

**CENTRAL ADMINISTRATIVE TRIBUNAL,**  
**ERNAKULAM BENCH**

**Original Application No. 181/00020/2019**

**Friday, this the 1<sup>st</sup> day of November, 2019**

**CORAM:**

**Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member**  
**Hon'ble Mr. Ashish Kalia, Judicial Member**

Zakeer Hussain M.K., aged 49 years,  
 S/o. Attakoya P (late), Fireman Driver Operator,  
 Police Station, Kavaratti – 682 555,  
 Union Territory of Lakshadweep,  
 Permanent Address : Mathil Kadanallan, Kalpeni Island,  
 Union Territory of Lakshadweep, Pin – 682 557. .... **Applicant**

**(By Advocate : Mr. T.C. Govindaswamy)**

**V e r s u s**

1. The Administrator, Lakshadweep Administration,  
 Union Territory of Lakshadweep, Kavaratti – 682 555.
2. The Superintendent of Police,  
 Union Territory of Lakshadweep, Kavaratti – 682 555.
3. Shri A.P. Mullakoya, Fireman Driver Operator,  
 Police Station, Kadamat – 682 556,  
 Union Territory of Lakshadweep.
4. Shri T. Hassan, Fireman Driver Operator,  
 Fire Station, Androth – 682 551,  
 Union Territory of Lakshadweep.
5. Shri P. Basheer, Fireman Driver Operator,  
 Police Station, Kiltan – 682 558,  
 Union Territory of Lakshadweep.
6. Shri M.P. Muthukoya, Fireman Driver Operator,  
 Police Station, Kadamat – 682 556,  
 Union Territory of Lakshadweep.
7. Shri P.P. Mohammed Abdul Nazar,  
 Fireman Driver Operator,  
 Police Station, Kavaratti – 682 555,  
 Union Territory of Lakshadweep.

8. Shri M. Abdul Muthalif, Fireman Driver Operator, Police Station, Kavaratti – 682 555, Union Territory of Lakshadweep.
9. Shri C.B. Abdulla, Fireman Driver Operator, Police Station, Chetlat – 682 554, Union Territory of Lakshadweep.
10. Shri K.K. Koya, Fireman Driver Operator, Police Station, Kalpeni – 682 557, Union Territory of Lakshadweep.
11. Shri A.K. Siraj, Fireman Driver Operator, Police Station, Amini – 682 252, Union Territory of Lakshadweep.
12. Shri M.V. Aliyul Akbar, Fireman Driver Operator, Fire Station, Androth – 682 551, Union Territory of Lakshadweep.
13. Shri K. Abdul Kader, Fireman Driver Operator, Fire Station, Minicoy – 682 559, Union Territory of Lakshadweep.
14. Shri P.P. Sayed Shaikoya, Fireman Driver Operator, Police Station, Amini – 682 252, Union Territory of Lakshadweep.
15. Shri M. Abdul Kadiri, Fireman Driver Operator, Police Station, Amini – 682 252, Union Territory of Lakshadweep.
16. Shri E.C. Andukoya, Fireman Driver Operator, Fire Station, Minicoy – 682 559, Union Territory of Lakshadweep.
17. Shri C.G. Hamzakoya, Fireman Driver Operator, Police Station, Kalpeni – 682 557, Union Territory of Lakshadweep. .... **Respondents**

**[By Advocates : Mr. S. Manu (R1&2) &  
Mr. K.B. Gangesh (R3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 15, 16  
& 17)]**

This application having been heard on 03.10.2019, the Tribunal on 01.11.2019 delivered the following:

**ORDER****Hon'ble Mr. Ashish Kalia, Judicial Member –**

The relief claimed by the applicant are as under:

- “(a) Call for the records leading to the issue of Annexure A1 and quash the same;
- (b) Declare that the respondents 3 to 17 are not entitled to be placed above the applicant in A1 seniority list and declare further that the respondents 3 to 17 are to be placed below the applicant in A1 seniority list and direct the respondents accordingly;
- (c) Direct the respondents to place the respondents 3 to 17 below the applicant in A1 seniority list and direct further to grant all the consequential benefits emanating therefrom;
- (d) Award costs of and incidental to this Application;
- (e) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.”

2. The applicant who is presently working as a Fireman Driver Operator under the respondents is aggrieved by Annexure A1 final seniority list of Fireman Driver Operator issued by the respondents in complete violation of the Government of India orders on the subject and by misquoting the Hon'ble Supreme Court judgment in *Y.V. Rangaiah*'s case which has absolutely no relevance or application in the matter of determination of inter-se seniority. In Annexure A1 the applicant is at serial No. 19 whereas respondents 3 to 17 are at serial Nos. 1 to 15 respectively. The applicant was a Fireman Driver Operator in the scale of pay of Rs. 950-1,500/- right from the date of his initial appointment, whereas the respondents 3 to 17 were Fireman as on 31.12.2005 in scale of Rs. 775-1,025/- i.e. two grades lower than the applicant.

