

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA 158/98

THURSDAY THIS THE 13th DAY OF APRIL, 2006

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

M. Bhaskaran
Sub Inspector of Police
Vigilance and Anti Corruption Unit
Kavarathi.

Applicant

By Advocate Mr. M.R. Rajendran Nair

Vs.

1 The Superintendent of Police
Union Territory of Lakshadweep
Kavaratti

2 The Administrator
Union Territory of Lakshadweep
Kavaratti.

3 Union of India represented by
the Secretary
Ministry of Home affairs,
New Delhi.

Respondents

By Advocate Mr. Shafik M.A.

ORDER

HON'BLE MRS.S SATHI NAIR, VICE CHAIRMAN

This Application was filed by the applicant, a Sub Inspector of Police of the Union Territory of Lakshadweep aggrieved by the refusal of the respondents to consider him for promotion to the post of Circle Inspector of Police on the basis of his seniority and as per the earlier directions of this Tribunal in OA 201/91 or at least with effect from 4.9.87, the date of

promotion of his junior. It was heard and disposed of by the Tribunal and the operative portion of the order was to the effect that the applicant was entitled to be considered for promotion to the post of inspector of Police w.e.f 4.9.1987 the date of promotion of his junior Sri M.C, Kidave. It was also directed to consider the applicant for promotion from the above date and on such promotion the applicant was to be entitled to the consequential benefits including arrears of salary. The respondents filed OP 16516/01 before the Hon. High Court pointing out that there was a serious error in appreciating the contentions raised by the parties and the comparison with Sri Kidavu who was promoted against a reserved vacancy was inconceivable. By the judgement dated 7th June 2005 the Hon. High Court set aside the order of the Tribunal and remitted the matter back to The Tribunal observing as under:

"Now that the applicant is retired his promotion can have only notional effect. We do not want to shut out his claims who had been constantly trying for his career advancement. In view of the circumstance that there is reference to claims over Somasekharan Nair in the reply affidavit at least we are of the view that first respondent is to be given opportunity to agitate over the issue before the Tribunal. We set aside the order in OA 158/99 and remit the matter for re-consideration. The Tribunal may give opportunity to parties to present fresh materials if they choose."

2 Accordingly the OA was restored and notices issued to the parties. The respondents filed an additional reply statement. The applicant though sought and was granted time to file an additional rejoinder did not do so.

3 The respondents have briefly recapitulated the factual background as follows. The applicant was originally appointed as a Constable in the Police Dept of the Lakshadweep Administration on 1967 and was promoted

as a Head Constable in 1968. The Recruitment Rules were amended in 1970 providing for 50% direct recruitment but only 3 posts could be filled by direct recruitment out of the 11 existing posts of Sub Inspectors and the remaining 8 posts were filled by deputation. Anticipating 4 vacancies under the promotion quota steps were taken to prepare a select list of 4 persons wherein the applicant was ranked as the 4th candidate, the first three being Sarvasri K.C Balakrishnan Nair, Sadasivan, and K.Narayan. Meanwhile Rules were amended that the promotion to the post of sub inspector could be effected only on satisfactory completion of Sub Inspector training course w.e.f 12.4.73 and, a conscious decision was taken not to promote the 4 persons in the list as they had not completed the training. The list which was to be valid for 18 months got lapsed on 12.7.74. Meanwhile Rules were again amended enabling the training to be undergone during the probation. A fresh Departmental test was conducted and the applicant who participated in the test and recommended by the DPC was promoted as Sub Inspector on 14-11-76. After 13 years the applicant challenged the seniority by filing OA 475/89 and the seniority list was set aside with liberty to review the seniority list after giving notice to all concerned. When he was given a reply rejecting his claim for retrospective promotion he filed OA 201/91 and the said OA was disposed of as per judgment dated 23.3.93 directing the Department to promote the applicant as Sub Inspector if any vacancy arose in the promotion quota during the period of validity of the select list, i.e the period between 7.2.73 & 7.8.74., to which the applicant could have been appointed on the basis of his 4th position in the Select list. No vacancy had arisen during the period but notwithstanding the absence of any vacancy the applicant was given promotion with effect from 7.2.73

