

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. ~~XXXXXX~~ 489 of 91 ~~100~~

DATE OF DECISION 28-5-92

K. Unnikrishnan and another Applicant (s)

M/s. K. Sukumaran & Usha Advocate for the Applicant (s)

Versus

Union of India and another Respondent (s)

Shri NN Sugunapalan, SCGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N.V. Krishnan, Member(Administrative)

The Hon'ble Mr. N. Dharmadan, Member(Judicial)

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? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

N. Dharmadan, M(J)

Both the applicants in this case were initially recruited as N.M.R. Labourer in the Lakshdweep Administration, during 1978 and 1979. They were subsequently promoted as Oilman on ad hoc basis and they still continue in the same post. The applicants, in this application filed under Sec.19 of the Administrative Tribunals Act 1985, seek ^{for} a direction to the respondent-Lakshadweep Administration to regularise their service in the post of Oilman with effect from their initial appointment to that post and also to consider them for promotion to the next higher category.

2. The respondents have filed reply denying the pleadings and averments in the Original Application.

However, they have admitted that both the applicants were appointed as NMR Labourer as averred by the applicants and were promoted on ad hoc basis as Oilman subsequently. They have further admitted in para 6 of the reply that the applicants are fully qualified to hold the post as per the Recruitment Rules. Nevertheless they contended that the Ministry of Home Affairs, New Delhi has directed the Lakshdweep Administration to prefer Islanders (Locals) to mainlanders in Group-C and D posts. Outsiders shall be considered only when Islanders are not available. They ~~XXXX~~ relied upon the letter of Home Ministry No.14016/14/74-ANL dated 3-7-75, regarding the above stated condition.

3. We have heard the arguments on both sides and gone through the documents carefully. At the time of the arguments, the learned counsel for the applicants submitted that this case is fully covered by the decision of this Tribunal in OA 268/88 and OA 629/91. From the undisputed facts it is clear ~~xxxxx~~ that the applicants have been continuing for very long periods without being regularised in the posts held by them. This Tribunal, as submitted by the learned counsel for the applicants, disposed of an identical matter in OA 268/88. The facts as well as the question of law arose for consideration in that case are similar to the case in hand. The Bench while disposing of the above case OA 268/88 made the following observations:

".....It is a matter of common knowledge that Rules issued under Article 309 can never be modified or altered or changed by means of a letter issued by Govt. by way of a claim for a regular appointment. No executive order can over-ride the Rules and the Supreme Court clarified in Narayanan V. State of Karnataka, AIR 1979 SC 1976, that 'when rules framed under Article 309 of Constitution of India are in force, no regularisation is permissible in exercise of executive powers of the Govt. under Article 162 thereof in contravention of the Rules'.....In the instant case the respondents have admitted that all the applicants satisfy the requirements for a regular selection under Annexure-I Recruitment Rules and they had passed the trade tests conducted by the Administration. Ext. R-3 also shows that the 2nd respondent had already taken steps for the regularisation of the applicant and ~~the~~ he had sent his recommendations for regularising them in service. Under these circumstances, we feel that the Govt. of India cannot decline the regularisation of the applicants. In a matter more or less similar case, the Punjab and Haryana High Court in Joginder Singh V. State of Punjab, 1981(2) SLR 792 held that the Govt. cannot decline the regularisation of an employee, who was originally appointed on ad hoc basis in a post after fulfilling all the conditions prescribed by an executive instruction for making such an appointment.....Accordingly in the facts and circumstances of the case, we allow the application and direct the respondents to regularise the services of the applicants giving all benefits due to them on account of regularisation of their services from the date of their original appointment in services....." (OAK 268/88-Krishnan Kutty & Ors. V. Secretary, M.H.A., New Delhi and others-an unreported case)

4. We have followed this decision in a number of similar cases viz. OAK 517/88, OA 1114/90 etc. Hence, we are inclined to follow the decision of this Tribunal in OAK 268/88 in disposing of this case also. Accordingly, we do so.

5. Accordingly, we direct the respondents to regularise the applicants in the regular posts of Group-D (Class-IV) viz. Oilman, if they are otherwise eligible, in accordance with law. The respondents should comply with the above direction within a period of three months from the date of receipt of copy of the judgment.

6. The Original Application is, thus, allowed on the above lines. There shall be no order as to costs.

N. Dharmadan
28.5.92.

(N. Dharmadan)
Member(Judicial)

N.V. Krishnan
28/5/92

(N.V. Krishnan)
Member(Administrative)

ganga ??