

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No.
~~XXXXXX~~

495/ 1988

DATE OF DECISION 29.6.1990

A.P. Radar Applicant (s)

Shri K.A Abdul Gafoor Advocate for the Applicant (s)

Versus

Union of India, represented by the Secretary to Government, Home Department, New Delhi & 5 others Respondent (s)

Mr.P.V Madhavan Nambiar Advocate for the Respondent (s)

CORAM: M/s. Sukumaran & Usha

The Hon'ble Mr. M.Y. Priolkar, Administrative Member

&

The Hon'ble Mr. N.Dharmadan, 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? Yes
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

HON'BLE SHRI N.DHARMADAN, JUDICIAL MEMBER

The applicant is working as Junior Engineer, P.W.D

Sub Division, Amini Island, under the Union Territory of Lakshadweep. His grievance is that he has been superseded and respondents 5 and 6 have been appointed as Junior Engineers with effect from 1979 overlooking his seniority.

2. The applicant was originally appointed as Ferro Printer in the Lakshadweep Public Works Department on 4.12.1979. He passed the Diploma in Civil Engineering in the year 1981 and became qualified for appointing as Junior Engineer. He also registered his name with the Lakshadweep Employment Exchange for recommending his posting as Junior Engineer. According

to the applicant, the posts in Group C & D available in the Islands will be filled up by giving preference to Islanders. Only when there are no qualified hands in the Islands, such posts will be filled up on deputation by persons from the Mainland. This is clear from the letter of Ministry of Home Affairs No.14016/14/74-ANL dated 3.7.1975 referred to in Annexure-A1.

3. The applicant was appointed as Junior Engineer with effect from 31.7.1981 on adhoc basis. But he has been regularised, as per Annexure-A2 order dated 16.7.1982, with effect from the date of his original appointment in 1981. The respondents 5 and 6 were continuing as Junior Engineer on adhoc basis from 1979 onwards. The applicant commenced his regular service on 31.7.1981 before the regularisation of respondents 5 and 6, which took place in 1984, but with retrospective effect from the date of their original appointment in 1979. In Annexure-III seniority list circulated as per circular letter dated 17th May 1989, the applicant was given 24th place, while the respondents 5 and 6 were placed as 21st and 22nd respectively. This, according to the applicant, is illegal because no notice was given to him. He filed representations. But they were rejected as per Annexure-AVI. In this application he is seeking to quash Annexures AIII, IV and AVI.

4. The contentions of the applicant for our consideration are that (i) the appointment of respondents 5 and 6 as Junior Engineers was not sanctioned by the Government of India as provided in Annexure-A1, (ii) the preferential right available to the Islanders as disclosed in Annexure-1 had been overlooked by the respondents 1 to 4 and (iii) the regularisation of respondents 5 and 6 with retrospective effect from 1979 is illegal because it adversely affected the applicant's seniority. He ought to have been notified before such regularisation since he was appointed as Junior Engineer in a regular vacancy with effect from 31.7.1981.

5. Respondents 1 to 4 and respondents 5 and 6 have filed separate counter affidavits. They have denied all the allegations in the Original Application. Respondents 1 to 4 in the counter affidavit submitted that Annexure-III seniority list has been prepared after the posting of respondents 5 and 6 as Junior Engineers with effect from their adhoc posting, namely, 2.7.1979 and 27.10.1979 respectively. They had been given their due seniority and rank since they were working on adhoc basis for a long period and there were no qualified local candidates in the live register of the Employment Exchange. The Administration has taken up the question

of the regularisation of their service with the Ministry vide Annexure-R1. Accordingly, the Home Ministry had approved the proposal of the Administration as seen from Annexure R2.

6. The respondents 5 and 6 in their counter affidavit have taken a different stand. They have indicated that the Recruitment Rules issued under Article 309 for the appointment of Junior Engineer (Ext.R6(b)) do not provide that the regular appointment can be made only from the Islanders. Any person who is qualified at the time of occurrence of the vacancy can be considered for regular appointment. Annexure-A1 being an extract of an executive order, cannot supersede the provisions contained in the rules. So the applicant cannot have any claim based on his nativity. They have also submitted that they were in service as Junier Engineers from 1979 onwards on an adhoc basis even when the applicant was not qualified for the post. Subsequently, when the applicant was appointed as Junior Engineer and regularised with effect from 1981, they were not given any notice. By issuing the impugned seniority list, the respondents 1 to 4 have only rectified a mistake committed in having regularised the appointment of the applicant with effect from 1981 without issuing notice to them.

Hence no notice need be given to the applicant, as

contended by him, before regularising the services of the respondents 5 and 6.

