

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 17 of 2013

Friday, This the 18th day of March, 2016

CORAM :

**HON'BLE SHRI U.SARATHCHANDRAN,
JUDICIAL MEMBER**

**HON'BLE SHRI E.K.BHARAT BHUSHAN,
ADMINISTRATIVE MEMBER**

P.P. Atta, Aged 56 years, S/o. Late K.P.Aboobacker, Research Officer, (Agricultural Census), Department of Agriculture, UT of Lakshadweep, Kavaratti Island, permanently residing at "Pakkichipura", Kavaratti Island, UT of Lakshadweep.Applicant

By Advocate : Shri Shafik M.A.

Versus

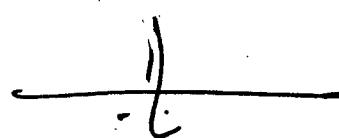
1. Union of India, represented by Administrator, UT of Lakshadweep, Kavaratti.
2. The Director (Planning & Statistics), UT of Lakshadweep, Kavaratti. ... Respondents

By Advocate : Shri S.Radhakrishnan

ORDER

Per: Hon'ble Shri E.K.Bharat Bhushan, Administrative Member

The grievance of the applicant in this O.A. against the respondents is as to non-extension of 2nd financial upgradation under the ACP Scheme. According to him, his claim for 2nd financial upgradation

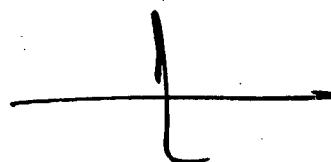


(O.A.No.17/2013 - CAT, Ernakulam Bench)

with effect from 14.1.2004 was wrongly denied by the respondents.

2. The facts in brief as stated by the applicant are that he entered into services in the cadre of Statistical Assistant on 14.1.1980. The cadre of Statistical Assistant is a feeder cadre to the post of Research Assistant, Statistical Officer and Junior Employment Officer under the Lakshadweep Administration. He was promoted as Research Assistant on adhoc basis with effect from 01.10.1999. The applicant represented the respondents to regularise his promotion to the cadre of Research Assistant with effect from 01.10.1999 and the same was rejected by the order dated 23.06.2006. Being aggrieved by the order dated 23.06.1999, the applicant approached this Tribunal in O.A.No.682/2009 with a prayer to quash the order dated 23.6.2009 and for a direction to the respondents to regularise his claim for promotion to the cadre of Research Assistant with effect from 01.10.1999. This Tribunal by the order dated 11.2.2011 vide Annexure A/5 allowed the said O.A. Pursuant to the orders of the Tribunal dated 11.2.2011, the respondents by the order bearing F.No.19/03/2009-Plg/697 dated 21.7.2011 regularised the adhoc promotion of the applicant to the post of Research Assistant notionally with effect from 01.10.1999 (Annexure A/6). In the meanwhile, by the order bearing F.No.14/1/2011-Plg/193 dated 23.2.2011 vide Annexure A/3, the applicant was promoted and posted as Field Officer in the scale of pay of Rs.9300-34800 + Grade Pay Rs.4600.

3. The applicant by referring to the fact that as on 14.1.2004 he had completed 24 years of service, made several representations to

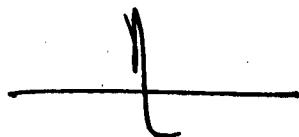
A handwritten mark or signature consisting of a vertical line with a small loop at the top, followed by a horizontal line extending to the right.

(O.A.No.17/2013 - CAT, Ernakulam Bench)

the respondents to grant 2nd financial upgradation in terms of the ACP Scheme. Ultimately, by considering his reminder dated 03.5.2012 to his earlier representations, the respondents turned down his request for grant of 2nd ACP with effect from 14.1.2004 by the order bearing F.No.28/2/2011-Pig/471 dated 06.6.2012 vide Annexure A/1. The operative portion of the said order dated 06.6.2012 vide Annexure A/1 is as under:

"Again vide representation dated 26-7-2011 he had requested to award ACP w-e-f 14-1-2004. As per the RR for the post of Research Officer, promotion is to be made from the Statistical Assistants with five years service in the grade rendered after appointment thereto on a regular basis. Essential qualification of Master's Degree in Statistics or Mathematics/Commerce/Economics (with Statistics as a subject) of a recognized University or equivalent is necessary for promotion. Shri Atta does not possess the essential qualification of Master's Degree. Similarly promotion to the post of Senior Statistical Officer is to be made from SO/SI with 3 years regular service in the grade failing which Statistical Officers/Statistical Investigator with 8 years combined regular service in the grades of SO/SI and Statistical Assistant. Shri Atta does not have either 3 years regular service as SO/SI or combined regular service of 8 years as SO/SI and SA and as such he does not qualify for promotion either RO or SSO. The DPC attached to the posts of RO and SSO met on 29-10-2011, examined the proposal for awarding 2nd ACP and found that he doesn't qualify for regular promotion either to the post of Research Officer or to the post of SSO as on 14-1-2004, the date by which Shri Atta completed 24 years of service, with reference to the RRs attached to these posts as of 14-1-2004. Accordingly a reply had been given to him vide O.M. 1st cited."

4. Being aggrieved of the above, the applicant presented the instant O.A. with a prayer to call for the records relating to the order at Annexure A/1 and A/2 by which his claim for 2nd financial upgradation with effect from 14.1.2004 was rejected and to quash the same. He also seeks a direction to the respondents to grant him 2nd financial

A handwritten signature is written over a horizontal line. The signature consists of a vertical line with a loop at the top and a curved line extending downwards to the right.

(O.A.No.17/2013 - CAT, Ernakulam Bench)

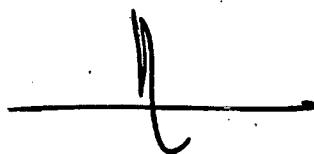
upgradation with effect from 14.1.2004 and to revise his pay accordingly and to draw the arrears of such fixation with all consequential benefits including the payment of interest @18 % per annum.

5. Pursuant to the notice of the O.A., the respondents entered appearance and filed their detailed reply stating that the impugned orders vide Annexure A/1 and A/2 do not suffer from any legal infirmity. On the other hand, the same is strictly in terms of the recruitment rules that was in vogue as on 14.01.2014. The applicant also filed his rejoinder reiterating the facts, grounds and contentions urged in his OAs to which again the respondents filed their additional reply.

6. Heard Shri Shafik M.A., learned counsel for the applicant and Ms.Anjali who represented Shri S.Radhakrishnan, the learned counsel for the respondents. Perused the pleadings and the documents annexed thereto.

7. The facts are not in dispute except to the one as stated by the respondents in their additional reply at paragraph 8 which is as under:

"8. It is submitted that the Annexure A4 order is not a promotion order it is only an Office Order of transfer and posting of Field Officer, Statistical Officer and similar grade. There was an inadvertent clerical error on the part of the Department in issuing Annexure A4 order since, Annexure A4 is actually an Office Order for the transfer and posting of Field Officer and similar grades (i.e. from Field Officer to Research Officer being inter transferable) and Statistical Officer and similar grades (i.e., from Statistical Officer to Junior Employment Officer being inter transferable)."



(O.A.No.17/2013 - CAT, Ernakulam Bench)

There is no specific rebuttal to the above specific assertion of the respondents. Be that as it may.

8. The learned counsel for applicant pointed out that admittedly the applicant entered into cadre of Statistical Assistant on 14.1.1980 and as on 15.1.2004 he has completed 24 years of service. As per the ACP Scheme dated 09.8.1999, a Government servant is entitled for 2nd financial upgradation on completion of 24 years of service. The applicant having completed 24 years of service as on 15.1.2004 is entitled for 2nd financial upgradation under ACP, the counsel submitted. He also drew our attention to the order dated 23.2.2011 vide Annexure A/3 and argued that the respondents being satisfied that the applicant fulfills all the eligibility criteria for promotion to the next promotional cadre of Research Officer promoted him on regular basis in the pay band of Rs.9300-34800 + Grade pay Rs.4600. By placing emphasis upon the fact that by the order dated 23.02.2011 vide Annexure A/3, the applicant was promoted to the next higher grade of Research Officer, he argued that the respondents shall be estopped from contending that the applicant does not have the prescribed educational qualification for the post of Research Officer. He argued that since the adhoc promotion given to the applicant came to be regularised with effect from 01.10.1999, the respondents are bound to count their service with effect from 01.10.1999 as regular service.

