

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 170/98

Tuesday this the 26th day of September, 2000.

CORAM

HON'BLE MR. A.M.SIVADAS, JUDICIAL MEMBER
HON'BLE MR. G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

P.Sayed Mohammed Koya
Police Constable No.219
Police Station Kavarathi
Lakshadweep.

Applicant

By advocate Mr. Thampan Thomas

Versus

1. The Administrator and
Inspector General of Police
U.T. of Lakshadweep, Kavarathi.
2. The Superintendent of Police
U.T. of Lakshadweep, Kavarathi.
3. K. Ashokan, Wireless Operator
C/o Superintendent of Police
U.T. of Lakshadweep, Kavarathi,
4. E.Visakanathan, Wireless Operator
C/o Superintendent of Police
U.T. of Lakshadweep, Kavarathi.
5. A.K. Thanka Koya, Wireless Operator
C/o. Superintendent of Police
U.T. of Lakshadweep, Kavarathi.
6. N.K.Lohithakshan, Wireless Operator
C/o. Superintendent of Police
U.T.of Lakshadweep, Kavarathi.
7. P.P.Venugopalan, Wireless Operator
C/o. Superintendent of Police
U.T. of Lakshadweep, Kavarathi.
8. Ratnakaran, Wireless Operator
C/o. Superintendent of Police
U.T. of Lakshadweep, Kavarathi.

Respondents

By advocate Mr. P.R.Ramachandra Menon for R1 & 2.
Mr.N.N.Sugunapalan for R9.

Application having been heard on 26th September, 2000,
the Tribunal on the same day delivered the following:

O R D E R

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


Applicant seeks to direct respondents 1 and 2 to
promote him as wireless operator with effect from the date on
which his juniors respondents 4 to 9 were promoted as wireless

...2/-

operators, to quash A-3 & A-5, to pay backwages to him from that date, to direct respondents 1 & 2 to extend the benefits of reservation for Scheduled Caste and Scheduled Tribe in the matter of promotion to the applicant to the post of wireless operator and also to consider the representation filed by the applicant.

2. Applicant is working as Police Constable under respondents 1 & 2. He was permitted to appear in a test for wireless operator and he passed the test in the year 1984. He has studied upto S.S.L.C. Wireless operator is equivalent to Additional Sub Inspector of Police. Since he has completed successfully the test for wireless operator, he is entitled for promotion as a wireless operator from the date on which his juniors were promoted. Respondents Nos. 4 to 9 are juniors to him. 3rd respondent is a wireless operator who has not passed SSLC examination. Applicant belongs to Scheduled Caste and is entitled to the benefits of reservation. The qualification can be exempted by the Administrator. The request of the applicant was rejected by the first respondent on the ground that no vacant post is available and the applicant's educational qualification is not relaxed. A-3 is one of the impugned orders issued by the Superintendent of Police, Union Territory of Lakshadweep, stating that there is no post of wireless operators/technicians remaining vacant in the department and his claim for relaxation of qualification is not based on realities. A-5 is the other impugned order which says that the applicant is not a matriculate and that for the post of wireless operators/radio technicians, the department has not waived the qualification prescribed even in respect of reserved vacancies.

...3/-



3. Official respondents resist the original application contending that the applicant was not considered for promotion by the then Departmental Promotion Committee since he did not have the requisite qualification of pass in S.S.L.C. examination. He is not senior to respondents 4 to 9. Applicant is placed at Sl.No.9 in the seniority list whereas respondent No.4 is placed at Sl.No.5. Respondents 3, 6 and 9 are also seniors to the applicant in the rank of police constable. A-3 and A-5 orders have been issued after careful consideration of the relevant facts and circumstances and rules on the subject. The grievance of the applicant if any arose as early as in the year 1985 when he was not considered by the DPC and merely because the applicant has filed representation subsequently will not give rise to a fresh cause of action. The original application is barred by limitation.

4. 9th respondent contends that he was appointed as police constable in the Lakshadweep Police Department as early as on 30.7.69 and was promoted as Assistant Sub Inspector (Wireless Operator) as early as in the year 1979. Applicant joined service only on 1.1.76 as police constable. Applicant is not liable to be considered for promotion to the post of wireless operator.

