

ENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. NO. 505/2009 & O. A. 244/2010

Dated this the 28th day of July, 2010

C O R A M

HON'BLE MR. JUSTICE K. THANKAPPAN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

O. A. 505/2009

P.K. Ibrahim S/o late Hamsa
working as Typewriting Instructor
Village Dweep Panchayath
Minicoy Island
residing at Purakkad House,
Kadamath Island

Applicant

By Advocate Mr. N. Unnikrishnan

Vs

- 1 Union of India represented by
the Secretary to the Government
Ministry of Home Affairs
Department of Personnel & Administrative Reforms
New Delhi.
 - 2 The Administrator
Union Territory of Lakshadweep
Kavaratti.
 - 3 The Secretary (Services)
Union Territory of Lakshadweep
Kavaratti.
 - 4 The Director (Services)
U.T. Of Lakshadweep Administration
Kavaratti.
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- 5 The Chairperson
Village (Dweep) Panchayath Minicoy Island
U.T. Of Lakshadweep
Kavaratti.
- 6 The Directorate Employment & Training
U.T. Of Lakshadweep
Kavaratti.
- 7 The Director of Education
U.T. Of Lakshadweep
Kavaratti.

..Respondents

By Advocate Mr. Sunil Jacobn Jose, SCGSC for R-1
Advocate Mr. S. Radhakrishnan for R-2-7

O.A. 244/2010

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- 6 The Director
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U.T. Of Lakshadweep
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..Respondents

By Advocate Mr. Millu Dandapani, ACGSC, for R-1
Advocate Mr. S. Radhakrishnan for R 2-6

These Applications having been heard on 13.7.2010, the
Tribunal delivered the following:

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

As the issues involved in these two Applications filed by the
same applicant are inter connected, both are being disposed of by a
common order.

O.A. 505/2009

2 The applicant, a Stenographer Grade-III presently working as
Typewriting Instructor in the Lakshadweep Administration is challenging
implementation of Annexure A-1 order promoting him to the post of
Stenographer Grade-II on regular basis.

3 The applicant joined service of the Agriculture Directorate,
Kavaratti Lakshadweep Administration, as Stenographer Grade-III on

23.12.1988 (A-2). He was subsequently transferred to the post of Typewriting Instructor in Androth Island w.e.f. 3.5.1996(A-3). While working so, in 2000, he was offered ad hoc promotion as Stenographer Gr.II which he declined(A5). Now, by the impugned order, he is promoted to the post of Stenographer Grade-II on regular basis. He submitted representation on 2.6.2009 which has not been disposed of so far. The applicant is also aggrieved by the fax message dated 25.6.2009 to relieve him from the post of Typewriting Instructor. The main grounds urged by the applicant is that he is foregoing promotion due to compelling family circumstances, the representation submitted by him is pending consideration and that there is a post of Typewriting Instructor lying vacant where he could be accommodated.

4 The respondents 2-7, in their reply statement submitted that while the applicant was transferred to the post of Typewriting Instructor, it was specifically stated in the order that he did not possess the requisite qualification viz. Diploma higher grade in Typewriting, that his posting was purely on ad hoc and emergent basis and that he was liable to be transferred back to his original post as and when qualified candidates are appointed and that he would not be have any claim for permanent transfer to the post. In compliance with the above, the applicant joined the post of Typewriting Instructor. They submitted that the applicant was promoted on ad hoc basis in his turn vide order dated 30.11.2000. As the applicant declined to accept the promotion, he was allowed to continue as Typewriting Instructor. Now that the applicant is promoted on regular basis, he cannot refuse the same as in the case of ad hoc promotion.

5 The applicant filed rejoinder stating that he was posted as Typewriting Instructor as per Recruitment Rules in vogue. Therefore, there is no provision to send him back. He stated that he is otherwise qualified to hold the post as he qualified in Typewriting English High Grade Examination conducted by the Board of Technical Examination, Kerala State. The respondents 2-7 filed additional reply statement. They stated that the applicant was considered for appointment to the post of Typewriting Instructor on transfer basis by adopting the second method of the recruitment as there were no qualified officials to be promoted from the feeder category and that he continued in the same post without any disturbance.

O.A. 244/2010

6 In this O.A, the applicant stated that out of the total 21 years of service, he is working for the last 14 years against substantive vacancy of Typewriting Instructor. He was appointed by transfer. There is dearth of Typewriting Instructors in the Island. therefore, the respondents are duty bound to regularise him in the post. He is seeking regularisation in the post of Typewriting Instructor w.e.f the date of appointment to that post. He submitted that persons who were transferred to the post like the applicant were granted regular appointment in the post. He relied on the judgment of the Apex Court in Bhagavathi Prasad's case (1990)1 SCC 361 and the orders of this Tribunal in O.A. 834/1993 and 1221/93 in support of his contention.

7 The respondents in their reply statement resisted the claim of the applicant for regularisation on the grounds that he is a regular

Stenographer Grade-III on deputation to the post of Typewriting Instructor and that the Administration is short of Stenographers. They further submitted that the applicant stands promoted as Stenographer Grade-II and that there is no justification for declining the regular promotion.

