

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 233 of 2002

Wednesday, this the 30th day of June, 2004

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

1. R. Ambika,
Office Superintendent,
Vocational Rehabilitation Centre
for Handicapped, Nalanchira,
Thiruvananthapuram.Applicant

[By Advocate Mr. N. Unnikrishnan]

Versus

1. Union of India, represented by the
Secretary to the Government of India,
Ministry of Labour, Shram Shakti Bhavan,
Rafi Marg, New Delhi - 110 001
2. The Director General (Employment & Training),
Room No. 6A, EE II Section,
Shram Shakti Bhavan, Rafi Marg, New Delhi-110 001
3. Group-C Departmental Promotion Committee
Ministry of Labour, Vocational Rehabilitation
Centre for Handicapped, Thiruvananthapuram
represented by its Chairman,
Director General (Employment & training).
4. The Senior Superintendent,
Vocational Rehabilitation Centre for
Handicapped, Nalanchira,
Thiruvananthapuram.Respondents

[By Advocate Mr. C. Rajendran, SCGSC]

The application having been heard on 30-6-2004, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The grievance of the applicant presently working as
Office Superintendent, Vocational Rehabilitation Centre for
Handicapped, Thiruvananthapuram is that despite the fact that
her promotion as Upper Division Clerk was regularized with
effect from 20-6-1988 vide Annexure A5 order, by Annexure A6

order she has been promoted as Office Superintendent only with effect from 11-10-2000, while she was entitled for promotion with effect from the year 1993 and her representation in that regard has been turned down by Annexure A8 and A9 orders. A short resume of the facts of the case can be stated as follows.

2. The applicant who was working as LDC under the respondents from 5-7-1983 onwards was on completion of the period of five years appointed as UDC on adhoc basis by order dated 20-6-1988 (Annexure A1). Although there was a regular vacancy of UDC, for reasons not known the applicant was not regularized. Since the representation submitted by the applicant claiming regularization was not responded to in the year 1995, the applicant met the Additional Director in November 1995 and immediately thereafter the applicant was promoted as a result of the DPC from 2-11-1995 as UDC prospectively. The applicant submitted representation for antedating the regularization to 20-6-1988. This representation was not considered and disposed of and therefore the applicant filed OA.No.720/96. Finding that the resolution of the issue involved fact adjudication, the Tribunal disposed of the matter directing the official respondents to consider and take a decision on the representation. Respondents in obedience to the directions contained in the order of the Tribunal in OA.No.720/96 considered the case of the applicant, but rejected the claim for preponement of the regularization on the ground that the vacancy of UDC was reserved for SC and in the absence of an order for de-reservation it was not possible to regularize the services of the applicant. Aggrieved by that the applicant has filed OA.No.1038/97 claiming regularization as UDC with effect from 20-6-1988 and all consequential benefits. The Tribunal in its order dated 29-3-2000, to which one of us was a party (Vice Chairman), held that the contention

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of the respondents that the post was reserved for SC was not justified because, in view of the dictum of the ruling of the Apex Court in Dr Chakradhar Paswan vs. State of Bihar & Others [AIR 1988 SC 959] reiterated in the Constitution Bench decision of the Apex Court in Post-Graduate Institute of Medical Education & Research, Chandigarh vs. Faculty Association & Others [AIR 1998 SC 1767], there cannot be a reservation in a single post and directed the respondents to consider the applicant as UDC with effect from the date of adhoc promotion, viz. 20-6-1988 and to consider the applicant for promotion to the post of Office Superintendent on that basis in turn. Pursuant to the above order, Annexure A5 order was issued regularizing the services of the applicant as UDC with effect from 20-6-1988. The applicant claimed consequential benefit of promotion as Office Superintendent with effect from 20-6-1993. She was actually promoted as Office Superintendent on 11-10-2000 by Annexure A6 order. The representation submitted by the applicant has been turned down by Annexure A8 and A9 orders without stating any proper reason. Aggrieved by that the applicant has filed this application seeking the following reliefs:-

- "i) to call for the records leading to the issuance of Annexures-A6, A8 and A9;
- ii) to declare that the applicant is entitled to the retrospective promotion with effect from 19.06.1993 as Office Superintendent;
- iii) to declare that Annexure-A6 in so far as it restricts the promotion as Office Superintendent with effect from 17.11.2001 (assumption of charge), and Annexures-A8 and A9 are invalid, illegal, unjustified, unreasonable and violative of the principles of natural justice as well as Article 14, 16, 19, 21 and 309 of the Constitution of India and, therefore, to quash the Annexures-A8 and A9 and strike down the restriction imposed on Annexure A6 in so far as it denies the deemed promotion with effect from 19.06.1993 to the applicant;

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- iv) to issue necessary orders granting deemed promotion with effect from 19.06.1993 as Office Superintendent with all consequential benefits to the applicant within a reasonable time;
- v) to grant such other reliefs as this Hon'ble Tribunal may deem fit just and necessary; and
- vi) to grant the cost of this Original Application."

