

FINAL ORDER  
17-7-1987

CENTRAL ADMINISTRATIVE TRIBUNAL  
MADRAS BENCH

Application No. OA 535/1986

K.P. Vijayan : Applicant

Versus

1. Director, Naval Physical and Oceanographic Laboratory, Cochin.	X	X	Respondents
2. Scientific Adviser, Ministry of Defence and Director General of Research and Development, Sena Bhavan, New Delhi.	X	X	X

Shri Mathew Zachariah : Counsel for applicant

Shri K. Narayana Kurup, ACGSC : Counsel for respondents

CORAM:

Hon'ble Shri C. Venkataraman, Member (Administrative)

Hon'ble Shri G. Sreedharan Nair, Member (Judicial)

ORDER

(Pronounced by Hon'ble Shri G. Sreedharan Nair)

The applicant while working as a Laboratory Attender was promoted on ad hoc basis as Lower Division Clerk on 24-12-1980, for a period of two months. Subsequently the period was extended till 31-12-1982, and he was reverted from 1-1-1983. The applicant alleges that in 1980 an examination was conducted for promoting Class IV employees to the post of

L.D.C., and two others were selected. According to the applicant he stood first in the test, and as he was not selected for appointment he filed O.P.No.5172/1983 before the High Court of Kerala which was disposed of on 14-8-1985 with a direction to the first respondent to appoint the applicant on a regular vacancy of LDC provided the other two persons stated to have appeared for the same test along with the applicant have been appointed without insisting on ~~their~~ <sup>his</sup> further passing any/test for that purpose. In view of the judgment the applicant was appointed to the post of L.D.C. on a regular vacancy by order dated 3-10-1985. It is claimed by the applicant that he is entitled to seniority above the ~~the~~ others who were appointed on the basis of the test conducted in 1980 as he stood first in that test. He further prays for arrears of wages which should have been granted to him if he was promoted in the year 1980 itself.

2. The respondents contend that though the applicant appeared for a limited departmental examination held in 1980 he did not qualify. The two persons who qualified in the examination were appointed to the posts of LDC on a regular basis. Thereafter as there were some more vacancies

it was decided to recruit some LDCs through the Employment Exchange on ad hoc basis. The applicant also appeared before the Selection Board along with the nominees of the Employment Exchange. ~~Four~~ <sup>Four</sup> 4 candidates were recommended and all of them were offered appointment on casual basis. It was thus that the applicant was appointed as LDC on ad hoc basis with effect from 24-12-1980 for a period of 2 months which was extended to 28-2-1981, after which the applicant was reverted to his original post. The applicant has no claim to the post of Lower Division Clerk and as such his request for fixation of seniority is not sustainable. In view of the judgment of the High Court the applicant was offered the regular post of Lower Division Clerk on 3-10-1985 purely as a compassionate measure.

3. The claim of the applicant for fixation of his seniority is on the premise that in the departmental examination held in 1980 he stood first and hence he should have been promoted to the post of LOWER Division Clerk before any other Group D employee was promoted. In the counter affidavit it is specifically contended that though the applicant had appeared in the departmental

examination he did not qualify but two other Group D employees Shri George and Shri Pankajakshan Pillai did qualify and they were appointed to the post of LDC on regular basis. The applicant has not produced any material in support of his averment that he qualified himself in the examination. As such the foundation of the claim falls to the ground.

4. Counsel of the applicant relied on the judgment of the High Court in OP 5172/1983. It is seen from the judgment that the writ petition was filed by the applicant for regular appointment in the post of LDC. There again the claim was urged on the basis that he had passed the test conducted in the year 1980. The respondents had contended before the High Court that the test conducted was in respect of appointment to the post of LDC in short term vacancy. It is clear from the counter affidavit filed in this case that subsequent to the departmental examination certain persons were appointed on ad hoc basis and the applicant was also so appointed. In the judgment in O.P. 5172/1983 the High Court without going into the question whether the applicant had actually passed the departmental examination for promotion to the post of LDC, disposed of the petition by directing

"the first respondent to appoint the petitioner also in a regular vacancy of Lower Division Clerk, provided the other two persons who were stated to have appeared for the same test along with him had been appointed to such vacancies without insisting on his passing any further test for that purpose."

At any rate as the respondents did not challenge the judgment of the High Court by appealing thereon it has a binding force as between two parties.

Admittedly by the order dated 3-10-1985 the applicant has been appointed as LDC. The respondents would have it that it was purely as a compassionate measure.

5. The question that arises is whether having secured the appointment pursuant to the aforesaid direction in the judgment of the High Court the applicant can claim seniority as if he was appointed *having qualified himself in* in the year 1980 on the basis of *the examination* *conducted that year*, and claim consequential benefits.

The answer has to be in the negative, for there is no finding in the judgment in OP 5172 that the applicant had actually qualified himself in the departmental examination held in the year 1980 for promoting Group D employees to the post of LDC.

The appointment of the applicant as LDC pursuant

to the Memorandum dated 3-10-1985 can under no circumstances have retrospective effect or be deemed as if it were made with effect from 1980.

6. We dismiss this application.

C Venkataraman  
(C. Venkataraman) (7/7)  
Member (Administrative)  
17-7-1987

G Sreedharan Nair  
(G. Sreedharan Nair) (7/7)  
Member (Judicial)  
17-7-1987

Index : ~~YES~~ / NO