

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 201/91 199

DATE OF DECISION 23.3.93

M.Bhaskaran Applicant (s)

Mr.M.R.Rajendran Nair Advocate for the Applicant (s)

Versus

The Superintendent of Police, Respondent (s)
Union Territory of Lakshadweep,
Kavaratti and 2 others.

Mr.N.N.Sugunapalan Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. N.DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not? Y
3. Whether their Lordships wish to see the fair copy of the Judgement? N
4. To be circulated to all Benches of the Tribunal? N

JUDGEMENT

(Hon'ble Mr.S.P.Mukerji,Vice Chairman)

In this application dated 31.1.1991 the applicant who has been working as a Sub Inspector of Police under the Lakshadweep Administration has challenged the impugned order dated 8.1.90 by which his representation dated 14.5.76 for retrospective promotion as Sub Inspector was rejected. He has prayed that he should be declared to be entitled to be promoted as Sub Inspector on the basis of the recommendations of the D.P.C which met on 22.1.73. The brief facts of the case are as follows.

2. The applicant joined the Lakshadweep Police Force as Constable in 1967 and was promoted as Head Constable on 18.1.68. In accordance with the Recruitment Rules of 1961 for the post of Sub Inspectors , Head Constables who have passed S.S.L.C and have put in five years of service as Head Constable were eligible for promotion as S.I. Direct recruitment

was to be resorted to in the absence of promotees. These rules were amended on 5.3.70 providing for 50% direct recruitment (Annexure-III). On 12.4.73 the Recruitment Rules were further amended providing that promotion to the post of Sub Inspector could be effected only on satisfactory completion of Sub Inspectors Course. The rules were further amended on 12.7.74 whereby the promotees were enabled to undergo the qualifying course during the period of probation. The rules were further amended on 13.10.77 deleting the training course. The applicant's grievance is that before 12.4.73 when completion of Sub Inspector's course was prescribed for promotion, the Departmental Promotion Committee met on 22.1.73 and the applicant and three other Head Constables were included in the Select List. This Select List, as admitted by the respondents, was also approved by the Administrator. But no promotion was made from that Select List because the Deputy Superintendent of Police who was then the Head of the Department suggested that the promotion of the applicant and three others recommended by the D.P.C be given effect to after they have undergone Sub Inspectors Training at Police Training College in view of the fact that they lacked experience in investigation work and their knowledge in law was inadequate. Accordingly the recommendations of the D.P.C were not given effect to. Again in 1975 a departmental promotion test was conducted for the selection of Sub Inspectors. The applicant appeared in that test and on the basis of this test and the recommendations of the D.P.C, the applicant was promoted as Sub Inspector on 14.11.76. According to the applicant when he was not promoted on the recommendation of 1973 DPC, he represented against, the prescription of the qualifying course and again on 14.5.76, he represented for retrospective promotion. There was no reply to his representation till the impugned order was passed on 8.1.90 rejecting the same mainly on the ground that the Select List prepared

by the D.P.C in 1973 lapsed on the expiry of one year and six months. The applicant further states that in the 1979 Seniority List the applicant was assigned the date of promotion as 4.11.76. In the 1987 Seniority List dated 31.8.1987 he was shown senior to S/Shri Nallakoya and Joseph who had been appointed as Sub Inspectors on 29.5.78 and 2.9.78. On 5.5.89 another Seniority List was issued by the respondents in which these two Sub Inspectors were shown senior to the applicant by taking into account their training period for seniority. The applicant challenged this Seniority List in O.A. 475/89 which was disposed of by the Tribunal with the direction to the respondents to dispose of the representation of the applicant against the Seniority List. While so, in another O.A. 466/89 filed by another colleague, the Seniority List of 1989 was set aside with liberty to the respondents to review the Seniority List after giving notice to all concerned. The applicant's contention is that he is entitled to be promoted on the basis of the 1973 Select List as when the D.P.C met, the Recruitment Rules in force at that time did not have any provision for completion of S.I course. He has also contended that there were vacancies available at that time against which he could have been appointed.

