

OA /

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 122/2011

Thursday, this the ^{20th} _{th} day of October, 2011.

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms. K NOORJEHAN, ADMINISTRATIVE MEMBER

Y.Thankappan, Group D,
(S/o Yacob), Nehru Yuva Kendra,
Thiruvananthapuram.Applicant

(By Advocate Mr K Babu Rajan)

v.

1. Union of India represented by the Secretary,
Ministry of Youth Affairs & Sports,
South Block, New Delhi-110 001.
2. The Director General,
Core-4 1Ind Floor,
Scope Minar Twin Towers Complex,
Lakshmi Nagar, District Centre,
New Delhi-110 092.
3. The Zonal Director,
Nehru Yuva Kendra Sangathan,
No.942-42, 1Ind, 1Ird Block,
Rajaji Nagar, Bangalore-560 010.
4. The Zonal Director,
Nhru Yuva Kendra Sangathan,
Pattom.P.O. Thiruvananthapuram-695 004.
5. The District Youth Co-ordinator,
Nehru Yuva Kendra, Pattom.P.O.
Thiruvananthapuram-695 004.Respondents

(By Advocate Mr Pradeep Krishna, ACGSC)

This application having been finally heard on 17.10.2011, the Tribunal on ^{20.10.2011}
delivered the following:

[Signature]

ORDER**HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER**

The applicant joined in a Group D post in 1974 was one of the co-applicants in OA No. 1428/1991 had in his favour the following order:-

"7. In this view of the matter, we dispose of the original application after recording the statement in the reply statement. Regarding regularisation, we direct applicants to file individual representations claiming regularisation based on their service in the Nehru Yuva Kendra and the Nehru Yuva Kendra Sangathan. The representations shall be filed within two weeks from the date of receipt of a copy of this judgment. If such representations are filed, the same will be considered and disposed of in accordance with law as early as possible, at any rate within six months from the date of receipt of the representations."

2. Accordingly, representation vide Annexure A-2 was preferred by the applicant and further action was initiated vide communication dated 19-12-1994 (Annexure A-6) and 30-01-1995 addressed to the fifth respondent(annexed to the counter filed by the respondents). Certain information was to be furnished by the applicant but he was on long leave and thereafter he was shifted to some other station, consequent to which neither the applicant nor the respondents followed the matter. Meanwhile the services of others similarly situated (and who are co-applicants in the aforesaid OA No. 1428/91 were regularized, vide Annexure A-7 dated 18-12-1995. It is the case of the applicant that he had been suffering from certain heart ailment which resulted in a surgery and due to the same he could not further proceed with the matter for a substantial period, at least upto 2005 and thereafter. It was then that the applicant had moved a representation dated 01-09-2009 addressed to the Department of Youth Affairs for regularization. As there was no response, he had obtained certain information through RTI, vide Annexure A-9 to A-11. The present application is filed seeking inter alia the following reliefs:-

- (i) To order and direct the respondents, particularly the 2nd respondent to pass appropriate order giving effect to Annexure A-1 judgment thereby regularising the applicant as ordered in Annexure A-1.;
- (ii) To order and direct the respondents to grant all consequential benefits of regularization of the applicant as Group D as per law;

3. Respondents have contested the O.A. Their contention is that since no information as called for from the applicant were forthcoming, the case for regularization at that point of time was not processed by them. The respondents had also stated that the " in the circumstances when the applicant's whereabouts are not known, the 5th Respondent NYK Office is not in a position to provide the documents which is to be submitted by the applicant himself"

4. The applicant has filed his rejoinder to the reply reiterating his contentions as contained in the O.A.

5. When the case came up for final hearing, respondents were directed to make available the service book of the applicant to ascertain as to how the period from 1993 to 2009 were treated. It is observed from the service book that from 15-03-1993 to 20-04-1993, 26-04-1993 to 30-04-1993, and a few days in May, July, September and October, 1993 the applicant was stated to have been on unauthorized absence. Subsequently, entries were made in November 93 and thereafter on 05-06-1996 and thereafter, the entries were continuous without any break.

6. Counsel for the applicant had made available a copy of the letter dated 17-06-1996 from the Office of the District Youth Coordinator, Pathanamthitta addressed to his counterpart at Kollam about the leave sanctioned and absence without proper leave application.



7. Counsel for the applicant argued that the applicant is entitled to have his services regularized in accordance with order of this Tribunal vide Annexure A-1 and it was due to inaction on the part of the respondents that the same had not taken place. He has also submitted that non regularization is a continuous cause of action and has also relied upon certain decisions to substantiate his case.

8. Counsel for the respondents submitted that the services of the applicant could not be regularized due to non availability of particulars/documents at the material point of time.

9. Arguments were heard and documents perused. Regularization is one time affair and as such in the strict sense, it cannot be said that there has been a continuous cause of action unlike erroneous fixation of pay as has been the case of M.R. Gupta vs Union of India and others (AIR 1996 SC 669). Nevertheless, in the instant case since the applicant had in his favour an order passed as early as in 1991 for regularization he is certainly entitled to such regularization but the question is whether the regularization should date back to 1995 when the other co-applicants were regularized. For, save formal regularization, as per service book, the applicant has been granted regular increments including stagnation increment as well as ACP, vide order dated 01-06-1993. While considering the same, it has to be ensured that the same should not affect the interest of the other parties. The Apex Court has, in the case of Union of India vs Tarsem Singh (2008) 8 SCC 648 held as under:-

“7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing



wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition."

10. Thus, at best, while the applicant's services could be regularized from the date at par with the other Group D employees vide Annexure A-7, his seniority should be so fixed which would not affect the seniority of any other persons recruited or regularized till 31-08-2009 (the date prior to his request for such regularization, vide Annexure A-8.) Any other consequential benefit flowing from such regularization save seniority aspect which is to be restricted as stated above should also be made available to the applicant. Respondents are directed to pass suitable orders within a period of four months from the date of receipt of certified copy of this order.

11. The O.A is disposed of as above.

12. No costs.


K NOORJEHAN
ADMINISTRATIVE MEMBER

trs


Dr K.B.S.RAJAN
JUDICIAL MEMBER