

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.100/96

Thursday, this the 29th day of April, 1999.

CORAM:

HON'BLE MR A.M.SIVADAS, JUDICIAL MEMBER

HON'BLE MR B.N.BAHADUR, ADMINISTRATIVE MEMBER

D.Alimanikfan,  
Registrar of Co-operative Societies,  
Union Territory of Lakshadweep,  
Kavaratti. - Applicant

By Advocate Mr M.V.Thampan

Vs

1. The Administrator,  
Union Territory of Lakshadweep,  
Kavaratti.
2. Union of India represented by  
the Secretary to the Government of India,  
Ministry of Homes Affairs,  
New Delhi.
3. The Secretary to the Government of India,  
Ministry of Agriculture,  
Department of Agriculture & Co-operation,  
New Delhi. - Respondents

By Advocate Mr S Radhakrishnan, ACGSC

The application having been heard on 22.4.99, the  
Tribunal on 29.4.99 delivered the following:

O R D E R

HON'BLE MR B.N.BAHADUR, ADMINISTRATIVE MEMBER

This is an application made by Shri D Ali Manikfan,  
presently working as Registrar of Co-operative Societies, Union  
Territory of Lakshadweep on an ad hoc basis. Applicant seeks  
the relief as follows:

"(a) to declare that the post of Registrar of  
Co-operative Societies in Lakshadweep which arose

BnB

- 2 -

on 1990 has to be filled on the basis of the Recruitment Rules existed at the relevant time.

(b) to declare that Annexure-A5 rules notified on 31.3.1995 will not have any retrospective operation and that the right acquired by the applicant to the post cannot be taken away.

(c) to issue a declaration that the applicant is entitled to regularisation in the post of Registrar of Co-operative Societies, Union Territory of Lakshadweep and to direct the respondents to regularise the applicant to the present post.

ii) to restrain the respondents from appointing any one other than the applicant to the post of Registrar of Co-operative Societies, under the Union Territory of Lakshadweep.

iii) to quash Annexure-A8 and issue such other orders or directions as this Hon'ble Tribunal may deem fit and proper the fact and circumstances of this case."

2. The facts of the case as put forth by the applicant are that he joined as Registrar of Co-operative Societies on an ad hoc basis w.e.f. 5.12.94 as per orders of the Government. He joined service as Inspector in 1974, and through a series of promotions, was promoted as Deputy Registrar(D.R) w.e.f. 13.6.86. Applicant avers that since July 1987, when the then Registrar retired, he has been holding the charge of the post of Registrar of Co-operative Societies for most of the time till now, barring a short period in 1989-90.

3. Applicant then goes on to describe the recruitment rules of 1980 for the post of Registrar and Deputy Registrar in the U.T. Administration(A-1). Briefly, the Registrar's post can be filled up by promotion/transfer on deputation, failing which by direct recruitment. The eligibility criteria etc. have been extracted from the recruitment rules by the applicant in his application.

Bm/B

- 3 -

Applicant avers that he is fully qualified for the post except that in 1993, when the filling up came up for consideration, he did not have the required eight years service as D.R. The U.T. Administration, thereafter, circulated the post for filling up by deputation in October, 1993(A-2) and the applicant also applied for the post. Only five applications including that of the applicant were received. Applicant claims that he was the only suitable candidate. Recommendations were sent to Government by A-3, whereby first respondent recommended the case of the applicant who was to complete eight years of service as Deputy Registrar on 12.6.94. The circumstances leading to the constitution of DPC meeting on 7.10.94 and the recommendation of applicant's case for appointment on ad hoc basis have been described in the application.

4. Applicant avers that he was eligible from 12.6.94 itself and his appointment should be considered and that he deserves to be regularised in the post of Registrar.

5. Applicant thereafter describes how in 1995 a new rule was notified, a copy of which he has filed at A-5. According to this rule, only officers holding duty posts can be included in the Delhi, Andaman & Nicobar Islands, Civil Service Rules(DANILCS), 1971. This rule, the applicant avers, cannot have retrospective effect.

6. A representation was made by him, but third respondent has rejected the proposal for regularisation of the applicant to the post of Registrar(A-8). Thus the applicant is before us with the relief he seeks.

7. A reply has been filed on behalf of the respondents in which the generality of averments/allegations made in the O.A. have been denied. The respondents goes on to say that the U.T.



-4 -

of Lakshadweep now has rules operative jointly called the Delhi, Andaman & Nicobar Islands Civil Service(erstwhile DANICS). Rules regarding this civil service were notified on 1.4.95. According to Rule 6, all the existing officers of Lakshadweep Administration holding posts of regular basis which have been encadred in the service shall continue to be in their respective posts and grades would continue to be in their posts till they became members of the service, subject to suitability. If any officer is not considered suitable, the post will be treated as excadre post.

