

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 226/2011

Tuesday, this the 19th day of June, 2012.

CORAM

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

**K.M.Ibrahim,
S/o Madhurakom Mohammed Haji,
Keerthi Mahal House,
Kadamath Island, U.T of Lakshadweep
Now working as Village Extension Officer,
Sub Divisional Office,
Kavaratti-682 555.**

- Applicant

(By Advocate Mr M.P.Krishnan Nair)

v.

**1. The Administrator,
Union Territory of Lakshadweep,
Kavaratti-682 555.**

**2. The Collector-cum-Development Commissioner,
Administration of U.T of
Lakshadweep-682 555.**

- Respondents

(By Advocate Mr S Radhakrishnan)

This application having been finally heard on 12.06.2012, the Tribunal on 19.06.2012 delivered the following:

ORDER

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

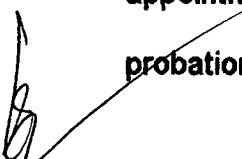
This case has a chequered history. The applicant was appointed as Village Extension Officer on 18.2.1988. The said appointment was, admittedly, purely on ad hoc basis. On 29.11.1999, on account of non-availability of vacancy in the grade (as the regular incumbent to the post who went on deputation had to be repatriated to the parent department), services of the

applicant who was the juniormost Village Extension Officer were to be discontinued. In 1999 itself the applicant challenged the order of discontinuation of his services by filing O.A.No.1316/1999 which however, was dismissed. While dismissing the O.A. The Tribunal has recorded a finding that the applicant is a juniormost among the ad hoc Village Extension Officers. Against the aforesaid order of the Tribunal, applicant moved O.P.No.9998/2000 before the Hon'ble High Court of Kerala which had upheld the order of the Tribunal vide Annexure A-2. A latitude has, however, been given in the judgment dated 15.12.2000 in the aforesaid O.P that if other remedies are available to the petitioner, he could pursue the remedies before the appropriate forum. In the wake of the aforesaid judgment, the applicant filed a representation dated 23.1.2000 followed by another dated 7.6.2000 which was disposed of (as per the direction of the Tribunal in O.A.No.65/2001 filed by the applicant). The respondents had rejected the claim of the applicant for regularization vide Annexure A-4 order dated 23.2.2001. In the said order the respondents had indicated that the services of the applicant were discontinued on account of non-availability of vacancy and further the applicant was not possessing the requisite qualification for the post in question as ^{pr} the recruitment rules at the time of his discharge from service. As the applicant had referred to the names of two more individuals (Shri K.C.Mohammed Khaleel and Shri P.C.Mohammed) who had already been appointed on ad hoc basis but whose services were continued, it has also been stated that their services were discontinued. But in compliance with an interim order of the court, they were allowed to continue. The respondents had also indicated therein that future vacancies, if any, would be filled up by following recruitment procedure in terms of relevant recruitment rules and the applicant has no right for any special dispensation at the stage.

2. The applicant could fulfil the requisite qualification and subsequently

requested the respondents that to consider his case for reinstatement by promoting any of the then serving Village Extension Officer as Extension Officer (G) and to accommodate him in the resultant vacancy. Annexure A-6 letter dated 19.3.2005 refers. He had filed O.A.No.449/2005 seeking the relief of reinstatement in service and to get his services regularised with effect from 18.2.1988 and consequential benefits thereof. This O.A was contested by the respondents on the legal ground of resjudicata. Referring to the earlier round of litigation, the Tribunal by its order 24.11.2005 (Annexure R1-(c)) dismissed the O.A. References to the representation dated 19.3.2005 was also made in the said order. Against the aforesaid order, the applicant moved the Hon'ble High Court in the Writ Petition No.33832/2005. The High Court had considered the entire issue and held that two reasons for termination in the case of the petitioner were: (a) want of vacancy and (b) want of test qualification. As the applicant fulfilled the test qualification at that point of time, keeping in view the period of service rendered earlier and the fact that the applicant had been without employment for ten years and that he was aged 46 at that time, the court had held that the applicant should be considered for regular appointment and disposed of the Writ Petition with a direction to the Collector-cum-Development Commissioner, Administration of Union Territory of Lakshadweep to consider the case of the applicant for Village Extension Officer in any of the existing or next arising vacancy.