under the threat of contempt proceedings. A review application had been filed and a MA for condoning the delay in filing the review. The review application was not entertained in view of the delay. While so, OA 1209/97 was filed by the applicant to consider his claim for promotion as Circle Inspector w.e.f 9.12.83 or at least from 4.9 .87, the date of promotion of one M.C.Kidave and for consequential benefits. This OA was disposed off directing disposal of his representation. After considering the entire facts and circumstances a detailed order was issued rejecting the claim which is impugned in this original application. As regards the claims made in the present OA the respondents have submitted that the promotion of Sri M.C Kidave to the post of Circle Inspector of police w.e.f 1987 was in respect of a reserved vacancy which could not have been claimed by the applicant under any circumstances. Sri Kidave being a Scheduled Tribe was promoted against the vacancy which was specifically earmarked for Scheduled Tribes. Sri Somashekharan Nair who was referred to in the proceedings before the High Court was directly recruited as a Sub Inspector in 1974 and these facts were specifically pleaded in the reply statements filed before the Tribunal. The above two persons have not been impleaded as parties in this proceedings. There was thus no vacancy to promote the applicant on 4.9.1987 and the applicant is seeking unlawful reliefs which cannot be granted to him.

4 In the original application the applicant has urged the following grounds.

5 Pursuant to the judgment in OA201/91, he was promoted as Sub Inspector w.e.f 7.2.1973 with all consequential benefits including seniority (Annexure A2). His representations for revision of his seniority were kept

pending on the ground that Review petitions were pending. The respondents promoted Sri M.C Kidave w.e.f. 4.9.1987 even though he was appointed on 1.1.1974 and hence junior to the applicant. One Sri Aboobaker had been promoted in 1983 as DYSP thus creating a vacancy of Circle inspector. Since juniors stood promoted to the higher post the applicant is entitled to be considered for promotion w.e.f 9.12.83 or at least w.e.f. 4.9.1987. In his rejoinder the applicant has claimed that vacancies existed in the category of Inspectors of police as early as on 24.3.82 against which the applicant could have been promoted Mr Somasekharan Nair who is junior to the applicant was also promoted on 4.9.1987.

6 We have heard the learned counsel on both sides and have gone through the materials on record and the additional pleadings. The applicant had earlier approached this Tribunal seeking promotion to the post of Sub inspector of police in OA201/91 and was granted that relief with all consequential benefits and he is now before us seeking further promotion to the post of Inspector of police on the basis of the earlier promotion granted to him. Curiously the respondents have now come up with the contention that the earlier promotion given to him was a mistake. This argument is unacceptable. In the first instance the Tribunal had directed to promote the applicant if any vacancy arose in the promotion quota of Sub inspector during the period of validity of the select list i.e. Between 7.2.73 and 7.8.74 to which the applicant could have been appointed on the basis of his 4th position in the select list. Thus there were sufficient conditions attached which the respondents could have explored viz: a vacancies should have arisen during that period and the 3 persons above.

the applicant should have been accommodated before considering the applicant. But the respondents implemented the order fully and Annexure A2 states clearly that all consequential benefits including seniority are granted. The contention that the implementation was done under the threat of contempt proceedings and that there was no vacancy during the relevant period etc are afterthoughts and these pleas were dismissed in the earlier order also. The review petitions were dismissed. The respondents had ample time to approach the higher courts, but they have not availed of those opportunities. In our view, the question relating to the vacancy position, promotion to the post of Sub Inspector and consequential benefits including seniority stand concluded and the order of the Tribunal in OA 201/91 and its implementation by Annexure A2 order have become final. The respondents should have then recast the seniority list as a necessary corollary which they have not done till this date and this inaction has given rise to this subsequent litigation by the applicant and it has also caused harm to other persons in the same cadre who have been affected by the grant of retrospective promotion to the applicant. The respondents should have put them on notice so that they could have put forth their claims for consideration..

