

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

***Original Application No. 594 of 2002***

Monday, this the 23<sup>rd</sup> day of October, 2006

**C O R A M :**

**HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER  
HON'BLE MR. N. RAMAKRISHNAN, ADMINISTRATIVE MEMBER**

M. Mohammed Manikfan,  
S/o. Moosa Manikfan,  
Chief Engine Driver,  
Office of the Port Assistant,  
Union Territory of Lakshadweep,  
Minicoy.

... Applicant.

(By Advocate Mr.M.V. Thamban)

**v e r s u s**

1. The Administrator,  
Union Territory of Lakshadweep,  
Kavaratti.

2. The Port Officer,  
Union Territory of Lakshadweep,  
Kavaratti.

... Respondents.

(By Advocate Mr. S. Radhakrishnan)

The Original Application having been heard on 16.10.06, this Tribunal on 23.10.2006 delivered the following :

**O R D E R**  
**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

The applicant, a matriculate, initially appointed as Engine Driver (pay scale 380 – 560) in M.L. Laccadives on 29-09-1976 on ad hoc basis vide Annexure A-1 order, was by Annexure A-2 order dated 11-05-1987 promoted



on ad hoc basis to the post of Chief Engine Driver (pay scale Rs.1640-2900) . That ad hoc appointment continues till his retirement. The applicant, therefore, seeks regularization in the post of Chief Engine Driver and consequent financial upgradation under the ACP Scheme in the pay scale applicable to the Asst. Engineer.

2. Briefly stated, in the respondents' organization, there is a hierarchy as under:-

- (a) Engine Driver (380 - 560)
- (b) Junior Engineer (425 - 700)
- (c) Chief Engine Driver (1640 - 2900)(RP)
- (d) Asst. Engineer (2000 - 3500)

3. The post of Junior Engineer is filled by promotion from the post of Engine Driver and it carried the scale of Rs. 425-600 (pre revised) vide Recruitment Rules notified on 01-06-1978, Annexure R-1. Qualification requirement for the same is Diploma in Mechanical or Marine Engineering or SSLC with 15 months Engine Driver course at CIF and with MMD certificate for fishing vessel engine driver (motor) with 6 months workshop practice.

4. Initially there were no recruitment rules for the post of Chief Engine Driver. Recruitment rules were for the first time framed in respect of that post only by notification dated 24-04-1989 (vide Annexure R2). Qualification requirements for the said post under promotion quota <sup>is</sup> two years regular service in posts in the grade of Rs 1600 - 2600 and Diploma in Mechanical



of Marine Engineering from a recognized institute or equivalent and 28 years experience in Marine Workshop or Shipyard with specific experience in the operation and maintenance of mechanised barges. Qualifications are relaxable at the discretion of the Union Public Service Commission in case of candidates otherwise well qualified. Later on, by way of amendment to the Recruitment Rules, vide corrigendum dated 4<sup>th</sup> September, 1989 (Annexure A-3) Departmental Junior Engineer with 5 years regular service in the grade possessing matriculation or equivalent qualifications of recognized university or Board with certificate of competency as Engine Driver issued under the Inland Vessels Act, 1917, or the Harbour Craft Rules were also included for consideration for the said post of Chief Engine Driver and any junior engineer selected to the post of Chief Engine Driver would be treated as having been promoted.

5. On 11-05-1987, vide Annexure A-2 order, the applicant who was earlier working as Engine Driver and another individual by name T.P. Aboobacker, working as Junior Engineer, were both promoted on ad hoc basis as Chief Engine Driver. However, with the framing of the Recruitment Rule to the post of Chief Engine Driver as stated above, the said Aboobacker, who fulfilled the requisite qualification and experience for promotion on regular basis as Chief Engine Driver was treated as having been promoted on regular basis to the post of Chief Engine Driver w.e.f. 12-05-1987 (Para 6 of the counter). The applicant who was not holding the post of Junior Engineer

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could not be promoted on regular basis as Chief Engine Driver.