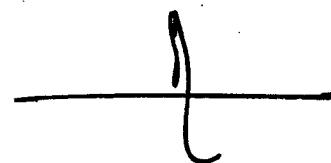
9. Per contra, the learned counsel for the respondents by referring to the educational qualification prescribed for the post of Research Officer in the Rules of Recruitment called "the Research Officer (Lakshadweep

(O.A.No.17/2013 - CAT, Ernakulam Bench)

Administration) Recruitment Rules, 1976 pointed out that the applicant has the qualification prescribed in the said Recruitment Rules, 1976 as on 14.1.2004. She pointed out that said Recruitment Rules of 1976 came to be superseded by the Rules called "Lakshadweep Administration Senior Statistical Officer/ Research Ministerial) Recruitment Rules, 2010. She argued that it is not the case of the applicant that he is the holder of Master degree in Statistics/ Mathematics/Commerce/ Economics (with Statistics as a subject) from a recognized University or that he is possessing equivalent qualification for the purpose of considering him for promotion to the cadre of Research Officer. She further argued that the mere fact that the applicant was promoted to the cadre of Research Officer by the order dated 23.2.2011 vide Annexure A/3 cannot be a ground to interfere with the impugned order. She argued that the same is strictly in terms of the Recruitment Rules 1976 which was in vogue as on 14.01.2004. The fact that the applicant does not have the educational qualification prescribed in the 1976 Rules for the post of Research Officer is not disputed by the applicant.

10. Upon hearing the learned counsel for both the parties and on perusal of the pleadings and the documents annexed thereto, the singular question that arises for our consideration is :

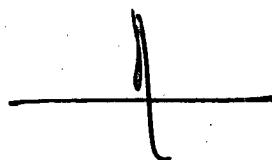
"Whether the fact that the applicant was promoted to the cadre of Research Officer in the pay band of Rs.9300-34800 + Grade Pay of Rs.4600/- on regular basis by the order dated 23.2.2011 vide Annexure A/3 entitles the applicant for 2nd financial upgradation under ACP with effect from 14.1.2004?"



(O.A.No.17/2013 - CAT, Ernakulam Bench)

11. The method of recruitment to the cadre of Research Officer was originally governed by the Recruitment Rules called, "The Research Officer (Lakshadweep Administration) Recruitment Rules, 1976." The said Rules of 1976 came to be superseded by the Rules called Lakshadweep Administration Senior Statistical Officer/ Research Officer/ Field Officer (SS) (Group 'B' Gazetted Non-Ministerial) Recruitment Rules, 2010. As on the date of Annexure A/3 i.e. on 23.02.2011 the Rules of 2010 was occupying the field. The 2010 Rules came into force from the date on which it was published in the official Gazette i.e. on 6th January 2011. The applicant had the qualification in terms of the Recruitment Rules, 2010 to the cadre of Research Officer. Accordingly, he was promoted to the cadre of Research Officer by the order dated 23.2.2011 vide Annexure A/3.

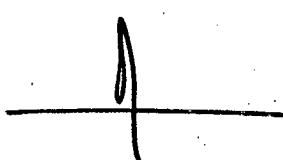
12. Admittedly, as on 14.1.2004 the Recruitment Rules of 1976 was in vogue. It is also an admitted fact that the applicant does not have the educational qualification prescribed in the Recruitment Rules of 1976 for the post of Research Officer to which he was promoted by the said order dated 23.2.2011. The bone of contention of the learned counsel for applicant was that the respondents while promoting the applicant to the cadre of Research Officer on regular basis did not insist on the educational qualification whereas they insist on it for 2nd ACP. Therefore, in such circumstances, the respondents are not justified in denying the 2nd financial upgradation under ACPs for want of qualification prescribed under the recruitment rules, counsel argued.

A handwritten mark or signature consisting of a vertical line with a curved flourish at the top, positioned below the text in the previous block.