5. Respondents have raised the contention that the original application is barred by limitation. A-2 is the earliest representation submitted by the applicant. The same was rejected as per A-3. A-3 is dated 19.7.94. This OA was filed only on 2.2.98. Applicant has filed 2 other representations A-4 & A-6 dated 22.7.96 and 30.6.97 respectively. It is well settled that successive representations cannot save limitation. A-5 the other

impugned order is dated 4.3.97. On the basis of A-5, the applicant cannot seek condonation of delay or say that the OA is within time since what is denied as per A-5 was already denied as per A-3. So the cause of action has arisen from the date of A-3 and not from the date of A-5. Since A-3 is dated 19.7.94 and the OA was filed only on 2.2.98, original application is barred by limitation. On that ground original application is liable to be dismissed.

6. Still we will consider on merits also. Though the applicant with certain allegations has brought the 3rd respondent in the party array, on 9.7.98 it was submitted that the applicant is not seeking any relief against respondent No.3 and he does not wish to retain the 3rd respondent in the party array. It was further submitted that he may be permitted to delete the name of the 3rd respondent from the party array and the same was granted. So the position is that 3rd respondent is not in the scene at all.

7. Applicant proceeds on the footings that respondents 4 to 9 are juniors to him. Respondents have denied it. R9(A) says specifically that 9th respondent was working as wireless operator with effect from 2.10.79. It also says that he was confirmed as police constable on 15.9.71. Applicant admittedly entered service only on 1.1.76. It is so strange and curious that the applicant who entered service only in the year 1976 claims seniority in respect of 9th respondent who was confirmed on 15.9.71. As far as other private respondents are concerned though applicant says that they are juniors to him and the same having been denied by the official respondents it is upto the applicant to prove the same. There is no document produced by the applicant to show that he is

senior to respondents 4 to 8. As far as 9th respondent is concerned it is crystal clear that he is far senior to the applicant.


8. Applicant was not promoted as wireless operator for the reason that he is not possessed of the requisite qualification. The qualification prescribed is pass in SSLC. From the applicant's plea it is clear that he has not passed SSLC examination. From A-1 it is seen that the qualification prescribed is a pass in matriculation examination or equivalent examination. Learned counsel appearing for the applicant relying on A-1 notification dated 19th December, 1984 submitted that the applicant is entitled to relaxation in educational qualification. A-1 says that relaxation in educational qualification can be granted in the case of deserving candidates who are otherwise found suitable on the recommendations of the DPC. There is no case for the applicant that he was found otherwise suitable on the recommendations of the DPC. We asked the learned counsel of the applicant whether the DPC has recommended applicant's name and it was submitted that DPC has not recommended his name. That being so, relaxation in educational qualification as per A-1 does not arise in the case of the applicant.

9. R3 is the Recruitment Rules. As per R-3 there is power to relax. That power is vested with the Administrator. As per the power to relax :Where the Administrator is of the opinion that it is necessary or expedient to do so, for reasons to be recorded in writing, he may by order relax any of the provisions of those rules with respect to any class of category of persons except Rule 4. So as per R3, the relaxation available is not for an individual but only for a a

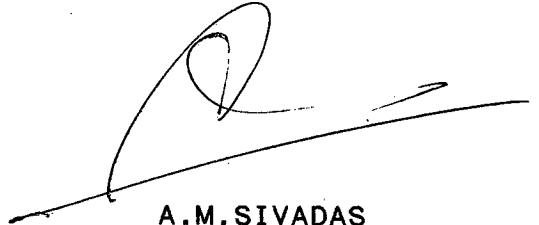
class or category of persons. Applicant cannot individually claim any such relaxation. On merits also, applicant has no case.

Accordingly original Application is dismissed.

Dated 26th September, 2000.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

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Annexures referred to in this order:

- A-3: True copy of the Memo as per F.No.18/370/80-Estt(Pol) dated 19.7.94 issued by the office of the Supdt. of Police, U.T. of Lakshadweep, Kavarathi.
- A-5: True copy of the Memo as per F.No.18/370/80-Estt(Pol) 750 issued by the office of the 1st respondent on 4.3.97.
- A-2: True copy of the representation submitted by the applicant before the 1st respondent on 18.4.94.
- A-4: True copy of the representation submitted by the applicant before the 1st respondent on 22-7-96.
- A-6: True copy of the representation submitted by the applicant before the 1st respondent on 30.6.97.
- A-1: True copy of the Notification issued by the 1st respondent as F.No.4/1/82-Pol dated 19.12.84.
- R9A: True copy of Office Memo No.F.No.1/5/92-Estt(Pol)/2952 dated 14.2.95 issued by the Supdt. of Police, U.T. Of Lakshadweep
- R3: True copy of the Notification No.4/45/74-Pol dated 13.10.77 issued by the Administrator, U.T. of Lakshadweep, Kavarathi.