

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.61/03

Wednesday this the 7th day of December 2005.

CORAM:

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

K. Gangadharan, Retired LDC,
residing at Jit View, Thayineri,
Payyanur. Applicant

(By Advocate Shri M.R.Hariraj)

Vs.

1. Union of India represented by its Secretary
to Government of India,
Ministry of Home Affairs, New Delhi.
2. The Administrator,
Union Territory of Lakshadweep, Kavaratti.
3. The Secretary (Administration),
Union Territory of Lakshadweep, Kavaratti.
4. The Secretary to the Administrator,
Administration to the Union Territory of Lakshadweep,
Willington Island, Cochin-3.
5. The Accounts Officer (P&A),
Principal Pay and Accounts Office,
Union Territory of Lakshadweep, Kavaratti.

(By Advocate Shri TPM Ibrahim Khan, SCGSC(R-1)

(By Advocate Shri P.R.Ramachandra Menon, (R.2-5)

The application having been heard on 7.12.2005
the Tribunal on the same day delivered the following

ORDER (Oral)

HON'BLE MR. KV SACHIDANANDAN, JUDICIAL MEMBER

The applicant, who is aged 60 years, retired from service as LDC on 31.12.02. He was aggrieved by Annexure A-1 impugned order cancelling him the in-situ promotion awarded to him vide A-2 order dated 23.8.96 with effect from 1.4.1991. The respondents on the previous day of his retirement i.e.on 30.12.02 passed an order A-4 directing him for a

recovery of excess amount drawn by him. Aggrieved by A-1 and A-4 impugned orders, the applicant has filed this O.A. seeking the following main reliefs:

- i) To quash Annexure A1 to the extent it relates to the applicant.
- ii) To quash Annexure A-4.
- iii) To call for the records leading to the reassessment of the pension, family pension and gratuity payable to the applicant consequent on Annexures A1 and A4 orders and quash the same.
- iv) Direct the respondents to restore the fixation of applicant's pay reckoning the in situ promotion granted to him as per Annexure A2 order and further direct them to assess the pension, family pension and gratuity payable to the applicant on that basis and also draw and disburse the pension and pensionary benefits payable to the applicant without delay.

2. The respondents have filed a reply statement contending that the Accounts Officer, Pay & Accounts has raised an objection that the in situ promotion granted to the applicant in 1991 is against the guidelines laid down under the scheme and therefore, it has to be reviewed. It was the duty of the pension processing authority to check the service incidents and all event that took place in the entire service career of the employees with reference to the service book before sending the pension papers to the Pension Sanctioning Authority to ensure that any excess payment made to him or any irregularities that occurred due to the oversight and/or omissions from any office where he worked that may happen in the normal course and to rectify the same before the employee is retired from service. Accordingly, the in situ promotion awarded to the applicant in the year



1991 was reviewed by the Administration as the applicant was not entitled for the same in terms of para 2(b) and (c) of G.O.I. O.M.No.10(1)/E.III/88, dated 13.9.1991 and 4.9.92 (Annexure R2(a). Accordingly, the in-situ promotion that was granted to the applicant was reviewed. In the instant case, the applicant has not passed departmental test being conducted by the Administration every year. The pass in the test is one of the qualification required by the candidate to be considered for promotion to the next hierarchical post in the line as per the existing Recruitment Rules. The scheme is also applicable to the incumbents of both (a) posts having no avenue of promotion at all; and (b) posts having inadequate avenue of promotion. The grade the applicant was holding was LDC (entry grade) which has avenue of promotion to the grade of UDC upto Office Superintendent. Moreover, he did not pass the departmental test which was stipulated in the recruitment rules for the post of UDC (promotion post of LDC) existing even at the time of his recruitment to the post of LDC. This provision is still there in the recruitment rules for the post of UDC (Annexure R-2(b)). The scheme itself says that test qualification is mandatory for consideration for awarding in situ promotion as in the case of normal promotions. As the scheme envisages promotion in situ after following due process of promotion with reference to seniority-cum-fitness, some employees who are far juniors to him were promoted to the post of UDC and Accountant as they were qualified for promotion as per Recruitment Rules. Had the applicant being declared pass in the departmental test, he would also have been promoted and posted to any higher grade and for which the fault lies on the applicant. It is clarified that the scheme is applicable to the incumbents of both (a) posts having no avenue of promotions at all (b) posts having

