

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 294 of 2008

FRIDAY , this the 17th day of April, 2009

C O R A M :

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

K.P. Mohammed Manikfan,
S/o. Late Pookoya,
Village Extension Officer,
Office of the Deputy Collector,
Minicoy, Union Territory of Lakshadweep ... Applicant.


(By Advocate Mr. P.K. Ibrahim)

v e r s u s

1. The Administrator,
Union Territory of Lakshadweep,
Kavaratti.
2. The Collector Cum Development Commissioner,
Union Territory of Lakshadweep, Kavaratti.
3. The Director (Services), Secretariat,
Kavaratti Island.
4. P.C. Mohamood,
S/o. Muzammil,
Village Extension Officer,
Office of the Sub Divisional Officer,
Kavaratti. ... Respondents.

(By Advocates Mr. S. Radhakrishnan (R1-3) and
Mr. R. Sreeraj (R4))


The Original Application having been heard on 30.03.09, this Tribunal
on 17-4-09 delivered the following :



O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

Seniority is the issue in this case. The admitted portion of the case as per the counter would give a fair idea about the facts of the case. Recruitment Rules provide for appointment of Village Extension Officers, and the applicant was appointed to the said post on 23-10-1982. For removal of probation and confirmation in the said post, the Rules required successful completion of training course for the said post at the Extension Training Centre, Mannurthy, Trichur. The applicant completed the same in 1988. Respondent No. 4 was appointed to the said post of Village Extension Officer on 02-11-1982 and he could not complete the training course even till 2000, consequent to which, his services were terminated by an order in OA No. 1356/2000 dated 25.07.2001, the Tribunal directed the respondents to regularize the services of the said individual as was done in the case of the applicant and another similarly situated. Thus, the fourth respondent has been back in service and his services regularized from the initial date of appointment.

2. The respondents circulated a draft seniority list of Village Extension Officers, vide Annexure A-7 in which objections, if any were called for and the applicant, having found his position lower to respondent No. 4, notwithstanding the fact that the said respondent's initial date of joining was posterior to that of the applicant, moved a representation dated 30-08-2007, vide Annexure A-9. However, by Annexure A-11 order, the respondents have, after stating, as




stating, as hereunder, made the draft seniority absolute, without any change and the final seniority list has been published vide Annexure A-10:-

"The objections were examined with reference to the Recruitment Rules for the post of Village Extension Officer applicable at the time of their appointment and found that the seniority can be counted only from the date of fulfilling the qualifications prescribed in the Recruitment Rules and not from the date of joining into Government Service or merit in selection."

3. The applicant has challenged the Annexure A-10 seniority and A-11 communication and prayed for quashing the same and for a direction to the respondents that his name should precede the name of the fourth respondent.

4. Respondents have contested the case. According to them, vide Annexure A-8, as early as in 1983, the fact that the fourth respondent had been declared as senior to the applicant is known to the applicant. Further, the applicant's position in the seniority list is also in pursuance of the judgment of the Hon'ble High Court vide judgment dated 04-03-2005 in O.P No. 14281/2002, vide Annexure R 1(f).

5. Counsel for the applicant submitted that admittedly the date of initial appointment of the applicant is anterior to that of the fourth respondent and equally admittedly, the date of fulfilling the qualification by the applicant is prior to that of the fourth respondent. It has also been stated that neither the merit position nor date of initial appointment is stated to be the guiding factor



and the lone factor for fixation of seniority is the date of fulfilling the qualifications, vide Annexure A-10. As such, on the basis of date of passing the requisite training it should be the applicant who should have been granted higher seniority.

6. Counsel for the respondents submitted that the applicant should have, at the appropriate time, challenged the Annexure A-4 order whereby his ad hoc service has been regularized w.e.f. 02-11-1982. As he had not challenged, he cannot be permitted to challenge the same now.

7. Counsel for the private respondent adopted and supported the arguments of the counsel for the respondents. He has supplemented that the fourth respondent is certainly senior otherwise, such a mention would not have been made in the order passed as early as in 1983 vide Annexure A-8.

8. Arguments were heard and documents perused. If Annexure A-10 order is the correct decision that neither date of joining nor the merit position in the selection is the criteria for seniority and the lone criterion for seniority is the date of fulfilling the qualifications, then there is no reason as to why the applicant should not be treated as senior, since, admittedly, the fourth respondent had fulfilled the qualification only in 2000. Again, the fourth respondent, vide earlier order of this Tribunal at Annexure R 1(e) had claimed regularization as village Extension Officer in the same manner in which the




applicant in this OA and another were regularized. The same was allowed by this Tribunal. The question is as to how to work out the seniority of the applicant qua the fourth respondent.

9. Seniority as per the extant rules normally corresponds to the merit position. In the instant case, though Annexure A-8 indicates that the fourth respondent is senior to the applicant and accordingly, the applicant's services were regularized w.e.f. 02-11-1982 i.e. the date on which ~~he~~ Shri P.C. Mohamood (Respondent No. 4) joined duty. But in para 8 of the counter, the respondents have stated that the relevant records are not available to confirm as to who is senior as per the merit list.

10. When the merit position is not known, date of joining must be the criteria, for "actual is always accepted as real." In *N.K. Chouhan vs. State of Gujarat*, AIR 1977 SC 251, the Apex Court held as under :

"Seniority normally is measured by length of continuous officiating service – actual is easily accepted as the legal."

11. If date of fulfilling the qualifications is taken as the criterion, then also the applicant having fulfilled the qualifications as early as in 1988, while the fourth respondent had qualified only at a much later date, then again, the applicant becomes entitled to higher seniority.



12. In the instant case, admittedly, the applicant having joined the department earlier than the fourth respondent coupled with the fact that he had fulfilled the qualification requirement much earlier than the applicant, from whichever angle it is considered, the applicant's claim appears justifiable.

13. In view of the above, the OA is **allowed**. Annexure A-10 order in so far as it directs confirming the draft seniority as final is quashed and set aside. Annexure A-11 order of seniority is also quashed and set aside. Respondents are directed to reschedule the seniority of Village Extension Officer on the basis of date of fulfilling the qualifications, as per their decision in Annexure A-10. The revised seniority be issued within a period of two months from the date of communication of this order.

14. No costs.

(Dated, the 17th April, 2009)


(K. NOORJEHAN)
ADMINISTRATIVE MEMBER


(Dr. K B S RAJAN)
JUDICIAL MEMBER

CVT.