6. Though to the knowledge of the respondents the applicant did not possess the requisite qualifications for the post of Chief Engine Driver consequent to which only his promotion was ~~on~~<sup>Keep h</sup> ad hoc basis, no steps were taken to fill up the said post on regular basis in accordance with the provisions of the Recruitment Rules. Thus, the applicant continued for over 19 years in the same post but on ad hoc basis.

7. It is in the afore said backdrop that the applicant seeks regularization in the post of Chief Engineer and consequential benefits including ACP upgradation.

8. Respondents have contested the OA. According to them, the applicant cannot be regularized under the existing rules to the post of Chief Engine Driver nor could he be afforded the ACP facilities, as his regular post was only Engine Driver and if ACP is afforded, the same would be the pay scale as of Junior Engineer (425-700 /1400-2300) and after Junior Engineer the second ACP would be applicable after 24 years of service (or 09-08-99 whichever is earlier) and the same would be in the grade of 1640-2900 whereas, the applicant has been in the very same grade right from 1987.

9. The counsel for the applicant submitted that since the applicant has

been functioning as Chief Engine Driver for the past 19 years, it would be appropriate if his ad hoc status is converted as regular, in which event he would be eligible for second upgradation, as his first promotion was to the grade of Chief Engine Driver from the post of Engine Driver.

10. The counsel for the respondents fairly stated that though equity may be in favour of the applicant, his case cannot, within the rules, be covered for such regularization as the applicant admittedly does not possess the requisite qualification for the post of Chief Engineer on regular basis.

11. Arguments were heard and documents perused. If the rules are applied in the strict sense, there is of course no case in favour of the applicant. However, if the fact that the applicant has been performing his duties as Chief Engine Driver right from 1987 is considered along with the provisions contained in Rule 5 of the Recruitment Rules (power to relax), it could be possible for the respondents to consider the case of the applicant for regularization in the said post by invoking the provisions of the Recruitment Rules. For this purpose, concurrence of the UPSC as stated earlier would also be needed.

12. But then the question would arise whether relaxation which is admissible only with reference to a class or category of persons, could be pressed into service in respect of an individual. This has been answered in

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affirmative by the Apex Court in the case of Sandeep Kumar Sharma v. State of Punjab, (1997) 10 SCC 298, wherein, the Apex Court has held as under:-

**9. Rule 14 contains the general power of Government to relax the rules. It reads thus:**

*"14. General power to relax rules.—Where the Government is of the opinion that it is necessary or expedient so to do, it may by order, for reasons to be recorded in writing relax any of the provisions of these rules with respect to any class or category of persons."*

....

**11. The High Court seems to have taken the view that the only beneficiary of the aforesaid relaxation is the appellant and hence considered it an act of favouritism shown to him. According to the learned Judges "the so-called policy was formulated after the result of the written test was announced with the sole object of securing selection and appointment of the aforesaid candidate because without clearing the standard of physical fitness he could not have been interviewed by the Commission. This, in our opinion, is nothing but an act of sheer favouritism".**

**12. The appellant cannot be blamed for being the only candidate available at present seeking relaxation of physical standards. The same benefit could also have ensured to anyone else situated in the same position as the appellant had there been any. Policy wise it is not possible to think that the appellant would have been the only kith and kin of those who suffered on account of the activities of the terrorists in Punjab or those who faced terrorism bravely. Perhaps, in this particular selection the appellant happened to be the only beneficiary of the policy. Nor can we find any mala fides merely because the Government evolved the policy on the occasion when the appellant approached for relaxation of the standard. The occasion would have provided to the Government an opportunity to recapitulate the events and thus to remind themselves of the plight of those families which suffered traumatic experiences when their kith and kin were relentlessly involved in continued operations fighting the terrorists who were possessed with highly lethal weapons and using hideouts to strike blitz against innocent people as well as the police force intermittently. A Government may have to act on some occasion for chalking out a particular policy. If any particular**



