

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Date of Decision: 5.6.1991

Original Application No.290/90

M.K. Muthukoya, Superintendent,
P.W.D. Division, U.T. of Lakshadweep,
Amini. .. Applicant

M/s Boby George & MV Thamban .. Counsel for applicant

Vs.

1. Union of India, represented
by the Secretary to Ministry
of Home Affairs (ANL)
New Delhi.

2. Administrator,
U.T. of Lakshadweep,
Kavarathy. .. Respondents

Mr. C. Kochunni Nair, ACGSC .. Counsel for R.1.
Mr. NN Sugunapalan, SCGSC .. Counsel for R.2.

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Hon'ble Mr. S.P.Mukerji - Vice Chairman

and

Hon'ble Mr. A.V.Haridasan - Judicial Member

- 1.Whether Reporters of local papers may be allowed to see the Judgment?
- 2.To be referred to the Reporter or not?
- 3.Whether their Lordships wish to see the fair copy of the Judgment?
- 4.To be circulated to all Benches of the Tribunal?

JUDGMENT

(Hon'ble Mr. S.P.Mukerji, Vice Chairman)

In this application dated 9.4.1990 filed under
Section 19 of the Administrative Tribunals Act, subsequently
amended the applicant who has been working as Superintendent
P.W.D. under the Administrator, Union Territory of Laksha-
dweep has challenged the impugned orders dated 3.10.89 at
Annexure-V rejecting his representation for promotion to
the post of Settlement Officer/Deputy Collector as also
the Circular dated 20.12.89 by which volunteers have been
asked to apply for the post of Deputy Collector, Minicoy

on deputation basis. It is also prayed that respondents be directed to promote the applicant to the post of Deputy Collector/Settlement Officer under the old Recruitment Rules notified in 1982 at Annexure-I and to desist from modifying those rules to exclude the category of Office Superintendent for promotion to the post of Deputy Collector/Settlement Officer. His further prayer is to set aside the revised Recruitment Rules as notified on 3.7.89 and to declare that the Recruitment Rules of 1982 at Annexure-I are still in force.

2. The brief facts of the case are as follows. The applicant who is a member of a Scheduled Tribe was recruited as L.D.C. in the Union Territory of Lakshadweep on 15.5.1964 and was promoted as U.D.C. on 22.11.71. He was promoted as Tahsildar/Assistant Settlement Officer on adhoc basis on 20.12.80 and on a regular basis on 2.12.81. He hasbeen working as Superintendent with effect from 13.10.88. There are two posts of Deputy Collector/Settlement Officer under the Lakshadweep Administration. In accordance with the Recruitment Rules which were notified on 12.1.82 (Annexure-I) Superintendents/Tahsildars/Assistant Settlement Officers on completion of 8 years of regular service became eligible for promotion as Deputy Collector/Settlement Officer provided they passed the prescribed tests. According to the applicant on the basis of his promotion as Tahsildar/Assistant Settlement Officer on 20.12.80 he became eligible for promotion as Deputy Collector/Settlement Officer in 1988. His grievance is/that even though a post of Deputy Collector fell vacant from August, 1989, when one of the incumbents went on 120 days of leave, and three vacancies had already been

filled up by general candidates, he as a Scheduled Tribe candidate became entitled to be promoted as Deputy Collector in 1988. He has been representing for such promotion on 0.12.88, 6.9.89 and 11.10.89 but no heed was placed to his pleas. It was on his third representation of October, 1989 that he learnt that there was a change in the Recruitment Rules even though ^{earlier} he had no inkling about the same. His second representation dated 6.9.89 was not forwarded on the ground that there was no clear vacancy. In spite of it the respondents initiated action to fill up the post of Deputy Collector by issuing the Circular dated 20.12.89 inviting applications for filling up the post of Deputy Collector/ Settlement Officer by deputation.