3. The respondents have stated that the applicant and others who were included in the 1973 Select List were not promoted as Sub Inspector in the public interest as it was thought that they lacked experience in investigation work and they needed training. They have also argued that the Select List was prepared not against the existing vacancies but against the anticipated vacancies. Their further contention is that having appeared in the departmental test for promotion as Sub Inspector in 1975, ^{he} cannot now challenge his non-promotion on the basis of the 1973 Select List. As regards S/Shri Nallakoya and Joseph, they have stated that they were directly recruited as Sub Inspector and they joined the Police Training College on 15.7.76, i.e, prior to the promotion of the applicant on 14.11.76

and therefore, they were held to be senior to the applicant. Though the respondents have conceded that the Seniority List of 5.5.89 in which these two officials were shown as senior to the applicant had been set aside by the Tribunal in O.A.466/89, they have argued that the Tribunal had not considered retrospective promotion of the applicant from 1973. They have stated that even though the applicant was promoted on the recommendation of the D.P.C. of 1975 with effect from 14.11.76 since he had not passed the qualifying course of six months as prescribed in the Recruitment Rules he was assigned the date of promotion from 13.7.77 when the rules were amended deleting the provision of training course. The applicant did not raise any objection to his promotion with effect from 14.11.76 till the Seniority List of 5.5.89 was published.

4. In the rejoinder the applicant has referred to various orders sanctioning posts of Sub Inspector to indicate that in 1973 when the DPC met there were posts of Sub Inspectors available and the contention of the respondents that the Select List was for anticipated vacancies is not correct. He has argued that he was sent on three months training course on investigation during 1970(Annexure -XII) and that his promotion in 1973 should have been made on the basis of the rules as they stood then.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The first point to be decided is whether the applicant can at this distance of time challenge his non-promotion in 1976. The respondents concede that the applicant was included in the Select List by the D.P.C which met on 22.1.73 and that Select List had the approval of the Administrator who is the competent authority and yet this was not given effect to because of certain objections raised by the then Deputy Superintendent of Police who was the Head of the Police Department. According to

the applicant he had represented on 9.4.73 requesting the Deputy Superintendent of Police to initiate steps for giving effect to the recommendations made by the D.P.C without waiting for the qualifying course which he had suggested to be included in the Recruitment Rules. This was followed by another representation dated 14.5.76 claiming promotion on the basis of the inclusion of his name in the Select List prepared by the D.P.C in January, 1973. He prayed in that representation that he should be promoted with effect from the date from which his promotion was recommended by the D.P.C and approved by the Administrator in 1973. It may be noted that the office of the Administrator itself in the note dated 7.2.1973 at Annexure-V addressed to the Deputy Superintendent of Police , conveyed as follows:-

"The Departmental Promotion Committee has recommended the following Head constables who are possessing the required experience and educational qualifications for appointment as Sub Inspectors of Police in L.M. & A. Islands. Administrator has approved this recommendation.

1. Shri K.C.Balakrishnan Nair
2. Shri T.Sadasivan
3. Shri K.Narayanan
4. Shri M.Bhaskaran

Necessary action may please be taken to depute them for the next course of training for Sub Inspectors of Police in Kerala.

A sealed cover containing their C.Rs is enclosed. Its receipt may also be acknowledged."

Unfortunately for the applicant he was neither promoted nor sent for the training. Fourteen years after he had filed the representation on 14.5.76, the respondents rejected his representation at Annexure-I dated 8.1.90 giving various reasons. This also disposed of the applicant's representation dated 22.10.1990 and 14.12.1990. Thus the cause of action had shifted from 1973 to 8.1.90 when Annexure-I was issued. In that light, the application cannot be dismissed as time-barred.

