

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 25 of 2009

.....*Tuesday*....., this the *22nd* day of February, 2011.

CORAM:

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

M.K. Cheriya Koya,
S/o. Pookoya, Ferro Printer,
Lakshadweep Public Works Department,
Circle Office, Kavarathi,
Residing at Agathi Island,
Union Territory of Lakshadweep. Applicant.

(By Advocate Mr. P.V. Mohanan)

v e r s u s

1. The Administrator,
Union Territory of Lakshadweep,
Kavarathi.
2. The Superintending Engineer,
Lakshadweep Public Works Department,
Kavarathi, Union Territory of Lakshadweep. Respondents.

(By Advocate Mr. S. Radhakrishnan)

The Original Application having been heard on 14.02.2011, the
Tribunal on 22.02.2011 delivered the following:

ORDER

HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

This O.A. has been filed by the applicant challenging the filling up of 2 vacancies of Draftsman Grade-III by direct recruitment and for a direction to the respondents to promote him to the post of Draftsman Grade-III with effect from 16.12.2002 with all consequential benefits.



2. The applicant is the sole Ferro Printer working in the Public Works Department of Union Territory of Lakshadweep and has been stagnated. The next higher post as per the Recruitment Rules is Draftsman Grade-III/Tracer. The total sanctioned posts are 7. The method of recruitment is 80% by direct recruitment and 20% by promotion failing both transfer on deputation. Two substantive vacancies of Draftsman Grade-III arose in the year 2001 consequent on promotion of Draftsman Grade-III to Draftsman Grade-II. Aggrieved by the non-consideration of promotion and selection as well, the applicant preferred O.A. No. 522/2002 before this Tribunal. The aforesaid O.A. was disposed of as under :

"13. It is an admitted fact that the applicant has not put 6 years service as per RR to be considered for the promotion post. Considering the fact that if this RR is not coming into effect and the applicant being the sole aspirant on the promotion line and also considering the powers vested with the first respondent to relax the age for such candidate, we direct that the applicant may make a representation within two weeks from the date of receipt of a copy of this order to the first respondent and the first respondent himself, and if he has no power, forward the same to the concerned higher authorities who have powers to consider age relaxation to the applicant for consideration under the promotion quota and if so considered, he may be taken to the zone of consideration for selection. It has been submitted before the Court that the selection is not finalized due to some irregularities in the selection process. Therefore, no prejudice to others will be caused in case if the applicant is also considered for selection either by direct recruitment or by promotion quota.

14. We find that this case is more genuine because the respondents did not consider 20% promotion quota prescribed for promotion. On the other hand, the attempt on the part of the respondents to earmark the entire vacancy towards direct recruitment quota is not justified in view of the provisions in RR that 80% by direct recruitment and 20% by promotion failing both transfer on deputation.

15. In the result, we dispose of this O.A. With a direction to the respondents to consider the representation of the applicant for age relaxation as per the observations made



above and consider his candidature for the post of Draftsman Grade-III within a period of 3 months from the date of receipt of a copy of this order and the decision taken thereon shall be communicated to the applicant immediately thereafter, in any case, within one month from the date of consideration of the representation."

Against the aforesaid order, a Writ Petition No.13189/2003 was filed by the respondents, which was dismissed by Hon'ble High Court of Kerala vide its judgement dated 06.03.2007 as follows :

"Therefore, we see no ground to interfere in the order of the Central Administrative Tribunal in a petition under Article 227 of the Constitution of India".

3. Vide Annexure A-6 dated 11.12.2008, the Lakshadweep Administration initiated steps to fill up the two vacancies of Draftsman Grade-III by direct recruitment quota. Hence the O.A.