*occasion has alerted the Government to the necessity for taking a policy decision it is hardly sufficient to attribute mala fide or favouritism to the Government."*

13. In view of the above, we are of the considered view that this case deserves consideration by the respondents for relaxation of rules, in consultation with the UPSC so that the applicant could be regularized from a date with retrospective effect and if by virtue of the same, the applicant is entitled to any other consequential benefits, the same may also be considered. This OA is therefore, disposed of with the direction to the respondents to consider invoking of power to relax in respect of qualification of the applicant with reference to the post of Chief Engine Driver on regular basis keeping in view the fact that by now the applicant had put in 19 years of service in the said post on ad hoc basis and is now retired. And, further, in the event of favourable consideration, if the applicant is entitled to any other consequential benefits, the same be also made available. The decision in this regard may be communicated to the applicant within a period of six months from the date of communication of this order.

14. No costs.

(Dated, the 23<sup>rd</sup> October, 2006)

N. Ramakrishnan  
N. RAMAKRISHNAN  
ADMINISTRATIVE MEMBER

CVR.

K. B. S. Rajan  
K. B. S. RAJAN  
JUDICIAL MEMBER

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

Original Application No. 594 of 2002

Monday, this the 21st day of November, 2005

**C O R A M :**

HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER  
HON'BLE MR. N. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

M. Mohammed Manikfan,  
S/o. Moosa Manikfan,  
Chief Engine Driver,  
Office of the Port Assistant,  
Union Territory of Lakshadweep,  
Minicoy. .... Applicant.

(By Advocate Mr.M.V. Thamban)

versus

1. The Administrator,  
Union Territory of Lakshadweep,  
Kavaratti.
2. The Port Officer,  
Union Territory of Lakshadweep,  
Kavaratti. .... Respondents.

(By Advocate Mr. S. Radhakrishnan)

**O R D E R**

HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

The applicant is presently working as Chief Engine Driver in the Department of Port under the Union Territory of Lakshadweep at Minicoy. The applicant possessed the qualification of SSLC and Certificate of competency as Engine Driver (Motor) issued by the Mercantile Marine Department, Calcutta. It was averred in the O.A. that the applicant was

fully qualified for the post of Engine Driver as per rules and accordingly, he was appointed as Engine Driver vide A/1 order dated 29.9.1976 in the pay scale of Rs. 380-560. At that point of time, there was no opportunity for promotion to any higher posts from the post of Engine Driver in the department. The Department created a post of Junior Engineer (Port) in the year 1978, but no Recruitment Rules were framed for the post. The scale of pay of the Junior Engineer was fixed at Rs. 400-600. Even without any Recruitment Rules, one Shri T.P. Abubacker has been appointed as Junior Engineer on ad hoc basis by the respondents. He also had the qualification of SSLC with Certificate of competency as Fishing Engine Driver (Motor) and he continued in that post. Meanwhile, two posts of Chief Engine Drivers were created in the Department in the pay scale of Rs. 1640-2900. For that post also, no Recruitment Rules were framed. The applicant was promoted to the post of Chief Engine Driver on ad hoc basis alongwith the said Shri T.P. Aboobacker vide A/2 order dated 11.5.1987. The Administration had recommended to the Government of India to prescribe the qualification for promotion to the post of Chief Engine Driver as Engine Driver with 8 years experience and Junior Engineer with 5 years experience. Thereafter, Government of India, Ministry of Surface Transport, had issued notification dated 24.4.1989 prescribing the Recruitment Rules for the post of Chief Engine Driver under the Administration of Union Territory of Lakshadweep. The applicant could not get the said Recruitment Rules so far. The