3. In the wake of the above judgment dated 15.10.2009 and in compliance thereof, the respondents had issued order of appointment to the applicant dated 12.1.2010 appointing him as Village Extension Officer on the pay band of Rs.5200-20200 with Grade Pay of Rs.2400/- with a rider that the above appointment would be on temporary basis and the applicant would be on probation for a period of two years. In other words, the appointment has been a



fresh appointment for him.

4. The applicant had joined the post and preferred a comprehensive representation dated 28.5.2010 claiming parity in matters of employment at par with the other two ad hoc Village Extension Officers, viz, Shri K.C.Mohammed Khaleel and Shri P.C.Mohammed for regularization as in their cases from retrospective effect and consequential benefits thereof. This has not been responded to by the respondents and as such the applicant has moved this O.A seeking the following relief:

(a) To call for the records leading to the regularization of applicant's service and also action taken by the respondent ~~in~~ pursuant to the applicant's Annexure A-7 representation dated 8.5.2010 and Annexure A-9, its reminder dated 12.7.2010 and also records of regularization of services of Lady Village Extension Officers viz, Annexure A-10 and also regularization of service of PVP Thajudheen, as per Annexure A-11 hereto and also appointment order dated 12.1.2010 of the applicant.

(b) Declare that the applicant is entitled to get all the benefits for which he requested for in his representation viz,

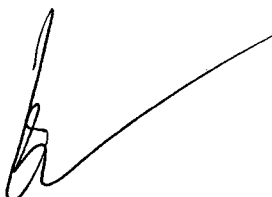
(a) Entitled to obtain the services as provided in cAG's letter No.2092/NGEI/73-67 dated 23.9.1967 and FR 54 and 54-A.

(b) Entitled to obtain benefit of past service under Rule 24 and 25 of Pension Rules.

(c) To retain the General Provident Fund for which he contributed for 12 years.

(d) Benefit of reinstatement with retrospective effect from 29.11.99 and all other consequential benefits.

(e) Service regularization from his date of initial appointment as in the case of his counterparts.

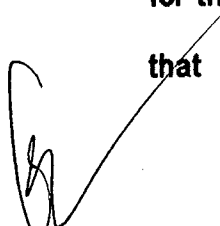


- (c) Issue necessary direction to the respondents to give the above mentioned benefits as prayed for above in prayer (b);
- (d) Pass any other appropriate order or orders, directions which are deemed just and necessary in the facts and circumstances of the case.

5. Respondents have contested the O.A. They had given the brief history of the case and submitted that the applicant is not entitled to any relief and that they had strictly followed the order of the High Court in granting the appointment to the applicant.

6. Applicant has filed his rejoinder reiterating the stand and on filing the additional reply statement, rejoinders has also been filed. In addition, the applicant had also filed written arguments.

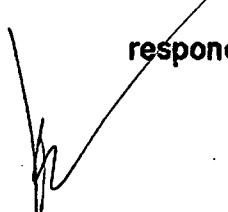
7. Counsel for the applicant argued at length, that, admittedly, the applicants initial appointment was in February 1988 along with two others and though his services were terminated in 1999 on account of non-availability of vacancies in similar circumstances, though orders in respect of other two candidates also were issued for termination, those two individuals on approaching the Tribunal were afforded the regularization by the Department. In this regard he has invited our attention of the order of the Tribunal dated 25.7.2001 in O.A.No.1356/2001. The counsel has contended that justice demands that the decision in the case of Shri K.C.Mohammed Khaleel and Shri P.C.Mohammed (Annexure A-5) should have been extended to the applicant also as he had qualified in the training much earlier than the other two individuals and he has already been appointed now as per the High Court's order. Counsel for the applicant in fact submitted that the tenor of the High Court order is such that it refers to the case of Shri K.C.Mohammed Khaleel and Shri



P.C.Mohammed and has recorded the contention that the applicant having acquired the qualification earlier than the other two persons, the case for his regularization should have been considered favourably. The operative portion also indicates that appointment of the applicant as Village Extension Officer against the existing or next arising vacancy was "in the light of observations in this judgment".


8. Counsel for the respondents on the other hand submitted that O.A.No.449/2005 having been dismissed, the applicant had carried the matter to the High Court which had directed the respondents to consider the case of the applicant for appointment against the existing vacancy or the next vacancy and though it should have been in tune with the recruitment rules, in view of the High Court decision, the applicant has been appointed as Village Extension Officer against the existing vacancy. The High Court's decision thus upheld the decision of the Tribunal in respect of applicant's non-entitlement to regularization, though the decision of the High Court varies from that of the Tribunal in respect of regular appointment of the applicant. A reading of the High Court's judgment, according to the counsel for the respondents, would go to show that the High Court meant only a fresh appointment.

