

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 163/2005

FRIDAY THIS THE 7th DAY OF JULY, 2006.

CORAM

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

A. Rajan S/o late Sri K. Ayyappan
Lower Division Clerk
Integrated Fisheries Project
Government of India, Ministry of Agriculture
Department of Animal Husbandry & Dairying
Ernakulam, Kochi-16.
Alappat House, Kundanoor, Marad PO
Maradu Village, Kanayannur Taluk
Ernakulam District.

Applicant

By Advocate M/s Aziz & Associates

Vs

1 Union of India represented by the
Secretary, Ministry of Agriculture
Krishi Bhavan,
New Delhi.

2 Director
Integrated Fisheries
Project, Kochi-16

Respondents

By Advocate Mr. TPM Ibrahim Khan, SCGSC

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

This application is filed seeking the following reliefs:

(1) Call for the records of the case from the office of the 2nd respondent and set aside the impugned order.,

(2) Direct the 2nd respondent to promote the applicant to the post of UDC counting the seniority of the applicant w.e.f. 14.3.1991.

(3) Such other and further reliefs as this Hon'ble Tribunal may deem just and proper in the circumstances of this case.

2 The brief facts of the case as submitted by the applicant is given below. The applicant entered service as an unskilled Worker (Group-D) in the Integrated Fisheries Project, Kochi-16 from 14.3.1984. He appeared for the competitive examination conducted by the department for selection to the post of LDC reserved for Group-D employees and passed the competitive test on 14.3.1991 and was appointed as LDC in the IFP in the pay scale of Rs. 950-1500 by order dated 14.3.1991. The appointment was on adhoc basis and was subject to the condition that he should pass the typewriting speed test conducted by the Staff Selection Commission within six months time and that future increments will be sanctioned only after passing the typewriting speed test. The applicant could not pass the test within the stipulated time but continued in the post. He passed the typewriting speed test on 17.1.1997 and accordingly he was regularsied w.e.f. the same date in the grade of LDC as per Annexure A-1 order dated 21.10.2000. The applicant then submitted representations to the Department requesting for regularisation from the date of his initial appointment i.e. w.e.f. 14.3.1991 and for considering his seniority accordingly. But no reply was given to the applicant. While so, certain LDCs Smt.

C.Vasundhara, Smt. R. Sreeja and Smt. K. Geetha were promoted as UDCs by Annexures A-5 and A-5(a) respectively overlooking the seniority of the applicant. Thereupon, the applicant made another representation to the Department on 10.1.2005. Without considering the representation the impugned order at Annexure A-7 has been issued by the respondents disposing of his earlier representations. The applicant has assailed the said order on the ground that the order is passed on the basis of a Circular of DOPT OM No. 134020/2/91-Estt(D) dated 29.9.1992 which only stipulate that regularisation in the cadre could be made only after passing the typing test and there is no stipulation in the said circular with regard to the fact that the seniority in the cadre will be counted only from the date of confirmation. The applicant was already confirmed in the lower cadre and further confirmation in the higher post was not necessary. There was no mention either in the DOPT order or in the original order appointing the applicant that seniority will be counted only w.e.f. the date of confirmation. The typing test is only an additional qualification to be obtained for future increments and not for seniority purpose. The judgment of the CAT referred to in the impugned order is not applicable in the case of the applicant as his appointment was against the regular vacancy in the merit list prepared as per the Recruitment Rules approved and accepted by the Department.

