

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 278 of 2006

Friday, this the 7th day of March, 2008

C O R A M :

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER

T. Sukumaran,
S/o. Late Sri Ramunnikutty Nair,
Jamadar,
Central Administrative Tribunal,
Ernakulam Bench, Ernakulam,
Residing at Puthalathkuzhy,
Pennurcherupalam P.O., Narikuni (Via.),
Kozhikode : 673 585.

... Applicant.

(By Advocate Mr. M.R. Hariraj)

v e r s u s

1. The Principal Registrar,
Central Administrative Tribunal,
Principal Bench, New Delhi.
2. The Registrar,
Central Administrative Tribunal,
Ernakulam Bench, Ernakulam.
3. P.K. Shaji, LDC (Ad hoc),
Central Administrative Tribunal,
Ernakulam Bench, Ernakulam.
4. Union of India, represented by
The Secretary, Department of
Personnel and Training, New Delhi.

... Respondents.

(By Advocate Mr. TPM Ibrahim Khan, SCGSC for R-1,2 & 4 and Mr. Vellayani
Sundara Raju for R-3)

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER


Nearly a score of years ago, the Apex Court has, in the case of
Council of Scientific and Industrial Research v. K.G.S. Bhatt, (1989) 4 SCC
635, made the following observation:-

"Every management must provide realistic opportunities for promising employees to move upward. The organisation that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, mis-allocation of personnel, low morale, and ineffectual performance, among both non-managerial employees and their supervisors. There cannot be any modern management much less any career planning, manpower development, management development etc. which is not related to a system of promotions."

2. While dealing with this OA, incidentally, we may scrutinize whether the above observation of the Apex Court could be pressed into service, in this case, of course, keeping in view also the extant rule on the subject.

3. The applicant, joined as a peon in October, 1989 at the Ernakulam Bench was promoted as Jamadar with effect from 24-10-1997 on ad hoc basis and later regularized w.e.f. 13-11-1998. His educational qualification is S.S.L.C. which is a qualification specified for promotion to the post of LDC in the C.A.T.


4. Rules of recruitment for the post of LDC provide for 10% of the vacancies to be filled up by way of promotion from among the eligible Group D Employees and within this 10%, 5% is by way of seniority and 5% is by way of a departmental competitive examination. As the C.A.T. is spread all over the country, recruitment is centralized and as such, for the purpose of regular promotion under the aforesaid quota, combined seniority of Group D employees of all the Benches has to be prepared and promotions considered. That is the task of the Principal Bench. Qualifying in the typing test is a pre-requisite for such promotion. This requirement is specified not only for regular promotion but even for ad hoc promotion as well.



5. While the combined seniority list is considered for effecting regular promotion, for ad hoc promotion, however, the local seniority maintained bench-wise would suffice as such an ad hoc appointment is only temporary and transfer on such ad hoc promotion, that too, at the lower level, would not be advisable. Thus, if in any Bench, there be a requirement of filling of any vacant post of LDC by way of promoting eligible Group D employees on ad hoc basis, then ad hoc appointment is resorted to only with reference to the Group D employees serving in that Bench. Authority competent to approve such promotion, is however vested with the Principal Bench.

6. Vide Annexure A-4 order dated 4th March, 2005, the applicant was promoted on ad hoc basis for a period of three months. The said appointment was subject to the condition that the applicant clears the typing test within a period of four weeks. The applicant took charge of LDC on 4th March, 2005 and he was alerted for typewriting test on 01-04-2005 vide Annexure A-9. In the test he was declared successful. Thus, the applicant fulfills all the conditions for such ad hoc appointment as LDC.

7. It appears that the respondents had conducted an exercise of verifying the seniority list when it seems to have been found that the applicant in fact was junior to Respondent No.3 who is also an SSLC qualified and thus eligible for consideration. As such, on the expiry of the tenure of ad hoc promotion, the applicant was not given further extension. However, he continued as such, as LDC till August, 2005. By Annexure A-8 order dated 31-08-2005, the respondents have promoted on ad hoc basis the 3rd respondent. The applicant has moved Annexure A-9 representation for continuance of his ad hoc promotion as LDC. But the respondents had reverted the applicant w.e.f. 4.6.2005, vide




Annexure A-10 order dated 6-9-2005. Later on in partial modification of the said order, the ad hoc promotion of the applicant was extended upto 31-08-2005, vide Annexure A-11. There was, however, no response to the representation filed by the applicant.

