

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. 173/2001

WEDNESDAY, THIS THE 21st DAY OF APRIL, 2004.

C O R A M

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER

1. M.P. Attakoya S/o Sayed Shaikkoya Thangal
Police Constable, Androth
residing at Chemmachery, Androth Island
UT of Lakshadweep
2. M.C. Hamza S/o late A.K. Hassainar
Police Conlstable, Kavaratti
residing at Mullachetta House
Kalpeni Island, UT of Lakshadweep
3. T.K.Mohammed S/o late M.P. Aboobacker
Police Constable, Kavaratti
residing at Thernikkad, Kavaratti
UT of Lakshadweep.
4. A.L. Shamsanoor S/o late A.K. Aboobacker
Police Constable, Kavaratti
residing at Adamillom,
Kavaratti, UT of Lakshadweep.
5. N. Vazilmuk S/o late N.Hamzath Haji
Police Constable, Kiltan
residing at Nabicham House, Kiltan
UT of Lakshadweep
6. T.V. Varghese S/o Ouseph Varkey
Police Constable, Kiltan
Permanently residing at Thuruthikkara House
Thathampally P.O.
Alappuzha
7. K.C. Seethikoyaaa S/o Yousef Haji
Police Constable, Androth
resindg at Achammada House, Keechery
Androth Island, UT of Lakshadweep.
8. P.V.P. Nallakoya S/o Koya
Police Constable, Agatti
residing at Shekummada House, Keechery
Androth Island,
UT of Lakshadwaeep
9. P. Attakoya S/o late Muthukoya
Policee Constable, Kavaratti
residing at Puthiyattanoda Padipura House
Androth, UT of Lakshadweep
10. A. B. Attakoya S/o Muthukoya
Police Constable, Agatti
residing at Edacherry, Androth Island
UT of Lakshadweep.

11. C.K. Damodaran Nair S/o Govindan Nair
Police Constable, Androth
residing at Keechery, Androth
UT of Lakshadweep
12. A.B. Koyamma Ss/o Sayed Koya K.P.
Police Constable, Kalpeni
residing at Veliyapura, Androth
U.T. of Lakshadweep.
13. S. Badarudeen S/o Koyamamkakoya
Police Constable, Kalpeni
residing at Police Quarters, Kalpeni
U.T. of Lakshadweep.

By Advocate Mr. Shafik M.A.

Vs.

1. Union of India represented by Secretary
Ministry of Home Affairs
New Delhi.
2. The Secretary to the Government of India
Department of Personnel & Training
Ministry of Personnel, Public Grievances &
Pension
North Block, New Delhi.
3. The Administrator & Inspector General of Police,
U.T. of Lakshadweep, Kavaratti.
4. The Superintendent of Police
U.T. of Lakshadweep, Kavaratti.

By Advocate Mr. C. Rajendran SCGSC for R 1-2
By Advocate Mr. S. Radhakrishnan, for R 3 & 4

The Application having been heard on 10.2.2004 this Tribunal delivered the following on 21.4.2004.

O R D E R

HON'BLE MR. H.P.DAS, ADMINISTRATIVE MEMBER

The applicants are Constables in the Police Department of the Lakshadweep Administration who are aggrieved by the denial of the benefits of the Assured Career Progression (ACP) Scheme. They had joined their present posts in 1971. They aver that in 1978 they had appeared in the qualifying tests for promotion to the rank of Head Constable. They also aver that the results of these tests

H. P. Das

were published but the copies of such results were not made available to them. They have 'reliably learnt' that they had qualified in the tests and would be entitled for promotion. While their seniors were promoted on the basis of these results since 1978, they were not promoted, while in 1991 fresh tests were announced. The applicants along with others who had appeared in the tests objected to this on the ground that they could not be asked to face a fresh examination when the 1978 list was still not exhausted. The proposed tests were cancelled by order dated 18.11.1991. No tests were held thereafter and in the meantime the Government of India introduced the ACP Scheme on 9.8.12999. The applicants who had not been promoted until then despite having put in 28 years of regular service, were eligible for the benefit of two financial upgradations straightaway on 9.8.1999 as per the scheme. The applicants claim that they fulfilled all conditions for regular promotion for receiving the benefit. Instead of this, the applicants were granted only one upgradation w.e.f. 25.3.2000. This date, according to them has no relevance as the upgradtions accrued to them from the date of introduction of the scheme itself i.e. 9.8.1999. The applicants accordingly represented against this order. The representation was rejected. Further, the applicants are aggrieved by issue of notification dated 25.3.2000 by which the recruitment rules for the posts of Head Constable and Assistant Sub Inspector were amended to remove the condition of passing required tests for promotion in respect of those who had crossed the age of 40 and 50 respectively. This, according to the applicants created an anomalous situation in which those after passing the tests and having as much as 29 years of service were not granted promotion while those

H. B. D.

despite not passing the tests were granted promotion only on the ground that they had crossed the age of 40 and 50. The applicants seek the following reliefs:

(i) To call for the records relating to Annexure A-1 and A-13 and to quash Annexure A1, A2 and A3 as illegal, arbitrary and violative of the provisions of the Constitution of India.