3. The Lakshadweep Fire Force was constituted during the year 1991-92. The Recruitment Rules consists of various cadres like Fireman in scale Rs. 775-1,025/-, Driver Operator in scale of Rs. 950-1,500/- Leading Fireman in scale Rs. 950-1,400/-, Sub Officer in scale Rs. 1,400-2,300/- and Station Officer (Fire Brigade) in scale of Rs. 1,640-2,900/-. The applicant was appointed as Fireman Driver Operator. The Fireman Driver Operators do not have a proper avenue of promotion despite being in a position higher than that of Fireman and Leading Fireman.

4. As per the amended Recruitment Rules (Annexure A4) the Fireman and the Driver Operator constitute a common cadre. The promotion to the post of Leading Fireman is to be from among Fireman/Driver Operator with 3 years regular service and who had passed the departmental test conducted by the Department from time to time. The respondents did not initiate any action for conducting the departmental test so as to enable the erstwhile Fireman Driver Operators like the applicant to qualify the same and consider for promotion as Leading Fireman.

5. The applicant and similarly placed persons submitted representation but the same was not considered. Aggrieved the applicant has filed OA No. 181/71/2014 which was disposed of by this Tribunal vide order dated 2.12.2014 observing that before publication of the final list, the official respondents have to hear the persons who are likely to be affected by the list which is likely to be published. It was also ordered that persons who are likely to be affected were at liberty to make representations within one

month. The applicant and similarly placed persons submitted representation which were rejected by Annexure A1 referring to DoPT order dated 13.9.2012 and judgment of the apex court in *Y.V. Rangaiah*'s case which has no application at all in the matter of determination of inter-se seniority. By Annexue A1 the respondents have also published the final seniority list of Fireman Driver Operator. Aggrieved, the applicant has filed the present OA.

6. Notices were issued to the respondents. They entered appearance through Shri S. Manu, learned counsel appearing for respondents Nos. 1 & 2 who filed a statement contending that the applicant is working as a Fireman Driver Operator in Fire Unit, Police Station, Kavaratti. He was appointed as a Driver Operator vide order dated 4.1.1994. The Ministry of Home Affairs sanctioned 64 posts for implementation of the first phase of fire protection and control in Lakshadweep Island as per letter dated 11.9.1991.

7. Accordingly, the department had appointed 40 persons as Fireman and 8 persons as Driver Operators. As per the Recruitment Rules for the post of Leading Fireman, the post of Fireman only was the feeder post. Later the Ministry of Home Affairs sanctioned 17 new posts including 15 posts of Leading Fireman as part of implementation of the 2<sup>nd</sup> phase Fire Protection and Control in Lakshadweep as per letter dated 24.6.2011.

8. As on the date of creation of posts/occurrence of vacancies, their existed qualified Fireman in the Department eligible for promotion to the post of Leading Fireman as per Recruitment Rules then in force. Respondents 3 to 17 are among those qualified Fireman eligible for promotion to the post of Leading Fireman as per the Recruitment Rules in force as on 24.6.2011. The Administration amended the Recruitment Rules as per notification dated 26.9.2012 and consequently the post of Fireman and Driver Operator got amalgamated to single post and was designed as Fireman Driver Operator. The respondents 1 & 2 submitted that as per paragraph II of DoPT OM dated 13.9.2012, where posts having different pay scales prior to VIth CPC recommendations and now after merger have come to lie in the same pay band with same grade pay and the inter se seniority of all the employees will be fully maintained with employee in higher pre-revised pay scale being placed higher vis-a-vis an employee in lower pay scale and within the same pre-revised pay scale seniority which existed prior to the revision shall continue.

9. Accordingly, the Driver Operators who are in a higher scale of pay than the Fireman prior to merger need to be placed above the Fireman in the combined seniority list of Fireman Driver Operator. The applicant was afforded sufficient time to raise objections against the provisional seniority list and he chosen to remain silent. The respondents 1 and 2 submitted that the administration has not received Annexure A10 representation as alleged by the applicant. Since the applicant has not raised any objection to Annexure A9 provisional seniority list, he cannot feel aggrieved by

Annexure A1 seniority list.

10. Mr. K.B. Gangesh, learned counsel entered appearance on behalf of respondents Nos. 3-10, 12, 13 and 15-17 who had filed a reply statement contending more or less similar submissions made by the official respondents Nos. 1 & 2. Respondents pray for dismissing the OA.

11. Heard Mr. T.C. Govindaswamy, learned counsel appearing for the applicants, Mr. S. Manu, learned counsel appearing for respondents Nos. 1 & 2 and Mr. K.B. Gangesh, learned counsel appearing for respondents Nos. 3-10, 12, 13 and 15-17. Perused the record.

