

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 67 of 2007

Friday, this the 8th day of August, 2008

CORAM:

**HON'BLE DR K B S RAJAN, JUDICIAL MEMBER
HON'BLE MRS. K N K KARTHIKAYANI, ADMINISTRATIVE MEMBER**

**K. Sasikumar,
S/o. K. Kuttappan,
Office Assistant 'A',
Naval Physical and Oceanographic Laboratory,
Thrikkakara, Kochi – 21** ... **Applicant.**

(By Advocate Mr. M. V. Thamban)

versus

1. The Director,
Naval Physical and Oceanographic Laboratory,
Thrikkakara, Kochi – 21
2. The Director,
Aeronautical Establishment,
(Zonal Recruitment Centre),
Ministry of Defence,
New Tippusandra (PO),
Bangalore : 560 075
3. Union of India
Represented by the Secretary,
Ministry of Defence,
Sena Bhavan, New Delhi : 11

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

The Original Application having been heard on 5.8.08, this Tribunal on 8.8.08 delivered the following :

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

The applicant has been functioning as Office Attendant 'A' in the office of the first respondent and he has, as his qualification, S.S.L.C., with Typewriting knowledge and computer operation.

2. Provision exists for promotion to the post of Administrative Assistant and the conditions attached thereto *inter alia* are, (vide Annexure A-2) as under:-

No.	Scale	Edl. Qualification	Method of Recrt
693	Rs 3050 - 4590	(i) Matriculation (10 th) from a recognized School or Board.	(i) By direct Recruitment – 90%. (ii) By promotion on the basis of selection-cum-seniority, subject to qualifying the Limited Departmental Examination – 5%. (iii) By promotion on the basis of selection-cum-seniority.

3. The above qualifications prescriptions meant both for promotees and also for Direct recruits (which include in addition to the above academic qualification, typing speed of 30 words/25 words in English/Hindi Respectively, speed in Key Punching operation and preferred qualification of knowledge of computer operation) are effective from 04th March, 2006, while earlier, the academic qualification requirement was Senior Secondary School Certificate, recognized by Central or State Government vide notification dated 29-05-1998. Further, the Recruitment Rules in para 4(ii) thereof, have provided for as under:-



“4. Method of recruitment, age limit and qualifications:

(i)

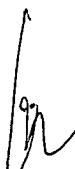
(ii) For the purpose of promotion, the Laboratories and Establishments of Defence Research and Development Organization have been grouped into various Departmental Promotion Committee II Groups, as per the orders issued by the Government from time to time. Each such Group shall be considered as a separate and independent unit and promotion of eligible employees to the next higher post included in these rules, except to the post of Administrative Assistant ‘A’ shall be made within the Group only.”

4. According to the applicant, for the past ten years, no post of Administrative Assistants was filled up by way of promotion either through departmental qualifying examination or on the basis of seniority (under the overall 10% quota) and all the vacancies during this period were diverted towards Direct Recruitment.

5. Sometimes in late March, 2006, there was a notification, vide Annexure A-4, calling for applications for filling up 14 posts of Administrative Assistants, for which the qualification prescription was Senior Secondary School Certificate, recognized by Central or State Government plus typing, key board punching and Computer operation qualification, as referred to above.

6. The above higher qualification compared to that as prescribed in the amended recruitment rules was stated to be for the reason that the recruitment process was initiated prior to coming into force of the amendment to the Rules.

7. The applicant submitted Annexure A-5 representation dated 01 June, 2006, which reads as under:-



"Most humbly and regardfully I submit that I joined service at Naval Psychological Research Unit (NPRU), Kochi, under DRDO, on 25 May 1988 as Peon. Consequent on winding up of NPRU in 2001, I was permanently posted to NPOL, Kochi, wef 02 Jul 2001. Though I* have now completed 18 years of service, I have not received any promotion so far, except one upgradation under ACP Scheme during the year, 2000. I have passed MATRIC / SSLC and also have the knowledge of typing. I came to know that the minimum academic qualification for the direct recruitment of Adm Asst 'A' has recently been revised as MATRIC/SSLC amended vide SRO No. 34 dated 28 Dec 2005 effective from 04 Mar 2006. In view of this, I request your goodself to either permit me to appear in the LDCE test or promote me as Adm Asst 'A' as I fulfil the required qualification.