inadequate avenue of promotion, provided that the incumbents of these posts fulfill all the conditions laid down. Since the applicant has promotion avenue as mentioned above, the awarding of in situ promotion to him is not correct. This is not a case of reduction of pay of the applicant but only refixation involved in order to rectify the mistake. The applicant has been intimated by the 4th respondents that a sum of Rs.104984/- has been paid to him in excess on this account, for which he is not legally entitled and therefore, the same has to be refunded to the Government. Taking into account all these aspects the respondents have taken steps by issuing impugned order of recovery (A-4), which cannot be faulted. The applicant has filed a rejoinder reiterating the same contentions as raised in the O.A.

3. We have heard Shri M.R.Hariraj, learned counsel appearing for the applicant and Shri TPM Ibrahim Khan, SCGSC appearing for the respondent No.1 and Shri PR Ramachandra Menon, learned counsel appearing for respondents 2 to 5. Learned counsel for the applicant argued that, the applicant has retired on 31.12.02 and on the verge of retirement, the benefit of in-situ promotion that has been awarded to him in the year 1991 has been withdrawn even without any notice, is not correct and against the rules. Learned counsel for the respondents on the other hand submitted that since he has not been passed in the departmental examination, he is not entitled to get the benefit and therefore, the impugned order has been passed, which is not faulted.

4. We have given due consideration to the arguments, evidence, and material placed on record.

5. The main contention that the respondents has taken in the reply

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statement for denying the benefits is that, the applicant has not acquired required qualification stipulated in the Recruitment Rules for promotion to the post of UDC and therefore, the employee was not entitled for in-situ promotion as per the Government of India letter dated 6.11.91, mentioned in Annexure A1 which is reproduced hereunder:

"The matter has been re-examined with reference to the guidelines of the scheme and subsequent clarifications issued by the Government of India, from time to time on the subject. On verification of the service records it is seen that Shri.Gangadharan, LDC have not acquired required test qualification stipulated in the RR for the post of UDC and thereby the employee was not entitled for in situ promotion as per the clarification of Govt. of India, MOF. O.M. No.10(1)/ E.III/88, dated 6th November, 1991. Therefor the Administrator, UT of Lakshadweep has reviewed the case and has ordered to set aside the earlier office order in which, Shri K.Gangadharan and Smt. P.M.Komalam. L.D.Clerks were awarded in situ promotion referred above."

6. It has also brought to our notice the order A-2 dated 23.8.96 wherein he was granted in-situ promotion along with another. Though the order was in 1996 , the promotion was given with effect from 1.4.91. From the pleadings and materials available on record it is evident that, this benefit has been granted to the applicant after a duly constituted DPC dated 7.8.96. The DPC has cleared the position of the applicant and recommended for granting of in situ promotion. Learned counsel for the respondents states that, while scrutinizing the pension proposals of the applicant, the Accounts Officer, Pay & Accounts has raised objections in having awarded in situ promotion to him in the year 1991 and therefore, Pension Disbursing Authority has rejected the same and therefore, it was reviewed and the impugned order has been passed. It will be profitable to quote the In situ promotion Scheme (Annexure A-3), the relevant paragraphs (sub-clauses a,b,c,f & g of Clause 2 and Clause 3) which are re-produced as under:



2. The scheme will have the following basic features:

(a) Groups 'C' and 'D' employees who fulfill the conditions mentioned at (i), (ii) and (iii) above will be considered for promotion in situ to the next higher scale.

(b) Promotion in situ will be allowed after following due process of promotion with reference to seniority-cum-fitness.