12. The applicant who is working as Fireman Driver Operator is aggrieved by the seniority list of Fireman Driver Operators issued by the respondents against the settled principle of law fixing the inter-se seniority by putting the Fireman who were in lower scale of pay above in the list of seniority for the feeder category of Leading Fireman. The Recruitment Rules were amended in the year 2012 and the cadre of Fireman Driver Operator was merged with the cadre of Fireman. Earlier the Fireman Driver Operator was not having any promotional avenue and the post of Fireman Driver Operator was an isolated post. Now the Fireman Driver Operator can be considered for further promotion to the post of Leading Fireman provided they acquire the following requirement:

“Fireman/Driver Operator with 3 years regular service and passed departmental test conducted by the department from time to time.”

The Fireman now working under the organization had joined duty on 7.9.1993 and all the Drivers had joined on 21.12.1993. As the pay band is same w.e.f. 1.1.2006 in PB-1 Rs. 5,200-20,200/- plus Grade Pay of Rs. 1,900/- the pay of Fireman Driver Operator cannot be higher than the pay of the Fireman. At present 27 Fireman who joined in service on 7.9.1993 and passed the departmental test on 30.11.2000, 1.12.2000 and on 23.12.2005 are continuing in the post of Fireman due to non-availability of the promotion post of Leading Fireman. Now the new post of Leading Fireman available with this department is only 14 numbers. Therefore, the department is not in a position even to consider all personnel who joined in service on 7.9.1993 and already passed the test since the erstwhile isolated category of Driver Operator also became the feeder category of Leading Fireman along with Fireman by Annexure A3.

13. The grievance of the applicant has already been redressed by the respondents by providing promotional avenues by merging the cadre of Fireman Driver Operator with Fireman. As regards the questioning of the seniority list on the ground of un-similarity of duties by Fireman Driver Operators and that they are having higher pay scale is not tenable in the eyes of law. After 1.1.2006 both the above said category were given same Grade Pay of Rs. 1,900/- and Fireman were already working and qualified to be promoted to the next post of Leading Fireman by passing the requisite test prescribed by the Department. They joined much prior to the applicant in their services. Thus, applicant cannot claim that the post of Fireman Driver Operator is discriminated by any manner. During the course of

argument the applicant's counsel has cited the judgment of the apex court in ***Y.V. Rangiya & Ors. v. J. Sreenivas Rao & Ors.*** and ***Deepak Agrawal & Anr. v. State of UP & Ors.*** - Civil Appeal No. 6587 of 2003, wherein the apex court has held that previous vacancies shall be filled up by earlier Recruitment Rules and subsequent vacancies by subsequent Recruitment Rules. This covers the whole issue in the present Original Application.

14. In view of the above discussion, we are of the view that the present Original Application lacks merit and deserves to be dismissed. Hence, the Original Application is dismissed. The parties shall bear their own costs.

**(ASHISH KALIA)**  
**JUDICIAL MEMBER**

**(E.K. BHARAT BHUSHAN)**  
**ADMINISTRATIVE MEMBER**

“SA”

**Original Application No. 181/00020/2019****APPLICANT'S ANNEXURES**

**Annexure A1** – True copy of office order bearing F. No. 10/33/2015-AC(F) dated 22.8.2018, issued by the 2<sup>nd</sup> respondent.

**Annexure A2** – True copy of notification Recruitment rules, bearing F. No.1/13/91-Estt (Pol) dated 27.1.1992 published by the first respondent.

**Annexure A3** – True copy of certificate issued by the Cochin Port Fire Service under No. FS/115/44/94 dated 18.5.1994.

**Annexure A4** – True copy of Recruitment Rules amended as per a notification bearing F. No. 10/40/2012-AC(F) dated 26.9.2012.

**Annexure A5** – True copy of the reply statement dated 26<sup>th</sup> May, 2015 filed on behalf of the respondents 1 and 2 in OA No. 181/0071/2014.

**Annexure A6** – True copy of the DoP&T OM bearing No. 20020/4/2010-Estt (D) dated 13.9.2012.

**Annexure A7** – True copy of the provisional seniority list published by the respondents as per Office Memorandum bearing F. No. 10/33/2015-AC(F)2847 dated 4.8.2016.

**Annexure A8** – True copy of the order dated 2<sup>nd</sup> December, 2014 in OA No. 181/00071/2014 rendered by this Hon'ble Tribunal.

**Annexure A9** – True copy of the provisional seniority list bearing F. No. 10/33/2015-AC(F) dated 1.8.2018 issued from the office of the 2<sup>nd</sup> respondent.

**Annexure A10** – True copy of the representation dated 8.8.2018 submitted by the applicant.

**Annexure A11** – True copy of office order bearing F. No.10/29/2015-AC(F) dated 22.2.2019 issued from the office of the 2<sup>nd</sup> respondent.

**RESPONDENTS' ANNEXURES**

**Annexure R3(a)**— True copy of representation preferred by the applicants before the 2<sup>nd</sup> respondent dated 6.1.2017.

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