For this I shall be ever grateful to you."

8. The above representation was, however, rejected, vide Annexure A-6 communication stating that "conducting Limited Departmental Examination/affecting promotion is not feasible with present authorisation of posts in the grade of Administrative Assistant 'A'"

9. The applicant has challenged the above decision of the respondents and has prayed for the following relief(s):-

(i) To issue a declaration that the educational qualification required for the post of Administrative Assistant 'A' is only SSLC as amended by Annexure A1 and for all recruitments after 4.3.2006, the minimum educational qualification that can be fixed is only SSLC and not more and also to declare that Annexure A4 notification is violative of Annexures A1 and A2 and discriminatory;

(ii) To set aside Annexure A4 notification, Annexures A6 and A8 letters as they are violative of the Recruitment Rules currently in force and to direct the respondents to conduct retest after renofifying or after accepting applicants application;



(iii) To direct the respondents to initiate fresh recruitment process for the post of Administrative Assistant 'A' afresh and also to accept the application of the applicant for the post accepting his educational qualifications i.e. SSLC on the basis of Annexure A1.

(iv) To direct the respondents not to proceed with any further action on the basis of Annexure A4 notification as it is against the statutory rules.

10. Respondents have contested the O.A. Their justification in rejection of the representation of the applicant and in clinging to the Direct Recruitment is as under:-

"It is submitted that the contention raised in Para 4 of the rejoinder is denied. It is submitted that the mode of recruitment for filling up of the posts of Administrative Assistant 'A' was already explained vide para 3 of the additional reply statement of the respondent. It is reiterated that as per Recruitment Rules (SRO 10E) issued in exercise of powers conferred by the proviso to Article 309 of the Constitution by the President, 10% posts of Administrative Assistants 'A' are earmarked for filling up by promotion from amongst Group 'D' employees with five years regular service rendered in the grade in the respective laboratory and possessing the qualifications prescribed for direct recruitment or equivalent qualifications. The above said 10% posts are to be filled by two methods viz. 5% on the basis of selection-cum-seniority subject to qualifying the Limited Departmental Examination and 5% on the basis of selection-cum-seniority. The promotion is to be considered locally by the individual Laboratory independently by Departmental Promotion Committee III as per column 14 of the Schedule to said SRO (Annexure R-2 of Original Reply statement). Since this Laboratory is authorized with only 8 posts of Administrative Assistant 'A' and 5% of which comes to insignificant fraction, there is no post available for promotion to Group 'D' employees by either method. However, the contention of the applicant that at no point of time the Group 'D' employees will get a chance for promotions totally incorrect as two promotional avenues are available within Group 'D' category besides two financial upgradation to next higher pay scales under Assured Career Progression Scheme. The applicant had already received first financial upgradation to next higher pay scale on 29.05.2000. Whenever sufficient post of Administrative

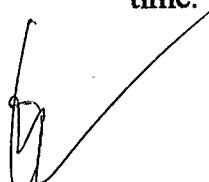


Assistant 'A' is sanctioned to this Laboratory to constitute a post for filling by promotion, all the eligible Group 'D' employees of this Laboratory including the applicant will be considered, if otherwise eligible by the Departmental Promotion Committee-III."

11. Counsel for the applicant submitted that there cannot be a situation that for 10 years there could be only direct recruitment and not promotion, when 10% posts of Administrative Assistants are to be earmarked for promotion. Assuming that there were no adequate number of eligible candidates (inasmuch as none had the educational qualification) that many number of posts which fell within promotion quota should have been carried forward for the subsequent years. Respondents have, in violation of the Recruitment Rules, exceeded the quota fixed for direct recruitment. Counsel for the applicant further invited the attention of the Tribunal, to para 4(ii) of the Recruitment Rules and contended that in so far as Administrative Assistant 'A' is concerned, the restriction of promotion within the group does not apply.

