

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.449/2005

Thursday, this the 24th day of November, 2005.

CORAM:

HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

K.M.Ibrahim,
Kadmat Island,
U.T. of Lakshadweep,
(Formerly working as Village Extension Office,
O/o Additional Sub Divisional Officer,
Chetlet Island,
U.T. Of Lakshadweep). - Applicant

By Advocate Mr M.P.Krishnan Nair

vs

1. Union of India rep. by Administrator,
Administration of U.T. Of Lakshadweep,
Secretariat,
Kavaratti Island-682 55.
2. The Collector-cum-Development Commissioner,
Administration of U.T. Of Lakshadweep,
Secretariat,
Kavaratti Island-682 55.
3. The Secretary(Administration),
Administration of U.T. Of Lakshadweep,
Secretariat,
Kavaratti Island-682 55.
4. Shri M.K.Ali Asgar,
Malmikakkad House,
Kalpeni, Lakshadweep,
U.T. Of Lakshadweep.
5. Shri C.Abdul Sameem,
Cheiyapada House,
Lakshadweep,
U.T. Of Lakshadweep. - Respondents

By Advocate Mr Shafik.M.A. (for R.1 to 3)

By Advocate Mr KP Dandapani (for R.4&5)



O R D E R

HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. Shri. KM Ibrahim applicant in this OA seeks reinstatement and regularisation in the post of Village Extension Officer.
2. The applicant was appointed on adhoc basis along with others, as Village Extension Officer on 18-2-1988 vide (A-3) appointment letter. It was made clear in both the letter containing the offer of appointment(A-2) and the appointment letter (A-3) that the appointment was purely temporary and on adhoc basis with no admissible claims of regular and permanent employment, confirmation, and seniority and the appointment was terminable without any reasons assigned and two years probation period was fixed for regular appointment. According to the applicant, the appointment was governed by the Recruitment Rules (A-5). The applicant joined duty on 18.2.88. On 29.11.99, he was terminated for want of vacancy (A-15). During the period of about 11 years, he made representations for confirmation. One of them dated 11.4.96 was rejected by O.M dated 4-6-96 (A-4) which informed him that he was appointed on ad hoc basis since he was not fully qualified to hold the post for having not successfully completed the Village Extension Officers training in an approved Institute. According to the applicant, the A-5 recruitment rules prescribe only completion of VEO training for one year at a Government recognised training centre and not its successful completion. He actually underwent the training during 1986-87. He passed the test on 19.1.2000 and the relative certificate was issued on 14.2.2000. He filed O.A.1316/99 challenging the order dated 29.11.99 and requesting a direction to regularise his service with effect from the initial date of appointment viz, 13.2.88. Vide A-7 order, the O.A was dismissed. The above order of the Tribunal was confirmed by the Hon'ble High Court of Kerala vide A-8 judgment. He moved another O.A 65/2001 in which the Tribunal passed an order directing the respondents to consider the representations of the applicant dated 8.11.99(A-6 in this O.A) and 7.6.2000 and pass appropriate orders. In these representations



he had stated that he had subsequently qualified in the examination and requested to review the termination order and to reinstate him in service. He made another representation dated 23.1.2001 before the Administrator of Lakshadweep, attaching a copy of the Tribunal's order. The Administrator rejected the representation on 23-2 2001 vide A-11 document. The main reasons stated therein were i) The applicant did not make any serious attempt to pass the examination in the training for ten long years and he passed after about 3 ½ years after a memo was issued to him. ii) His services were discontinued for want of vacancy for accommodating a regular incumbent on his return from deputation and the applicant was the juniormost VEO working on ad hoc basis and not possessing the requisite qualifications. iii) Future vacancies will have to be filled by following the relevant recruitment rules and iv) The order of termination on 29.11.99 was unsuccessfully challenged by the applicant first before this Tribunal in O.A.366/99 followed by O.P.9998/2000 before the High Court of Kerala. A-11 order of the Administrator was again challenged by the applicant in O.A 333/2001. This O.A was allowed to be withdrawn by the applicant subsequently vide order dated 4.6.2003. He made another representation on 19-3-05 (A-18) with the request to order immediate promotion to the post of Extension Officers General and reinstate him in the resultant vacancy. With no relief in sight, he has come before this Tribunal with this application.

3. He seeks the relief of a declaration from this Tribunal that he is entitled to be reinstated against one of the consequential vacancies of two VEOs on their promotion as Extension Officers and to get his services regularised with effect from 18.2.88 and the relief of reinstatement with regularisation and consequential benefits thereof.

4. The grounds of his claim are the following:

- i) The enabling provisions as contained in A-19 document



relating to reemployment of retrenched employees.

- ii) He has uninterrupted service for about twelve years for want of vacancy.
- iii) Availability of two vacancies consequent to the promotion of two VEOs as Extension Officers.

