

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 349 OF 2011

Tuesday, this the 30th day of October, 2012

CORAM:

HON'BLE MS.K NOORJEHAN, ADMINISTRATIVE MEMBER

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|----|--|---|------------|
| 1. | M.K Ashraf
S/o Muthukunhi P.P
Working as Mason Grade – II
L.P.W Department
Union Territory of Lakshadweep
Kadamath Island – 682 556 | | |
| 2. | A.C Mohammed Haneefa
S/o Syed Mohammed Avvechetta
Working as Man Mazdoor,
L.P.W Department
Union Territory of Lakshadweep
Kadamath Island – 682 556 | - | Applicants |

(By Advocate Mr.N Unnikrishnan)

Versus

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| 1. | Union of India represented by
the Secretary to the Government of India,
Ministry of Personnel and Public Grievances
Department of Personnel and Training
New Delhi – 110 001 | | |
| 2. | The Administrator
Union Territory of Lakshadweep
Kavaratti – 682 555 | | |
| 3. | The Superintending Engineer
Lakshadweep Public Work Department
U.T of Lakshadweep
Kavaratti – 682 555 | | |
| 4. | The Assistant Engineer
Lakshadweep Public Works Department Sub Division
Union Territory of Lakshadweep
Kiltan – 682 558 | - | Respondents |

(By Advocate – Mr.S Radhakrishnan for R2-4)

The application having been heard on 10.10.12, the Tribunal on 30.10.12 delivered the following:

ORDER

BY HON'BLE MS.K NOORJEHAN, ADMINISTRATIVE MEMBER

1. The applicants in this Original Application are challenging the non-action on the part of the respondents to regularise them against Group C/D posts, while their juniors are being appointed.

2. The applicants aver that they were granted temporary status with effect from 01.09.1993 as the first applicant joined as NMR Mason Grade III in 1986 and the second applicant joined as Man Mazdoor in 1988. According to the applicants as per Annexure A-1 Scheme of Government of India (for Grant Temporary Status and Regularisation), those who are granted temporary status are entitled to two out of every three vacancies in Group D cadre in the respective offices where the casual labourers are working. The first applicant who joined as Grade III Mason was upgraded to Grade II and is continuing as such till date. The third respondent vide Annexure A-9 order directed the Subordinate offices to appoint temporary status labourers from the combined seniority list to the post of Watchman and similar category in various departments (Annexures A-9 and A-10). The applicants contend that for direct recruitment the minimum educational qualification required is 4th Standard. The first applicant has passed 4th Standard and 2nd applicant has passed 6th Standard. They further maintained that the age and educational qualification prescribed for direct recruitees will not apply in the case of those casual labourers conferred with temporary status (Annexure A-13). Hence they contend that they are entitled to be appointed to

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Group C/D posts like W.C Assistant Mason, Assistant Carpenter, Welder, Cleaner, Sevak and Khalasi and Watchman etc. While so, the third respondent instructed the fourth respondent to forward the names of those temporary status casual labourers who are matriculates for absorption in the post of Assistant Mason, Carpenter, Khalasi etc (Annexure A-20). The applicants contend that the attempt of the third respondent to fill up the above promotion vacancies by persons with matriculation is contrary to the Recruitment Rules. Such action on the part of the respondents is putting the applicants to irreparable injury, recurring monetary loss and injustice. Therefore, they seek a direction to the respondents to regularise them in Group D/C posts eventhough the applicants are not matriculates.

3. In the reply statement the respondents submitted that though the applicants were conferred with temporary status they can not be brought to the permanent establishment unless they are selected through regular selection process for Group D Post. They added that as per Lakshadweep PWD Group B & C Recruitment Rules 2011, the method of recruitment to the sanctioned Group C posts is by absorption from temporary status casual labourers working in the Lakshadweep PWD who are matriculates failing which by direct recruitment (Annexure R-2(a)). Moreover, the Recruitment Rules 2011 is framed based on the 6th CPC recommendation which prescribes matriculation as the minimum educational qualification for the lowest post in the Central Government service. According to the respondents there are temporary status casual labourers who are matriculates and who are eligible for absorption as per the 2011 relevant Recruitment Rules. The claim of the applicants that they should be absorbed cannot be entertained as they do not fulfill the educational qualification. They

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submitted that in the absence of a specific direction from the Government of India, the respondents are not in a position to over ride the relevant Recruitment Rules and guidelines.

