

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.185/02

Wednesday, this the 24th day of April, 2002.

CORAM

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

K.Sayed Mohammed
Kunnasada House
Androth Island
Chemmacherry

...Applicant.

(By advocate Mr.K.B.Ganesh)

Versus

1. The Administrator
Union Territory of Lakshadweep
Kavarathi.
2. Union of India rep. by Secretary
Government of India
Ministry of Home Affairs
New Delhi.
3. The Executive Engineer
Department of Electricity
Administration of Union Territory
of Lakshadweep, Kavarathi.

...Respondents.

(By advocate Mr.S.Radhakrishnan (R1 &3)
(Mr.C.Rajendran, SCGSC for R2)

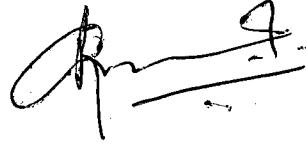
The application having been heard on 24th April, 2002, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant, a Lineman in the Electricity Department of Kavarathi, Union Territory of Lakshadweep Islands has filed this Original Application seeking the following reliefs:

- i. An order setting aside Annexure A-1 office memorandum issued by the 3rd respondent.
- ii. An order staying all further proceedings pursuant to Annexure A-1 office memorandum till a final decision is taken on Annexure A-2 representation preferred by the petitioner on merits after affording an opportunity of personal hearing to him and other similarly circumstanced persons.



2. According to the applicant, he was appointed as a work charge helper in the Electricity Department on 18th October, 1979. In due course he was promoted as Oilman in 1982, promoted as Helper for Lineman in 1986 and promoted as Lineman in 1997. The Administration of UT of Lakshadweep, Department of Electricity issued a circular dated 15.1.2002 (Annexure A-1). Aggrieved by the said circular, the applicant has approached this Tribunal seeking the above reliefs.

3. We heard the learned counsel for the applicant. The learned counsel for the applicant took us through A-1 and submitted that the applicant apprehending that his seniority will get affected as Lineman and he is likely to be posted as Engine Driver cum Switch Board Attendant has filed a representation to the authorities and according to him, without hearing him, the respondents should not act on A-1.

4. On a careful consideration of the submissions made by the learned counsel for the applicant and on a perusal of the contents of the OA, we find that the applicant has no subsisting cause of action at this stage to approach this Tribunal. A-1 impugned in this OA reads as under:

"Administration of the
Union Territory of Lakshadweep
(Department of Electricity)
Kavarathi-682 555

F.No.37/7/2001-Estt/Ele(Part)/92

Dated 15.1.02

OFFICE MEMORANDUM

Sub: Establishment - Department of Electricity Transfer and posting of Lineman - Regarding.

Some complains have been received by the undersigned from some of the staff from Minicoy stating that some Helper for Lineman has been shifted to the post of Lineman ignoring their seniority in the grade.



In this connection, it is to inform that, as per the recommendations of Vth Central Pay Commission, the scale of pay of Lineman, Engine Driver-cum-Switch Board Attendant/ Attendant/ Helper for Lineman/ Helper for Meter Testing and Mechanical fitter are merged into a single elongated pay scale 2610-4000 with effect from 1.1.1996. Since the scales of pay of the above categories of staff are the same promotion cannot be effected within the same scale of pay. The Department has, therefore, already proposed to amend the existing Recruitment Rules to enable to make appointments to the above posts inter changeable and also propose to amend charter of duties of Lineman/ED/Attendant/HLM/HMT/Mechanical fitter etc. so that the duties of these cadres can be allocated by ensuring equal status change in designation of these cadres does not in any way affect the existing seniority and promotion prospects. The said placement has been made with reference to the availability of the vacant posts in each islands and they will not get any seniority in the grade of Lineman over the other senior Helper for Lineman. Further they will be shifted to the post of Helper for Lineman whenever required in such island. Therefore, the appointment of junior Helper to Lineman as Lineman in any particular island will not construed promotions and get seniority in the grade of Lineman over their seniors in the grade of Helper for Lineman.

Therefore, the action taken by the department is in order within the provisions of existing Recruitment Rules in force and not vitiated the seniority of any of the senior Helper for Lineman since a inters seniority is to be followed in the grade of Lineman/Engine Driver/Attender/Mechanical fitter/Helper for Lineman/Helper for Meter Testing etc. in future.

Therefore, the Assistant Engineer (Ele), Minicoy is directed to bring the content of the OM to the notice of all employees working under him for their future guidance.

Sd/-
(C.M.Ahmed)
Executive Engineer

To
The Assistant Engineer (Ele), Minicoy".

5. On a perusal of the above office memorandum, we find that the Department has only proposed certain actions for amendment of the Recruitment Rules etc. consequent on the merger of the grades of different categories of employees into a single elongated pay scale of Rs.2610-4000 with effect from 1.1.96. We also find that it has been made clear that junior helper to Lineman will not get any seniority in the grade of Lineman over their seniors in the grade of helper for Lineman. Whatever action is to be done by the respondents and for what purpose the



office memorandum was issued are made clear in the memo itself. We also do not find any basis for the applicant's apprehension that the department will post him as Engine Driver cum Switch Board Attendant on the basis of A-1. On a specific query to the learned counsel for the applicant, he could not enlighten us as to, according to the service conditions, what is his right to be heard before any Recruitment Rule is proposed to be modified. He cited the judgement of the Hon'ble Supreme Court in the case of H.L.Trehan and others Vs. Union of India and others AIR 1989 SC 568. We have considered the judgement cited by the learned counsel for the applicant. In the said judgement, the Hon'ble Supreme Court has held as under:

"11. One of the contentions that was urged by the respondents Nos. 1 to 4 before the High Court at the hearing of the writ petition, as noticed above, is that unguided and arbitrary powers have been vested in the official by sub-sec.(1) of S.11 for the alteration of the terms and conditions of service of the employees. It has been observed by the High Court that although the terms and conditions of service could be altered by CORIL, but such alteration has to be made 'duly' as provided in sub-sec.(2) of S.11 of the Act. The High Court has placed reliance upon the ordinary dictionary meaning of the word 'duly' which, according to Concise Oxford Dictionary, means 'rightly, properly, fitly' and according to Stroud's Judicial Dictionary, Fourth Edition, the word 'duly' means 'done in due course and according to law'. In our opinion, the word 'duly' is very significant and excludes any arbitrary exercise of power under S.11(2). It is now a well established principle of law that there can be no deprivation or curtailment of any existing right, advantage or benefit enjoyed by a Government servant without complying with the rules of natural justice by giving the Government servant concerned an opportunity of being heard. Any arbitrary or whimsical exercise of power prejudicially affecting the existing conditions of service of a Government servant will offend against the provision of Art. 14 of the Constitution. Admittedly, the employees of CORIL were not given an opportunity of hearing or representing their case before the impugned circular was issued by the Board of Directors. The impugned circular cannot, therefore, be sustain as it offends against the rules of natural justice."



6. Annexure A-1 impugned in this OA does not in any way indicate that the respondents are going to take any action which would adversely affect the applicant in this OA. Moreover, it cannot be presumed that the authority would take action to amend the Recruitment Rules, etc. contrary to the law of the land.

7. Under these circumstances, finding no merit in this OA at this stage and the applicant not having any cause of action, we reject this original Application at the admission stage itself.

Dated 24th April, 2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

aa.

APPENDIX

Applicant's Annexures:

1. A-1 : True copy of the office memorandum dated 15.1.2002 issued by the 3rd respondent.
2. A-2 : True copy of the representation dated 12.3.02 preferred by the petitioner.

npp
30.4.02