

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

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OA No: 96/1990

Date of Decision: 31.1.92

Mr. N.P.Pillai .... Applicant  
Mr. M.R.Rajendran Nair.. Counsel for the applicant

Versus

Director General,  
Deptt. of Lighthouses and  
Light Ships & 3 others .. Respondents

Mr. P.Sankaran Kutty Nair.. Counsel for R1-3

C O R A M

Hon'ble Mr. N.V.Krishnan, Member (Administrative)

And

Hon'ble Mr. N.Dharmadan, Member (Judicial)

1. Whether Reporters of local papers may be allowed to see the judgement? ✓
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the judgement? ✓
4. To be circulated to all Benches of the Tribunal? ✓

J U D G E M E N T

(N.V.Krishnan, AM)

The applicant is a substantive Upper Division Clerk in the office of the Director of Light House & Lightships, under respondent-3, who has been promoted on adhoc basis to the next higher post of Divisional Accountant by order dated 17.2.89 (Exbt.A1) of the 1st respondent, on the transfer of the <sup>regular</sup> incumbent, though he is not eligible for such promotion under the <sup>Ann.R2</sup> Recruitment Rules. By the Exbt. A4 order, the fourth respondent has now been transferred and appointed on deputation for three years to this post on a regular basis as she is eligible for such appointment under the said Recruitment Rules. As a result thereof the applicant will be.

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reverted though the fourth respondent has not<sup>yet</sup> joined. It is in these circumstances that the applicant has prayed for the following reliefs:

- "(i) To call for the records relating to Exbt.A4 memo No. 14/9/88-Admn. dated 12.1.1990 of the 1st respondent and to set aside the same as illegal, ultravires and void.
- (ii) To declare that the provision in Annexure-R2 rules relating to the method of recruitment to the post of Divisional Accountant which provides for transfer on deputation from other Departments is unconstitutional.
- (iii) To direct the 1st respondent to promote the applicant as Divisional Accountant substantively regularising the adhoc appointment as Divisional Accountant made as per Exbt. A1 and to grant him further promotions on that basis."

2. Tthe applicant has assailed the Ann.R2 Recruitment Rules in the following circumstances:

2.1 The recruitment to this post was governed by the Department of Light House & Lightships (Non-gazetted, non-Technical posts) Recruitment Rules 1962--1962 Rules, for short. These Rules provided for appointment to the post of Divisional Accountant by promotion from U.D.Cs, Store Keeper, etc. with a minimum service of three years and also by transfer of Accounts Clerks from various offices of the Accountant General & Public Works Department with requisite qualifications. The Rules were amended on 24.10.75 (Exbt.A3). The amendment did not effect any change in the matter of promotion and thus UDCs and others were still eligible for promotion. The earlier provision relating to transfer of Accounts Clerks<sup>alone</sup> was substituted by providing for transfer of Head Clerks.

2.2 It is also necessary to add that Exbt. A3 also provided that the post of Superintendent shall be filled by promotion from Divisional Accountants, Head Clerk and Personal Assistant to the Director General and that posts of Head Clerks may be filled by promotion of UDC, etc.

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2.3 The 1962 Rules were superseded by the Department of Light Houses and Lightships (Group C and Group D Non-technical Posts) Recruitment Rules 1988 (Exbt. R2)-1988 Rules, for short <sup>in these Rules</sup> The provisions for recruitment/are as follows:

(a) Superintendents: Promotion from only UDCs with 10 years service failing which by transfer on deputation.

This provision is subject to the following Note:

"The above provision will, however, take effect only after all the present incumbents of the posts of Divisional Accountant/Head Clerk working on regular basis on the date of commencement of these rules, are either promoted to the post of Superintendent or otherwise relinquish the post on retirement/resignation, etc."

(b) Divisional Accountants: Transfer on deputation of officers holding analogous posts in the offices of Controller of Accounts/Director of Audit, failing which by direct recruitment.

(c) Head Clerks: Promotion from the UDCs only.

2.4 The applicant contends that for the post of Divisional Accountant, the impugned Ann.R2 Rules totally exclude promotion as a method and hence UDCs who could be promoted under the 1962 Rules have been denied avenues of promotion. This grievance has been accentuated by the provisions of the Note in respect of recruitment to the post of Superintendent, which postpones effective promotion of UDCs to that post for quite some time. The denial of promotional opportunities has been deprecated by the Hon'ble Supreme Court and Government has been directed to provide adequate avenues (AIR 1990 SC 311 and Raghunath Prasad Singh Vs. Govt. of Rajasthan 1988(7) SLR 5). It is for this reason that prayer 1(a) has been made to declare that the provisions of the 1988 Rules regarding recruitment to the post of Divisional Accountant as unconstitutional.

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3. The respondents 1 to 3 (Department, for short) have filed a detailed reply. Respondent 4 has neither filed any reply nor did she appear before us at the time of hearing.

