

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
ORIGINAL APPLICATION NO:204/2004
DATED THE 19th DAY OF SEPTEMBER,2006**

CORAM:

**HON'BLE SMT. SATHI NAIR, VICE CHAIRMAN
HON'BLE SHRI GEORGE PARACKEN, MEMBER(J)**

1. K.C.Syed,
 Laboratory Technician,
 Government Hospital Island,
 Residing at Minicoy Island
 U.T. Of Lakshadweep.
2. Zainul Abid,
 Laboratory Technician,
 Public Health Centre,
 Kiltan Island, residing at Kiltan Island,
 U.T. Of Lakshadweep.
3. K.K.Moosa,
 Laboratory Technician,
 Indira Gandhi Hospital,
 U.T. Of Lakshadweep,
 Kavaratti, Residing at Kavaratti.
4. P.V.P.Badarudeen,
 Laboratory Technician,
 C.H.C.Androth Island,
 Residing at Androth Island,
 U.T. Of Lakshadweep.
5. M.C.Mohamed Koya,
 Laboratory Technician,
 Medical Directorate,
 U.T. Of Lakshadweep,
 Kavaratti, Residing at Kavaratti.
6. K.Akbar Ali,
 Laboratory Technician, C.H.C.Androth Island,
 Residing at Androth Island,
 U.T. Of Lakshadweep.
7. M.C.Mohammed Hussain,
 Laboratory Technician,
 Public Health Centre, Kadamath Island,
 Residing at Kadamath Island.

8. P.L. Attakoya,
Laboratory Technician,
Indira Gandhi Hospital,
U.T. Of Lakshadweep, Kavaratti,
Residing at Kavaratti. ... Applicants

By Advocate Mr.P.V.Mohanan

V/s.

1. The Administrator,
U.T. of Lakshadweep
Kavaratti.
2. Union of India Represented by
Secretary to Government,
Ministry of Personnel,
Public Grievances and Pension,
New Delhi. ... Respondents

By Advocate Mr.S.Radhakrishnan

This OA having been heard on 19th September, 2006, the Tribunal on the same day delivered the following:-

(ORDER)

Hon'ble Smt.Sathi Nair, Vice Chairman

The applicants are directly recruited as Laboratory Technician in the department of Medical and Health Services, U.T. Of Lakshadweep. They were granted the revised scale of pay of Rs.4500-7000 with effect from 1/1/1996 in the category of Laboratory Technician. Afterwards there was a merger of the posts of Laboratory Technicians and Senior Laboratory Technicians to one grade of Rs.4500-150-7000. Thereafter under the ACP scheme they were granted higher pay scale of Rs.5500-9000 and Rs.6500-10500 vide Annexure A-2(1) order dated 15/4/2000 .

Subsequently, it is alleged that the respondents have issued the impugned order dated 20/2/2004 (Annexure A6) in gross violation of the principles of natural justice, withdrawing the ACP benefits.

2. When the matter came up for hearing, the learned counsel for the applicants has brought to our notice that the respondents have revised and refixed the pay of the applicants on receipt of certain complaints from some Para Medical Staff and after the matter was examined at various levels in the Department as well as in the Finance Department of the Administration. The complaint referred to was from paramedical staff stating that the granting of 1st and 2nd ACP in the scale of Rs.5500-175-9000 and Rs.6500-10500/- was wrong as it was found that the Screening Committee which met on 12/4/2000 has recommended for awarding the 1st ACP to Laboratory Technicians/Senior Laboratory Technicians working in the merged scale of Rs.4500-125-7000 (revised) to the higher scale of Rs.5500-175-9000 (revised) by adopting the pay scale of Technical Assistants available in the Lakshadweep AIDS Control Society sanctioned by National AIDS Control Organisation of Ministry of Health and Family Welfare, taking the view that the post of Technical Assistant in the Lakshadweep AIDS Control Society is not a promotion post for Laboratory Technician/Senior Laboratory Technicians working in the department, the Screening Committee revised its recommendation that the financial upgradation shall be given only to the immediately next higher (standard/common) pay scale as indicated in the OM dated 9/8/1999

R

Government order regarding ACP Scheme for Central Government Civilian Employees and consequently upgradation was granted in the scales of Rs.5000-150-8000 and Rs.5500-175-9000.

