

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 347/90 199
~~xxxxx~~ No.

DATE OF DECISION 27.3.91

Achuthanandan Kuniyil _____ Applicant (s)

M/s.K.V.Kuriakose & K.Surendra Mohan _____ Advocate for the Applicant (s)

Versus

~~The Union Public Service Commission,~~ _____ Respondent (s)
represented by the Secretary,
U.P.S.C., New Delhi-110 011 and another

Mr.N.N.Sugunapalan, SCGSC _____ Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.Mukerji, Vice Chairman

The Hon'ble Mr. N.Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*
4. To be circulated to all Benches of the Tribunal? *Yes*

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 7.4.1990 filed under Section 19 of the Administrative Tribunals Act, the applicant who has been working as a Senior Grade Assistant in the University of Calicut has prayed that the action of the first respondent, i.e., the Union Public Service Commission in conducting the interview for selection for the post of Programme Executive, Malayalam without calling the applicant for interview should be set aside being arbitrary and illegal and to direct the respondents to select suitable candidate for the aforesaid post only after interviewing the applicant. The brief facts of the case are as follows.

2. The applicant's date of birth is 24.11.1955. He was selected through the Kerala Public Service Commission for the post of L.D.C in the Panchayat Department of the Kerala State and joined the post on 2 years' probation on 31.7.78. According to him, the post was permanent. He was regularised in that post later. In response to the advertisement

.2.

published on 3.9.1988 as at Annexure A-1 he applied for ^{two} ~~the~~ posts of Programme Executive-Malayalam, one for spoken words/features and the other for women and children. At the time of submitting the application the applicant was over 32 years of age, whereas in accordance with the advertisement the upper age limit was "30 years relaxable for Government servants and Contract Employees of All India Radio and Doordarshan upto five years". While sending the applications he sent covering letters to the U.P.S.C (Annexures A-4 and A-5) dated 22.9.1988 indicating that even though working as an Assistant in the University of Calicut, his lien was kept in the Panchayat Department of the State Government and therefore the upper age limit may be relaxed for 3 years for the purposes of selection to the post. He enclosed a certificate (Annexure A-6) issued by the District Panchayat Officer certifying that the applicant "had been working as L.D Clerk in the Panchayat Department from 31.3.78 to 3.5.84 and that he is well experienced in accounts and office establishment works". The applicant's grievance is that in spite of his applications and prayer he was not called for interview nor was he given any reply to his applications even though according to the U.P.S.C's acknowledgement cards (Annexures A2/A3) he was to be "informed in due course of the result of your application". The applicant has challenged his exclusion from interview as violative of Articles 14 and 16 of the Constitution.

3. The U.P.S.C in the counter affidavit have stated that even though the applicant had stated that he had a lien on the post of L.D.C, the certificate enclosed with the application merely indicates that he had been working as an L.D.C in the Panchayat Department between 1978 and 1984. His employer had not certified that his lien had been kept in the post of L.D.C and accordingly he was not entitled to any age concession. The U.P.S.C also indicated that even if the upper age limit had been relaxed in his case, he would not have been called for the interview as he "did not meet the shortlisting criterion adopted

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by the Commission". Possession of minimum qualification by itself cannot entitle a candidate to be called for interview . The applicant has questioned the respondents' averment to exclude him because of his not meeting the short-listing criterion, by stating that ~~this~~^{these} ~~criteria~~^{criteria} have not been revealed to him. He has further argued that persons with even lesser qualifications were called for interview. He has mentioned some names of candidates who unlike him had either no record of literary activities or publications to their credit but had been called for interview . Further, he has stated that under rule 17 of the Kerala Service Rules as a holder of the permanent post of L.D Clerk in the Kerala Government Service, he was holding a lien on that post. If the certificate enclosed with his application at Annexure A-6 was not sufficient, he should have been given an opportunity to produce such a certificate. Along with the rejoinder the applicant has produced a certificate dated 18.7.90 issued by the Director of Panchayat (Annexure A-9) of the Government of Kerala certifying inter-alia "that he would have retained his lien in this Department till 2.5.1989 in the post of L.D Clerk". The applicant's contention is that the non-disclosure of the shortlisting criteria by the respondents shows that the only ground on which his application was rejected was of his being overaged. He has also argued that as an employee of the University of Calicut which is a statutory body and an instrumentality of the State under Article 12 of the Constitution, he was entitled to age relaxation even without a lien with the State Govt. In the additional counter affidavit the UPSC have stated categorically that "the petitioner's application was not considered as he was over-aged". Since he was not a Government employee or contract employee of All India Radio/Door-darshan, he was above 30 years of age on the closing date of the application and being not entitled to age relaxation, was not eligible because of the age limit. In the additional rejoinder the applicant has stated that he was holding a permanent post under the Kerala State Govt. as L.D.C from 31.7.1978 and had applied for the post of Assistant Grade II in the University of Calicut through proper channel and on selection