6. We are also persuaded to feel that the applicant by the virtue of the communication of the office of the Administrator dated 7.2.1973 had developed a vested right for promotion as Sub Inspector. That note indicated that the D.P.C had found the applicant and three other Head Constables as 'fit' for promotion as Sub Inspector of Police and possessing the required experience and educational qualifications. The Administrator who is the Head of the Union Territories Administration had approved the same and it was only a formality for the Deputy Superintendent of Police to give effect to the Select List. He did not do it, but got the Recruitment Rules amended on 12.4.73. This amendment (Annexure-III) did not have retrospective effect and cannot foreclose the promotion of the applicant and take away his vested right of such promotion which he had acquired by the note dated 7.2.1973 by which the Select List had been approved by the Administrator, who had directed the Deputy Superintendent of Police to initiate action for the applicant's promotion.

7. The contention of the respondents that the Select List was prepared against the anticipated vacancies and since the anticipated vacancies materialised after the amendment, the applicant's promotion will have to be governed by the amended Recruitment Rules, is not acceptable to us. It is conceded that the D.P.C met on 22.1.73 and the Administrator's approval to the Select List was given the formal shape by Annexure-V dated 7.2.1973. The amendment to the Recruitment Rules providing for a Sub Inspector's course was admittedly promulgated on 12.4.1973. The selection process for promotion of the applicant had thus been initiated and completed before the amendment. Accordingly, the applicant's selection in 1973 cannot be frustrated by subsequent amendment of the Recruitment Rules. In P.Mahendran and others vs. State of Karnataka and others, AIR 1990 SC 405, a three Judge Bench of the Hon'ble Supreme Court relying upon an earlier ruling of that

Court in A.A.Calton v. Director of Education, AIR 1983 SC 1143, observed as follows:-

" 5. It is well settled rule of construction that every statute or statutory Rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the Rules showing the intention to affect existing rights the Rule must be held to be prospective. If a Rule is expressed in language which is fairly capable of either interpretation it ought to be construed as prospective only. In the absence of any express provision or necessary intendment the rule cannot be given retrospective effect except in matter of procedure. The amending Rule of 1987 does not contain any express provision giving the amendment retrospective effect nor there is anything therein showing the necessary intendment for enforcing the Rule with retrospective effect. Since the amending Rule was not retrospective, it could not adversely affect the right of those candidates who were qualified for selection and appointment on the date they applied for the post, moreover as the process of selection had already commenced when the amending Rules came into force. The amended Rule could not affect the existing rights of those candidates who were being considered for selection as they possessed the requisite qualifications prescribed by the Rules before its amendment moreover construction of amending Rules should be made in a reasonable manner to avoid unnecessary hardship to those who have no control over the subject matter."

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"In view of the above the appellants' selection and appointment could not be held as illegal as the process of selection had commenced in 1983 which had to be completed in accordance with law as it stood at the commencement of the selection. The amended Rule could not be applied to invalidate the selection made by the Commission. Strangely the Tribunal did not follow the latest authority of this Court as laid down in Calton's case, (AIR 1983 SC 1143) on the ground that the view taken in that case was contrary to the Constitution Bench decision of this Court in State of Andhra Pradesh v. T.Ramakrishna Rao, (1972) 4 SCC 830: (AIR 1972 SC 2175). We have carefully considered the decision but we do not find anything therein contrary to the view taken in Calton's case."

(emphasis added)

In N.T. Bevin Katti, etc. vs. Karnataka Public Service Commission and others, AIR 1990 SC 1233, the Hon'ble Supreme Court after surveying the earlier rulings including the one given in Rangaiah's case (AIR 1983 SC 852), observed as follows:-

"Lest there be any confusion, we would like to make it clear that a candidate on making application for a post pursuant to an advertisement does not acquire any vested right for selection, but if he is eligible and is otherwise qualified in accordance with the relevant Rules and the terms contained in the advertisement, he does acquire a vested right for being considered for selection in accordance with the Rules as they existed on the date of advertisement. He cannot be deprived of that limited right on the amendment of Rules during the pendency of selection unless the amended Rules are retrospective in nature."