4. The respondents counter the applicant with the following points:

- 1. Having moved this Tribunal earlier, this application is barred by limitation and *res judicata*.
- 2. He could pass the examination only in the year 2000
- 3. The applicant is the junior most among those selected contrary to his own claims
- 4. The recruitment rules existed at the time of recruitment of the applicant alone applies to him and such rules are in R.

4-6

- 5. Despite instructions the applicant failed to pass in the exam in time earlier
- 6. The A11 order was not challenged by the applicant who is only interested in pursuing the old impugned orders
- 7. The applicant has no special right to be appointed retrospectively
- 8. The applicant seeks reinstatement against the vacancies consequent to the promotion of two VEOs. Notification to fill up these vacancies by direct recruitment has already been published on 1.7.2005. The applicant has chosen not to challenge this notification and hence he cannot be heard to seek a direction for reinstatement against one of these two vacancies.
- 9. A-19 document deals with the cases of temporary Government employees who were working on regular basis



and were retrenched. This cannot be applied to the applicant who was working only on an ad hoc basis and he was not retrenched.

5. The following points are formulated for consideration:

- Whether the applicant was eligible to be appointed on a regular basis in 1988 in terms of the Recruitment Rules.
- Whether this O.A is barred by resjudicata.
- Whether he has a right of reinstatement

6. Taking the question first whether the applicant was eligible to be appointed on a regular basis in 1988 in terms of the Recruitment Rules, the respondents have pointed out that the Rules that existed at the relevant time should apply in his case. The applicant was recruited in 1988. The Rules in annexure R-6 document apply in his case. These rules prescribe SSLC or equivalent examination and successful completion of VEO's training as the necessary qualification. The applicant has produced A-5 document which is a schedule to some other document, the nature of which is not indicated, especially its date of publication. The position taken by the respondents relating to the recruitment rules that are applicable in his case (R-4, R-5 and R-6) has not in any case, been controverted by the applicant. The points made by the respondents are accepted. Hence we find that on the date of ad hoc appointment, the applicant had not fulfilled the necessary qualifications.

7. On the next question of whether this O.A is barred by resjudicata, already it is seen that this applicant has filed so far the following Original Applications before this Tribunal – O.A 1316/99, O.A.65/2001 and O.A.333/2001, all without success. It may be recalled that in the present O.A, he has sought the relief of a declaration that he is entitled to be appointed in a resultant vacancy from promotions and regularised with effect from 18.2.1988 and of a direction for such appointment and retrospective regularisation. In O.A.1316/99, the order of which has been annexed as A-7 document, he has sought, inter-alia the relief of



regularisation with effect from the initial date of appointment as such, viz, 18.2.88. This O.A was dismissed, the implication being the relief referred to above as sought in the present O.A has been already adjudicated upon. It is relevant to note that this order has been confirmed by the Hon'ble High Court of Kerala. In the next O.A.65/2001, the order to the respondent in that O.A was to dispose of his representations within three months. The applicant had requested for regularization and reinstatement. This was disposed of by the respondent vide A-11 order dated 23.2.2001. This was challenged by the applicant in O.A 333/01 which was withdrawn by the applicant himself subsequently with the leave of this Tribunal vide order dated 4.6.2003. It is seen that the crucial point of reinstatement has been adjudicated upon by this Tribunal in the first O.A which was dismissed on merit and the order was confirmed by the High Court. It has to be therefore held that this point was adjudicated and hence this O.A is barred by resjudicata.

8. As to the question whether he has a right of reinstatement, the respondents have denied the existence of any such right. First of all, he has no eligibility to be appointed to the resultant vacancy and regularised retrospectively with effect from 19.2.88. This is because he did not meet the criterion of eligibility as on 19.2.88. Besides, he had accepted the offer of appointment with the attendant conditions that there are no rights of permanent employment, regularization, confirmation and seniority and the appointments are temporary and ad hoc. Having accepted these conditions, the applicant cannot be heard to plead otherwise. Prior to his termination in 1999, he was advised about the temporary nature of his job and the need for undergoing training. He was terminated for want of vacancy. And, he could pass the necessary training course only in 19.1.2000 much after his termination. Secondly, the vacancy of the present post which is sought for by the applicant has been notified on 1.7.2005. Challenge actually should have been against this order which has not been made. Thirdly, the applicant has placed reliance vide A-19 document



which is true copy of the circular G.I.DP&AR OM No.28017/7/92Estt.(D) dated 22.1.93 on the question of priority of retrenched officers for the purpose of redeployment through Employment Exchange. The respondents contend that this applies to Government servants who worked on regular basis and were retrenched. The applicant has got only an ad hoc appointment with qualifications not in tune with those prescribed. More importantly, no case has been made out relating to his vested right of consideration for reinstatement and retrospective regularization. Hence it is found that he is not entitled to be considered for reinstatement.

9. In the end, we find that on the date of ad hoc appointment, the applicant had not fulfilled the necessary qualifications, the issue is barred by resjudicata and he has no right of reinstatement. The O.A is dismissed with no order as to costs.

Dated, the 24th November, 2005.


N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER


K.V. SACHIDANANDAN
JUDICIAL MEMBER

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