8. Respondents make the assertion that applicant has not been appointed to the post of Registrar on a regulr basis and hence has no claim. Action was undertaken in February, 1990 for appointment of a suitable officer by notification of vacancies with State Governments/U.Ts and after due process, one officer from U.P. had been selected. However, there was delay in his appointment and meanwhile on 19.6.92, applicant applied for promotion. Even though he was not qualified as per new rules, his case was taken up with Government of India. UPSC to whom it was referred by the Ministry, advised to extend the time limit given to the officer selected from U.P. who finally informed the Government in February, 1993 that he had been promoted in U.P. itself. The process of re-advertisement in October, 1993 has thereafter being described and the description of events as given by the applicant have been accepted on the factual points, though not his arguments.

9. Respondents aver that now that the new dispensation has come into force and the post of Registrar has been included in the DANILCS cadre. The applicant is not eligible since he holds the post on an ad hoc basis. Also the post of D.R. is not a part of the DANILCS cadre and hence the applicant cannot be inducted

Bms

- 5 -

into this service. On these grounds, the Ministry has rejected the representation of the applicant after careful consideration. The respondents claim that the application before us is devoid of merit and hence pray for its rejection.

10. We have heard the arguments made on behalf of both sides and have perused the papers in the case including the rejoinder filed etc. Learned counsel for applicant argued the case strenuously before us reiterating the averments made in the O.A. The salient points made by learned counsel are as follows in brief:

(a) The applicant was falling short of required eight years of service when notification for vacancies was circulated and the local administration had obviously considered him fit since it recommended his name, by relaxation of this shortcoming in terms of number of years of service required as Deputy Registrar.

(b) When the DPC was held and the officer took charge thereafter on ad hoc basis, he had already become eligible and should have therefore being considered for regular appointment, since the only reason for considering his appointment as ad hoc was the shortfall in his number of years of service as D.R.

(c) Applicant fully qualifies for the post on all other grounds as per the recruitment rules.

(d) The applicant's appointment, though ad hoc, was made after full procedure being followed including consultation with UPSC, and therefore this only requires regularisation and hence the rules operating at that time would be applicable. It was strenuously argued that the subsequent notification through which the post of Registrar has become a part of DANILCS cadre are not operative retrospectively. Citation of case law as made in the application was reiterated.

Bnb

- 6 -

11. Arguing the case on behalf of respondents, their learned counsel placed before us a chronological statement tracing the facts of the case in a systematic manner. He argued that the appointment, is an ad hoc appointment, and by this very fact the applicant is now not entitled to be promoted as Registrar in view of the new notification described above. The post can only be held by a member of the DANILCS cadre and the applicant is not even entitled to be included in that service as Deputy Registrar of Co-operative Societies are not so entitled. The learned counsel for respondents also took us over the various averments and arguments made in the written statement filed by the respondents, and strenuously contended that the application was devoid of merit and hence deserved to be dismissed.

12. In order to appreciate the case better for an analysis, we reproduce below the admitted chronological facts of the case:

Post of Registrar of Co-operative Societies under the UTL Administration

Post of Registrar fell vacant on : 02.05.90

Relevant Notification for filling up of the post(Annexure A-2, pp.19-20 of the O.A.) dated : 25.10.93

Method of filling up the post By promotion/transfer on deputation failing which by direct recruitment.  
(Col.11 in Schedule to Annexure A1 at p.16 of the O.A.)

Qualification for promotion Departmental Deputy Registrar of Co-operative Societies - 8 years regular service in the grade.  
(Col.12 in Schedule to Annexure A1 at p.16 of the O.A.)

Applicant submitted his application in response to Annexure A2 on (para 6 of the reply statement at p.6) : 03.12.93

Applications of 5 candidates, including the applicant, forwarded to the Ministry for selection on (para 7 of the reply statement at p.6) : 16.05.94

*Ans*

Proposal to appoint the applicant to the post on ad hoc basis till regular appointment is made : 16.05.94  
(para 7 of the reply statement at p.6)

Applicant completed 8 years regular service in the grade on : 12.06.94  
(para 3 of the reply statement at p.3)

Ministry agreed to the ad hoc appointment of the applicant by letter dated : 02.09.94  
(para 7 of the reply statement at p.6)

DPC held for consideration of ad hoc appointment of the applicant on : 07.10.94

Applicant appointed on ad hoc basis on : 30.11.94

Applicant joined on : 05.12.94

DANILCS Rules published in the Gazette on : 01.04.95

No conscious decision to fill up the post on the basis of new Rules

5 Applications still pending before the Ministry"

13. It is seen that the process of filling up the post was started even before 1993, as described by the respondents in their statement and finally a notification was issued on 25.10.93(A-2). It is clear from the Recruitment Rules that the Government has the full right to fill up the post by transfer on deputation and this indeed was sought to be done by a notification at A-2. The events that have led to the nonfilling up the post for a long time have been made (and reproduced above) and need not be reiterated. The applicant admittedly completed eight years of regular service in the grade of D.R. on 12.6.94. It is important to note that while all these process of ~~filling up~~ <sup>selection</sup> selection was going over a long period, the applicant had meanwhile completed the required 8 years service as early as on 12.6.94. Admittedly, this was the only shortcoming that the applicant suffered from in terms of the recruitment rules and only because of this was an ad hoc appointment considered. A proposal to appoint the applicant was made less than one month before the applicant completed 8 years of service.