3 The respondents have filed a reply statement. The details pertaining to the service of the applicant are not denied. The contentions of the respondents are two fold. In the first instance they relied on the DOPT OM NO. 14020/2/91-Estt(D) dated 29.9.1992 stipulating that persons who are appointed to the post of LDC by promotion from Group-D will be eligible for regularisation and confirmation in the grade from a date not earlier than passing the typing test conducted by the Staff Selection Commission and the applicant has passed the said typewriting speed test only on 17.1.1997. The question of seniority of the applicant was taken up with the Ministry in consultation with the DOPT and the DOPT has clarified the same position as stated above. Secondly in terms of the judgment of the CAT Mumbai Bench in O.A. No. 950/1992 referred to by the applicant in his representation in support of his claim, the case of the applicant was not found in conformity with the conditions laid down in the judgment that the appointment should in all respects conform to the Recruitment Rules. The applicant was promoted on adhoc basis subject to the condition that he should pass the typewriting speed test and he failed to fulfill the conditions laid down at the time of initial appointment. They also stated that in the case of the three persons who were promoted as UDCs mentioned in the OA by the applicant, they have been promoted by virtue of their regular service in the grade of LDC as only regular service can be counted for considering promotion. The applicant has also been granted notional increments for the period from the date of his initial

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adhoc appointment and the full financial benefits has been extended from the date of his regularisation.

4 The applicant in his rejoinder reiterated that the circular relied on by the respondents related to only confirmation and confirmation is not binding as far as determination of seniority is concerned. He has also contended that he is a promotee to the post of LDC and not an adhoc appointee and therefore the DOPT circular which is in violation of the Recruitment Rules is not applicable at all in his case.

5 We have heard the learned counsel on both sides. The learned counsel for the applicant relied on a catena of judgements of the Apex Court as listed below on the service law relating to seniority:

(i) R.B. Desai and another Vs. S.K. Khanolkar and Others (AIR 1999 SC 3306)

(ii) Satpal Antil V. Union of India and another (AIR 1995 SC 1858)

(iii) B.N. Saxena Vs. New Delhi Municipal; Committee and others (AIR 1990 SC 2021)

(iv) Ajit Kumar Rath Vs. State of Orissa and Others (AIR 2000 SC 85)

6 The ratio of the above judgements being that any appointment whether adhoc or not, if it is made in accordance with the Recruitment Rules and to a substantive vacancy, the seniority will be counted from the date of temporary promotion. It was further argued

that even though the word 'ad hoc' is mentioned in the Government order, the applicant has been regularly and uninterruptedly working in the cadre of LDC ever since the initial appointment on 14.9.1991 and the appointment was against a regular vacancy after fulfilling the procedure prescribed as per the Recruitment Rules. The counsel further submitted that the circular of DOPT dated 29.9.1992 specifically stated that regularisation in the cadre will be only made after passing the typewriting speed test and there is no mention regarding seniority in the above circular. It was also pointed out that according to the rules regarding confirmation as per Swamy's Hand Book-1999 at page 43 para 7- Passing of typewriting test by LDCs in attached and subordinate offices of the Government not participating in Central Secretariat Clerical Services is one of the essential conditions for confirmation only and the question of seniority has been de-linked from confirmation.

7 The learned counsel for the respondents argued that a clear stipulation was made in the appointment order of the applicant as LDC that the appointment is on ad hoc basis subject to the condition that he should pass the typewriting speed test and as per DOPT OM dated 29.9.92 the LDCs will be eligible for regularisation from the date on which they passed the typewriting test. Hence the third respondent has only acted in accordance with the instructions of the DOPT, the averments of the applicant therefore has no merit.

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8 We have carefully perused the pleadings and the judgments referred by the learned counsel for the applicant. Whereas the judgments referred to by the learned counsel for the applicant pertained to seniority in different context in the judgment in Ajith Kumar Rath Vs. State of Orissa and Others (AIR 2000 SC 85) is specific to the case in hand. The appellant in that case was promoted to the post of Asstt. Engineer in accordance with rules against a permanent vacancy and given adhoc promotion pending concurrence of Public Service Commission. The Hon'ble Supreme Court held that adhoc service of the promotee is to be counted for purposes of seniority.. This judgment has referred in detail to various earlier judgments of the Hon'ble Supreme Court in the matter of seniority and the most celebrated case is that of Direct Recruit Class-II Engineering; Officers Association Vs. State of Maharashtra, (AIR 1990 Lab IC 1304) wherein a Bench of three Member Judges has held that the seniority of direct recruits if appointed under the rules, has to be determined on the basis of the dates of appointment regarding direct recruits and in case of promotees from the date on which they have been promoted on ad hoc or temporary basis against substantive vacancy. It was finally held that as the appellant therein was promoted in terms of the rules against a permanent vacancy but had to be given adhoc promotion only pending concurrence of the Public Service Commission, he is entitled to seniority from the date of his adhoc appointment.

