

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 374 of 1991
T. A. No.

DATE OF DECISION 12-11-1992

Mr AK Thangakoya Applicant (s)

M/s MV Thampan &
G Krishnakumari Advocate for the Applicant (s)

Versus

Superintendent of Police, Respondent (s)
U.T. of Lakshadweep, Kavarathy & 4 others

Mr NN Sugunapalan Advocate for the Respondent (s) 1&2
M/s Sukumaran & Usha - 3 to 5

CORAM :

The Hon'ble Mr. SP MUKERJI, VICE CHAIRMAN

&

The Hon'ble Mr. AV HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? Yes
4. To be circulated to all Benches of the Tribunal? No.

JUDGEMENT

(Hon'ble Mr SP Mukerji, Vice Chairman)

The applicant is a Constable under the Union Territory Administration of Lakshadweep and belongs to the Scheduled Tribe community. He has filed this application dated 24.2.1991 as amended on 2.9.1991 seeking the following reliefs:

- (i) To issue a writ of mandamus or other writ or direction directing the respondent to promote to the post of Wireless Operator/Radio Technician the applicant from the same date as that of Sri Retnakaran and PP Venugopalan notionally and be accommodated in the vacancy of Sri Koyamma who died on 10.6.92;
- (ii) To issue a writ of prohibition or other writ or order or direction to the respondents not to appoint any one from the forward community to the post of Wireless Operator/Radio Technician till the Scheduled Tribe members are adequately represented as per the rules, i.e. 10 out of the total 23 posts;
- (iii) To issue a writ of mandamus or other writ or direction directing the respondents to meticulously follow the 100% roster for the SC/ST prescribed for the Lakshadweep service;

- (iv) To issue such other writ or order of direction as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of this case,
- (v) To issue a writ or certiorari or other writ or order or direction calling for the records and quash Annexure-VII."

As a matter of fact, this application is a 'fall-out' of the judgement delivered by us in TAK-135/85 dated 24.4.1990 a copy of which is available at Annexure-R2. That application was filed by the additional respondents 3,4&5 before us today, challenging their nonselection for the post of ASI(Wireless Operators)/Radio Technicians in the selection held in October 1984. The applicant before us today also ^{had} appeared in the same selection and was not included in the panel of 8 Constables for filling up 8 vacancies of ASI(Wireless Operators)/Radio Technicians. In that judgement after detailed discussions, we found that in accordance with the recruitment rules in existence in October 1984, when the selection test was held, there was no provision for having a qualifying test and the selection was to be made on the basis of seniority. We found that the applicants in that application who are the additional respondents before us, being senior to some who had been selected and sent for training and were respondents 3 to 11 in that application, had a case in their favour and we directed in that application as follows:

"5. In the facts and circumstances, we allow this application to the extent of directing that the applicants also should be sent for wireless operators training in the next available course and if they pass the test after the completion of the course they should be appointed as Wireless Operator/Radio Technician as the case may be and given seniority immediately above the respondents 4 to 11. If there are no available posts of Wireless Operators or Radio Technicians, supernumerary posts should be created to accommodate the petitioners if they pass the examination held after the training course. These supernumerary posts should be adjusted against future vacancies arising due to expansion, retirement, etc. In the circumstances there will be no order as to costs."

In compliance of the aforesaid directions, the additional respondents were sent for training for promotion as Wireless Operators/ Radio Technicians. The applicant before us now has felt aggrieved by the sending for training of the 3 additional respondents on more than one ground. Firstly, he ~~mainly~~ ^{like} contends that/ the three additional respondents, he is also entitled to be sent for training for appointment as ASI(Wireless Operators)/Radio Technicians as he is similarly placed like the additional respondents and ^{that} one Shri Venugopalan who was junior to the additional respondents as also the applicant having been included in the aforesaid panel of eight, the applicant also is entitled to promotion on the basis of his being senior to Shri Venugopalan. The applicant's further contention is that unlike the three additional respondents, the applicant belongs to the S.T.Community and therefore over and above the claims of the additional respondents recognised by this Tribunal in our aforesaid judgement, the applicant has ~~some~~ a still superior claim of being promoted on the basis of his seniority against the reserved vacancy. He contends that among the S.T. eligible candidates, he is ^{the} _c seniormost in the cadre of Constables for promotion as ASI(Wireless Operator)/Radio Technician.

2. We have heard the arguments of the learned counsel for all the parties including the learned counsel for additional respondents and gone through the documents carefully.

3. We have no doubt in our mind that the test for selection held in October 1984 was not regular and the panel drawn up on the basis of that irregular selection cannot be held out against

the applicant. The following extracts from our aforesaid judgement dated 24.4.1990 would bear quotation for this case also and are quoted as follows:

"4. Since the provision of qualifying test was introduced for the first time in the Recruitment Rules on 19.12.84, holding of such a qualifying test on 14.10.84 when the Recruitment Rules of 1977 as amended in 1978 were in force does not appear to be proper. On 14.10.84 the Recruitment Rules then in force clearly indicated that the method of appointment of Wireless Operators and Radio Technicians was by promotion based on seniority. It is now established law that vacancies are to be filled up in accordance with the Recruitment Rules in vogue when the vacancies materialise. In any case, on 14.10.84 when the selection process was initiated, the Recruitment Rules did not provide for any qualifying test, but provided for selection of candidates for being sent for Wireless Operators training based on seniority, the final selection to be based on the performance of the trainees after completion of the training course. In the circumstances, the rationale of prescribing the qualifying test to ensure a minimum standard of basic knowledge of Science and Mathematics does not hold water. Providing 40% for passing the qualifying examination, when normally the pass percentage is 35% seems also to be on the high side. When selection has to be made on the basis of the performance in the examination to be held after the training course, putting a stopper at the threshold by prescribing a qualifying examination with a high percentage of qualifying marks is also not desirable. It is also surprising that out of 308 Constables appeared, the number of persons who qualified was 8, which is exactly the same as the number of vacancies. We had an occasion to go through the marks list of the candidates and found at random that the name of the first petitioner Shri Y Rajan did not even figure in the final list in which the total marks were written against all the candidates. It is also intriguing that the results of the qualifying test were not published which according to us is obligatory where recruitment to public service is involved. Because of these infirmities we do not think that this is a fit case where the petitioners can be estopped from challenging the qualifying test merely because they had appeared in the test without protest. For one thing, when they appeared in the test they did not know about the qualifying marks and could not predict that the results will not be published and that only 8 candidates equal to the number of vacancies would be held to have qualified and nobody else."

