

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 222 OF 2010

Thursday, this the 4th day of August, 2011

CORAM:

**HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

K.Sasi Kumar
Office Assistant 'A'
Naval Physical and Oceanographic Laboratory
Thrikkakara, Kochi - 21 ... Applicant

(By Advocate Mr.M.V.Thamban)

versus

1. The Director
Naval Physical and Oceanographic Laboratory
Thrikkakara, Kochi - 21
2. The Director
Aeronautical Establishment
(Zonal Recruitment Centre)
Ministry of Defence,
New Tippusandra PO
Bangalore – 560 075
3. The Director General
Defence Research and Development Organization
DRDO Bhavan, Rajaji Marg
New Delhi
4. The Director (HRD)
DRDO Bhavan, Rajaji Marg
New Delhi
5. Union of India represented by the Secretary
Ministry of Defence, South Block
New Delhi – 11

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

The application having been heard on 04.08.2011, the Tribunal on the same day delivered the following:

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ORDER

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER

This is the second round of litigation at the instance of the applicant. He filed OA 67/07 earlier raising a grievance against non appointment to the post of Administrative Assistant by way of promotion to the 10% quota (5% based on LDCE and 5% on the basis of selection-cum-seniority). The applicant is an Office Attendant 'A' in the Office of the 1st respondent. He possessed SSLC with typewriting knowledge and computer operation for the post of Administrative Assistant. As per Recruitment Rules the post is to be filled up in the manner as prescribed in the relevant Recruitment Rules. As per the Recruitment Rules, 90% of the vacancies by direct recruitment and the remaining 10% by way of promotion (5% on the basis of selection-cum-seniority and 5% on the basis of selection-cum-seniority subject to qualifying the LDCE). The educational qualification as prescribed is 10th standard which is common to the promotees as also to the direct recruits. Earlier the qualification prescribed was pass from Senior Secondary School. According to the applicant, for the past several years promotions were not effected for want of qualified hands and the authorities realizing this have reduced the qualification to 10th standard. So, however while issuing the notification to fill up the 14 posts of Administrative Assistant qualification required to possess was shown as Plus two. Inter-alia challenging the notification, he approached this Tribunal by filing the said OA. This Tribunal after considering the rival submissions disposed of the OA with the following directions:-

" 18. Thus, the O.A. is disposed of, with directions to the respondents as under:-



(a) The respondents shall work out the exact number of promotee Administrative Assistants 'A' presently holding the posts, out of 698 total posts.

(b) If the number of such promotee Administrative Assistants is less than 70, the same be made up to 70, for which purpose, the vacancies that are at present available and the future vacancies in the said post be filled up by way of promotion from amongst the eligible Office Attendants, in the manner as provided for in the amended Rules. Needless to mention that if the applicant is one of the eligible candidates, he shall also be considered for such promotion.

(c) If the number of such promotee Administrative Assistants is more than 70, future vacancies may be diverted towards direct recruitment till the prescribed ratio is maintained and thereafter, vacancies in the respective quota be filled up.

It is also observed in Para 13 as follows:-

13. Arguments were heard and documents perused. Vide para 4(ii) of the Recruitment Rules, restriction has been imposed as to grouping of laboratories in respect of promotions as per the orders of the Government of India from time to time. Obviously, such restriction should have been meant to ensure that only those who have exposure in the nature of work involved in a particular laboratory is inducted in the higher posts. However, in so far as Administrative Assistant 'A' post is concerned, the functions attached to the post cannot vary from laboratory to laboratory. They are pure and simple administrative functions, common to all and independent of the special nature of each laboratory. It was presumably for this reason that the restriction imposed for other promotions, has been specifically excluded in so far as filling up of the post of Administrative Assistant 'A' is concerned.

2. The above decision became final. What remained to be done by the respondents in the light of the above directions is to ascertain the actual number of promotees in Administrative Assistants in Grade 'A' and to work out the directions accordingly. By Annexure A-10, a copy of which is addressed to the applicant herein, the respondents have worked out the number of vacancies, if any, available to be filled up by way of promotion.



According to them, the number of persons promoted to the above post of Administrative Assistant 'A' from among the qualified through LDCE is more than 70 i.e more than 10%. Hence, according to them the prescribed ratio of Administrative Assistant as per SRO No.10E of 1998 the DRDO, Ministry of Defence, Group 'C' (Administration) Posts Recruitment Rules, 1998, 90% to be filled up by direct recruitment and 10% by promotion from Group D employees on the basis of selection-cum-seniority, subject to qualifying the LDCE as has been amended by DRDO and the applicants candidature could be considered by DPC/LDCE as and when vacancy will be available in future. Thus according to the respondents, 70 posts are to be filled up by way of promotion, has since been exceeded as at present there is no vacancies available to be filled up by promotion. Inter-alia challenging Annexure A-10 order the present OA is filed. By a corrigendum notice it is informed that they will be conducting entry test in various cities. It is further mentioned that due to change in qualification made from 10th standard to Pass in Senior Secondary School, the written examinations will now to be held and candidates have already applied possessing the requisite qualification need not apply again. A copy of the Recruitment Notice is marked as Annexure A-16.

3. It is contended by the applicant that Annexure A-16 is contrary to the final decision rendered by this Tribunal in OA 67/07 referred to above. It is also contended that the contention of the respondents that there are more than 70 Administrative Assistants and thus exceeded the ratio is factually wrong. He has relied on certain information received under RTI Act and also the affidavit filed by the respondents wherein it is stated that actually there are only six Administrative Assistants working in the



promotion quota of 10% available and the remaining vacancies are to be filled up based on the decision rendered by this Tribunal in OA 67/07.