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9 In the light of the above well settled position, the first question to be considered by us whether the applicant was appointed to a post in accordance with the rules notwithstanding the fact that it was an adhoc appointment. It is admitted by the respondents that he qualified in the departmental competitive examination held for Group- D employees and as per the Recruitment Rules to the post of Lower Division Clerks in the Department, 10% posts are to be filled up from among the Group-D staff on the basis of passing the competitive examination and the remaining 90% are still filled by direct recruitment. It is also not in dispute that the applicant's appointment was against a regular vacancy and as seen from the pleadings, his appointment was on adhoc basis initially because he had not passed the typewriting speed test conducted by the Staff Selection Commission for which six month's time has been given to him. The respondents have contended that passing the typewriting test is the chief criterion and it is an essential qualification as far as the newly appointed Lower Division Clerks are concerned which determines their regularisation/seniority.

10 We may therefore examine the Recruitment Rules in this respect. The Recruitment Rules have been produced by the applicant as Annexure A-7. Portion relating to LDC is extracted below:

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**RECRUITMENT RULES FOR VARIOUS POSTS
IN THE INTEGRATED FISHERIES PROJECT,
COCHIN-16**

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|----|---|--|
| 1. | Name of Post | Lower Division Clerk |
| 2. | No. Of posts | 15 |
| 3. | Classification | CGS Group-C Non Gazetted, Ministerial |
| 4. | Scale of pay | 260-6-290-EB-6-326—8-366-EB-8-390-10-400 |
| 5. | Whether Selection or non-selection post | N.A. |
| 6. | Age limit for direct recruits | 19-25 years |
| 7. | Educational other qualifications required for direct recruits | <p>1. Matriculation or equivalent qualification of a recognised university or Board</p> <p>2. A speed of 30 wpm in typewriting provided that:</p> <p>a) A person not possessing the said qualification in typewriting may be appointed subject to the condition that he will not be eligible for drawing increments in the graded till he acquires a speed of 30 wpm in typewriting</p> <p>(b) a physically handicapped person who is otherwise qualified to hold a clerical post but does not possess the said qualifications in typewriting may be appointed subject to the condition that the Medical Board attached to the special Emp. Exchange for handicapped, or where there is no such board the Civil Surgeon certifies that the said handicapped person is not in a fit condition to be able to type.</p> |

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|----|---|---|
| 8 | Whether age and educational qualification prescribed for direct recruits will apply in the case of promotees | N.A. |
| 9 | Period of probation if any, | 2 years |
| 10 | Method of rectt. Whether by direct rectt. or by promotion or by deputation/transfer & percentage of the vacancies to be filled by various methods | 80% vacancies shall be filled by direct recruitment and 20% vacancies shall be filled from amongst Class-IV employees working in the same office who are matriculate or possess equivalent qualifications and have rendered 5 years service in the Class I V on the basis of comp. Exam. The maximum age limit for eligibility for the exam. will be 45 years(50 yrs. For SC/ST employees). The maximum No. of recruits by this method shall be limited to 10% of the vacancies in the cadre of LDC occurring in a year, unfilled vacancies shall not be carried over) |
| 11 | In case of recruitment by promotion/ deputation/ transfer, grades from which promotion/deputation transfer to be made. | N.A. |
| 12 | If a DPC exists what is its composition | N.A. |
| 13 | Circumstances in which UPSC is to be consulted in making recruitment | N.A. |