3. It is alleged in the application that since the Tribunal has in its order in OA.No.1038/97 held that the applicant was entitled to be considered for regularization as UDC with effect from 20-6-1988 with consequential benefits of being considered for promotion in due turn, the action on the part of the respondents in not promoting the applicant with effect from the due date, but only with effect from 11-10-2000 prospectively, is wholly unjustified.

4. Respondents in their reply statement contend that the regularization of the services of the applicant as UDC could not be made earlier because the decision of the Hon'ble Supreme Court regarding reservation of the single post came only much later and that since the applicant did not have actual service of five years as UDC, she could not be promoted any day earlier than the actual promotion of the applicant by Annexure A6 order with effect from 11-10-2000. It is also contended that the posts actually had been occupied by people on deputation after 1993 and therefore the applicant could be promoted only when the post becoming vacant.

5. We have perused the pleadings and materials on record and have heard Shri N.Unnikrishnan, learned counsel of the applicant and Shri C.Rajendran, learned SCGSC for the respondents.

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6. The contention of the respondents that the applicant's services as UDC could not be regularized earlier is no more valid because the Tribunal had, relying on the ruling of the Apex Court in Dr Chakradhar Paswan vs. State of Bihar & Others [AIR 1988 SC 959], held that the respondents have erroneously treated the post of UDC as reserved for SC, since it was a single post. The law declared by the Apex Court in the year 1988 itself. There is no justification for the respondents in erroneously treating the post as reserved for SC and not promoting the applicant as UDC in 1988 itself. However, now pursuant to the order of the Tribunal in OA.No.1038/97, the services of the applicant as UDC has already been regularized with effect from 20-6-1988 by Annexure A5 order. The Tribunal had, in its judgement, in paragraph 6 held that on such regularization the applicant would be entitled to be considered for promotion to the next post of Office Superintendent on that basis and in paragraph 7 directed the respondents to consider the applicant for promotion as Office Superintendent in due turn. The question is what is the due turn. The applicant completed five years of service as UDC in terms of Annexure A4 order on 20-6-1993. From page 5 of the reply statement, it is evident that between 5-11-1993 and 7-6-1995 the post of Office Superintendent was remaining unoccupied. Therefore, the due turn for consideration of the applicant for promotion would be in the month of November, 1993. The contention of the respondents that the applicant was actually promoted as UDC only in 2000 and therefore without acquiring the experience in the UDC cadre the applicant could not be considered for promotion is not tenable because the non-regularisation of the applicant's services as UDC with effect from 20-6-1988 was not on account of any lapse on the part of the applicant, but wholly because of the erroneous decision of the respondents. The applicant's chances of career advancement cannot be left at

the sweet will and pleasure of the respondents. The applicant, therefore, having been promoted as UDC with effect from 20-6-1988 under Annexure A4 order consequent on the Tribunal's decision, we hold that the applicant was eligible for consideration for promotion as Office Superintendent with effect from the date of completion of five years of service as UDC from 20-6-1988. Therefore, we are of the considered view that the applicant had become eligible for consideration for promotion as Office Superintendent in the month of November, 1993, i.e. after 5-11-1993.

7. In the result, in the light of what is stated above, we allow the Original Application. Respondents are directed to consider the applicant for promotion as Office Superintendent with effect from 5-11-1993 by convening a review DPC and if found not otherwise unsuitable to promote the applicant with effect from that date and notionally fix the applicant's pay with effect from the due date and to give her the actual consequential monetary benefits from the date she took over as Office Superintendent. The above directions shall be complied with as expeditiously as possible, at any rate within three months from the date of receipt of a copy of this order. No order as to costs.

Wednesday, this the 30th day of June, 2004

H.P. DAS
ADMINISTRATIVE MEMBER

A.V. HARIDASAN
VICE CHAIRMAN

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