

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. 247/92

Tuesday, the sixteenth day of November, 1993

MR. N. DHARMADAN MEMBER (JUDICIAL)

MR. P.V. VENKATAKRISHNAN ~~MEMBER~~ (ADMVE)

N. Sayed Mohamed Koya
Stenographer Grade-III
Directorate of Animal Husbandry
U.T. of Lakshadweep, Kavaratti

Applicant

By Mr. M.R. Rajendran Nair

vs.

1. The Administrator, U.T. of Lakshadweep
Kavaratti

2. The Collector cum Development Commissioner
U.T. of Lakshadweep, Kavaratti

3. Shri P.K.N. Kutty, Confidential Assistant
to Administrator, U.T. of Lakshadweep,
Kavaratti

4. Shri M.K. Musthaffa, Typewriting Instructor
Govt. ~~H.S.~~ H.S. Kalpeni.

5. Shri M.K. Kunhikoya, Stenographer
Munsiff Court, Amini Island, U.T.
of Lakshadweep.

Respondents

By Mr. M.V.S. Nampoothiry, ACGSC for R 1 & 2

ORDER

MR. N. DHARMADAN

The only question that arises for consideration
in this case is the seniority of the applicant vis-a-vis
the respondents No. 3 to 5.

2. According to the applicant, he was appointed as
Lower Division Clerk w.e.f. 16.10.78. He appeared for
departmental examination from 1980 onwards; but he was not
successful. In 1982 he was appointed as Stenographer Gr.III
in the Rural Development Department. While continuing on
deputation, he appeared for test and interview, for promotion
to the post of Stenographer Grade-III, which was conducted
on 4.11.85. He was successful along with R-4 and R-3.
He was actually promoted and appointed only on 7.1.86, ~~but~~

the fourth respondent was treated as a direct recruitee (for appointment) on adhoc basis w.e.f. 19.8.85, and regularly appointed w.e.f. 30.12.85. According to applicant, it is illegal and contrary to the Recruitment Rules which are produced as Annexure-II. The relevant portion of the Recruitment Rules reads as follows:

" Method of recruitment whether by direct recruitment or by promotion or transfer and percentage of vacancies to be filled by various methods.

By promotion or deputation failing both by direct recruitment."

3. It is submitted that the applicant being a promotee, he will have to be posted as Grade-D Stenographer above the fourth respondent considering the pass in the test held on 4.11.85.

4. The case of the applicant against other contesting respondents is stated in ground(b) of the original application. He has pointed out ~~xxxxx~~, specific cases of Smt. O.M. Saraswathi, C. Omana, P. Chandraprabha, M.K. Musthaffa and M. Sayed Mohammed Koya and submitted that three of them were retrospectively promoted w.e.f. 15.4.80, 24.9.80 and 6.8.81 respectively granting benefit of their earlier service rendered by them on adhoc basis. The case of the applicant is that if similar treatment is given to the applicant as well, the benefit of 2½ years adhoc service will give him higher seniority over Respondents 3 & 5 also.

5. In the reply filed by the respondents 1 & 2, they have admitted the facts stated by the applicant. Since there is no dispute regarding the facts, the case can be decided on the interpretation of Annexure-II Recruitment Rules.

6. It is made clear from the method of recruitment and promotion as provided in Annexure-II that promotion to the post of Stenographer Grade-III shall be considered depending upon the pass in the test. The method provided under the Recruitment Rules is promotion, deputation failing

which by direct recruitment. The applicant being a candidate in service and found to be eligible for promotion, he ought to have been appointed before the appointment of Respondent No.4, a direct recruitee by strictly adhering to the Recruitment Rules. The applicant has also a case for appointment w.e.f. 4.11.85 the date on which he became qualified. The applicant could have been appointed before the ~~fourth~~ respondent was appointed on a regular basis. In that view of the matter, there is considerable force in the statement made by the learned counsel for the applicant that the applicant is entitled to get seniority over Respondent No.4. We accept it.

7. Regarding the case of the applicant vis-a-vis Respondents 3 & 5, it has to be pointed out that the applicant's service during 1982-85, while he was on deputation, was in the capacity as Stenographer Grade-D in the Rural Development Department. This period should be counted, according to the applicant, along with his service for reckoning his seniority. His prayer is to declare that he is entitled to get retrospective regularisation as Stenographer by reckoning his service as Stenographer in the Rural Development Department and to have his seniority assigned accordingly. If as a matter of fact, the benefit of inclusion of adhoc service as given to the persons mentioned in ground (b) of the original application, is given to the applicant, it goes without saying that the applicant will be eligible for seniority over R-3 and R-5 also. Since this is a matter which requires consideration by the first respondent, we leave it to him. However, we are satisfied that the seniority of the applicant vis-a-vis Respondents 3 & 5 is to be decided by the first respondent in the light of the above observation and in accordance with law.

8. Under these circumstances, while allowing the application to the extent of declaring that the applicant is senior to respondent No.4, we direct the first respondent to consider the seniority of the applicant above respondents No. 3 & 5 in accordance with law, keeping in mind the above observations. This shall be done within a period of three months

from the date of receipt of the copy of this judgment. The application is allowed to the extent indicated above.

9. There shall be no order as to costs.

A. Venkatakrishnan
(P.V. VENKATAKRISHNAN)

MEMBER (ADMINISTRATIVE)

KMR

N. Dharmadan
(N. DHARMADAN)
16. 11. 93
MEMBER (JUDICIAL)