(ii) To declare that the applicants are entitled to be granted 2 financial upgradations with effect from 9.8.99, on the basis of Annexure A-5 scheme, considering their 29 years of service and to direct the respondents 3 & 4 to immediately refix the pay of the applicants after granting two financial upgradations with effect from 9.8.99 as per the provisions of Annexure A-5 scheme

(iii) To declare that imposing new conditions for granting regular promotions after the issuance of Annexure A5 scheme in order to deny the rightful claim of the applicants for getting the financial upgradations as per Annexure A-5 as illegal and arbitrary and to direct the respondents to implement Annexure A5 scheme as per the conditions for regular promotions prevailing as on the date of Annexure A5

(iv) To issue such other appropriate orders or directions this Hon'ble Court may deem fit just and proper in the circumstances of the case

(v) To grant the costs of this Original Application

2. The learned counsel for the applicants explaining the grounds for relief argued that the amendment of recruitment rules for promotion to the posts of Head Constable and Assistant Sub Inspector on 25.3.2000 (A3), as it came after the introduction of the ACP scheme on 9.8.1999 (A5) was illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India. Amendments to the recruitment rules for giving the benefit of age in promotion created a new class of beneficiaries and while compromising the basic parameters of eligibility for the promotional posts, it deprived the applicants of their rightful due on the one hand and granted it to a class of persons who were otherwise not eligible for promotion, but for the relaxation of the

H. J. D.

requirement. Those who had passed the tests and were not yet 40 or 50 were thus discriminated by allowing the benefits to those who had not passed the test and had crossed the age of 40 or 50. Thus, unwarranted relaxation of promotional norms, led to the arbitrary implementation of the ACP Scheme.

3. The learned counsel for the respondents, pointed out that 'no papers could be traced out' to establish that tests were held in 1978 and the applicants had appeared the tests and were declared successful. He contended that while the test proposed in 1991 were cancelled due to technical reasons, tests were conducted later on 28.7.2000 and promotions were being made on the basis of the amended recruitment rules under which those above 40 and 50 are not required to take the promotional tests for the posts of Head Constables and Asstt. Sub Inspector respectively. The applicants were not eligible for the first financial upgradation on 9.8.1999 as they had not passed the test as per record although they claim to have passed the tests in 1978. Assuming that they had passed the tests for promotion to the rank of Head Constable in 1978, they would still not be eligible for second ACP upgradation on 9.8.1999 as they had not passed the tests for promotion to the rank of Assistant Sub Inspector on 9.8.19899. The learned counsel for the respondents referring to the amendment to the recruitment rules by notification dated 25.3.2000 clarified that the real intention of amending the recruitment rules was the make available the benefits of ACP upgradation to those like the applicants who had not passed the required tests although they had crossed the age of 40 or 50. By virtue of this relaxation 137 Constables including the applicants,

M. S. D.

could be given the benefit of first ACP atleast from the date of notification. They could not have been given the benefit on 9.8.1999, as on that date the requirement of passing the test was not relaxed in the recruitment rules. Insofar as the second upgradation was concerned, the applicants could not have got the benefit as they had not passed the required test and under the amended recruitment rules, they would be entitled to the second upgradation only after they have crossed 50, not earlier. As a special case, even Constables who were awarded one financial upgradation (like the applicants) under the shelter of amended recruitment rules dated 25.3.2000 were permitted to appear for the promotion test of Asstt. Sub Inspectors only for the purpose of second upgradation under ACP Scheme. The applicants did not avail this opportunity. Referring to the alleged discrimination on the basis of age perpetrated by the notification relaxing the condition of passing promotion test for those above 40 and 50, the learned counsel for the respondents cited Rangaswami Vs Government of Andhra Pradesh (AIR 1990 SC 535) in which it was held that as far as the qualifications prescribed for the post and its relevancy and suitability are concerned it is not for the Courts to consider and assess and it is the prerogative of the executive. He also referred to V.K. Sood Vs. Secretary, Civil Aviation and Others (AIR 1990 SC 535) in which the Apex Court had held that the statutory rules cannot be impeached even on the ground that they prescribe tailor made qualifications to suit particular individuals. Thus, the learned counsel for respondents contended, the amendment of the recruitment rules dated 25.3.2003 so as not to subject to test those who had crossed the age of 40 and 50 for promotion as Head Constable and Assistant Sub Inspector,

12-1-24

respectively cannot be questioned as being discriminatory.

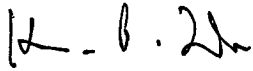
4. Heard. we recognise that the applicants have no evidence to establish that they had appeared and passed some promotion tests in 1978. The respondents have also averred that no papers relating to any such examination could be located. In the absence of any evidence to suggest that the applicants had indeed appeared and passed the examination and in the light of the averment of the Lakshadweep Police Department that no papers in respect of any such test could be located, we have to accept that the applicants had not passed the required tests for promotion to the rank of Head Constable. Consequently on 9.8.1999, despite putting in 28 years of regular service they could not be granted the first financial upgradation. They were rightly granted the first financial upgradation on 25.3.2000 taking advantage of the relaxed recruitment rules. We do not find the relaxation discriminatory in any manner. Once it is accepted that the applicant had not passed the tests for promotion to the rank of Head Constable, and that the first upgradation was made available as a consequence of relaxed recruitment rules, for those who had crossed 40, the next stage would follow automatically. We see from the declarations of age in the OA that all the applicants have crossed 50, and we also recognise that they have not passed the tests for promotion to the rank of Asstt. Sub Inspector, and they would thus be entitled to receive the second upgradation after the dates they completed 50 years of age along with other such eligible persons. The respondents have also averred to the application of this principle for second upgradation.

12-8-22

Incidentally, we would like to point out that applicant NO. 8 - P.V.P Nallakoya has been shown in the gradation list at Sl. No. 207 having joined as Constable in 1974 and not in 1971.

5. The Original Application is dismissed. No order as to costs.

Dated the 21st April, 2004.



H. P. DAS
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

kmn