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he was relieved from the Government post with the direction to report ^{to} the Deputy Registrar, University of Calicut(Annexure A-10). He has produced the State Government orders dated 24.3.1966 and 31.10.1969 allowing the concession regarding retention of lien in Govt. Service to be extended to officers who take up appointments under Corporations, Government Companies"and Universities in the State subject to the following further conditions ..."He has also produced another order at Annexure A-13 confirming the applicant ^{in and others} "who have completed their period of probation as on 1.8.1988".According to the applicant vide this order at Annexure A-13 dated 3.11.89 he was confirmed in the post of Assistant in the University of Calicut with effect from 3.11.89. According to him his lien in Government Service had to be retained for 5 years, i.e., upto 2.5.89.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully.The point at issue is whether the applicant had a lien on the post of L.D.C in the Panchayat Department of the Government of Kerala when he applied for the post of Programme Executive on 22.9.88. The certificate given by the Director of Panchayats on 18.7.90 at Annexure A-9 reads as follows:-

" Certified that Sri.Achuthanandan,Kuniyil,Senior Assistant, University of Calicut was working as L.D.Clerk in this Department during the period from 31.7.1978 to 3.5.1984 and was relieved from this Department on the A.N. of 3.5.1984, to take up the appointment as Assistant Grade II in the University of Calicut.

Also certified that he would have retained his lien in this Department till 2.5.1989 in the post of L.D.Clerk."
(emphasis added)

From the above it is clear that the applicant had been retaining his lien in the post of L.D.Clerk under the State Government at the time of his applying to the U.P.S.C for the post of Programme Executive. We see considerable force in the argument of the applicant that had the U.P.S.C informed him that his prayer for the benefit of age relaxation could not be granted to him because the certificate which he had originally attached with his application at Annexure A-6 did not clearly indicate about his lien being retained in Govt. Service he was

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not entitled to age relaxation, he would have produced the necessary certificate about his lien as he has done at Annexure A-9. The applicant had made a positive statement in his application to the U.P.S.C at Annexures A-4 and A-5 that he was "relieved from the Pandayat Department keeping the lien in the Panchayat Department". The U.P.S.C's acknowledgement card also at Annexure A-3 gave him an assurance that the applicant would be informed about the result of his application. It was, therefore, incumbent on the part of the U.P.S.C to inform the applicant about his prayer for age relaxation and reject the same ^{only} after giving him an opportunity to establish his continuing nexus with the State Government. Rules 17, 18 and 19 of the Kerala Service Rules read as follows:-

"17. Unless his lien is suspended under rule 18 or transferred under rule 20 an officer holding substantively a permanent post retains a lien on that post -

- (a) while performing the duties of that post;
- (b) while on foreign service or holding a temporary post, or officiating in another post;
- (c) during joining time on transfer to another post, unless he is transferred substantively to a post on lower pay, in which he is relieved of his duties in the old post;
- (d) while on leave;
- (e) while under suspension; and
- (f) while under training.

18.(a) The Government shall suspend the lien of an officer on a permanent post which he holds substantively if he is appointed in a substantive capacity -

- (1) to a permanent post outside the cadre on which he is borne, or
- (2) provisionally to a post on which another officer would hold a lien had his lien not been suspended under this rule.


(b) The Government may, at their option, suspend the lien of an officer on a permanent post which he holds substantively, if he is transferred to foreign service or in circumstances not covered by clause (a) of this rule, is transferred, whether in a substantive or officiating capacity to a post in another cadre, and if in any of these cases there is reason to believe that he will remain absent from the post on which he holds a lien for a period of not less than three years.
....".

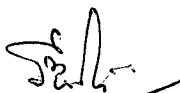
"19.(a) An officer's lien on a post may in no circumstances be terminated, even with his consent, if the result will be to leave him without a lien or a suspended lien upon a permanent post.

