

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.577/09

Thursday this the 24th day of June 2010

C O R A M :

HON'BLE Mr.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER

1. I.Deepa,
D/o.K.R.Narayanan Panicker,
Compiler, Directorate of Census Operations,
Kerala, C.G.O.Complex, Poonkulam,
Vellayani P.O., Trivandrum.
Residing at Thushara, Jeevan Nagar,
Pattom, Thiruvananthapuram.
2. Manoj C,
S/o.P.K.Chandra Lal,
Compiler, Directorate of Census Operations,
Kerala, C.G.O.Complex, Poonkulam,
Vellayani P.O., Trivandrum.
Residing at Ravi Mandiram,
Near S.N.College, Mundakkal, Kollam.
3. Manju S,
D/o.G.Manoharan,
Compiler, Directorate of Census Operations,
Kerala, C.G.O.Complex, Poonkulam,
Vellayani P.O., Trivandrum.
Residing at TC-6/1877, SRA 24,
Karthika, Vattiyur Kavu P.O.,
Trivandrum – 13.
4. Biju S,
S/o.C.B.Sukumara Pillai,
Compiler, Directorate of Census Operations,
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Vellayani P.O., Trivandrum.
Residing at Chalayil House,
Charamangalam, Muhama P.O.,
Alappuzha.

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5. S.Riaz,
S/o.H.A.Sualiman,
Compiler, Directorate of Census Operations,
Kerala, C.G.O.Complex, Poonkulam,
Vellayani P.O., Trivandrum.
Residing at TC-43/11, Kidargil Veedu,
Thottanmaracaud, Trivandrum.

6. Beena C.S.
D/o.Sivasankara Pillai,
Compiler, Directorate of Census Operations,
Kerala, C.G.O.Complex, Poonkulam,
Vellayani P.O., Trivandrum.
Residing at Thejas, TC 28/1204,
Sreekanteswaram Fort PO, Trivandrum.

...Applicants

(By Advocate Mr.P.V.Mohanan)

V e r s u s

1. Union of India represented by Secretary,
Ministry of Home Affairs, Government of India,
New Delhi.

2. The Registrar General of India,
Office of the Registrar General, India,
2/A, Mansingh Road, New Delhi – 110 011.

3. The Joint Director,
Directorate of Census Operations,
Kerala, C.G.O.Complex, Poonkulam,
Vellayani P.O., Trivandrum.

...Respondents

(By Advocate Mr.Sunil Jacob Jose,SCGSC)

This application having been heard on 24th day of June 2010 this Tribunal on the same day delivered the following :-

ORDER

HON'BLE Mr.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER

The short question involved in this Original Application is that whether the applicants are entitled for antedation of promotion to the post of Compiler or not.



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2. Before answering the question, we have to consider the bare facts of the case. All the applicants except the 6th applicant became eligible for promotion to the post of Complier as on 22.6.2008 as per the Annexure A-2 Recruitment Rules. The applicants are entitled for promotion as there are vacancies existed at the time they became qualified for promotion but the Department has not promoted them in spite of the fact that the DPC met on 7.7.2008. The 6th applicant became eligible or passed the departmental qualification only later. However, during the pendency of an earlier O.A, namely, O.A.No.565/08 filed for the same purpose, the Department passed Annexure A-5 promotion orders promoting all the applicants with effect from 22.1.2009. Aggrieved by such stand taken by the Department giving promotion to the applicants with effect from 22.1.2009, the present Original Application has been filed praying for a declaration from this Court to the effect that the applicants are deemed to have been promoted to the category of Compiler on completion of 8 years of service in the category of Assistant Compiler or in the alternative declare that the applicants are deemed to have been promoted to the cadre of Compiler on the date on which the DPC met.

3. The Original Application has been admitted by this Tribunal and notice ordered. In pursuance to the notice ordered, a reply statement has been filed on behalf of the respondents and it is stated in the reply statement that though the applicants completed 8 years of service, the Department took time for assessing the vacancies as on 1st January 2009.



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That is the reason for order of promotion granted to the applicants with effect from 22.1.2009. Further, it is stated in the reply statement that as per the Office Memorandum issued by the Department of Personnel and Training dated 17.9.1998 the prior clearance should have been obtained from the Headquarters Office well before conducting the DPC. The respondents also relied on Annexure R-1 Office Memorandum dated 17th September 1998.

