

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 282/2008

this the 7 th day of July, 2009.

C O R A M

**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

K.Saifulla S/o Ahammadkunji
Ambulance Driver
PHC, Kiltan Island

.. Applicant

By Advocate M/s P.V. Mohanan & P.N.Biju

Vs

1 The Administrator
 Union Territory of Lakshadweep
 Kavarathy

2 The Director of Medical and Health Services
 Directorate of Medical and Health Services
 Kavarathy, Union Territory of Lakshadweep
 Kavarathy.

.. Respondents.

By Advocate Mr. S. Radhakrishnan

The Application having been heard on 24.6.2009 the Tribunal delivered the following

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant a Driver in the Health Services Department of the Lakshadweep Administration, is aggrieved by the denial of promotion to Grade-II and Grade-I on completion of 9 and 6 years of services respectively.

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2 The applicant entered service of the Lakshadweep Administration as Driver in 1984. According to the applicant, as per the extant orders of the Government of India he is entitled to be promoted to Grade-II on completion of nine years of service and to Grade-I on completion of six years of service as Grade-II or on completion of 15 years of combined service as Driver. The applicant possess the requisite years of service hence, he is entitled to get promotion to grade-II in the year 1993 and to grade-I in the year 1999. But he was denied promotion. There is no departmental proceedings pending against him. Hence aggrieved by the denial of promotions he filed this application for grant of the same with all consequential benefits.

3 The respondents in the reply statement submitted that though the scheme of promotion of Staff Car Driver was introduced w.e.f. 1.8.93 it could not be implemented due to delay in finalising the seniority list of Drivers working under the Administration. There were 42 posts of Staff Car Drivers at the time of implementation of the new scheme in 1999 out of which 7 posts in Grade-I and 6 posts in Grade-II were created as per the guidelines in the OM at Annexure R -1(a). Eight Drivers were promoted to Grade-II and 7 to Grade-I strictly on the basis of seniority, trade test and on the basis of recommendation of the DPC as at Annexure R 1(C). By OM dated 15.2.2001 the Ministry has modified the promotion grades with inclusion of one more grade (Special Grade) in the ratio of 30: 30: 35: 5. The Lakshadweep Administration in pursuance of the above said OM restructured the cadre strength into 4 grades in the ratio 12:12:14:2 taking the basic strength of SCD as 40 posts and the process could be completed in January, 2006. The applicant along with 10 officials were promoted to Grade-II w.e.f. 21.3.2006 based on the DPC held on

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21.3.2006. He was promoted to Grade-II only w.e.f. the date of passing of the trade test and as recommended by the DPC.

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

5 The Govt. Of India, Ministry of Personnel, Public Greivances and Pensions OM dated 30.11.1993 orders promotion of SCDs as follows:

The posts of Staff Car Drivers in the existing scale of Rs. 950-1500 will be placed in the following three scales, viz. Rs. 950-1500, Rs. 1200-1800 and Rs. 1320-2040 in the ratio of 55:25:20. For example, if there are five posts of Staff Car Drivers 55% of 5 posts i.e. 3 will be in the scale of Rs. 850-1500. 25% of 5 i.e. 1 will be in the scale of Rs. 1200-1800 and 20% of 5 i.e. 1 will be in the scale of Rs. 1320-2040:

2.1.1 The nomenclature of the posts in the various scales will be as under:-

<u>Sl. No.</u>	<u>Scale</u>	<u>Nomenclature</u>
1	950-1500	Staff Car Driver Ordinary Grade
2	1200-1800	Staff Car Driver Grade-II
3	1320-2040	Sstaff Car Driver grade-I

2.3 The minimum eligibility criteria for appointment to the posts in the above scale will be as under:

<u>Grade</u>	<u>Eligibility period</u>
Ordinary Grade 950-1500	Basic Grade
Grade-II staff Car Driver (1200-1800)	- 9 years of regular service in the ordinary Grade
Grade-I of Staff Car Driver ((1320-2040)	- 6 years of regular service in Grade-II of Staff Car Driver

2.4 The method of appointments to the posts in Grade-II and Grade-I of Staff Car Driver will be by promotion on Non-Selection (Seniority-cum-Fitness) basis and will be further subject to passing

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of a trade Test of appropriate standard contained in the Annexure I to this OM.

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2.9 These orders come into force w.e.f. 1.8.1993.

From the above, it is clear that to get promotion under the scheme, an ordinary Staff Car Driver should complete 9/6 years of service in Ordinary/Grade-II respectively and the appointment will be on the basis of seniority-cum-fitness and on passing a Trade Test of appropriate standard. The promotion is also subject to availability of vacancies in the ratio of 55:25:20.