3. In the reply statement, the respondents have mentioned that there is no well defined hierarchical posts for the promotion of Laboratory Technicians and Senior Laboratory Technicians. After the merger of pay scales of Laboratory Technician and Senior Laboratory Technicians, there is no further promotional avenue for Lab. Technicians. The Recruitment Rule for the post of Technical Assistants in Lakshadweep AIDS Control Society notified on 17/7/1994 provide for following method of recruitment:-

- | | |
|--|--|
| 11 Method of recruitment whether by direct recruitment or by deputation transfer and or by promotion and percentage of vacancies to be filled by various methods | : By promotion failing which by direct recruitment and failing both by transfer on deputation. |
| 12 In case of recruitment by promotion/deputation/transfer grades from which promotion/deputation/transfer is to be made | : Promotion: Laboratory Technician with 5 years regular service in the grade:-
Transfer on deputation: Officers having the qualification prescribed in Col.8, of the Central/State Govts./U.T. Administration/Autonomous bodies, etc. |

4. The applicants in the rejoinder has submitted that as per the then Recruitment Rule the post of Laboratory Technician (Rs.1320-2040) was the feeder category for promotion to the post of Senior Laboratory Technician (Rs.1400-2300) and the only mode of recruitment prescribed for Technical



Assistant is "transfer on deputation failing which by short term contract." The transfer on deputation is to be made among officers under the Central/State Government /Union Territory of Administration/Autonomous Organisations but after the applicants have been granted the ACP and having enjoyed the promotion, and as the post of Laboratory Technician having been recognised as feeder post to the post of Technical Assistant these posts have also be treated as a well defined hierarchy in the department. It has also been contended that similar grades have been given to Laboratory Technicians by other departments like National TB Institute Bangalore, National Institute of Communicable disease, New Delhi under the same Ministry.

6. The counsel has also relied on the ratio of the judgment of Bhagwan Shukla V/s. Union of India reported in AIR 1994 SC 2480 holding that

"the appellant has obviously been visited with Civil consequences but he had been granted no opportunity to show cause against the reduction of his basic pay. He was not even put on notice before his pay was reduced by the department and the order came to be made behind his back without following any procedure known to law. There, is, thus, a flagrant violation of Principles of Natural Justice and the appellant has been made to suffer huge financial loss without being heard. Fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the concerned to notice and giving him a hearing in the matter."

The instant case is squarely covered as the applicants have been enjoying the benefit of ACP in the higher grade and without any notice to them the same is being revised and refixed.

7. The learned counsel for respondents fairly submitted before us that as no notice has been given to the applicants, as they should have

2

been given before revising their promotion and refixing their pay scale, he has no objection if this Court disposes of the original application with a direction to the respondents to treat the impugned order as notice and give an opportunity to the applicants to represent against the same. The counsel for applicant is also agreeable to the suggested course of action.

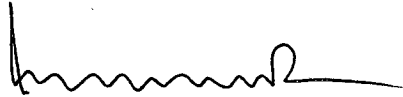
8. We have heard the counsel. The question whether the posts of Technical assistants are promotional post for the applicants within the hierarchy of the department has not been examined and appreciated by the respondents properly before taking action to cancel the promotions/upgradations granted to the applicants and since the respondents counsel has fairly conceded that the applicants should have been put to notice and given an opportunity to represent against the cancellation of the benefits already granted, we are of the view that, the respondents should consider the matter afresh by treating the impugned order as show cause notice and give an opportunity to the applicants to make a representation putting forthwith their view point and dispose of the same.

9. Hence, we are disposing of the OA with a direction permitting the applicants to make a comprehensive representation within two weeks and the first respondent if necessary in consultation with the second respondent, shall consider the representations keeping in view the

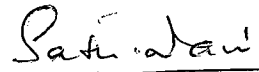
✓

:7:

observations made above and convey the decision to the applicants by a speaking order within a period of two months from the date of receipt of such representations from the applicants.



GEORGE PARACKEN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

abp