4. The applicant submits that he has completed 6 years of service as Ferro Printer on 16.12.2002 and is eligible for promotion to the post of Draftsman Grade-III as on 16.12.2002. The quota of 20% set apart for promotion is not filled. The present incumbents in Draftsman Grade-III are direct recruits. Therefore, Annexure A-6 proposing to fill up the two vacancies by direct recruitment is contrary to Recruitment Rules. It is unfair to insist on the applicant to appear for the written test alongwith young graduates. The applicant is the only eligible candidate for promotion, who has been stagnated. Therefore, he is entitled to promotion to the post of Draftsman Grade-III.



5. The respondents resisted the O.A. In their reply statement, they submitted that 2 vacancies of Draftsman Grade-III arose in 2001 after the revised Recruitment Rules, 1996, came into existence. One promotee is already posted as Draftsman Grade-III/Tracer. 80% of the vacancies are to be filled up by direct recruitment. Therefore, the existing 2 vacancies have to be filled by direct recruitment only. As per order of this Tribunal in O.A. No. 522/2002 dated 18.12.2002, upheld by Hon'ble High Court of Kerala in O.P. No. 13189/2003, the applicant has to be considered for direct recruitment. As per the Roster point for Draftsman Grade-III/Tracer vide RR F.No. 2/1/151/25-C1 dated 16.01.1996, the 3rd point is for promotion and the first and second points are for direct recruitment. As per the old Recruitment Rules, 1983, the method of recruitment was by promotion or by transfer from similar post on deputation failing which by direct recruitment. According to the old Recruitment Rules, one Shri P. Hyder, Ferro Printer, was promoted to the post of Draftsman Grade-III vide Office Order No. F.No. 2/8/257/92-C1 dated 22.02.1996 against the vacancy of 02.11.1995. Even if Mr. Hyder was promoted prior to the new Recruitment Rules dated 16.1.1996, he was appointed under the promotion quota on the basis of 1983 Recruitment Rules as Annexure A-1 Recruitment Rules is an amendment to 1983 and 1991 Recruitment Rules and, therefore, it is a continuation of the old Recruitment Rules wherein also promotion was prescribed as a method of appointment.

6. We have heard Mr. P.V. Mohanan, learned counsel for the applicant and Mr. S. Radhakrishnan, learned counsel for the respondents and perused the records.



7. This Tribunal had directed vide interim order dated 05.03.2009 to earmark one of the two vacancies for promotion against which the applicant can be considered for promotion and earmark the other vacancy for direct recruitment in which the applicant might also participate. However, the applicant is disinclined to compete with youngsters in direct recruitment. He seeks promotion. His submission that all the incumbents in the post of Draftsman Grade-III are direct recruits is incorrect as one of them, namely Shri Hyder is a promotee. As per Recruitment Rules, 1996, 20% of the posts of Draftsman Grade-III is meant for promotion quota. But the roster point for promotion is at the third vacancy which is yet to arise; the present two vacancies fall in the direct recruitment quota. Therefore, there is no enforceable right accrued to the applicant although he is eligible for promotion as on 16.12.2002. He has to wait for next vacancy to arise for consideration for promotion. In the facts and circumstances of the instant O.A, ~~and~~ interference by this Tribunal is not called for..

8. As per column 12 of the Schedule of Recruitment Rules, 1996, for promotion, 6 years experience as Ferro Printer is essential, in addition to the educational qualification prescribed for direct recruitment. Normally, in Recruitment Rules, less rigorous qualifications are prescribed for promotees than direct recruits, taking into account the length of service and experience of the former. Further, the applicant is the only candidate for promotion. He is eligible for promotion since 16.12.2002. He is stagnating. Considering these facts, the Administrator of Lakshadweep can under Rule 5 of the Recruitment Rules, 1996, relax the provision of the Recruitment Rules in



favour of the applicant, if he considers it desirable. We make it clear that the disposal of this O.A shall not stand in his way for a sympathetic consideration of the case of the applicant for promotion.

9. In view of the above, the O.A. is dismissed. The interim order dated 05.03.2009 is vacated. But the Administrator of Lakshadweep Administrator may consider the case of the applicant sympathetically. No order as to costs.

(Dated, the 22nd February, 2011)



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

cvr.