6 The respondents have admitted that the new scheme could not be implemented in the Lakshadweep Administration w.e.f. 1.8.93 due to delay in finalising the seniority list. No seniority list has been produced before us. Trade Tests were conducted after finalisation of the seniority and 8/7 officials were promoted to Grade-II and Grade-I respectively. The respondents have asserted that the trade test was conducted strictly on the basis of seniority list and on the basis of recommendation of the DPC the promotion has been effected. The applicant was eligible to be considered for Grade-II on 1.8.1993 and for Grade-I on completion of 6 years of service in Grade-II in his turn subject to availability of a post.

7 The respondents have admitted in the reply statement that there were 42 posts at the time of implementation of the new scheme in 1999. According to the OM quoted above, these posts have to be distributed in the ratio of 55:25:20. Therefore, it is clear that there were at least 24 posts in Grade-III, 10 in Grade-II and 8 in Grade-I. The respondents

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have produced Annexure R 1(C) office order dated 3rd June, 1999 promoting 8 officials to Grade-I and 7 officials to Grade-II with effect from the date noted against their names. A perusal of the same would show that except Shri K.Velayudhan at Sl. No. 6 in the Grade-II list, all others figure in the Grade-I list too with different dates of promotion to that grade. It is seen that promotions to Grade-I and Grade-II has not been effected in the manner prescribed in para 3 of DOPT OM No. 22036/1/92-Est (D) dated 30.11.1993 which is extracted below:

"3 While making initial appointment to the above newly created scales, each Ministry/Department will screen the list of Staff Car Drivers, who have rendered not less than 15 years of service, may be considered for appointment to posts in grade-I direct to the extent of availability of vacancies in that grade subject to being found fit by DPC on the basis of seniority cum fitness and passing of trade test. In the same manner Staff Car Drivers, who have rendered not less than 9 years service (including those who could not be accommodated in Grade-I inspite of putting in 15 years of service, for want of vacancies) may be considered for appointment to grade-I by following the same eligibility and other criteria prescribed for appointment to these posts."

Therefore, 8 Drivers who had more than 15 years of service should have been appointed to posts in Grade-I directly. Then those who have completed 15 years of service and could not be considered for appointment to Grade-I should have been considered for appointment to Grade-II. The applicant who commenced service in March, 1984, could have been placed in Grade-II depending on his position in the seniority list. Since 6 officials who were placed in Grade-II were upgraded to Grade-I as per Annexure R-1(c), 9 more Drivers could have been promoted at that point of time, as shown in R-1(c) to Grade-II. Therefore, it is clear that posts were available in Grade-II on different dates. But, the respondents had not filled the posts scrupulously following the guidelines contained in DOPT 's OM at R-1(a).



While so, in compliance with the direction of the Principal Bench of the Tribunal, New Delhi in O.A. 2529/96, a new "Special Grade" for Staff Car Drivers in the scale of Rs. 5000-8000 was introduced w.e.f. 8.11.1996 in the revised ratio of 30:30:35:5. According to the Recruitment Rules for Special Grade Post, Driver in Grade-I having 3 years regular service in the grade based on seniority alone is eligible to be promoted to that grade. The availability of posts of revised grades of Staff Car Driver in the Lakshadweep Administration is given below:

Ordinary Grade (Rs.3050-4590)	12 posts
Grade-II (Rs. 4000-6000)	12
Grade-I (Rs.4500-7000)	14
Special Grade (Rs.5000-8000)	2

8 Admittedly there is inordinate delay in finalising the seniority list of Staff Car Drivers in the Lakshadweep Administration, in conducting the trade test and granting promotion to higher grades. The delay affected the majority of the Drivers in the Administration. The Promotion Scheme for Staff Car Drivers was formulated vide Office Memorandum dated 30th November, 1993 in compliance with the direction of the Principal Bench of the Tribunal, New Delhi in the case of Staff Car Drivers' Association and Others Vs. Union of India (O.A. 2957/91). Therefore, the delay in finalisation of the seniority list etc. cannot stand in the way of implementing the scheme in letter and spirit w.e.f. 1.8.1993/8.11.1996. Therefore, we are of the view that the interest of justice will be met if we allow the O.A. with the following direction/declaration:

- (ii) Implement the Promotion Scheme for Staff Car Drivers in the ratio 55:25:20 w.e.f. 1.8.1993 as envisaged in O.M. dated 30.11.1993 and in the ratio of 30:30:35:5 w.e.f. 8.11.1996 as envisaged in the O.M dated 15.2.2001

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treating pass in trade test already conducted as valid and conducting trade test for those who were not called for the same.

(ii) Declare that the applicant is eligible to be considered for promotion to Grade-II w.e.f. 1.8.1993 itself and for Grade-I in his turn based on his position in the seniority list, subject to availability of vacancies within the identified posts of 14 Drivers in Grade-I.

9 Action on the above lines shall be completed within four months from the date of receipt of this order. The O.A. is allowed as above. No costs.

Dated 7th July, 2009.


K. NOORJEHAN
ADMINISTRATIVE MEMBER

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GEORGE PARACKEN
JUDICIAL MEMBER