3. The respondents have stated that in accordance with the Recruitment Rules of 1982 the applicant would have become eligible for promotion after completing 8 years of regular service in the cadre of Tahsildar/Assistant Settlement Officer/Superintendent. Since he was appointed on regular basis in that cadre on 2.12.81, he was to become eligible for promotion under the old Recruitment Rules only on 2.12.89. However, in the meantime ^{in July 1989} on the basis of the guidelines and policy of the Government and to provide greater mobility and avoid multiplicity of Recruitment Rules and after consulting the Union Public Service Commission, the Recruitment Rules for the post of Deputy Collector/ Settlement Officer were amended. By the amendment the post of Superintendent/Assistant/Supply and Marketing Officers were excluded for promotion to the

post of Deputy Collector/Settlement Officer. Avenues of promotion for them were to be provided for the post of B.D.Os whose number was increased from 1 to 6. Besides the post of Secretary (Administration) was also clubbed with the post of Deputy Collector/Settlement Officer. The revised Recruitment Rules were notified on 3.7.89 and published in the Government of India Gazette on 22.7.89. They have clarified that the revised Recruitment Rules do not effect reservation and other concessions available to Scheduled Caste/Scheduled Tribe candidates. They have also clarified that the vacancy of Settlement Officer which arose in ^{August} 1989 was only for a period of 120 days when the regular incumbent went on leave. The regular vacancy arose on 1.12.90 on the retirement of the regular incumbent. Since the applicant was not eligible in August, 1989 he should have no grievance if the leave vacancy was not filled up by promoting him. They have justified filling up the post of Deputy Collector/Settlement Officer by deputation as no eligible officer from the feeder categories is available. They have indicated that in order to protect the interest of the officials like the applicant excluded from the feeder category, promotion avenues are being provided by retaining this post as feeder category for promotion to the six posts of BDOs.

4. In the rejoinder the applicant has questioned the notification of the revised Recruitment Rules in the Government of India Gazette which is not available in the Lakshadweep Islands. He has argued that since the old Recruitment Rules of 1982 had been notified in the Lakshadweep Gazette, the revised Recruitment Rules also should have been notified in that Gazette. He has also questioned the

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justification of amending the Recruitment Rules by stating that no eligible candidate is available from the feeder category under the amended Rules. He has also argued that since his adhoc appointment as Tahsildar/ Assistant Settlement Officer with effect from 20.12.80 was subsequently regularised with effect from 2.12.81, his adhoc service also should be taken as qualifying service for the purpose of promotion.

5. The respondents have clarified that since the revised Recruitment Rules were issued by the President under Article 309 of the Constitution of India, it had to be published in the Government of India Gazette. They have also appended other Recruitment Rules for different posts under Lakshadweep Administration which were published in the Government of India Gazette. They have clarified that under the revised Recruitment Rules, one out of the three posts of Settlement Officer/Deputy Collector/ Secretary (Administration) is to be filled up by deputation. The post of Deputy Collector is to be filled up by BDOs with three years of regular service possessing test qualification. Since none of the BDOs have the required ^{fill the} qualifying service, the respondents had to resort to by transfer on deputation. Even under the old Recruitment Rules, the applicant's turn would have come only if none ^{higher} in the feeder category of BDOs was available. A number of BDOs have been working on an ad hoc basis since 1983 but because of their having no regular service, they were not eligible.

6. In the additional rejoinder the applicant has stated that the Revised Recruitment Rules have since been notified in the Lakshadweep Gazette (extra-ordinary) on

14.9.90. He has also discussed why the post of Superintendent in the lower grade of 1400-2300 should not be included as a feeder category in the cadre of Deputy Collector/ Settlement Officer/Secretary(Administration) in the scale of Rs.2000-3500. His grievance is that he cannot be promoted now even as BDO as he has not put in 5 years of service as Superintendent.

7. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. In accordance with the Recruitment Rules of 1982 the following were the feeder categories for promotion as Settlement Officer/Deputy Collector:

- "(i) Secretary to the Administrator with two years regular service in the grade or combined regular service of three years in the grade of Secretary to the Administrator and Block Development Officer (Hqrs);
- (ii) Failing (i) above Block Development Officer (Hqrs) with three years regular service in the grade or combined regular service of eight years in the grades of Block Development Officer (Hqrs) and Office Superintendent
- (iii) Failing (ii) above Office Superintendent with eight years' regular service in the grade failing which Office Superintendent with combined regular service of eight years in the grades of Office Superintendent and Tahsildar or Assistant Settlement Officer."