8 The applicant filed rejoinder stating that the applicant was appointed as Typewriting Instructor in the interest of the Department even though he did not possess the qualification of typewriting English Higher Grade at the time of his transfer and later he acquired the requisite qualification.

9 We have heard learned counsel appearing for the parties and perused the records produced before us.

10 The main contention of the applicant is that he is working as Typewriting Instructor from 30.4.1996 onwards on public interest and that at the relevant time, no one was available to be appointed to the post as per the recruitment rules and that though he did not possess the required qualification at that time, he acquired the same in 1997. The respondents argued that he was temporarily transferred to the ex-cadre post. The order by which he was transferred is Annexure A-3 dated 30.4.1996. The relevant portion is extracted below:

Sub: Establishment- Union Territory of Lakshadweep-Transfer of Stenographer (Grade-III) to the post of Typewriting Instructor on temporary arrangement-Orders issued.

The Administrator, Union Territory of Lakshadweep is pleased to order temporary transfer of following Stenographer (Grade-III) to the post of Typewriting Instructor in the same scale of pay of Rs. 1200-30-1560-40-2040/- against the post created vide Administrator's order F.No.1/1/93-EEL dated 6.5.1994

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Sl	Name & Designation	From	To	Remarks
1	Shri P.K. Ibrahim Stenographer Grade-III	Directorate of Agriculture Kavaratti	Government High School Andrott	As typewriting Inspector Government High School Andrott.

Shri Ibrahim, Stenographer is informed that the post of Typewriting Instructor has to be filled with candidates possessing Diploma/Higher Grade in typewriting, that he does not possess the requisite qualification, that he is posted without the prescribed qualification purely on ad hoc basis until further order, that he is liable to be transferred back to the post of Stenographer(Grade-III) as and when qualified candidates are selected and appointed as Typewriting Instructor and that he will not have any claim for permanent transfer to the post of Typewriting Instructor.

X x x x x x x x

From the above, it is clear that though the transfer of the applicant was temporary, conditional and the applicant did not possess the requisite qualification to be appointed and he was liable to be transferred to his parent post, he was permitted to continue in the post for the last 14 years. The respondents were all along treating the applicant as Typewriting Instructor and he was transferred to various Islands in that capacity. There is no material to show that the applicant was on deputation.

11 As regards declination of promotion, it is submitted by the respondents that the applicant was offered ad hoc promotion to the post of Stenographer Grade-II and his refusal to accept the same, was acceded to by the Appointing Authority. Now the situation is different, the applicant is promoted on regular basis. It is for the Appointing Authority to decide whether the reasons for declining promotion is acceptable or not and intimate the applicant accordingly.

12 The applicant is willing to forgo his regular promotion and continue to work as Typewriting Instructor. The applicant contended that he is eligible to be regularised in the post as he acquired the requisite qualification in 1997. In short, the applicant is seeking regularisation in the post of Typewriting Instructor forgoing promotion to the post of Stenographer Grade-II.

13 A perusal of the recruitment rules of Typewriter Instructor dated 7.11.1970 (Annexure A-10) would show that the minimum educational and other qualifications required for direct recruits under Column 8 is

- (i) SSLC/Matriculation or its equivalent and
- (ii) Diploma/Higher Grade in Typewriting or its equivalent.

In the case of recruitment by promotion, transfer, grades from which promotion is to be made from the cadre of Clerks, Typists and Stenographers possessing the qualifications mentioned in Col.8 and who have put in five years service in the cadre under this Administration, selection to be made after test.

The Department had not taken earnest efforts to fill up the post of Typewriter Instructor nor did they took steps to regularise the applicant.

14 A perusal of Annexure A-14(iii) issued on 15.3.2001, revised final seniority list of Stenographers Grade-III appointed after 16.5.1974, would show that Sl. NO. 15 Shri PV. Valsalan who was regularly appointed to the grade as Typewriting Instructor Govt. High School, Kavaratti, Sl. No. 31 Shri C.M. Pookunhikoyha is working as Instructor-III, Kavaratti Sl. No. 36 Shri K. Buzar Jamhar, is working as Assistant Settlement Officer w.e.f. 7.7.1989. The applicant has

produced orders of regularisation of similarly situated persons i.e. S/Shri P.P. Cheiyakoya and A.P.Zakkariya who were regularised w.e.f. 19.5.1994 and 6.9.1994 respectively (Annexure A-15). Therefore, the applicant contended that he could have been regularised in the post of Typewriting Instructor.

15 The learned counsel for the applicant relied on the the judgment of the Apex Court in Bhagwatiprasad V. Delhi State Mineral Development Corporation (1990) 1 SCC 361 and pleaded that the experience gained by an employee in the work can be treated as a substitute for educational qualification in appropriate cases and relaxation provision can be resorted to for giving regular appointment to such employees..." In the case on hand though the applicant did not possess the requisite qualification at the relevant time, however, later he acquired the same within a year. Therefore, he is qualified to be appointed regularly from the date of acquiring the qualification.

