

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

....

O.A. 328/92

Wednesday, the eighth day of December, 1993

MR. N. DHARMADAN MEMBER (JUDICIAL)

MR. S. KASIPANDIAN MEMBER (ADMINISTRATIVE)

C. Sarojini Amma Assistant
Office of the Director of
Census Operations, Trivandrum

Applicant

By Advocate Mr. K.R.B. Kaimal

vs.

1. Union of India represented by the
Secretary, Ministry of Home Affairs
New Delhi
2. The Director of Census Operations,
Trivandrum
3. S. Saraswathy Amma, Assistant
Office of the Director of Census Operations
Trivandrum
4. M. Somanatha Pillai-do-

Respondents

By Advocate Mr. S. Krishnamoorthy, ACGSC for R1 & 2
Mr. M.K. Damodaran for R-4
Mr. B. Raghunathan for R-3

ORDER

N. DHARMADAN

Applicant who is at present working as Assistant in the office of the Director of Census Operations, Trivandrum filed this application under section 19 of the Administrative Tribunals' Act challenging Annexure-III order passed on 19.2.92 by the Director of Census Operations Kerala which was issued pursuant to the direction in Annexure-I judgment in O.A. 445/90 dated 14.8.91.

2. The main grievance of the applicant is that she also participated in the examination held on 12.4.80 for promotion to the cadre of UDC along with applicant and respondent-4 in O.A. 445/-90. Since that case was allowed directing to conduct a fresh examination, the applicant's claims for sitting in the examination deserves consideration notwithstanding the failure to get promotion on the basis of of the earlier examination held on 12.4.80.

3. The learned counsel for applicant submitted that the applicant filed a review application R.A. 35/92 in O.A. 445/90 which was dismissed on 20.4.92 but there is an observation that she shall be fully eligible for appearing in the examination and she is also entitled to participate in the examination. However, that review was dismissed on the ground that she is not really an affected person.

4. It is brought to our notice that from the statement in the reply filed by the respondents 1 & 2 that the applicant in this case appeared in the departmental examination for promotion to the cadre of UDC held on 12.4.80 but she secured only 38.5% marks while the applicant in that case⁴ /who is the fourth respondent in this case, secured 45% marks and got selection. The selection of the fourth respondent was not objected to by the applicant in this case by filing either a representation or an original application against the same. Hence, her right for getting entry in the re-examination in the light of Annexure-I judgment is foreclosed and she cannot get relief in a case which was filed by the aggrieved person who obtained an order in her favour in O.A. 445/90² raising the contention before this Tribunal that the examination was conducted irregularly without giving her opportunity for proving her merit. In that view, we accepted the contentions of the applicant therein and examined the grievance vis-a-vis the fourth respondent in that case. Accordingly, we issued specific direction in that judgment in the following manner:

- "1. The third respondent is directed to conduct a fresh limited competitive departmental test for promotion as UDC, with the same syllabus and topics mentioned in Annexure R-7 notice in which only the applicant and 4th respondent alone should be allowed to participate.

2. This shall be conducted by the 3rd respondent within a period of three months from the date of receipt of the copy of this judgment. Till then the status quo as on today be maintained regarding further promotion of the 4th respondent.

3(a) If the applicant is found to be more meritorious than the 4th respondent in the examination, she shall be confirmed as UDC w.e.f. 1.8.80 when the 4th respondent was confirmed and shall be placed above him in the seniority list with all consequential benefits including consideration for further promotion, notwithstanding any observations made in Annexures-E and F orders challenged in this case.

(b) If the respondents 1 to 3 do not wish to disturb the date of confirmation of 4th respondent, a supernumerary post for accommodating the applicant's confirmation w.e.f. 1.8.80 will have to be created. If it is not possible, the 4th respondent's date of confirmation will have to give place to that of the applicant.

(c) If however, the 4th respondent is bound to be more meritorious in the examination as compared to the applicant, there will be no change in the seniority of dates of confirmation between the applicant and the 4th respondent and the status quo order referred to in (2) above will automatically stand vacated."

In the above directions, we made it clear that the further examination is to be held for the limited purpose of assessing the comparative merit of the applicant and 4th respondents therein. The examination was directed to be held with the same syllabus which was in force on the date of examination. Thus, it was made clear in the earlier judgment itself that the examination was directed to be conducted for the limited purpose of testing the merit of the applicant and the fourth respondent in that case; the applicant in this original application has no locus stand in the issue. Her right to participate in the re-examination cannot be revived simply because the judgment has been rendered. In fact she has no legal right at all.

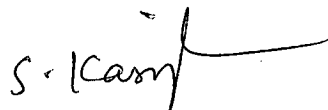
5. In this view of the matter, we are satisfied that there is no merit in the contentions raised by the applicant. She has no right to be directed for sitting

in the examination in the light of the specific directions in O.A. 445/90 particularly because she did not raise any objection against the earlier examination and procedure adopted therein. Under these circumstances she cannot get any relief by getting a direction in this original application for sitting in the examination which was conducted as per the direction of this Tribunal in O.A. 445/90 granting relief to the aggrieved therein.

6. We have passed an interim order on 26.2.92 without advertng to the correct position regarding the legal right of the applicant. However, after satisfying that the applicant has no legal right to sit for the examination which was conducted strictly in accordance with the direction of this Tribunal in O.A. 445/90, we vacate the interim order dated 26.2.92 which was passed as an interim measure. It does not confer any right on her.

7. The original application is dismissed.

8. There shall be no order as to costs.



(S. KASIPANDIAN)
MEMBER (ADMINISTRATIVE)



(N. DHARMADAN)
MEMBER (JUDICIAL)

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