4. Even though there was an interim order passed by this Tribunal against conducting of examination pursuant to Annexure A-16 Recruitment Notice, subsequently the same was vacated enabling the respondents to proceed with the examination and appointment was stayed and this still continues. As against the stay granted by this Tribunal earlier, the same was challenged before the Hon'ble High Court in W.P(C) 27047/10 which was disposed of by judgment dated 31.08.2010.

5. At the out set, we may say that the challenge against Annexure A-16 does not actually arise for consideration in so far as Annexure A-16 notification in respect of examination to be held for appointment by way of direct recruitment, whereas the applicant is seeking appointment by way of promotion to the 10% quota. Therefore, to the extent of promotion to the 10% quota is concerned, Annexure A -16 corrigendum notification which is issued in continuation of an earlier notification issued for the purpose of conducting the test for direct recruitment has no application. Even otherwise, the vacancies which has arisen to be filled up by way of promotion ordinarily, be filled up based on the qualification as prescribed and existing as on the date of arising of the vacancies.

6. We may notice that earlier the qualification was plus two which was subsequently reduced to 10th standard which has been upheld by this Tribunal. It may also be seen that it was after reducing the qualification to 10th standard that notification was issued prescribing as Plus two. The

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Tribunal in categorical terms held that vacancies will have to be filled up on the basis of amended reduced qualification of 10th standard. All that remained to be considered and as directed was to ascertain the actual number of vacancies available to be filled up by way of promotion to the post of Administrative Assistant. Hence only dispute which arose for consideration in the present OA is whether the stand taken by the respondents in Annexure A-10 holding that more than 70 posts have been filled up by promotion is factually correct or not ? As per Annexure A-18 information furnished to the applicant by letter dated 05.08.2010 from the Ministry of Defence as per which details of promotees as Administrative Assistant after the amendment of the Recruitment Rules qualification has been prescribed as Matriculation is six, four as promotees by way of selection-cum-seniority and two on the basis of selection-cum-seniority subjected to LDCE (vide para d and e of Para 2). The names and other details are produced as Table 1 & 2 thereof. Contrary to the said information, however, respondents by filing the reply statement took the stand that the employees who have been promoted as Administrative Assistant exceeds 70. Obviously, this is contrary to the information furnished by Annexure A-18. However, on noticing the contradiction in the reply statement filed against the information furnished vide Annexure A-18 the Tribunal sought a clarification. Accordingly, an affidavit has been filed subsequently on 27.08.2010 wherein it is averred among many other things that actually the figure 105 submitted before this Tribunal earlier was based on the input provided by all the Laboratories all over India and now to the direction of the Tribunal in its order dated 29.06.2010 further details of all the Administrative Assistants promoted from Group D through DPC have been collected and the details are furnished in para 4 (the paragraph is not



numbered). The list of 25 persons having been promoted to the post of Administrative Assistant from Group D through LDCE/DPC as the case may be. In the affidavit they have expressed regret for the mistake committed earlier by which erroneous data has been furnished to this Tribunal. Thus even going by the affidavit filed by the respondents, Annexure A-10 communication holding that there are excess over the 10% in the quota earmarked for promotion is wrong and liable to be set aside. Accordingly, we quash Annexure A-10. Now the question is as to how many vacancies are to be filed up by way of promotion from Group D. Even though going by the affidavit, there are 25 Administrative Assistants promoted from Group D, there is a serious dispute on the figures given in the affidavit. It is contended in the rejoinder subsequently filed by the applicant that the information furnished under the RTI Act there are only six Administrative Assistants and the remaining 19 Administrative Assistants shown in the affidavit are Industrial Workers. Promotion to the Administrative Assistants from Group D is to be made from the feeder category excluding Industrial Workers. But we are not in a position to examine this aspect. Any further details of those 19 persons who are alleged to have been promoted wrongly, they being Industrial Workers, can be successfully challenged only if they are made parties to the proceedings and that has not been done. The factual details are also lacking to arrive at a conclusion. Hence we leave open this question. However, if a representation is filed pointing out any legality, in the promotion of those 19 persons, the authority shall consider the same of course after hearing the affected parties. The question as to whether at this belated stage, challenge could be made against those promotees is left open. Based on the affidavit, admittedly there are 45 vacancies to be

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filled up by way of promotion from Group 'D' employees. We therefore, direct the 4th respondent or such other competent authority to notify the actual number of vacancies from out of 45 to be filled up by promotion after conducting LDCE and the remaining by way of promotion based on seniority-cum-merit. It is open to the respondents to fill up the remaining vacancies by way of direct recruitment in accordance with law and actual number of vacancies to be filled up by direct recruitment will however be subject to the decision of the respondents in the representation that may be made by the applicant which right we have reserved as per above paragraph. It will be open to the respondents to fill up the vacancies under direct recruitment after reassessing the same as stated above. We also direct that since the test for filling up the vacancies by direct recruitment have already been taken place it is only appropriate that the remaining vacancies be filled up by way of promotion as expeditiously as possible , at any rate, within a period of four months from the date of receipt of a copy of this order.

7. OA is allowed as above. No costs.

Dated, the 4th August, 2011.



K GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R.RAMAN
JUDICIAL MEMBER

vs