stating that it was passed based on the records available in the Department. As regards vacancy of SI (Band) they submitted that the issue was raised in O.A. 1240/97 and 1407/97 before the Tribunal which was dismissed (R-1(f)). They further submitted that the vacancy of SI(Band) is presently manned by a retired SI(Band) of Pondicherry Police on contract basis since no one in the Department has been found suitable for appointment as per the Recruitment Rules. The vacancy occurred due to the promotion of Shri U.P.Mohammed, Shri K.Narayanan who was 3rd in the seniority list was promoted. They submitted that the applicant could not be promoted because of non-availability of vacancy. However, they submitted that he was granted 2nd financial up-gradation as per the ACP Scheme.

4 The applicant filed rejoinder stating that there were two posts of SI (Operator/Technical) created vide order R-1(a) dated 25.8.81 and 3 posts of SI (Wireless) created vide order R-1(b) dated 10.1.77 and 24.3.82 and that if one post has been converted to SI(band) then 4 posts of SIs are available. The respondents are stating only about SI(Operator/technical). The applicant denied that any Band unit functioning in the Department, no recruitment rules were published.

5 The respondents filed additional reply statement reiterating their averments in the reply statement and denying the contention of the applicant in the rejoinder that there are five posts of SI(Wireless). They further stated that Shri U.P.Mohammed was promoted to the rank of Inspector (Communication) w.e.f. 3.8.2005 (R1(h)) whereas this O.A. was filed on 12.9.07 after more than two years. Therefore, the O.A is hit by limitation.

6 We have heard learned counsel for the parties

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7 The applicant's counsel claims that there were four posts of SI (Wireless) excluding one post of SI(Wireless) which was re-designated as SI (Band). The respondents refuted this argument stating that there are only three posts of SI(Wireless) out of which one is re-designated as SI(Band). A perusal of Annexure R-1(a) and R-1(b) shows that the respondents are right in claiming that there are altogether only three posts of SI (Wireless). The third respondent vide its letter No. U-13020/I(8-35)/74-ANL dated 5.3.76 sanctioned the following posts for the Wireless Unit of the first respondent which was created vide Annexure R-1(b) of the; 2nd respondent which is extracted below:

In exercise of the powers conferred under Rule 10 Schedule III of the DFP rules, 1958 as amended from time to time, the Administrator, UT of Lakshadweep is pleased to sanction the creation of the following posts for Police Wireless on the existing terms and conditions and on the scale of pay as noted against each with effect from the date of filling up the posts upto 28.2.1987 or till the necessity ceases whichever is earlier:

Sl No	Name of post	Classification	Scale of pay	No. of posts	Distribution
1	Sub Inspector (Wireless)	Class-III Non-Gazetted (Non ministerial)	Rs. 425-15-530-EB -15-560-20-600	1 (One)	Kavaratti to be incharge of the Wireless at HQ
2	Wireless Operators	-do-	Rs. 330-8-370-10-400-EB-10-480	9(Nine)	Kavaratti-3, Minicoy-2 Amini-2 & Agatti-2
3	Radio Technicians	-do-	Rs. 330-8-370-10-400-EB-480	3(Three)	Kavaratti-1 Minicoy-1 Amini-1(with jurisdiction to Amini and Agatti)

The 3rd respondent vide its letter No. U-13024/3/80-ANL dated 25.9.1981, sanctioned, ~~two~~ more posts of SI(Operator/Technical), to be used in the Wireless unit vide Annexure R-1(a). This was stated to be created by the 2nd respondent on 24.3.82 vide its file No. 1/3/80-PO)PA). This is referred to in Annexure R-1(c)

8 Hence, there can be no dispute that there were only three posts of Sub Inspector (Wireless) available for promotion and that the applicant

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was at Sl.No. 4 in the seniority list of ASIs. Out of these three posts, one post was already re-designated as Sub Inspector (Band) w.e.f. 13.7.1990. Therefore, only two vacancies were available at the material time. The persons at the top of the seniority list S/Shr U.P. Mohammed and Shri K.BalanNair were appointed. The applicant was at the 4th position. When Shri U.P. Muhammed, the person at Sl. No.1 of the seniority list and promoted as SI(Wireless), was further promoted to the post of Inspector (Wireless), Shri K.Narayanan who occupied the 3rd position in the seniority list was promoted as SI(Wireless). It is a fact that no vacancy occurred till the retirement of the applicant. Therefore, according to us the applicant could not be promoted the post of SI (Wireless) as there was no vacancy.


9 As regards the challenge of the applicant against re-designation of one post of SI(Wireless) to SI(Band), it is noticed that the post of SI(Band) is being manned by a retired SI(Band) of Pondichery Police on contract basis since no one in the Department is found suitable for the appointment. Therefore, the question that comes up for consideration is whether the re-designation of the post of SI(Wireless) to that of SI(Band) is justified in view of the inability of the respondents to find out a qualified person in the Island to occupy the post. Had the post been continued as SI(Wireless) the applicant would have got promotion. No purpose is served by the re-designation of the post except that a retired man is engaged on contract basis the applicant was denied promotion for want of vacancy. Even now the post is stated to be vacant and the respondents have conceded that the recruitment rules are yet to be notified. If so, it is high time that the post is brought to the main stream of SI (Wireless) in the Police Department. However, we notice that the re-designation was done in the year 13.7.90 which remained unchallenged for the last 17 years. The challenge of the applicant is hit by limitation. Therefore, this ground cannot be accepted.

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10 We further notice that the applicant was granted the benefit of financial upgradation under the ACP Scheme which would compensate for not getting promotion to a great extent.

11. In this view of the matter, the Application fails. It is dismissed. No costs.


K. NOORJEHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

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