4. In so far as the validity of the Ann.R2 Rules are concerned, we have carefully considered the arguments advanced by the parties and the reply of the Department. It is noted that under the 1962 Rules, promotions to the post of Head Clerks and Divisional Accountants were made from UDC, Accounts Clerk, Storekeeper, Storekeeper-cum-Attendant and Accountant cum Storekeeper. Similarly, promotions to the post of Superintendent was made from Divisional Accountant, Head Clerk and P A to the Director General. As against this, the impugned 1988 Rules give greater chances of promotion to UDC because, promotion to the grade of Head Clerks and Superintendents shall be exclusively made from UDCs. This opportunity is not to be shared with others like Storekeepers, etc. Secondly, under the 1962 Rules the UDCs could, along with others, aspire to be promoted to only 2 posts of Head Clerks and 9 posts of Divisional Accountants--as stated by the Department--while, under the 1988 Rules they can aspire to get promoted to 15 posts exclusively reserved for them i.e. 2 posts of Head Clerks and 13 posts of Superintendents.

5. We were perplexed by the Note incorporated in the 1988 Rules relating to recruitment to the post of Superintendent, <sup>by this Note</sup> for the provisions of recruitment to this post are held in abeyance for an indefinite period as can be seen from its terms vide the extract in (a) of sub para 2.3 supra. The Department has given a rational explanation for this Note as follows:

"In this connection, it is stated that the provision for filling up the post of Divisional Accountant will be by transfer on deputation failing which by direct recruitment has been made at the instance

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of Department of Personnel & Training. At the time of revision of Department of Light Houses & Lightships, Group 'C' & 'D' (Non Gazetted Non technical posts) Recruitment Rules 1962 the Department of Personnel and Training was of the view that the Divisional Accountant/Commercial Accountant are accounts posts and the incumbents of these posts should not be made eligible for promotion to the post of Superintendents."

"According to revised Recruitment Rules UDCs are directly considered for promotion to the post of Superintendent. The Divisional Accountants and Head Clerks who have also been earlier promoted from the post of UDCs cannot be deprived of the right for promotion to the post of Superintendent as they were also one time UDCs. Because of promotion to the post of Divisional Accountant and Head Clerks, the Divisional Accountants and Head Clerks will be considered senior to UDCs. as these posts are higher in rank than the post of UDC and also the incumbents of the post of Divisional Accountant and Head Clerk are in higher scale than UDCs. Hence to do proper justice to the Divisional Accountants and Head Clerks, Note No.1 has appeared against the post of Superintendent under Column 12 in the Department of Lighthouses & Lightships (Group 'C' and 'D' Non-technical posts) Recruitment Rules, 1988."

6. In the circumstance we hold that the 1988 Rules cannot be assailed on the grounds raised by the applicant.

There is neither a denial of promotion opportunities to UDC nor any discrimination.

7. Obviously, the vacancy to which the applicant was appointed on adhoc basis (Ann.1) arose after the 1988 Rules. Clearly, he is not entitled to hold that post <sup>as a</sup> right and he can be replaced by a regular appointment made in terms of the Rules like the appointment of respondent-4 by the Ann.A4 order. The learned counsel for the applicant however pleaded that certain other facts also be taken into account. He states that there are a number of vacancies of Divisional Accountant which is to be filled up on an all India basis. The Department could, perhaps, first fill up posts that are clearly vacant, instead of replacing him immediately. The applicant has a couple of years to retire and if the Department is unable to fill all the vacant posts in the country, he may be allowed to continue until he retires or <sup>until</sup> all other

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posts except this have been filled up regularly.


8. The learned counsel for the Department was unable to respond to these suggestions as all the facts were not in his possession. He could not, however, deny that in ordering such appointments the Department itself could have taken into account such considerations. While we do not express any views on this request we feel that such a request merits sympathetic consideration.

9. We notice that by an interim order dated 1.2.90 which was continued upto 15.3.90 only the Department was directed to maintain the status quo of the applicant as a Divisional Accountant. We therefore dispose of this application with the following directions:

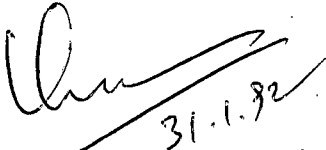
(a) The applicant is directed to give to the 3rd respondent a representation addressed to the 1st respondent through proper channel, within 15 days from the date of receipt of this judgement praying for his continuance at Cochin on the grounds raised in para 7.

(b) In case such a representation is received it shall be sent to the first respondent who is directed to consider it sympathetically and dispose it of in accordance with law within two months of its receipt by him. Until such an order is passed the respondents 1 to 4 are directed not to give effect to the Ann.A4 order of appointment of Respondent-4 as Divisional Accountant, if it has not been given effect to till today. and the Ann.4 order will abide by the final decision taken.

10. The application is disposed of as above. No order as to costs.

  
(N. Dharmadan)  
Member (Judicial)

31.1.92

  
(N. V. Krishnan)  
Member (Administrative)