7. We have considered the arguments of the learned counsel for the applicant. There is no substance in the first two grounds urged by the learned counsel for the applicant that there was no sanction by the Ministry for the regular appointment of respondents 5 and 6 and that the preferential right of the Islanders was overlooked by respondents 1 to 4 by regularising the appointments of respondents 5 & 6. respondents 5 & 6 respondents 5 and 6. The were appointed as Junior Engineers on an adhoc basis with effect from 1979 at a time when no eligible candidates from the local Scheduled Tribe were available. The letter of the Collector-cum-Development Commissioner dated 6.8.1983 which was referred to in Annexure-R2 mentions about the non-availability of eligible local Islanders in the live register of the local Employment Exchange at the time of the appointment of respondents 5 and 6 in 1979.

Annexure-R2 reads as follows:-

" I am directed to refer to your letter No. 2/6/80-CB dated 6.8.83 on the above subject and to say that in view of the circumstances explained by the Administration, this Ministry have no objection to the appointment of S/Shri N.Nandakumar and K.V Venugopalan adhoc Junior Engineer(Civil) on regular basis in the Administration w.e.f the date of their adhoc appointment."

8. This letter indicates that a decision has been taken by the Government in this behalf. But that decision has not been challenged by the applicant at any

time. It became final. The applicant has not challenged the same in this application. Hence we do not give any weight to the argument that this letter had been issued only by a Desk Officer and not by a competent authority in accordance with law.

9. The question of sanction for regularisation of the services of respondents 5 and 6 arises from the wording contained in Annexure A1. It is only an executive instruction. It does not supersede the Recruitment Rules Ext R6(b). No reference of any such sanction is made in the Recruitment Rules providing for selection of Junior Engineer. Hence we find no merit in the aforesaid two grounds urged by the learned counsel for the applicant.

10. The further and more important contention of the learned counsel for the applicant is that he was not given a notice before regularisation. Having regard to the facts of this case we are unable to accept this contention. At the time of initial appointment of respondents 5 and 6, the applicant was not even qualified and he was not in service as Junior Engineer. His adhoc service as Junior Engineer commenced only on 31.7.1981, commencement of the long after the adhoc service of respondents 5 and 6. So his right of seniority can be protected from that of his appointment as Junior Engineer. date The Supreme Court in Union of India and others

vs. K.K.Vadera and others, AIR 1990 SC 442 held as follows:-

" We do not know of any law or any rule under which a promotion is to be effective from the date of creation of the promotional post. After a post falls vacant for any reason whatsoever, a promotion to that post should be from the date the promotion is granted and not from the date on which such post fall vacant. In the same way when additional posts are created, promotions to those posts can be granted only after the Assessment Board has met and made its recommendations for promotions being granted. If on the contrary, promotions are directed to become effective from the date of the creation of additional posts, then it would have the effect of giving promotions even before the Assessment Board has met and assessed the suitability of the candidates for promotion. In the circumstances, it is difficult to sustain the judgment of the Tribunal."

11. Similarly the respondents 5 and 6 are also entitled to protect their right for regularisation from 1979. The applicant cannot raise any objection to the regularisation of these respondents from the date of their original appointment as Junior Engineer. Thus the regularisation of their adhoc appointments with retrospective effect from the date of their original appointment, would not take away the rights of the applicant, because he was not in the service as Junior Engineer on that date. His subsequent appointment as Junior Engineer has been regularised with effect from his original appointment, just in the same manner as has been done in the case of respondents 5 and 6, even though this was done in 1982 before the regularisation of the services of the respondents 5 and 6.
6. If the applicant has a case that he is really

senior to respondents 5 and 6 and there is an actual supersession the contention of the applicant merits consideration. The Supreme Court in Bala Kishan vs. Delhi Administration and another, AIR 1990 S.C 100, considering the right of seniority and promotion of the Government servant observed as follows:-

"In service, there could be only one norm for confirmation or promotion of persons belonging to the same cadre. No junior shall be confirmed or promoted without considering the same of his senior. Any deviation from this principle will have demoralising effect in service apart from being contrary to Art. 16(1) of the Constitution."

12. Having regard to the facts and circumstances of this case, we see no prejudice to the applicant by the regularisation of the respondents 5 and 6 from the date of their original appointment as Junior Engineers in 1979.

13. In the result we see no force in the contentions of the applicant. He has no grievance to be redressed by this Tribunal. The application is liable to be dismissed. We do so. There will be no order as to costs.

N. Dharmadan
(N.DHARMADAN)
JUDICIAL MEMBER

29.6.90

M.Y. Priolkar
(M.Y PRIOLKAR)
ADMINISTRATIVE MEMBER