7 Having confirmed the view that the applicant was rightly promoted w.e.f. 7.2.73, we proceed to examine his claim for further promotion to the post of Inspector of Police which is the subject matter of this OA. This Tribunal in the earlier judgment had found that he was entitled to get the date of promotion assigned to his junior Sri MC Kidavu. Now in the subsequent pleadings in the High Court and the additional statement filed in the OA after it was restored, the respondents have brought out the

position that Sri Kidave belongs to Scheduled Tribe category and the vacancy which arose on 4.9.87 falls on the 4th point in the reservation roster as reserved for Scheduled Tribe and the applicant could not have been considered for that vacancy. They also state that they had mentioned this position in the replies filed. We are not able to find any mention of this fact in the earlier order. It is therefore a possibility that this fact was overlooked. Since the applicant belongs to the unreserved category he cannot be considered for promotion against a reserved vacancy and to this extent the earlier order requires to be modified.

8 The applicant has also contended that one Somasekharan Nair who is junior to the applicant was also promoted on 4.9.87. The respondents contend that Somasekharan Nair was directly recruited as sub inspector in 1974 when the applicant was working as a Head Constable and therefore he is senior to the applicant. It is also pointed out that Sri M.C.Kidave was also recruited to the post of Sub Inspector in 1974 and hence senior to the applicant. Obviously the respondents' contentions of seniority are based on the date of actual promotion of the applicant on 14.11.76 and they conveniently ignore the order of this Tribunal granting him promotion from 7.2.73 which they have also implemented by issue of the order at Annexure A2. If the seniority list was revised in accordance with the above position the applicant would find place above the direct recruits of 1974 and hence he would rank senior to both Sri Kidave and Somasekharan Nair. In the proceedings before the Hon High Court he has asserted his right to claim seniority over Sri K.C.Balakrishnan Nair who was also promoted on 4.9.87, though Sri Nair was appointed as Sub Inspector earlier, that by virtue of retrospective promotion granted to him he had become senior. But

from the pleadings we find that even in 1973 when the DPC prepared the select list Sri Balakrishnan Nair was senior to the applicant and in the panel of four names Sri Nair ranked 1st when the applicant was placed 4th. The direction of this Tribunal in OA 201/91 is also clear that the applicant's right to promotion was also granted on the basis of his fourth position only and the rights of the persons placed above him in the select list are not affected by that order and by virtue of that order the applicant cannot claim seniority above Sri Nair. Had the seniority list been finalized by the respondents there would have been no ground to raise such claims. The respondents were specifically directed by the order in OA475/89 to review the seniority list after giving notice to all concerned. They have not done so with the result that even now it cannot be conclusively said who is the seniormost candidate available for consideration on the material date. As we have stated earlier one thing is clear that Sri Kidave and Somasekharan Nair are juniors to the applicant as a result of the order in OA201/91. Hence of the two vacancies Kidave's vacancy being a reserved vacancy it was not available but the applicant has a right to be considered against the second vacancy. But it is not clear as to how many seniors to the applicant were available on that date to be considered against that vacancy. The respondents contend that there were 3 others viz. Sri Balakrishnan nair, T.Sadasivan and K.Narayanan who are all seniors and these are the persons who were placed in the select list above the applicant. This position can only be determined if the seniority list is finalized. The applicant has also mentioned one Sri Aboobacker who it is seen from the pleadings was a direct recruit and was promoted to the post of DYSP on 9.12.83. Therefore the applicants eligibility would come up for

consideration against the vacancies from 1983 onwards and would have to be decided on the basis of his revised seniority, the no of vacancies and the seniors available and eligible for promotion. Since these facts have to be computed by the respondents after the revision of the seniority list we cannot give any specific relief to the applicant as that would only be perpetuating this litigation without any finality.

9 In the above view of the matter and the findings reached by us we direct the respondents to finalise the seniority list of Sub Inspectors as directed in OA 475/89 and in OA 201/91 in respect of the applicant, after giving notice to all concerned within a period of three months and thereafter the promotions to the post of Inspector of Police may be reviewed and the applicant shall be considered for promotion according to his revised seniority and availability of vacancies and if promoted he will be eligible for consequential benefits including revision of pension. OA is disposed of accordingly. No costs.

Dated 13.4.2006


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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