12. Counsel for the respondents submitted that NPOL where the applicant is working as Office Attendant has only 8 posts of Administrative Assistants and hence, no proportion could go in for promotion as 10% of the same works out to less than 1.

13. Arguments were heard and documents perused. Vide para 4(ii) of the Recruitment Rules, restriction has been imposed as to grouping of laboratories in respect of promotions as per the orders of the Government of India from time to time. Obviously, such restriction should have been meant to ensure that only those

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who have exposure in the nature of work involved in a particular laboratory is inducted in the higher posts. However, in so far as Administrative Assistant 'A' post is concerned, the functions attached to the post cannot vary from laboratory to laboratory. They are pure and simple administrative functions, common to all and independent of the special nature of each laboratory. It was presumably for this reason that the restriction imposed for other promotions, has been specifically excluded in so far as filling up of the post of Administrative Assistant 'A' is concerned.

14. Again, a perusal of the Recruitment Rules would go to show that the percentage of 10% earmarked to be filled up by way of promotion (with intermediate division of 5% each by way of Departmental Examination and seniority) is with reference to the posts and not with reference to vacancies. Obviously, such a stipulation goes in tandem with the general rules which require maintenance of post based roster, effective from 2nd July, 1997 in respect of reservation. Thus, in so far as filling up of the posts by promotion is concerned, the same shall be to the extent of 10% of the total posts i.e. 70 (total posts being nearly 700) and while filling the vacancies arising in respect of these posts the ratio between Direct Recruitment and promotees should be kept intact. Again, in so far as promotion by way of examination and seniority is concerned, this should also by and large stick to the percentage, as the rules provide for excess qualified in one year to be adjusted against the posts to be filled in the subsequent year. While filling up the vacancies, provisions of Rule 4(ii) of the Recruitment Rules shall also be followed.

15. In view of the above, it has to be seen first whether there are as many as 70 posts of Administrative Assistants 'A' which have already been filled up by promotion. If not, this has to be ensured and once the posts have been filled up as per the ratio fixed for promotion and direct recruitment, future vacancies should be filled up from that quota in which such vacancy arose (i.e. 'apple to apple' basis). In so filling up the posts by way of promotion, all the posts of Administrative Assistant 'A' in all the laboratories should be pooled up and promotion carried out on the basis of a combined seniority of office Attendants in all the laboratories. Then alone, the mandatory requirements as contained in Rule 4(ii) of the Recruitment Rules shall get fulfilled.

16. Now, the next question is whether the vacancies arisen during the period anterior to 04-03-2006 (i.e. the date amendment to the Recruitment Rules came into force) should be based on the higher educational qualifications. Answer to this question should be in negative, as, non-filling of the posts meant for promotion during the past was on account of non availability of the eligible candidates. As such, these should appropriately be filled up as per the current educational qualifications prescribed in the amended rules.

17. In nutshell, the drill to be performed by the respondents is that to ascertain the exact ratio in which the posts have so far been filled up and if there is a deficiency in the ratio of promotion under the 10% quota, the same should be made good by the methods of departmental examination/seniority subject to rejection of unfit as the case may be.



18. Thus, the O.A. is disposed of, with directions to the respondents as under:-

- (a) The respondents shall work out the exact number of promotee Administrative Assistants 'A' presently holding the posts, out of 698 total posts.
- (b) If the number of such promotee Administrative Assistants is less than 70, the same be made up to 70, for which purpose, the vacancies that are at present available and the future vacancies in the said post be filled up by way of promotion from amongst the eligible Office Attendants, in the manner as provided for in the amended Rules. Needless to mention that if the applicant is one of the eligible candidates, he shall also be considered for such promotion.
- (c) If the number of such promotee Administrative Assistants is more than 70, future vacancies may be diverted towards direct recruitment till the prescribed ratio is maintained and thereafter, vacancies in the respective quota be filled up.

19. The above drill shall be completed within a period of six months from the date of communication of this order.

20. Under the circumstances, there shall be no orders as to costs.

(Dated, the 8th August, 2008)

(K.N.K. KARTHIYAN)
ADMINISTRATIVE MEMBER

cvr.

(Dr. K B S RAJAN)
JUDICIAL MEMBER