(O.A.No.17/2013 - CAT, Ernakulam Bench)

13. In our opinion, the contention of the counsel for applicant is not sustainable. The Recruitment Rules 2010, vide Annexure R1 (page 65 of the paper book) and the Recruitment Rules of 1976 vide Annexure A/7 bear it out. We need not extract the relevant portion of the Recruitment Rules at Annexure A/7, since it is not the case of the applicant that he had all the qualification prescribed in the 1976 Rules. The 1976 Recruitment was occupying the field of Recruitment to the post of Research Officer till the same came to be superseded by the 2010 Recruitment Rules on 06.1.2011. The claim of the applicant for 2nd financial upgradation under ACP Scheme is with effect from 14.01.2004 and as on that day the Recruitment Rules, 1976 vide Annexure A/7 was occupying the field. Admittedly, the applicant was not in a position to fulfill all the eligibility criteria prescribed in the Recruitment Rules as on 14.01.2004 from which date he claims 2nd financial upgradation under ACP.

14. Annexure-I to the O.M. dated 09.8.1999 by which the ACP Scheme was introduced prescribes the conditions for grant of benefits under ACP Scheme. Condition No.6 at Annexure-I to the said O.M. dated 09.8.1999 requires that fulfillment of normal promotion norms shall be ensured. As per the Recruitment Rules, 1976 vide Annexure A/7 for being considered for promotion to the cadre of Research Officer, admittedly the applicant does not have the qualification prescribed at Annexure A/7. But, it is the specific contention of the applicant that since by the order dated 23.2.2011 vide Annexure A/3, he came to be promoted to the cadre of Research Officer on regular basis, the respondents cannot deny the 2nd financial upgradation under ACP.



(O.A.No.17/2013 - CAT, Ernakulam Bench)

Therefore, the question is whether the respondents are right in denying the 2nd financial upgradation to the applicant as on 14.1.2004.

15. As already observed, admittedly as on 14.1.2004, the method of recruitment to the post of Research Officer was governed by said Recruitment Rules, 1976. When the Recruitment Rules, 1976 hold the field, the claim of the applicant for promotion would have to be tested against and on a correct interpretation of Recruitment Rules, 1976. Admittedly, the applicant does not have the educational qualification prescribed under the said Recruitment Rules, 1976. Accordingly, in terms of condition No.6 at Appendix I of the O.M. dated 09.8.1999, it is incumbent upon the Committee which considered the eligibility of the applicant for 2nd financial upgradation as on 14.1.2014 to ensure that the applicant fulfills all the norms prescribed for normal promotion. One of the norms prescribed for promotion for the post of Research Officer is the educational qualification, which the applicant is lacking.

16. The Recruitment Rules of 2010 came into force with effect from 06.1.2011. By then, the case of the applicant was not considered for financial upgradation for the reason that he does not have the required number of regular service in the cadre of Research Assistant. But, in obedience of the orders of the Tribunal dated 11.2.2011 in the said O.A.No.682/2009 the adhoc service came to be treated as regular service. Only thereafter, his claim was considered for 2nd financial upgradation and as on date of considering his claim, the Recruitment Rules, 2010 was in force. Under the circumstances, the question is whether fulfillment of the normal promotion norms shall be considered

A handwritten mark or signature consisting of a horizontal line with a stylized, looped character drawn through it.

(O.A.No.17/2013 - CAT, Ernakulam Bench)

under the Recruitment Rules, 1976 or under the Recruitment Rules, 2010? To answer this question, we may profitably rely upon the judgment of the Hon'ble Supreme Court in the case of *Y.V.Rangaiah & Ors. v. J.Sreenivasa Rao & Ors.* 1983 SCC (L&S) 382. The relevant portion of the judgment is as under:

"9..... The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub-Registrar Grade II will be according to the new rules on the zonal basis and not on the State-wide basis and, therefore, there was no question of challenging the new rules. 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."

