

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 499/92

Wednesday, this the 19th day of January, 1994

SHRI N. DHARMADAN, MEMBER (J)
SHRI S.KASIPANDIAN, MEMBER (A)

M.V.Sayed Koya,
Primary School Teacher Gr. I,
Govt. S.B.School, Kavaratti. .. Applicant

By Advocate Shri M.N.Sukumaran Nair.

V/s

1. The Union of India, rep. by
The Secretary, Min. of Home
Affairs, New Delhi.
2. The Director of Education,
U.T. of Lakshadweep,
Kavaratti.
3. The Administrator,
U.T. of Lakshadweep, kavaratti. .. Respondents

By Advocate Shri M.V.S.Nampoothiri, ACGSC (Not present)

ORDER

N.DHARMADAN

The applicant is approaching this Tribunal for the second time for getting selection grade in the post of Primary School Teacher with effect from the due date namely 1.1.78. When an earlier order dated 10.4.87, Annexure-I, was passed against the applicant rejecting his request for granting the selection grade on the ground that his case would not come within the zone for consideration in the reserved quota as per the orders existed at the relevant time, the applicant challenged that order in OAK 132/88. After hearing the parties on the basis of the reply filed by the respondents and the submission that the case of the applicant would be considered in the light of the "recent instructions received by the respondents", this Tribunal disposed of the case as per Annexure-J judgment. There was an assurance that "there will not be any zone of

consideration for award of selection grade and the past cases require review". This Tribunal accepted that representation while passing the judgment dated 21.2.90. The relevant portion is extracted below:-

"4. In the circumstances, we are of the view that this application can be disposed of with the following directions:-

- (a) The second respondent is directed to complete the review within a period of two months from the date of receipt of a copy of this order and pass necessary orders appointing teachers to the selection grade. So far as the review is concerned, the respondent should also consider the request made by the applicant that the vacancy of ST to which he is entitled had arisen on 1.1.78. A copy of the orders passed by the second respondent in so far as the applicant is concerned should also be sent to the applicant.
- (b) The orders so passed by the second respondent should also show what consequential benefits are to be given to the applicant as a result of his appointment to the Selection Grade. "

2. In Annexure-J judgment there was specific direction to the respondents to consider the request of the applicant if it has actually arisen considering him in the S.T. vacancy w.e.f. 1.1.78^{1/2}. Respondents did not comply with the direction. Hence, the applicant filed CP (C) 29/91. That was disposed of as per Annexure-C order dated 13.11.91 accepting the submission made by the learned counsel for respondents that the direction of the Tribunal was complied. Thus, in pursuance of the direction in the judgment that the impugned order, Annexure-K, has been passed. But on a perusal of the order it is clear that the respondents have deviated from their earlier stand and undertaking and denied him the relief.

3. According to the applicant, respondents have relied on the earlier OM dated 13.2.80, on the basis of which Annexure-I order was originally passed rejecting the request of the applicant. That order was challenged by him. As stated above, the earlier case was disposed of accepting to the submission of the respondents that they will

consider the applicant for grant of selection grade in the light of the "recent orders". After the judgment, according to the applicant, the respondent should have considered the case of the applicant for grant of selection grade in terms of their stand taken before this Tribunal while passing Annexure-J judgment. There is no justification in having relied on Annexure-R1 to deny the relief. Virtually, according to the applicant, there is non-compliance of the direction. Hence, the O.A. is to be allowed with cost.

4. Nobody appeared on behalf of the respondents, but a detailed reply has been filed on behalf of the respondents. We have gone through the same. It is admitted in the reply that the respondents have placed reliance on Annexure-R1 OM dated 13.2.80 for considering the claim of the applicant for selection grade. The DPC proceedings produced as Annexure-R2 indicate that the applicant's claim was considered in the light of Annexure-R1 OM. The relevant clause in Annexure-R1 is extracted below:-

"2. In the Ministry of Finance OM dated 24.10.78 it has been clarified that in respect of selection grades to group C and D posts, any officer who has crossed 3/4 th span of the revised scale of pay of the ordinary grade will be eligible for the grant of selection grade, even if he does not fulfil the length of service condition ie. 14 years. Thus any officer whose pay in the ordinary grade, has under any circumstances, crossed the stage in the time scale of the ordinary grade, appropriate to 3/4th span will become eligible."

5. As per the above clause in Annexure-R1, the applicant is not eligible for getting the selection grade w.e.f. 1.1.78 as claimed by him as he has not completed 14 years of service prescribed therein. According to the applicant, Annexure-R1 cannot be relied on for it might have been superseded by recent orders for grant of selection grade and the respondents' stand before the Tribunal, when the earlier case came up for hearing, indicates that it would not apply to the case of the applicant. This Tribunal issued direction to the

respondents to consider the applicant in the ST vacancy w.e.f. 1.1.78 presumably because of the submission that there was no "zone of consideration for award of selection grade". Now, the respondents cannot fix a zone of consideration for rejecting the claim of the applicant for a selection Grade in ST vacancy w.e.f. 1.1.78. The respondents are bound to comply with the direction notwithstanding Annexure-R1. As a matter of fact, if the respondents really wanted to rely on Annexure-R1, they should have stated so and objected the claim of the applicant, in the earlier case. They did not do so. On the other hand, the respondents have chosen to represent before this Tribunal on the earlier occasion that they would only rely on "recent" order in the matter of grant of selection grade to the applicant. No valid or convincing reason is stated for deviating from the earlier stand and taking a different view to follow Annexure-R1 for the disposal of the claim of the applicant.

6. In the light of the above discussions, we see considerable force in the submission made by the applicant that the attempt of the 3rd respondent is only to deny the benefit of selection grade in the ST vacancy due to the filing of a Contempt Petition after the judgment, Annexure-J. However, we are satisfied that the order, Annexure-K, was not issued strictly in terms of the observation/direction of this Tribunal in the earlier case.

7. Under the above circumstances and in the light of the facts, we see no justification in the reasons stated in Annexure-K and it cannot be sustained. Accordingly, we quash the same and declare that the applicant is entitled to be considered for selection grade in the post of Primary Teacher against the S.T. vacancy, which existed as on 1.1.78 in the light of the clear direction of this Tribunal

in Annexure-J judgment, which was issued considering 11
and to the
posts of fact that the applicant was serial No. 10 in the
seniority list likely to get the S.T. quota vacancy w.e.f.
1.1.78. The above direction shall be complied with within a
period of three months from the date of communication of
this order.

8. The application is allowed as above. There will be
no order as to costs.



(S.KASIPANDIAN)
MEMBER(A)


19.1.94

(N.DHARMADAN)
MEMBER(J)

v/-