Column 7 thereof relates to educational and other qualifications required for direct recruits. Column 8 relates to whether age and educational qualifications prescribed for direct recruits apply in the case of promotees. Col. 10 prescribes the method of recruitment - whether by direct recruitment or by promotion or by deputation/transfer & percentage of the vacancies to be filled by various methods. 80% vacancies shall be filled up by direct recruitment and 20% shall be filled from amongst Class-IV employees working in the same office who are Matriculates or possess equivalent qualifications and have rendered 5 years of service in Class-IV on the basis of competitive examination. The applicant falls under the latter category to be filled from among Class-IV employees. It is the contention of the applicant that the essential qualification prescribed in Col.7 which consists of Matriculation as well as a speed of 30 w.p.m. In typewriting is applicable only to direct recruits and not to the 20% of the vacancies filled from Group-D category. His contention is based on the argument that 20% of the vacancies are filled by promotion and not by direct recruitment. This argument does not appear to be correct. It will be seen from the Recruitment Rules extracted above in col. 10 the word "promotion" is not mentioned against the 20% vacancies and column 11 is mentioned as not applicable. Hence it has to be construed as coming under direct recruitment only but from within the category of Class-IV employees in the same office who have passed the competitive examination. But it may be seen that column 7-

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Qualification stipulates under sub item (2) that a person who is not possessing a qualification in typewriting can be appointed subject to the condition "that he will not be eligible for drawing increment or for confirmation in that grade." Evidently it is in accordance with this provision in the Recruitment Rules that the applicant was appointed and therefore it has to be held that the appointment of the applicant is strictly in accordance with the Recruitment Rules and the contention of the Respondents that his appointment does not fulfill the criterion prescribed in the Recruitment Rules is not correct.

11 The next point that arises is whether the above condition imposed at the time of his appointment that he will not be eligible for confirmation till he clears the speed of 30 w.p.m. in typewriting will have a bearing on his seniority. It is now well settled position that seniority has been delinked from "confirmation". Paras 3 and Rule 7 regarding confirmation from Swamy's Handbook 1999 are extracted below:

3 Confirmation in higher posts:- When persons are appointed by direct recruitment, procedure as in Para 1 above is to be followed. If the appointment is by promotion, no confirmation is necessary. Satisfactory completion of probation period is automatically treated as confirmation in such higher posts. Where no probation is prescribed on promotion to higher posts, they will be treated as confirmed in the higher posts from the date of taking over that post on regular basis.

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7. Passing of Typewriting Test by LDCs:- Passing of Typewriting Test by LDCs in attached and subordinate

officers of the Government not participating in CSS is one of the essential conditions, for confirmation. Since probation is not covered by this condition, termination of probation period would have been made. They will be confirmed only from the date of passing the test. In case exemption from passing the test is given, confirmation will be from the date of exemption.

12 In accordance with the above provisions the applicant was confirmed only from the date of passing the test since he was not granted any exemption. The applicant is also not contesting his date of regularisation. His relief is confined to the question of seniority. The DOPT OM relied upon by the respondents only reiterates the above position in the rules that a person appointed as LDC who does not belong to the Central Secretariat Clerical Service, by any method including appointment on compassionate grounds or on adhoc basis, would be eligible for regularisation or confirmation only on and from the date of passing the typewriting test. It has no bearing on seniority. As far as seniority is concerned the position is well settled in the judgment of the Apex Court relied on by the applicant and discussed above that if a person who is appointed to a post according to rules his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. Therefore if an appointee continues in a post without break, followed by regularisation of his service in accordance with the rules, the period of officiating service will be counted for seniority. Therefore the respondents cannot rely on the above circular of the

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DOPT as far as seniority is concerned which is governed by a separate set of rules and judicial pronouncements. Therefore, the applicant who was appointed after fulfilling the formalities prescribed under the Recruitment Rules on 14.3.1991 and was regularised from 17.1.1997 is entitled to count his service from 14.3.1991 onwards in the grade of Lower Division Clerk for the purpose of seniority.

13 In the result, the OA is allowed. The respondents are directed to grant seniority to the applicant w.e.f. his date of appointment i.e. 14.3.1991 and consider him for promotion to the post of UDC in accordance with his seniority as per rules. No costs.

Dated 7.7.2006.


GEORGE PARACKEN
JUDICIAL MEMBER
SATHI NAIR
VICE CHAIRMAN

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