(C) The employees will get promotion in situ to the next higher scale available to them in the normal line/hierarchy of promotion. Promotions made on the basis of a qualifying or competitive departmental examination or subject to possessing or acquiring higher qualifications will not be treated as promotions in the normal line/hierarchy for the purpose of these instructions. In case where no promotional grade is available, promotions scale will be decided by the Ministry of Finance. The promotional grade in case of Staff Car Drivers in the scale of Rs.950-20-1, 150-EB-25-1, 500 will be Rs.1,200-30-1-440-EB-30-1,800.

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(f) Employees given promotion in situ will continue to be borne on the seniority list of the lower cadre/post and will be considered for functional promotion against available vacancies as per provisions of the Recruitment Rules.

(g) Even though promotion under this scheme, which is in situ, may not involve assumption of higher duties and responsibilities, the benefit of FR 22(1)(a)(1) (old FR 22-C) will be allowed while fixing pay on promotion as a special dispensation. However, such benefit will not be allowed again at the time of functional promotion in the same scale.

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3. Each Administrative Ministry/Department will identify the posts which have no promotional grade in the Ministry/Department or Organizations under its control and furnish the information relating to designation, scale of pay, recruitment qualifications, duties and responsibilities attached to each such post along with suggestion for suitable promotional scale based on comparable promotional grades generally available for the posts of that level to the Financial Adviser concerned Financial Advisers after scrutiny will take up the matter with the Ministry of Finance (Establishment Division) for prescribing suitable promotional grades based on an overall considerations in each such case."

7. From the above, it is very clear that, the employees will get promotion in situ to the next higher scale available to them in the normal line/hierarchy of promotion. Promotions made on the basis of a qualifying

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or competitive departmental examination or subject to possessing or acquiring higher qualifications will not be treated as promotions in the normal line/hierarchy for the purpose of these instructions.

8. A rider has been stipulated in sub-clause (f) that, in any way promotion in situ will continue to be borne on the seniority list of the lower cadre/post. Even though promotion under this scheme, which is in situ, may not involve assumption of higher duties and responsibilities, the benefit of FR 22(1)(a)(1) (old FR 22-C) will be allowed while fixing pay on promotion as a special dispensation. The In situ Promotions and ACP Scheme that has been produced by the respondents vide Annexure R-2 makes it clear that "Promotion in situ will be allowed after following due process of promotion with reference to seniority-cum-fitness and they will be considered for functional promotion only against available vacancies as per provisions of the Recruitment Rules. Further, vide Annexure R-2 the Administration of UT of Lakshadweep has adopted this scheme to the services of the employees.

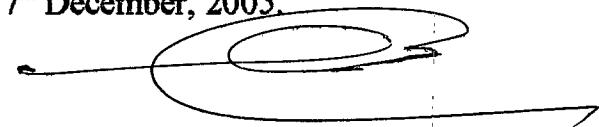
9. On going through the rule position we can find that a duly constituted DPC has cleared the name of the applicant for in situ promotion and the respondents cannot put a fetter to the scheme and therefore, we are of the view that, the impugned orders will not stand hold good. On going through the said scheme, we are also of the view that, nowhere in the scheme it is stipulated that the applicant should pass the qualifying test. The intention of the Scheme Making Authority is, to abate the stagnation in a particular cadre and the applicant is entitled to get the benefits.



10. In the conspectus of facts and circumstances and in view of the observations made above, we have no hesitation in setting aside Annexure A-1 and A-4 orders. Accordingly, we set aside the impugned orders A1 and A4 and direct the respondents to grant all the benefits including pensionary benefit flowing out of this order and pass appropriate orders within a period of three months from the date of receipt of a copy of this order. We also direct that, the recovery, if any made, will be refunded to the applicant.

11. O.A. is allowed. In the circumstances, no order as to costs.

Dated the 7th December, 2005.



N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

K.V.SACHIDANANDAN
JUDICIAL MEMBER

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