4. The question which ^{poses} ~~poses~~ itself before us is whether the applicant can claim the benefit of our aforesaid judgement at this stage. Shri NN Sugunapalan, the learned counsel for respondents 1&2 persuasively argued that as many as 308

Constables appeared in that test and a considerable number of them are senior to the applicant before us and if the applicant's claim is allowed and like the additional respondents, he is also to be accommodated by creating a supernumerary post, the respondents 1&2 will be hard put to it in accommodating all future claims ^{of those} senior to the applicant before us who may also moved this Tribunal for similar benefits. We see considerable force in the argument of the learned counsel Shri Sugunapalan, but the fact remains that the applicant stakes his claim not only on the basis of his being similarly circumstanced as ^{the} additional respondents 3 to 5, but also on the additional ground that he belongs to the S.T.Community and he is the seniormost among the eligible S.T.Constables and therefore he is entitled to a special treatment in being considered for promotion against a reserved vacancy.

5. To this argument Shri Sugunapalan contended that there was no reserved vacancy unfilled prior to 1985. Our attention however, was drawn by the learned counsel for the applicant to para-4 of the reply statement filed by respondents 1&2 which we are quoting below:

"4. The averments and allegations contained in paragraph 4(2) of the OA are not fully correct and hence denied. There are 17 posts of Wireless Operators and 6 posts of Radio Technicians. Of the 17 posts of Wireless Operators point numbers 4, 5, 10 and 13 are occupied by local ST candidates, point No.8 by an SC candidate (from Kerala) and remaining 12 points are occupied by non ST/SC candidates. Of the 6 posts of Radio Technicians Point Nos. 1 and 4 are occupied by local ST candidates and remaining 4 posts by non SC/ST candidates. Applicant has failed to qualify in the promotion test conducted as provided in the relevant Recruitment Rules and hence he could not be considered for the post of Wireless Operator."

Shri Sugunapalan argued that prior to 1.6.1985, the 40 Point

Roster would be applicable to the post of ASI(Wireless Operators)/ Radio Technicians in the Lakshadweep Administration. In accordance with the 40 Point Roster it is admitted that out of 17 posts, 3 posts will be reserved for S.C. and 2 posts for S.T. Shri Sugunapalan admitted that in accordance with the circular dated 27.9.1972 of the Ministry of Home Affairs at Annexure ~~III~~ ^{II} for the U.T. of Lakshadweep, all the S.C. vacancies would be available to S.T. candidates. Thus ~~all~~ ^{of} 17 posts of ASI(Wireless Operators) ~~5~~ ² posts would be reserved for S.T. Constables by the end of 1984. From para-4 of the reply statement as extracted above, it is clear that only 4 were filled up by local S.T. candidates and the 5th which should have gone to an S.T. candidate was erroneously given to the S.C. candidate from the mainland. Thus one vacancy which should have gone to an S.T. candidate by 1984 has not been made available to such a candidate and the applicant being ^{the senior most} ~~an~~ ^A S.T. eligible candidate, has a vested right to be considered for promotion to that post on the basis of his seniority and irrespective of his not qualifying in the selection test held in 1984. On this point alone, we are convinced that the applicant's case can be distinguished for extending the benefits given to the additional respondents 3 to 5, to the applicant also.

6. In our ^{interim} ~~order~~ ^{order} dated 15.7.1992, we had directed that the vacancy of ASI(Wireless Operator) arising out of the death of its incumbent Shri K Koyamma who was an S.T. officer, should not be filled up. We feel that, that vacancy should most equitably be adjusted against shortfall vacancy of 1984 which should have gone to an S.T. candidate. We however, make it clear that any

observations made and directions given in this application will not in anyway affect the rights of additional respondents 3 to 5 which ~~should~~ have been conferred on them by our judgement dated 24.4.1990 in TAK-135/85.

7. In the light of the discussions above, we allow this application to the extent of directing that the applicant being the seniormost eligible S.T. candidate in 1984 should be sent for ASI(Wireless Operator) training in the next available ^{course} ~~post~~ and if he passes the test after the completion of the course, he should be appointed as ASI(Wireless Operator)/Radio Technician ^{with the same date of notional promotion of Shri Venu-} and given seniority immediately below Shri Venugopalan/^{gopalan.} ^{The} ^{in that event} /applicant should be accommodated in that post arising out of the death of Shri Koyamma without prejudice to the rights of the respondents 3 to 5 to be accommodated in supernumerary posts if no other regular posts are available for their absorption. We make it clear that the applicant shall be entitled to the pay of the post of ASI(Wireless Operator)/Radio Technician only from the date he takes over as such after passing the training test, but ^{the} benefit of increments shall be given to him as if he was notionally promoted as such from the date of such promotion of Shri Venugopalan.

There is no order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER


(SP MUKERJI)
VICE CHAIRMAN

12-11-1992

trs