officers in the department also clarified that the same is not available with them. As per the information of the applicant, the method of appointment was 50% by promotion and 50% by transfer on deputation failing which both by direct recruitment. The qualification prescribed for promotion was Junior Engineer with five years service or Engine Drivers with 8 years service. Accordingly, the applicant was qualified for the post. But the other incumbent, Shri Aboobacker was to be behind him for promotion as he was junior with less experience. Vide Annexure A/3 corrigendum dated 4.9.1989, an amendment was brought about wherein the qualification for promotion to the post of Chief Engine Driver was amended so as to make Shri T.P. Aboobacker qualified. By the aforesaid amendment, the promotion to the post of Chief Engine Driver was made applicable to the Junior Engineer with 5 years service excluding the Engine Driver. The applicant has been continuing as Chief Engine Driver on ad hoc basis. He had no promotional avenues and he was also not regularised in <sup>the</sup> post held by him so far. When the applicant was promoted on ad hoc basis in the year 1987, there was no Recruitment Rules prescribed for the post. The Rules were notified only in the year 1989, i.e., after a period of two years from the date of his promotion. The applicant made various representations vide A/4, A/5 and A/6. In A/5 representation, the applicant requested for his regularisation as Chief Engine Driver from the date of his appointment and also the benefit of Assured Career Progression (ACP, for short). Again, the applicant



submitted A/7, A/8 and A/9 representations, but no decision was taken on his grievance. However, the applicant received A/10 communication dated 29.1.2001 from the Deputy Director of Supply and Transport, requesting the Port Officer to take action on the request of the applicant for ACP benefits on completion of 24 years of service. A similar letter (A/11) was sent to the Administrator enclosing the representation dt. 15.1.2001 submitted by the applicant. Aggrieved by the non-action on the part of the respondents, the applicant has filed this O.A. seeking the following main reliefs:

- "(a) To regularise the applicant in the grade of Chief Engine Driver from 11.5.1987 onwards with all consequential benefits;
- (b) To grant Assured Career Progression benefits on completion of 24 years of service i.e., with effect from 30.9.2000 and give him all consequential benefits including arrears of salary;
- (c) To create post above that of Chief Engine Driver so as to create avenues for promotion to the applicant;
- (d) To produce the copy of the Administration of Lakshadweep Chief Engine Driver, Recruitment Rules, 1989 as GSR 501(E) dated 24.4.1989 published on 1.5.1989 in the Government of India Gazette Extra Ordinary."

2. The respondents have filed a detailed reply statement contending that the applicant, who was qualified for the post of Engine Driver as per the Recruitment Rules was posted as Engine Driver in 1976. The

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Department of Port created a post of Junior Engineer, Port Workshop with specific Recruitment Rules in the pay scale of Rs. 425-15-500-EB-15-560-20-700 (PR) vide R/1 Notification dated 1.6.1978. In accordance with R/1 Recruitment Rules, one T.P. Aboobacker had been posted as Junior Engineer. Thereafter, two posts of Chief Engine Driver were created and the said Aboobacker and the applicant were posted against the same on 12.5.1987 on ad hoc basis. The Recruitment Rules for the post of Chief Engine Drivers were notified vide Government of India Notification (R/2) dated 24.4.1989. According to the RRs, the persons holding analogous posts on regular basis or with 2 years regular service in posts in scale of Rs. 1600-2600 or equivalent or with 5 years regular service in posts in the scale of Rs. 1400-2300 or equivalent and possessing the educational qualification of Diploma in Mechanical or Marine Engineering from a recognised Institute or equivalent and three years experience in Marine Workshop or Shipyard with specific experience in the operation and maintenance of mechanised barges. These Rules were later amended by R/3 corrigendum dated 4.9.1989 issued by the Ministry of Surface Transport so as to include Junior Engineers also in the feeder category for promotion to the post of Chief Engine Driver. As per the said Corrigendum, the Departmental Junior Engineer with 5 years regular service in the grade possessing Matriculation or equivalent qualification with Certificate of competency as Engine Driver can be considered for appointment to the post of Chief Engine Driver alongwith outsiders for