(emphasis added)

From the above it is clear that it is only after exhausting categories of Secretary to the Administrator and BDOs would the turn of the applicant ~~would have~~ come for promotion. Since the applicant started his regular service as Tahsildar/Assistant Settlement Officer on 2.12.81, he would have become eligible only on 2.12.89. By then the Recruitment Rules had been revised. Thus it appears to us that the claim of the applicant to seek promotion as Settlement Officer/Deputy Collector under the old

Recruitment Rules of 1982 is far fetched. The applicant has taken a technical plea that the revised Recruitment Rules could not be published in the Government of India Gazette as at Annexure.R.1 because the heading of the notification at Annexure.R.1 itself excludes Administration of Union Territories. The heading of the Government of India notification at Annexure.R.1 reads as follows:

"General Statutory Rules (including Orders, Bye-laws etc. of a general character issued by the Ministries of the Government of India (other than the Ministry of Defence) and by the Central Authorities (other than the Administrations of Union Territories.)"

(emphasis added)

The above heading will show that the exclusion is only in regard to those Orders, Bye-laws and Rules which are issued by Administration of Union Territories. Since the Recruitment Rules are issued by the President of India the same cannot be excluded. We, therefore, find no force in the argument of the applicant in this regard.

that
The fact/these Recruitment Rules were also subsequently published in the Lakshadweep Gazette cannot take away the validity of the notification issued in the Government of India Gazette.

8. As regards counting of adhoc service as regular, there is nothing to show that while the applicant has been appointed on adhoc basis on 20.10.80, all persons senior to him or in superior feeder categories were considered. It will not be fair to them if a fortuitous promotion of the applicant is considered to be regular under the statutory Recruitment Rules for the purposes of his Sewage Disposal eligibility. It has been held in ^{AIR 1989 SC 278} ~~Delhi Water Supply/ Committee & Ors. Vs. R.K. Kashyap & Others~~ that adhoc service followed by regularisation will count for seniority only

if the seniors are also considered at the time of adhoc promotion. In any case since the Statutory Rules specifically exclude adhoc service for the purpose of eligibility as distinguished from seniority, the applicant cannot get the benefit of adhoc fortuitous service to make up the regular short-fall in his qualifying service. The applicant's argument that by denying him promotion to the post of Deputy Collector/ Settlement Officer, his condition of service have been adversely affected cannot be accepted. In State of Maharashtra and another V. Chandrakant Anand Kulkarni and others, AIR 1981 SC 1990, the Supreme Court held that mere chances of promotion is not a condition of service but the right to be considered is a condition of service. Since the applicant's right to be considered for promotion as BDO still survives, it cannot be said that by the revised Rules his condition of service is adversely affected. It has been held by this Tribunal in Girish Sahay and others V. Union of India, (1989) 9 ATC 251 that Recruitment Rules can be modified even if prospects of promotion are affected. This Tribunal in Tarip Singh and others V. Union of India and others, (1989) 9 ATC 772 held that Recruitment Rules cannot be void merely because they do not provide for promotions.

9. The Supreme Court in State of Andhra Pradesh v. V. Sedanandam, (1989) 11 ATC 391 held that the mode and source of recruitment lie exclusively in the domain of the Executive and that judicial bodies should not intervene in the policy of recruitment. In a similar strain the Supreme Court in J. Rangaswamy V. Govt. of Andhra Pradesh, 1990 Lab. I.C. 296 held that the Courts should not consider

or assess relevancy, suitability and merits of the prescribed qualifications in the Recruitment Rules.

10. In the light of the above discussions and clear rulings of the Supreme Court and this Tribunal, we do not see any merit in the application and dismiss the same with no order as to costs.


A.V. HARIDASAN
JUDICIAL MEMBER

5.6.91


S.P. MUKERJI
VICE CHAIRMAN

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