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- (b) In a case covered by sub-clause (2) of clause (a) of rule 18, the suspended lien may not, except on the written request of the officer concerned, be terminated while the officer remains in Government service; provided that it shall be open to the competent authority to refuse consent for confirmation or retention of an officer in a permanent post outside the cadre on which he is borne unless he makes a written request that his lien on the permanent post in his parent office should be terminated."

From the above rules it is clear that under no circumstances can the lien of a permanent Government servant be terminated. At the most it can be suspended while he is on foreign service. Since the applicant did not acquire a lien in the University of Calicut until he was confirmed by the order at Annexure A-13 dated 3.11.1989 his status when he applied to the U.P.S.C on 22.9.1988 was that of a State Government servant on foreign service. He is , therefore, entitled to be considered for age relaxation by the U.P.S.C in accordance with the advertisement ^{at} in Annexure A-1. In the facts and circumstances ⁱⁿ we allow the application to the extent of directing respondent 1 to consider the applicant as a State Govt. employee for the purposes of granting age relaxation for the two posts of Programme Executive one for spoken words/features and the other for women and children and if the necessary age relaxation is granted, to consider his application for further consequential reliefs to which he is entitled in accordance with law. There will be no order as to costs.


27.3.91.
(N.Dharmadan)
Judicial Member


27.3.91.
(S.P.Mukerji)
Vice Chairman

CP(C) 153/92 w

GA. 347/90.

SPM & ND

Mr K. V. Kurukose

SCC by PM

Shri George C. P. Tharakan, SCC

takes notice on behalf of the original respondent. He shall file reply statement to the CP(C) within a period of three weeks with a copy to learned counsel for petitioner dated for further directions on 15.12.92.

Copy by hand

N. Dhanarajan (N. Dhanarajan) S. L. V. C. (S. L. V. C.)
J.M. V.C.

24/11/92

SPM & ND

Mr Surendra Mohan by PM

SCC by PM

learned Counsel for respondents seeks 3 weeks' time to file reply on the CP(C). He may do so with a copy to learned Counsel for petitioner. List on 21.1.93.

no further adjournment will be given.

S. L. V. C.
(S. L. V. C.)
15/12

S. L. V. C.
(S. L. V. C.)
15/12

21-1-93
(21)

Mr Surendra Mohan
Mr Poly Mathai for SCGSC

The learned counsel for the respondents seeks further time to file reply to the CP(C) and states that in spite of his best efforts, he has not been able to obtain any response from the respondents. In that light, we direct that a notice be issued to Shri RK Bhargava, Secretary, Ministry of Information & Broadcasting, New Delhi either to report compliance of our judgement dated

27.3.1991 in OA-347/90 by 3.3.1993 or to appear before us in person on that date to show cause why proceedings under the Contempt of Courts Act be not initiated against him for non-compliance of the aforesaid judgement.

List for further direction on 3.3.1993
 (AV Haridasan) J.M.
 (SP Mukerji) V.C.

21-1-93

3-3-93
 (32)

Mr George Tharakan, SCGSC

The learned counsel for the respondents, Shri George^{CP} Tharakan states that he has received a telegram from the UPSC that the applicant had been called for interview on 12.2.93. The learned counsel for the applicant seeks some time to verify the same.

List for further direction on 18.3.93

(AVH) (SPM)

3-3-93

18.3.93 Mr. Poly Mathai
 Mr. Surendra^{NAVA} through Rani Skaria

At the request of the learned counsel for the petitioner, who wants to check up whether the applicant has been called for interview, list for further directions on 1.4.93.

AVH SPM
 18.3.93

1.4.93 Mr. Surendra Mohan th. proxy
 Mr. Poly Mathai rep. SCGSC

Heard the learned counsel for both the parties. The learned counsel for the applicant indicates that the applicant has been called for interview on 12.2.93 though the results have not yet been announced. In that light we feel that the implementation of the judgment of this Tribunal dated 27.3.91 in O.A 347/90 has been completed and no further action is called for in the CP(C), which is closed and notice discharged.

(AV Haridasan) J.M.
 (SP Mukerji) V.C.
 1.4.93

22/1/93
 mason

notice issued.

Reply by R. 2
 filed
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AD
 8/4
 mason

order issued
 20/4/93