

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 325 of 2012

TUESDAY, this the 12th day of February, 2013

CORAM:

Hon'ble Mr. Justice P.R. Raman, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

S.M. Mohammed Rafeeqe, aged 39 years,
 S/o. Late M. Pookoya, Primary School Teacher,
 Government Junior Basic School, Mechery, Androth Island,
 UT of Lakshadweep residing at "Pali House", Mechery,
 Androth Island, UT of Lakshadweep-682 551. **Applicant**

(By Advocate – Mr. Shafik M.A.)

V e r s u s

1. Union of India, represented by Administrator,
 UT of Lakshadweep, Kavaratti.
2. The Director of Education, UT of Lakshadweep, Kavaratti.
3. Smt. K. Sainaba, Primary School Teacher,
 Government Senior Basic School, Minicoy Island,
 UT of Lakshadweep.
4. M.C. Abdulkader, Primary School Teacher,
 Government Junior Basic School C, Kadamath Island,
 UT of Lakshadweep. **Respondents**

(By Advocate – Mr. S.R. Radhakrishnan)

This application having been heard on 28.01.2013, the Tribunal on
12-02-2013 delivered the following:

O R D E R

By Hon'ble Mr. K. George Joseph, Administrative Member-

The applicant, a Primary School Teacher under the 2nd respondent having BSc. in Physics and BEd. in Physical Sciences, aspires for promotion



to the post of Headmaster of Junior Basic School. Though he was promoted as Trained Graduate Teacher he had declined the same as he is in the line for promotion as Headmaster Junior Basic School. As per recruitment rules 50% of the vacancies in the cadre of Headmaster of Junior Basic School is reserved for those Primary School Teachers who are having BA BEd., BSc. BEd., BSc. Ed. Etc. and 50% for those who are not having the qualifications of a degree and BEd. When promotions were made to the post of Headmaster, of Junior Basic Schools in the year 2011, two Primary School Teachers who were not having a degree & BEd. were promoted. There are three vacancies of Headmaster of Junior Basic School, two of which are filled up by Annexure A1 dated 14.3.2012 promoting two non-graduates. Serial No. 2 in Annexure A1 is said to have declined the promotion as he is on the verge of retirement. The applicant had submitted a detailed representation to the 1st respondent on 6.3.2012 as at Annexure 7 but no action is taken. Aggrieved he has filed this OA for the following reliefs:-

“(i) To call for the records relating to Annexure A1 to A7 and to quash A1 to the extent it promotes respondents 3 & 4 in preference to the applicant;

(ii) To declare that the applicant is entitled to be promoted as Headmaster Junior Basic School in preference to those who are not having graduation and B.Ed. Degree against 50% vacancies as per the recruitment rules and is entitled to be promoted against the vacancies in which respondents 3 & 4 are now promoted;

(iii) To issue such other appropriate orders or directions this Hon'ble Court may deem fit, just and proper in the circumstances of the case;

And

(iv) To grant the costs of this Original Application.”

2. The applicant contended that the action of the respondents promoting non-graduates when qualified hands like Senior Primary School Teachers



with BEd. are available is in violation of the recruitment rules and is illegal and arbitrary. In fact two vacancies filled up in the year 2011 were also by Primary School Teachers who did not have graduation. The present action of the respondents in issuing Annexure A1 order again promoting two other Primary School Teachers who are not having graduation and BEd. degree is absolutely illegal, incorrect and arbitrary. It is the vacancies which are reserved for the respective classes of Primary School Teachers and not the posts. All vacancies which have arisen since the introduction of the Recruitment Rules, 2002 are to be filled up in the ratio of 50:50.

3. Respondents in their reply statement submitted that out of 21 posts of Headmaster, Junior Basic School, 10 posts are to be filled up by promoting Primary School Teachers and 10 posts to be filled up by promoting Primary School Teachers with graduation and the remaining one post is to be filled up alternatively between the two categories as per Recruitment Rules, 2002. There are already 11 graduates against the 21 posts and there are only 5 TIC holders. In order to maintain the ratio 1:1 between non-graduate and graduate Primary School Teachers, 5 more non-graduates will have to be promoted.

4. In the rejoinder statement the applicant submitted that according to the Recruitment Rules, 50% of the vacancies in a given year is to be filled up by those who are having higher qualification of graduation with BEd. Filling up the entire vacancies with non-graduates is contrary to the rules.

5. We have heard the learned counsel for the parties and perused the



records.

6. As per Recruitment Rules, 2002 the post of Headmaster in Junior Basic Schools is to be filled up as under:-

- i) 50% of the vacancies by the promotion from the grade of Primary School Teacher;
- ii) 50% of the vacancies by promotion from the grade of Primary School Teachers having BA BEd./BSc. BEd./BSc. Ed.

7. There are already 11 graduates against 21 posts of Headmaster of Junior Basic Schools. There are only 5 TTC holders. Hence, 5 more non-graduates will have to be promoted according to the understanding of the respondents. Therefore, they have gone ahead with filling up the vacancies promoting Primary School Teachers. As per the say of the respondents 50% of the posts are to be filled up by TTC Holders and the remaining 50% by Graduate Teachers. A plain reading of the Recruitment Rules would show that 50% of the vacancies are to be filled up by promotion from the grade of Primary School Teachers and the remaining 50% of the vacancies by promotion from the grade of Primary School Teachers having BA BEd., BSc. BEd., BSc. Ed. The vacancies, not the posts are earmarked for each category. The respondents have erred in holding that the 50% of the posts are earmarked for the non-graduate Primary School Teachers. Since 2002 as per Annexure A2 Recruitment Rules, 50% of the vacancies in a year should go to the category of graduate Primary School Teacher. In this context from the judgment reported in 1999 (3) SCC 384 – All India Federation of Central Excise Vs.