17. By following the judgment in *Y.V.Rangaiah (supra)*, the Hon'ble Supreme Court in the case of *P.Ganeshwar Rao & Ors. v. State of Andhra Pradesh & Ors.* 1989 SCC (L&S) 123 held as under:

"11. In view of the foregoing we are of the view that the observations made by the Tribunal to the following effect, namely:

*In this case the rules for recruitment have been changed on April 28, 1980. Hence, *prima facie* it would not be legal to make direct recruitment against temporary vacancies, even if the vacancies were at an earlier date earmarked for direct recruits In these circumstances, there is, in my opinion, no scope for direct recruitment against temporary vacancies after April 28, 1980, i.e., the date on which the rules were amended as stated above are unsustainable. We hold that the amendment made on April 28, 1980 does not apply to the vacancies which had arisen prior to the date of the amendment."*

18. The said principle was further reiterated by the Hon'ble Supreme Court in the case of *State of Rajasthan v. R.Dayal (supra)* 1997 SCC

11

(O.A.No.17/2013 - CAT, Ernakulam Bench)

(L&S)1631 and *B.L.Gupta & Anr. v. M.C.D.* (1998) 9 SCC 223. In *B.L.Gupta (supra)*, the Hon'ble Supreme Court held as under:

"The Rules of 1978 prescribe the mode in which the promotions can be made. This mode has to be followed before the appointments could be made. If no statutory rules had existed it may have been possible, though we express no opinion on it, that the existing incumbents may have been regularised. Where, however, statutory rules exist, the appointments and promotions have to be made in accordance with the statutory rules specially where it has not been shown to us that the Rules gave the power to the appointing authority of relaxing the said Rules."

19. Subsequently, in the case of *Arjun Singh Rathore & Ors. v. B.N.Chaturvedi & Ors.* (2008) 2 SCC (L&S) 387, the Hon'ble Supreme Court by following the principles in *Y.V.Rangaiah (supra)* and *State of Rajasthan v. R.Dayal (supra)* held as under:

*"5. Mr. Calla, the learned Senior counsel for appellants has argued that the matter was fully covered by the judgment of this Court in *State of Rajasthan vs. R.Dayal* wherein it had been held that the vacancies to be filled by promotion were to be filed under the rules which were in operation on the date when the vacancies had occurred. Relying on and referring to an earlier judgment in the case of *Y.V.Rangaiah vs. J.Sreenivasa Rao* it was opined as under: (SCC p.422, para 8)*

"8... This Court has specifically laid (sic) that the vacancies which occurred prior to the amendment of the Rules would be governed by the original Rules and not by the amended Rules. Accordingly, this Court had held that the posts which fell vacant prior to the amendment of the Rules would be governed by the original Rules and not the amended Rules. As a necessary corollary, the vacancies that arose subsequent to the amendment of the Rules are required to be filled in in accordance with the law existing as on the date when the vacancies arose."

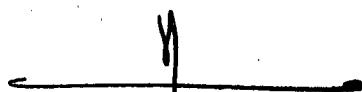
6. The above legal position has not been seriously disputed by the learned counsel for respondent Nos.6 &7. We are therefore of the opinion that the vacancies which had occurred prior to the

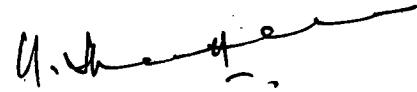
—

(O.A.No.17/2013 - CAT, Ernakulam Bench)

enforcement of the Rules of 1998 had to be filled in under the Rules of 1988 and as per the procedure laid down therein. We are therefore of the opinion that the judgment of the learned Single Judge needs to be restored. We order accordingly."

20. In view of the above decisions of the Hon'ble Supreme Court, we have no difficulty in arriving at the conclusion that the authorities in the process of ensuring that the applicant fulfills all the norms of normal promotion for the purpose of granting the 2nd financial upgradation under ACP Scheme has to follow the Rules, which was in vogue as on the date on which the applicant completed 24 years of service i.e. on 14.1.2004. The Recruitment Rules for promotion to the cadre of Research Officer which was in force as on 14.1.2004 is the Recruitment Rules of 1976. In view of the admitted position that the applicant does not have the prescribed qualification under the Rules of 1976, we decline to grant any of the prayer as sought by the applicant. O.A. deserves to be dismissed. Accordingly, the same is dismissed. There shall be no order as to costs.


(E.K. Bharat Bhushan)
Administrative Member


(U. Sarathchandran)
Judicial Member

nd/