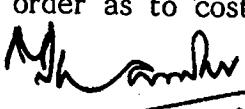
"It is a well accepted principle of constructions that a statutory rules or Government order is prospective in nature unless it is expressly or by necessary implication made to have retrospective effect. Where proceedings are initiated for selection by issuing advertisement, the selection should normally be regulated by the then existing rules and Government orders and any amendment of the rules or the Government order pending the selection should not affect the validity of the selection made by the selecting authority or the Public Service Commission unless the amended rules or the amended Government orders issued in exercise of its statutory power either by express provision or by necessary intendment indicate that amended Rules shall be applicable to the pending selections. See P.Mahendra v. State of Karnataka, (1989)4 JT 459:(AIR 1990 SC 405)."

In view of the clear rulings of the Hon'ble Supreme Court, we have no doubt in our mind that the applicant is entitled to promotion as Sub Inspector on the basis of the Select List prepared in January, 1973 as approved by the Administrator on 12th April 1973 at Annexure-V in accordance with the rules which existed on 22.1.73, against the vacancies which arose during the validity of the Select List, i.e, during the period of 18 months commencing from 12th April, 1973.

8. As regards the contention of the respondents that the applicant having appeared in the promotion test in 1975 without any objection can be deemed to have given up his right of promotion on the basis of the 1973 Select List, we find it difficult to accept the same. The applicant had admittedly represented for his promotion on the basis of the 1973 Select List on 9.4.73 and 14.5.76. It was incumbent upon the respondents to give a suitable reply to these representations and if after getting such reply he had appeared in the promotion test in 1975, it could be said that he had given up his right of promotion of 1973. The respondents have taken 14 years to dispose of the applicant's representation of 14.5.76 by the impugned order at Annexure-I dated 8.1.90. It is, thus, clear that the respondents themselves kept the issue open. It, therefore, does not lie in their mouth to say that by appearing in the promotion test in 1975, the applicant had closed his case of promotion in 1973. The respondents themselves have

not taken the plea of estoppel against the applicant while rejecting his representation at Annexure-1.

9. In the conspectus of facts, circumstances and law, as discussed above, we find that non-implementation of the direction of the Administrator at Annexure-V regarding giving effect to the recommendations of the DPC of 1973, is arbitrary and unfair to the applicant. However, accepting the contention of the respondents that the Select List as approved by the Administrator on 7.2.1973 was valid for 18 months, the applicant would still be entitled to promotion as Sub Inspector in his turn in the Select List if any vacancy arose during that period of validity. Accordingly, we allow the application to the extent of setting aside the impugned office memorandum dated 8.1.90 at Annexure-I and direct the respondents to promote the applicant as Sub Inspector, if any vacancy arose in the promotion quota of Sub Inspectors during the period of validity of the Select List, i.e., the period between 7.2.73 and 7.8.74, to which the applicant could have been appointed on the basis of his 4th position in the Select List. If the applicant is so promoted, he should be given all consequential benefits including that of seniority in accordance with law. There will be no order as to costs.


(N.DHARMADAN)
JUDICIAL MEMBER

23.3.93


23.3.93
(S.P.MUKERJI)
VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

MA No. 1218/94 in RA No. 64/94
and
RA No. 64/94 in OA No. 201/91

Friday, this the 19th day of January, 1996

CORAM:

HON'BLE MR JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN
HON'BLE MR P.V. VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

1. P.P. Sreedhara Kurup,
Sub Inspector of Police,
Kalpeni Island,
Union Territory of Lakshadweep. .. Review Applicant

By Advocate Mr. PV Mohanan

Versus

1. M. Bhaskaran, S/o M. Kunju,
Sub Inspector of Police,
Vigilance & Anticorruption Unit,
Lakshadweep, Kavaratti.

2. The Superintendent of Police,
Union Territory of Lakshadweep,
Kavaratti.

3. The Administrator,
Union Territory of Lakshadweep,
Kavaratti.

4. Union of India represented by
the Secretary,
Ministry of Home Affairs,
New Delhi. .. Respondents

By Advocates Mr. MR Rajendran Nair (R1) and
Mr. MVS Nampoothiry (R2 & R3)