Union of India & Ors., paragraph 13 which is relevant is extracted as under:-

“13. Reliance by the petitioners is placed upon *R.K. Sabharwal* case. That case deals with the principle that the posts vacated by an officer recruited from the SC/ST category must be filled in only by the same reserved category. This is because of the special provision in Article 335 of the Constitution of India relating to adequate representation of the SCs/STs in the services. The birthmarks there remain even on promotion in as much as a particular number of posts in the promotional category are reserved to be filled in only from among SCs/STs. On the other hand, so far as a normal quota rule between two feeder channels for recruitment or promotion is concerned, be it between direct recruits and promotees or promotion by a quota between different feeder groups (as in the case before us), the relevant precedents are *Paramjit Singh Sandu v. Ram Rakha Mal and State of Punjab v. Dr. R.N. Bhatnagar*. In *Paramjit Singh* case which related to recruitment from among promotees and direct recruits and promotees were treated as a rule of reservation, then because of the frequent retirements of the promotees who were generally closer to retirement, most vacancies in the promotional posts would repeatedly go to the aged promotees leaving little scope for direct recruitment. At p. 196, the learned Judge clarified as follows: (SCC para 6).

“What this Court meant while saying that when a quota rule is prescribed for recruitment to a cadre, it meant that quota should be corelated to the vacancies which are to be filled in. Who retired and from what source he was recruited may not be very relevant because retirement from service may not follow the quota rule”

The learned Judge further pointed out : (SCC p. 196, para 6)

“Promotees who come to the service at an advanced age may retire early and direct recruits who enter the service at a comparatively young age may continue for a long time. If, therefore, in a given year larger number of promotees retire and every time the vacancy is filled in by referring to the source from which the retiring person was recruited, it would substantially disturb the quota rule itself. Therefore, while making recruitment quota rule is required to be strictly adhered to.”

(emphasis supplied)

8. The Hon'ble Supreme Court has held that the word “post” cannot be understood to mean that the number of posts available and it has to be understood as the vacancies available. In *R.K. Sabharwal Vs. Union of India & Ors.* 1995(2) SCC 745, because of the special provision in Article 345 of



the Constitution of India relating to adequate representation of the SC & STs in the service the post vacated from an officer recruited through the SC & ST category must be filled up only by the same category. This principle is not applicable as far as normal quota rule between two feeder category of promotions. The concept of vacancy has no relevance in operating the percentage of reservation for the SC & ST which is to be worked out on the basis of roster points taking into consideration the vacancies that fell due at given point of time. Following the ratio of the decision of the Hon'ble Supreme Court Judgment in State of Punjab & Ors. Vs. Dr. Bhatnagar & Anr. - (1999) 2 SCC 330) even if the Recruitment Rules provide that 50% posts of Junior Basic schools are to be filled up by graduate teachers it cannot be said that the word 'post' must necessarily refer to total posts in the cadre and not to vacancies. In the instant case it is clearly stated in the Recruitment Rules, 2002 that the 50% of the vacancies and not posts are to be filled up by Primary School Teachers having BA BEd., BSc. BEd. and BSc. Ed. Therefore, we have no hesitation in holding that filling up the entire vacancies in any given year by the respondents by one category is illegal. As per MA No. 897 of 2012 respondents 3 & 4 have declined their promotions. As per the statement of the counsel for the applicant there are at present 5 vacancies. As per order dated 17.9.2012 one vacancy has been kept unfilled till the disposal of the case.

9. In the light of the above we declare that the applicant is entitled to be considered for promotion as Head Master in preference to persons not having graduation and BEd. against 50% vacancies in a given year as per the

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Recruitment Rules. The respondents are directed to consider the case of the applicant for promotion as Headmaster Junior Basic School, against the vacancies of 2011 and appoint him as such, if found fit, within a period of three months from the date of receipt of a copy of this order.

10. Original Application is allowed as above with no order as to costs.


(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER


(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

“SA”

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Contempt Petition No. 101 of 2013 in
Original Application No. 325 of 2012

Monday, this the 30th day of September, 2013

CORAM:

Hon'ble Dr. K.B.S. Rajan, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

S.M. Mohammed Rafeeqe, aged 40 years,
 S/o. Late M. Pookoya, Primary School Teacher,
 Government JB School, Mechery, Androth,
 UT of Lakshadweep residing at "Pali House", Mechery,
 Androth Island, UT of Lakshadweep.

Petitioner

(By Advocate – Mr. Shafik M.A.)

V e r s u s

1. Mr. H. Rajesh Prasad, age : not known,
 Fathers name : not known to the petitioner,
 The Administrator, UT of Lakshadweep, Kavaratti – 682 555.
2. Mr. A. Hamza, age : not known,
 Fathers name : not known to the petitioner,
 The Director of Education, UT of Lakshadweep,
 Kavaratti.

Respondents

(By Advocate – Mr. S. Radhakrishnan)

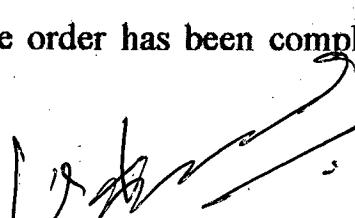
This Contempt Petition having been heard on 30.09.2013, the Tribunal
 on the same day delivered the following:

ORDER

By Hon'ble Dr. K.B.S. Rajan, Judicial Member-

According to the counsel for the parties the order has been complied
 with. As such this Contempt Petition is closed.

(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER
"SA"


(DR. K.B.S. RAJAN)
JUDICIAL MEMBER