50% of the posts. The cadres of both, the applicant and Shri Aboobacker, are different. Shri Aboobacker was posted in accordance with R/1 Recruitment Rules. Since the post of Engine Driver was not included as a feeder post for promotion to the post of Chief Engine Driver, the applicant could not be considered for regularisation against the post of Chief Engine Driver. The allegation of the applicant that the amendment was brought about only to help Shri Aboobacker was not correct as the Rules cannot be amended <sup>as</sup> so <sub>to</sub> favour a single individual only. Since the applicant did not possess the required qualification as per R/2 RRs, his regularisation could not be considered. Regarding the claim of the applicant for ACP benefits, it was submitted by the respondents that the 1<sup>st</sup> and 2<sup>nd</sup> ACP benefits would be granted to those employees who have served for 12 and 24 years respectively and who fulfill all the requirements for the next promotion. The applicant can be considered for 1<sup>st</sup> ACP only, i.e. from the post Engine Driver to the post of Junior Engineer. He is not eligible for 2<sup>nd</sup> ACP, that is to the pay scale of Chief Engine Driver, since he is not eligible for promotion as per the existing RRs. The applicant has not suffered any monetary loss instead he is getting the pay scale of Chief Engine Driver in view of his ad hoc promotion on that post with effect from 12.5.1987. The applicant is not entitled to any relief as prayed for in the O.A.

3. The applicant has filed a rejoinder reiterating his contention and

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further adding that he, being the seniormost, was discriminated by not promoting him. He is also not being regularised in the grade of Chief Engine Driver. There was no RR when the applicant was promoted as Chief Engine Driver in the year 1987. The applicant has been working as Chief Engine Driver for the last 16 years with unblemished service records. Though his appointment was on ad hoc basis, it was against a permanent post. The rules prescribing higher qualifications were notified subsequent to promotion of the applicant. The applicant is fully qualified to hold the post of Chief Engine Driver and also entitled to regularisation.

4. We have heard Mr. M.V. Thamban, learned counsel for the applicant and Shri S. Radhakrishnan, learned counsel appearing for the respondents.

5. We have given thoughtful consideration to the pleadings, evidence and the arguments advanced by the parties. Learned counsel for the applicant argued that the RR produced as Annexure R/2 alongwith the reply and the amendment to the RR as evidenced by R/3 are illegal arbitrary and discriminatory since this Rules do not include the category of Engine Driver as a feeder category for the post of Chief Engine Driver. The applicant though promoted as Chief Engine Driver on ad hoc basis is still continuing as such, therefore, he mainly prays for a direction to amend the RR (R/2) incorporating the grade of Engine Driver in the



feeder category for promotion to the post of Chief Engine Driver with retrospective effect from 24.4.1989. The learned counsel for the respondents, on the other hand, persuasively argued that as per R/2 RRs, the applicant is not eligible for promotion to the post of Chief Engine Driver and since he is not qualified for that post, he is also not eligible for 2<sup>nd</sup> ACP benefits. Therefore, none of the reliefs could be granted to the applicant.

6. Admittedly, the applicant is having the qualification of SSLC with a Certificate of competency as Engine Driver (Motor) issued by the Mercantile Marine Department, Calcutta. He was appointed as Engine Driver as per the then existing Rules. Since there was no opportunity for promotion from the post of Engine Driver, the department created two posts of Chief Engine Drivers and the applicant alongwith one T.P. Aboobacker were promoted by A/2 order dated 11.5.1987 on ad hoc basis. Annexure R/2 is the Recruitment Rules. R/3 corrigendum dated 4.9.1989 to the aforesaid RRs was issued wherein the departmental Junior Engineer with 5 years' regular service in the grade possessing matriculation or equivalent qualifications of recognised University or Board with Certificate of Competency as Engine Driver, was also included in the feeder category for the post of Chief Engine Driver. But the post of Engine Driver was not included in the feeder category. The main contention of the applicant is that he joined the department in 1976 as