4. We have heard Shri.P.V.Mohanan, counsel appearing for the applicants and also Shri.Rajesh on behalf of Shri.Sunil Jacob Jose,SCGSC appearing for the respondents. The main thrust given by the counsel appearing for the applicants is that as per Annexure A-2 Recruitment Rules promotion to the cadre of Compiler is to be effected as and when the employees in the feeder category complete 8 years of service and it is seen that the applicants except 6th applicant completed 8 years of service in the feeder category on 22.6.2008. If so, the applicants ought to have been promoted with effect from the date of occurrence of vacancy. The further case of the applicants is that it is a well settled proposition of law that as and when vacancy occurs, if the Recruitment Rules does not provide otherwise, the promotion has to be effected from the date of occurrence of the vacancy and on completion of qualification. For this purpose counsel appearing for the applicants relies on the Full Bench judgment of the Hon'ble High Court of Kerala reported in 1991 (1) KLT 337 in Padmanabhan Nair Vs. Deputy Director. To the above argument



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counsel appearing for the respondents relying on the reply statement submitted that even though the applicants completed 8 years of service in the feeder category, the Department as per the directions/instructions issued by the DoPT as per Annexure R-1 has to assess the vacancies and to get the clearance of the Department for making appointment and that too before the meeting held by the DPC. Further, counsel submits that even though the Departmental Promotion Committee met in July 2008, since the vacancy has to be assessed and sanction/clearance from the Department is needed they had taken some time for passing Annexure A-5 order.

5. Giving an anxious consideration to the arguments of the learned counsel for the parties and on the principles laid down by the Hon'ble High Court in Padmanabhan Nair's case, cited supra, the question to be considered is that whether the applicants are entitled for antedation of promotion to the post of Compiler or not. As per Annexure A-2 Recruitment Rules it is stated as follows :-

Promotion :- Assistant Compiler in the respective offices with eight years regular service in the grade of Rs.3050-4590.

Note :- Where juniors who have completed their qualifying or eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of the requisite qualifying or eligibility service by more than one year and have successfully completed their probation period, if prescribed.



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6. A reading of the above rule would show that as and when vacancy arises and employees in the feeder category completes 8 years of service it is mandatory on the part of the Department to give promotion to the employees who are found eligible for such promotion. The rule does not say that this is a selection. But, at the same time, we are of the view that if the rule is not insisting for selection it is automatic or mandatory on the part of the Department to give promotion to the employees if vacancies are there. It is also discernible from the fact revealed before this Court that there are vacancies existed at the time of completion of 8 years of service by the applicants except the 6th applicant. However, the Department has taken some time on the reason that they are relying on Annexure R-1. Before answering the question raised by the Department, we may go through Annexure R-1. In Annexure R-1 it is stated as follows :-

"3. The crucial date indicated above is in keeping with para 9 of the Department of Personnel and Training Office Memorandum No.22011/9/98-Estt.(D) dated September 8, 1998 which prescribes a Model Calendar for DPCs. In accordance with paragraphs 10 and 11 of the said Office Memorandum, these instructions will come into force in respect of vacancy years commencing from January 1/April 1, 1999 and will, accordingly, be applicable to all such subsequent vacancy years."

7. Further, it is seen from Annexure R-1 that it is the duty of the Department to find out if ACR has to be written financial year wise or calendar year wise. A reading of the rest of the paragraph 2 of Annexure R-1 would show that if the promotion is ordered based on any ACR or any other eligibility conditions, the Office Memorandum has to be followed.



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Whereas in the case in hand there is no question of having any ACR for consideration. Even though the service records can be verified by the DPC at the time of promotion, even otherwise, the promotion has to be ordered by the DPC. In the case in hand it is seen that the DPC met during July itself of 2008. If so, the applicants are entitled for promotion with effect from the date of occurrence of the vacancy and this principle is fortified by the Full Bench judgment of the High Court of Kerala reported in **1981 KLT 458 in Varghese & Others Vs. State of Kerala & Others**. In the above judgment it is clearly stated in paragraph 4 that :-

4. ".....If title to be considered for promotion arises on the occurrence of vacancies and no other questions need be considered and if on the day juniors become eligible for promotion there were vacancies which could be filled up by promoting them, in the absence of any rule which prohibits such promotion it could be said that promotions of such juniors would be possible. If such promotions are put off until the seniors also qualify themselves by completing the period of probation and acquiring the necessary test qualification so much so that when the question of promotion is actually taken up for consideration the seniors as well as are qualified could it be said that seniors could be superseded by the juniors because on the date of occurrence of the vacancies the juniors alone were qualified. In other words, does the title to be promoted depend on the qualification on the date of occurrence of the vacancies or does it depend on the qualifications on the date the post is sought to be filled up. On this, this Court had voiced different views....."

8. Further, it is stated in paragraph 6 that if there is vacancy as and when a person becomes qualified for being promoted to such vacancy he would be entitled to be considered for promotion in that vacancy. If there is no vacancy when a person becomes qualified for promotion and a vacancy



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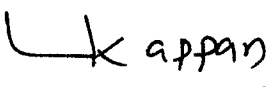
arises while he remains qualified, as and when such vacancy arises his case for promotion calls for consideration. Therefore, the fact that in these cases there were vacancies available even before applicants 2 to 4 completed their probation would make no difference at all.

9. Applying the above principle also this Original Application succeeds. We are accordingly directing the respondents to consider the case of the applicants by giving retrospective promotion with effect from the date of occurrence of vacancies vis-a-vis with that of the qualification they have acquired in the feeder category. Original Application allowed as above. There shall be no order as to costs.

(Dated this the 24th day of June 2010)


K.NOORJEHAN
ADMINISTRATIVE MEMBER

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JUSTICE K.THANKAPPAN
JUDICIAL MEMBER