16 The learned counsel for the respondents relied on the following cases:

(i) Secretary, State of Karnataka V. Umadevi (2006 4 SCC 1

The Apex Court was dealing with back door entry in the lower rungs of the service without following proper appointment procedure through PSCs or otherwise as per the recruitment rules and to permit these irregular appointees or those appointed on contract or on daily wages to continue year after year, thus keeping out those who are qualified to compete for the post. The Apex Court in that case held that:

"..... Unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee...."

".....It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules....".

(ii) Kendriya Vidyalaya Sangathan & Others (2007) 5 SCC 326

It was a question of regularisation of ad hoc appointees in the in the Kendriya Vidyalayas. The High Court had ordered regularisation of the employees who were selected not through a regular Selection Committee. The Apex Court on appeal however, set aside the judgment of the High Court.

(iii) Indian Drugs & Pharmaceuticals Ltd. Vs. Workmen, Indian Drugs & Pharmaceuticals Ltd. (2007)1 SCC 408

It is a case of regularisation of a temporary employee. The Apex Court held that rule cannot be relaxed and the Court/Tribunal cannot direct regularisation of temporary appointees dehors the rules.

(iv) Official Liquidator Vs. Dayanand and Others (2009) 1 SCC (L&S) 943

The Apex Court was considering the judgment in Pooran Chandra Pandey's case to water down binding effect of judgments of the Constitution bench of Supreme Court. Strongly emphasised binding effect of judgments of Supreme Court.

17 We have gone through the above case laws relied on by the respondents. The case of the applicant is different from the above cases. There is no dispute that the applicant in the present case is a

regular Stenographer Grade-III recruited in accordance with the rules. He was later transferred to the post of Typewriting Instructor, pending regular recruitment of Typewriting Instructors in accordance with the rules in force. The grievance of the applicant is that despite his continuance in the post for the last 14 years, and possessing the requisite qualification, he is not regularly appointed, instead, the respondents are insisting on his accepting the promotion as Stenographer Grade-II.

18 As regards O.A. 505/2009 regarding acceptance of promotion to the post of Stenographer Grade-II is concerned, the applicant has already submitted representation (Annexure A-6) to the respondents intimating the circumstances under which he could not accept the same. The respondents have to consider the same and pass orders in accordance with the rules keeping in mind the fact that the applicant is a qualified Stenographer Grade-III w.e.f. 23.12.1988 and that he has been promoted to the post of Stenographer Grade II and that he has been continuously working in the post of Typewriter Instructor w.e.f. 3.5.1996, that similar persons were granted regularisation as Typewriter Instructor and that the applicant has expressed his strong willingness to be regularised in the post of Typewriter Instructor.

19 As regards the reliefs prayed for in O.A. 244/2010 for regularisation in the post of Typewriting Instructor, we are of the view that the respondents have permitted the applicant to continue in the post of Typewriting Instructor indefinitely and that they have not taken steps to recruit regular hands to the post in accordance with the 1984 recruitment rules and till A-15 notification in 2009 for recruitment by

promotion. The contention of the respondents that Stenographer Grade-III is a ministerial post under the Administrative line and he cannot be posted as Instructor is not sustainable as the respondents themselves have transferred him and allowed to continue in the post for such a long time without making any effort to fill up the post on regular basis.

20 It is seen from A-4, A-6 and A-13 that the applicant has been representing for his regularisation as Typewriting Instructor, for long. Apparently, he had not received any reply. Annexure A-7 Recruitment Rules have been slightly modified vide Annexure A-10/R-2(a) Recruitment Rules published on 17.10.1984. The Recruitment Rules permit recruitment by promotion and transfer, failing both, by direct recruitment. Col. 11 and 12 are extracted below:

Method of recruitment whether by direct recruitment or by promotion or transfer and percentage of vacancies to be filled by various methods (Col. 11)	In case of recruitment by promotion, transfer, grades from which promotion to be made (Col. 12)
Promotion, failing which by transfer failing both by direct recruitment.	Promotion:- L.D. Clerks and Typists and possessing the qualifications mentioned in col. 8 of the schedule and five years service in the cadre under the Administration Transfer :- Stenographers and U.D. Clerks possessing the qualifications prescribed in Col. 8 of the Schedule.

It is crystal clear that there was no eligible candidate in the promotion category for a long time, perhaps till the latest notification in 2009. Taking into consideration his representations, he could have been regularised, under the transfer clause under Col 12 from 1997, when he acquired the requisite qualification. The applicant has pointed out instances of such regularisation, in respect of few others.

21 In the result, in the facts and circumstances of the case, we allow O.A. 244/2010, declare that the applicant is entitled to be considered for regularisation in the post of Typewriting Instructor w.e.f the date he acquired the requisite qualification of Typewriting higher. Accordingly we direct the respondents to consider regularisation of the applicant with effect from that date keeping in view our observations at para 17, 18, 19 and 20 above. This shall be done within three months from the date of receipt of a copy of this order. Consequently, O.A. 505/2009 has become infructuous and it is accordingly closed. No costs.

Dated 28th July, 2010

K. NOORJEHAN
ADMINISTRATIVE MEMBER

K. APPAN
JUSTICE K. THANKAPPAN
JUDICIAL MEMBER

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