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Engine Driver and was promoted to the post of Chief Engine Driver in 1987 on ad hoc basis against a clear vacancy. The R/2 RRs were notified on 24.4.1989 as per which, the applicant was qualified for the post of Chief Engine Driver. But as per R/3 corrigenda issued thereafter on 4.9.1989, the category of Engine Driver was excluded from the feeder category for promotion to the post of Chief Engine Driver, which according to the applicant, is discriminatory and illegal. As per the Rules in existence as on today, the applicant is not eligible for the post of Chief Engine Driver and it is difficult to regularise him for the said post. The case of the applicant is that the applicant was fully eligible for the post of Chief Engine Driver when he was promoted on the said post on ad hoc basis. The subsequent amendment in the RRs by way of R/3 corrigenda restraining the Engine Driver for the post of Chief Engine Driver, made the applicant ineligible. This was not applicable in the case of the applicant since he had already been promoted prior to the said amendment. The applicant has no other promotional avenues. The applicant is still continuing on the post of Chief Engine Driver though on ad hoc basis. The applicant also submitted representations for extending him the benefit of ACP Scheme on completion of 12 years and 24 years, which was denied to him on the ground that he was not regularised in the post of Chief Engine Driver. From the material placed on record, it is clear that the Administration had recommended the Government of India to prescribe the qualification for promotion to the post of Chief Engine



Driver as Engine Driver with 8 years experience and Junior Engineer with 5 years experience. Government of India, Ministry of Surface Transport, had issued Notification dated 24.4.1989 prescribing Recruitment Rules for the post of Chief Engine Driver. Thereafter, an amendment was brought about vide A/3 wherein the Engine Driver was excluded from the feeder category. The relevant portion is reproduced as under:

"The Departmental Junior Engineer with 5 years regular service in the grade possessing Matriculation or equivalent qualification from recognised University or Board with Certificate of competency as Engine Driver issued under the Inland Vessels Act, 1970 (1 of 1970) or the Harbour Crafts Rules, will also be considered alongwith the outsiders for 50% of the posts and in case he is selected for appointment to the post the same shall be deemed to have been filled by promotion"

7. The applicant, who joined the services in the year 1976 and promoted in the year 1987, has been left out whereas one Shri T.P. Aboobacker, having joined the Department subsequent to joining the applicant was regularised and he was later promoted as Assistant Engineer. Had the Recruitment Rules not been amended at a later stage, definitely the applicant would have come within the zone of consideration for regularisation. The applicant has been left out only on the ground of qualification, which was prescribed by way of an amendment in the Recruitment Rules. The said corrigenda (R/3) was issued after two years of the date of promotion of the applicant. The specific case of the



applicant is that he has been working as Chief Engine Driver for the last 16 years against a clear vacancy. Since he was disqualified for regularisation as Chief Engine Driver on the ground of qualification as per R/3 corrigenda, he was also left out from consideration of giving ACP benefits. As per the ACP Scheme, an employee continuing or stagnating in one grade for long time without promotional avenues, will be entitled to first Career Progression on completion of 12 years and second Career Progression benefit on completion of 24 years. The applicant had completed 24 years of service on 30.9.2000. He had put in a total service of about 26 years as on the date of filing of the OA. This benefit was denied to the applicant for the reason that his promotion to the grade of Chief Engine Driver in the year 1987 has not been regularised. It is an admitted fact that when the applicant was promoted as Chief Engine Driver, there was no Recruitment Rules. As per the Recruitment Rules notified subsequently, he was qualified for the post, but vide A/3 and R/3 corrigenda, this was amended disqualifying the applicant to get regularised in the promoted post.

8. Vide A/10 letter dated 29.1.2001, the Deputy Director (Supply & Transport), Administration of the U.T. Of Lakshadweep, requested the Port Officer, U.T. Of Lakshadweep, Kavaratti, to grant the eligible second financial upgradation benefit to the applicant. The contents of the said letter is quoted as under:



" Kindly see the reference cited. Shri M. Mohammed Manikfan, Chief Engine Driver is eligible for getting second financial upgradation benefit under the A.C.P. Scheme. Shri Mohammed Manikfan had joined as Engine Driver on 30.9.1976 under Port Department and he had been promoted and posted as Chief Engine Driver on 12.5.1987 Fore Noon. Now he has already completed 24 years regular service as on 30.9.2000. Therefore, he is eligible for second financial upgradation benefit under ACP Scheme with effect from 30.09.2000.