The applications having been heard on 19th January, 1996,
the Tribunal on the same day delivered the following:

O R D E R

CHETTUR SANKARAN NAIR(J), VICE CHAIRMAN

RA 64/94 is to review the order of this Tribunal in OA
201/91 whereby respondents were directed:

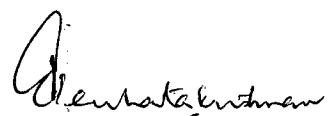
"to promote the applicant as Sub Inspector if any
vacancy arose in the promotion quota of Sub Inspectors
during the period of validity of the Select List ...

between 7.2.73 and 7.8.74, to which the applicant could have been appointed on the basis of his 4th position in the Select List. If the applicant is so promoted, he should be given all consequential benefits including seniority in accordance with law ...".

2. We read the directions as tentative and conditional, dependent on certain unascertained factors. Be that as it may, applicant therein was promoted. Review applicant submits that the promotion would lead to variation of seniority and that seniority list not having been challenged, by order in collateral proceedings and without hearing him, seniority cannot be varied. There is force in the submission. However, as pointed out by Counsel appearing for the Administration and for the parties the event that may prejudice the review applicant is yet to arise. It is also admitted and correctly too, that if seniority is varied based on a collateral direction, applicant will have a cause of action and that he can agitate it in appropriate proceedings.

3. The Review Application is delayed by 486 days. We do not think that there is good justification for the delay. We dismiss the Miscellaneous Application and the Review Application, noticing the position of law agreed to by all parties hitherto. There shall be no order as to costs.

Dated the 19th January, 1996



P.V. VENKATAKRISHNAN
ADMINISTRATIVE MEMBER



CHETTUR SANKARAN NAIR(J)
VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

.....

M.A. 1676/94 and R.A. 102/94

in O.A. 201/91.

Thursday this the 19th day of October, 1995.

CORAM:

HON'BLE MR. JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN
HON'BLE MR. PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

The Superintendent of Police,
U.T. of Lakshadweep, Kavaratti .. Review Applicant
(By Advocate Shri MVS Nampoothiri)

Vs.

M. Bhaskaran,
Sub Inspector of Police,
Vigilance & Anticorruption Unit,
Lakshadweep, Kavaratti. .. Respondent

(By Advocate Shri MR Rajendran Nair)

The application having been heard on 19th day of October, 1995,
the Tribunal on the same day delivered the following:

O R D E R

CHETTUR SANKARAN NAIR(J), VICE CHAIRMAN

Applicant seeks to review the orders in
OA-201/91. The application is filed out of time and
MA-1676/94 is to condone the delay in filing the Review
Application.

2. Learned Standing Counsel appearing for applicant
submits that the issue involved is very important and an
appointment has been granted to an official after
long years and without even hearing the affected parties.

In spite of the persuasive arguments of the Learned Standing Counsel, we do not find our way to condone the long delay of 586 (Five hundred and eighty six) days. The reason stated is that the files had to move from table to table and that "there were certain Law and Order situations, in addition to the calamities of Monsoon." We do not think that there has ever been a monsoon or calamity in the Island which lasted five hundred and eighty six days. This is a case of sheer neglect. Miscellaneous Application is dismissed and consequently, the Review Application is also dismissed. No costs.

Thursday this the 19th day of October, 1995.

P. Venkatakrishnan
PV VENKATAKRISHNAN
ADMINISTRATIVE MEMBER

Chettur Sankaran Nair
CHETTUR SANKARAN NAIR(J)
VICE CHAIRMAN

rv19/10