14. A significant fact that needs to be noted here is that on the date when the Ministry agreed for ad hoc appointment of the

*AmB*

- 8 -

applicant, it was already 2.9.94, and that the applicant had by this time already completed the required number of years of service. It is not clear as to why at this stage the applicant could not have been considered for a regular promotion subject, of course, subject to his being considered fit by DPC. Not only this, the DPC held to consider the applicant's fitness for ad hoc appointment was held on 7.10.94, almost <sup>PonB</sup>four months after the crucial date of 12.6.94. Thus when the DPC met the applicant was eligible for regular appointment. Significantly the DPC also considered him fit and it can be reasonably assumed that since the proposal for consideration was for ad hoc appointment he was approved for an ad hoc appointment. Nowhere is the contention made that a conscious decision was taken that the applicant was not fit for regular appointment, or that ad hoc appointment was consciously recommended/made even though the applicant had completed the 8 years service required.

15. Surely, therefore, a conclusion can be drawn in the absence of anything to the contrary in the papers, and in the absence of any argument in this regard that the applicant was for all intents and purposes, found fit per se for promotion to the post of Registrar by the DPC which was held on 7.10.94. It is indeed not understood as to why the fact that the applicant had completed the required number of years service was overlooked. In the facts and circumstances of the case described, it may be reasonably assumed that this was only because of the regular slow process in which things have obviously been done that this was not considered. The slow progress is evident from a perusal of dates of events in the selection process.

PonB



16. We now turn our attention to the point made about the notification through which new Recruitment Rules have come into force, whereby the applicant is not entitled to appointment as Registrar of Co-operative Societies, Lakshadweep since he is not a member of the newly constituted service. Nor does the post of Deputy Registrar entitle him to get into service according to contentions made before us. It is however, important to note that in the written statement of the respondents it is stated that "the averments with regard to the Recruitment Rules, 1980, for the post of Registrar of Co-operative Societies are correct." The stand is that when the vacancy arose in 1990, the applicant did not have the required length of qualifying service (i.e. 8 years) in the feeder grade or D.R. The fact, no doubt, remains, as has been discussed above that in June, 1994, when the applicant became entitled by virtue of completing 8 years, the vacancy existed and has indeed continued to exist since then. In this connection, the applicant has contended that the law settled by the Hon'ble Apex Court in the case of Rangaiah, would go to help him. In that case it is settled the Recruitment Rules at the time the vacancy existed should apply. The issue relating to delay in the process of filling up resulting in deprivation of chances of promotion has been discussed in this case((1983) 3 SCC 284). The point settled in this case would, in material terms, be applicable to the present case, given its facts and circumstances. It is clear that due to nonfinalisation of the process of regular selection for the post of Registrar of Co-operative Societies, the present applicant has suffered. The ratio decidendi of Rangaiah's case would be applicable to the present case before us. To quote from this judgement:

"But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules."

*BmB*

- 10 -

We have discussed above in detail the peculiar chronological circumstances whereby we consider justifiable the applicability of the principles settled in this case to the case before us.

17. In the peculiar facts and circumstances of this case, we are therefore convinced that the prayer asked for regularisation would need to be granted to the applicant. The applicant has sought for regularisation to the post of Registrar, though he has not claimed any particular date of effect in para 8 of his application. It has been stated before us that the applicant joined the post of Registrar on ad hoc basis on 5.12.94. It would be therefore justifiable to make this as the date of operation.

18. In view of the discussion made above, we hereby allow the O.A. to the extent, and in terms of the orders, as below:

The applicant shall be deemed to be appointed <sup>on regular basis</sup> to the post of Registrar of Co-operative Societies w.e.f. 5.12.94. All consequential benefits available to him as per rules may be provided to him accordingly. There will be no order as to costs.

Dated, the 29th of April, 1999.

*B.N. Bahadur*

**B.N. BAHADUR**  
ADMINISTRATIVE MEMBER

*A.M. Sivadas*  
**A.M. SIVADAS**  
JUDICIAL MEMBER

trs/28499

List of Annexures referred to in the Order:

1. A-1: True copy of the notification issued by the Government of India Ministry of Agriculture (Department of Agriculture and Co-operation) dated 3.12.1980.
2. A-2: True copy of the Notification issued by the Union Territory of Lakshadweep Administration F.No.5/1/90-Services dated 25.10.1993.