It is requested that eligible financial upgradation benefit under the ACP Scheme may be awarded to him and copy of the order may be communicated to this office for further action. His service book is enclosed herewith for reference."

9. Considering the entire material on record and the facts of the case, we find that the right of regularisation of the applicant on the post Chief Engine Driver has been denied on the basis of the corrigenda (R/3) issued by the respondents. As per Annexure R/2 Recruitment Rules, the applicant was eligible and qualified for the post and at the time of issue of this RRs, the applicant was holding the post of Chief Engine Driver on ad hoc basis. R/3 corrigenda were issued only after two years of his adhoc promotion and had the applicant been considered earlier, he would have definitely been regularised on the said post. In other words, the applicant has been working as Chief Engine Driver against a clear vacancy. If the respondents had done the right things at right time, the applicant would have had the benefit. The respondents have waited for consideration of his regularisation till the R/3 notification was issued,

according to which only the applicant was disqualified for promotional benefits. In our view, this cannot be a justifiable reason in denying regularisation of the applicant as Chief Engine Driver. We have also noticed that vide A/10 letter, the Deputy Director (Supply and Transport), U.T. Of Lakshadweep, had recommended for second financial upgradation to the applicant under ACP Scheme. This was also denied for the reason that the applicant has not been regularised on the post of Chief Engine Driver. In the case of Buddhi Nath Choudhary and Others vs. Abahi Kumar and Others, 2001 SCC (L&S) 589, Hon'ble Supreme Supreme Court granted the relief on equitable consideration that appointed candidates, being in employment for over a decade, would have acquired the requisite experience, if lacking at the time appointment. Learned counsel for the applicant has also invited our attention to the decision reported in AIR 1986 SC 638, Narender Chadha and Others vs. Union of India and Ors., to canvass for a position that an employee who had worked for a long period in a post, cannot be reverted even though the appointment was temporary or local or stop gap arrangement. The para 19 of the said judgement is relevant and quoted as follows:

"19. As observed in D.R. Nim vs. Union of India, (1967) 2 SCR 325: (AIR 1967 SC 1301) when an officer has worked for a long period as in this case for nearly fifteen to twenty years in a post and had never been reverted it cannot be held that the officer's continuous officiation was a mere temporary or local or stop gap arrangement even though the order of appointment may state so. In such circumstances the entire period of



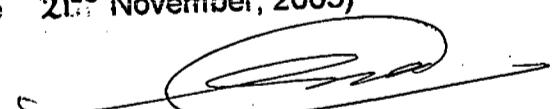
officiation has to be counted for seniority. Any other view would be arbitrary and violative of Articles 14 and 16(1) of the Constitution because the temporary service in the post in question is not for a short period intended to meet some emergent or unforeseen circumstances. Cl. (b) of R.9C of the Rules which deals with the question of seniority of promotees becomes irrelevant in the circumstances of this case as regards the promotees who have been holding the posts from a long time as stated above."

10. From the above legal positions and the fact that the applicant has been continuing in the post of Chief Engine Driver from 1987 onwards, we are of the considered view that the applicant is entitled to regularisation from the date of his promotion as Chief Engine Driver, i.e. from 11.5.1987, and other consequential benefits flowing out of his regularisation.

11. In the conspectus of the above discussion, we allow this OA with a direction that the respondents shall regularise the services of the applicant as Chief Engine Driver with effect from 11.5.1987 with all consequential benefits. In the circumstances, no order as to costs.

(Dated, the 21<sup>st</sup> November, 2005)

N.R.  
N. RAMAKRISHNAN  
ADMINISTRATIVE MEMBER

  
K.V. SACHIDANANDAN  
JUDICIAL MEMBER