4. The applicants filed rejoinder and contended that the vacancies which existed prior to the amended Recruitment Rules of 2011 will have to be filled up by the provisions of Recruitment Rules of 1998 (Annexure A-16). They also produced a copy of the order of this Tribunal in O.A No.284/10 and other connected O.As (Annexure A-21), dealing with an identical issue.

5. Arguments were heard and documents perused.

6. The applicants in the present O.A are arrayed as the third and 9th applicants in O.A 400/11 which is one of the connected cases in O.A 284/10 at Annexure A-21 supra. Therefore, the applicants are entitled to the benefits granted to all the applicants in O.A 284/10 and connected cases. The relevant portion of the order of this Tribunal is extracted below:-

"28. Thus, keeping in view the peculiar features of these cases, with the aforesaid decisions of the Apex Court in heart (especially the decision in J.C. Yadav cited above), if the case is viewed, the case of the applicants deserves invoking of the relaxation power vested with the Administrator and accordingly direct the respondents to consider relaxation of the qualification requirement in respect of the applicants and similarly situated temporary status casual labourers. The applicants with nearly thirty years of casual labour service of which twenty years of service was with temporary status may not be left in lurch on the basis of the introduction of the new condition of higher qualification. (Decision of the Apex Court in the case of ONGC cited above refers). They could well be considered for regularization after duly considering the case for relaxation of the rules and on grant of regularization they could be imparted three months training to equip themselves with the knowledge of the multi skilled works. Such a training could be given even prior to regularization, as regularization would take some time depending upon the availability of vacancies in the ratio of 2:1 as per the Recruitment Rules. Till then, the applicants should continue as

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temporary status casual workers with the attendant benefits attached to such temporary service. Respondents may consider judiciously and pragmatically, keeping in view also the disadvantageous caused to the islanders due to their being totally cut off from the mainland, and arrive at a decision in regard to the invoking of power to relax as contained in the Recruitment Rules and if so decided, pass suitable orders for such relaxation. Thereafter, as and when vacancies arise, in the quota meant for such temporary status employees, their services be regularized. In view of the fact that there shall be multi-skilled workers, while filling up the posts in future by way of regularization, the same shall be on the basis of seniority in the common roster and not of the individual department. The benefits arising out of such regularization (such as qualifying service for pension purpose, which would include half of the temporary status service) may be made available. The Administrator is the authority in this regard, of course, in consultation with the relevant Ministry/department in the Central Government. The Administrator may in exercise of its powers issue a general order relaxing any particular rule with a view to avail the services of requisite Temporary Status Casual labourers. If the functional needs do not warrant a higher qualification, the Administrator could fix the qualification in such a fashion that the same could accommodate majority of the temporary status employees. Of course, those who are nearing sixty or to reach sixty in the near future and whose seniority position is comparatively low, on account of which their turn for regularisation may not come, may not be in a position to be accommodated. These have to be satisfied with the temporary status alone.

29. The O.As are disposed of with the above directions. "

7. During the final hearing the counsel for the respondents submitted that the respondents are taking action to implement the order supra of the Tribunal. Since applicants are also parties in O.A 400/11, which was decided along with O.A 284/10, they will get all the benefits given to applicants in O.A 284/10 and connected cases. He stated that as permitted by this Tribunal 50 posts of Multi-tasking Employees which form 1/3 of the total number of vacancies were filled up by direct recruitment. The remaining 2/3 vacancies are being filled up by absorption of temporary status casual labourers. Around 399 casual labourers are to be absorbed against the remaining 120 vacancies. The first and second applicants are at serial No.179 and 309 of the present combined seniority list. Counsel for the respondents clarified that the provisional combined seniority list of the temporary status casual labourers is being updated and there

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can be slight changes in the serial numbers of the applicants, in the updated seniority list.

8. In view of the submission by the counsel for the respondents that the order of this Tribunal in O.A 284/10 and connected cases, is being implemented and the applicants are parties in O.A 400/11, the respondents are directed to absorb the applicants as per their turn in the combined seniority list of temporary status casual labourers.

9. The Original Application is disposed of with the above direction. No costs.

(Dated, this the 30th day of October, 2012)



(K.NOORJEHAN)
ADMINISTRATIVE MEMBER

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