9. Arguments were heard and documents perused. At this juncture, applicant has filed the second additional rejoinder and the respondents have filed additional reply statement. These do not, in any way, increase the strength of respective arguments as these are only repetitive of the earlier pleadings. In any event, the documents filed were found to be defective by the Registry as the additional rejoinder has been filed without serving a copy to the respondents and respondents' additional reply has been filed without the leave of the court.



10. Admittedly, the initial claim of the applicant in O.A.No.1316/1999 was for reinstatement of and regularization of the services which was dismissed by the Tribunal and upheld by the High Court. It is with the latitude given that the applicant moved the matter again and by that time he had at his credit the qualification requirements for the post of Village Extension Officer and as no vacancy was available his claim for reinstatement was rejected. As a matter of fact, as of 19.3.2005, the very request of the applicant was only for an appointment by promoting any of the Village Extension Officers as extension Officer and appointing him against the resultant vacancy. However, his claim in O.A.449/2005 was extended, apart from reinstatement, to regularization that too with effect from 18.2.1988. On account of resjudicata, the claim of the applicant had been rightly rejected by the Tribunal. However, when the High Court considered the issue, it has taken into account the age of the applicant the fact that he had already put in ten years of service and that he was without employment for a decade. On these grounds only, the High Court had negated the contention of the respondents that for the existing vacancy, the same shall be in accordance with the recruitment process, and directed the respondents to accommodate the applicant against any of the vacancies. Though reference to the decision of the Tribunal in the case of Shri K.C.Mohammed Khaleel and Shri P.C.Mohammed had been made in the High Court judgment, they are more in the nature of extracting the contention of the applicant rather than any observation that the applicant is to be treated at par with other two candidates. Paragraph 3 of the judgment of the High Court vide Annexure R1(d) clearly states:

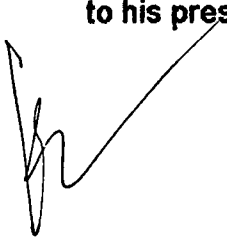
"The crux of the contention taken by the petitioner has acquired qualification and since admittedly there were vacancies on the acquisition of qualification, being the person acquired the qualification first the case for his regularization should have been considered favourably"



The High Court ultimately in the concluding sentence of the said paragraph has remarked:

"In any case, it is prayed that in view of the above factual matrix, he may be appointed in the existing or next arising vacancy."

11. The decision of the High Court to consider the case of the applicant on the basis of his rich experience of 10 years and that he had become overaged has to be construed that the applicant's appointment though to be treated as a fresh appointment, is based on his past service. No doubt, there has been a gap of 10 years from the date of his termination from ad hoc services till the date of his appointment. This long gap may go in favour of the contention of the respondents that the applicant cannot be treated as having been regularized from 1988. At the same time, viewed from another angle, the long services of 10 years on ad hoc basis by the applicant cannot be ignored especially when the same is the basis for his appointment. Counsel for the respondents rightly stated that the appointment of the applicant is not strictly on the basis of recruitment rules, but on the basis of the judgment passed by the High Court. Since the High Court has taken into account the experience of 10 years, the same should be considered as qualifying service for pension. In that event, the applicant's appointment on regular basis may have to be treated as in the wake of and as a chain of his initial ad hoc appointment. The interruption period when he was out of service has to be eclipsed and the applicant's 10 years of service should be treated as qualifying service for pension purpose. This shall not be, however, entail any increase in the pay and allowances of the applicant by way of grant of increments etc, but purely it would enable the applicant to claim his pension as his regularization is deemed to have been effected 10 years anterior to his present appointment.



12. In view of the The O.A is disposed with the following directions:
- (a) The applicant's services of 10 years shall count for qualifying service under the pension rules.
 - (b) His present appointment in the Government service should take into account the ad hoc services of the post;
 - (c) By virtue of (b) above, the applicant should be deemed to have service prior to 2004 itself in which event, he would be entitled .to pensionary benefits in accordance with 1972 Pension Rules.
 - (d) Respondents are directed to pass suitable orders in this regard and make necessary entries in the service book as well so that there shall be no confusion at the time of his retirement in respect of his entitlement to pension under the CCS (Pension) Rules, 1972.
13. There is no order as to costs.


K.NOORJEHAN
ADMINISTRATIVE MEMBER


Dr K.B.S.RAJAN
JUDICIAL MEMBER

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