8. The respondents have by the impugned Annexure A-12 order dated 2.2.2006, extended the ad hoc promotion of respondent No. 3 by granting exemption from passing typing test and the extension was for the period from 01-12-2005 to 31-12-2005. The applicant has filed this OA challenging the order of the respondents in promoting respondent No. 3 and in not considering his case for such promotion.

9. Respondents have contested the OA. According to them, the private respondent is admittedly senior to the applicant and initially as he did not qualify in the typing test, the applicant was appointed on ad hoc basis. However, as the said private respondent completed 45 years of age and as provision exists for exempting persons from qualifying in the typing test, granting such exemption the said respondent was promoted as ad hoc LDC. It has also been averred that already 10% quota had been exceeded. As such promotion of private respondent is neither under the 10% quota nor 90% quota.

10. The applicant has filed a rejoinder reiterating his contentions as contained in the O.A.

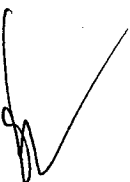
10.1 The private respondent has also filed a reply narrating his position and availability of the Rule exempting from qualifying in the typing test of persons who are 45 years of age.




11. When the case came up for consideration, learned counsel for the parties have stated that vacancies are available in Ernakulam Bench in the post of LDC. There has been no dispute or quarrel about the fact including that the applicant qualified in the typing test earlier (Annexure A/7 refers) whereas the private respondent is not and that the applicant is junior to the private respondent. Counsel for the applicant submitted that since vacancies are available, the applicant can also be considered for ad hoc promotion as LDC. Counsel for the respondents submitted that the same is under consideration by the Principal Bench of C.A.T., New Delhi, but it is not exactly known as what would be the outcome thereon and as to how when such a decision would be arrived at.

12. Arguments were heard and documents perused. At the outset, it is held that as normally the Administrative Head (in this case, the Principal Registrar of C.A.T.) alone is impleaded as respondent, it is felt that impleading the Hon'ble Chairman as respondent No. 1 is inappropriate and as such, the name of Hon'ble Chairman as respondent is deleted from the array of the respondents.

13. Filling up of the vacancies is not for the purpose of promoting any individual but to meet the service exigencies. When the compliment of a particular Bench is prescribed, the same is on the basis of the workload in that Bench and placement of personnel against such posts is essential for the smooth functioning of the Bench. May be for a temporary period, there could be vacancies but if the posts are lying vacant for a considerable time, then the same will adversely affect the Organisation in discharging the



functions entrusted upon it. Thus, when the vacancies are available, the paramount consideration is organisational interest and to meet the same, the posts are filled up. Posting an individual against such vacancies and the status that such individual gets has to be treated purely as incidental. The case is to be considered only with the above view in mind. It has been stated that there are five vacancies of LDCs in Ernakulam Bench itself. If these posts are not filled then there will be a dent in the efficiency of the Organisation. Administration cannot enshoulder work of 5 individuals upon the rest for a substantial period. As such it is inevitable not from the point of an individual promotion but from the point of view of organisational efficiency that such vacancies are filled up either on regular basis or on ad hoc basis. In so meeting the situation if the percentage of promotion exceeds, the same cannot be viewed as violative of Recruitment Rules especially when the vacancies are filled up on ad hoc basis. As such it will be in the interest of Administration first and in the interest of justice with regard to claimants that the vacant posts are filled by eligible and suitable candidates. Viewed from this point, obviously in so far as Ernakulam Bench is concerned, the post of LDCs that are vacant now can easily be filled up by considering the eligible and suitable candidates. The applicant is certainly one among them as is evident from the fact that he had been promoted on ad hoc basis for certain period. It is pertinent to mention here that the counsel for the applicant made a submission that in other Benches those who had qualified in the typing test along with the applicant are all continuing on ad hoc basis and the applicant alone has been singled out. This was not rebutted by the counsel for the respondents. If so, there is no reason to single out the applicant especially when the vacancies are available.



13. In view of the above discussions, it would be in the interest of justice if the case of the applicant is considered for ad hoc promotion to the post of LDC till such time the vacancy is filled up on regular basis. Accordingly, this **O.A. is allowed** to the extent that the respondents are directed to consider the case of the applicant and promote him to the post of LDC on ad hoc basis subject to normal conditions, if any, and such appointment on ad hoc basis should continue till the post is filled up on regular basis.

14. The above order shall be complied with within a period of four weeks from the date of communication of this order. No costs.

(Dated, the 7th March, 2008)


(Dr. K.S. SUGATHAN)
ADMINISTRATIVE MEMBER


(Dr. K B S RAJAN)
JUDICIAL MEMBER

CVR.