

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA



No.O A /351/59/2015

Coram : Hon'ble Mrs.Bidisha Banerjee, Judicial Member
Hon'ble Dr.(Ms) Nandita Chatterjee, Administrative Member

Shri K Sunil Kumar, Tehsildar,
S/o Late Karunakaran Pillai,
Presently working as in the capacity of
Tehsildar, Car Nicobar, A&N Islands

.....Applicant

- Versus -

1. Union of India (Service through the Secretary, Ministry of Home Affairs, New Delhi);
2. The Lieutenant Governor, A&N Islands, Raj Niwas, Port Blair – 744101;
3. The Chief Secretary, A&N Administration, Secretariat, Port Blair -744101;
4. The Principal Secretary(Revenue), A&N Administration, Secretariat, Port Blair-744101;
5. The Deputy Commissioner, South Andaman District, Port Blair -744101;
6. The Assistant Commissioner(HQ), Car Nicobar, A&N Islands

.....Respondents

For the applicant : Mr. R. George, counsel

For the respondents : Mr. S.K. Mandal, counsel
Mr. S.C. Mishra, counsel

Heard on : 19.12.2018

Order on : 21.12.18

ORDER

Bidisha Banerjee, Judicial Member

By way of this O.A. the applicant has sought for the following reliefs:-

"a) A mandatory order directing the Respondent authorities to regularise the service of the applicant in the post of Tehsildar from the date of the initial appointment i.e. on 10.12.1998 under the A&N Administration and to release all the consequential benefits;

b) A mandatory order directing the respondent authorities to regularise the service period of the applicant with retrospective effect and to fix the service seniority from the date of initial appointment i.e. on 10.12.1998 and thereby to revise the order of A&N Administration No.3898 dated 14.12.2009;

c) An order directing the Respondent authorities to certify and transmit the records relating to the instant proceeding so that the conscientious justice;

d) Any other appropriate relief or reliefs, as Your Lordship may deem fit and proper."

2. The respondents have taken a preliminary objection that the original application is hopelessly time barred.

3. To counter the same, Id. counsel for the applicant would invite our attention to an order passed in O.A.351/174/2014 dated 24.12.2014 wherein the O.A. preferred by the applicant was dismissed as premature as no order was passed by the Chief Secretary, A&N Administration on his representation forwarded to him only on 01.07.2014 and as the statutory period of six months was not over from the date of representation. We find no basis of raising such objection that the present application is time barred. Hence, we proceed to discuss the matter on merits.

4. The admitted facts that emerge from the pleadings of the parties are as under:-

It has been admitted by ld. senior counsel Mr. S.K. Mandal leading Mr. S.C. Misra that two vacancies in the post of Tehsildar arose in the year 1997 which were filled up through written test and interview by Shri M. Sanjay and Shri Santosh Prakash. Although the applicant stood selected, he could not be accommodated due to want of vacancies and was kept in waiting list. Thereafter one vacancy arose in 1998 against which the applicant was given ad hoc appointment as Tehsildar on 18.11.1998. His services were regularised only in the year 2009, but prospectively. The applicant has, therefore, prayed for regularisation in the post of Tehsildar w.e.f. 18.11.1998, the date of his ad hoc appointment. The prayer is due to the fact that even as ad hoc Tehsildar, the applicant was permitted to draw increment on a regular scale of pay as evident from order No.1158 dated 10.12.1998, upon acceptance of the terms and conditions of appointment.

5. Ld. counsel for the respondents would vociferously contend that since the applicant accepted the terms and conditions of appointment as Tehsildar on ad hoc basis, he would be estopped from claiming regularisation from the date of initial ad hoc appointment.

6. Ld. counsel for the applicant, on the contrary would submit that the respondents having granted regularisation to several ad hoc Tehsildars from the date of their initial ad hoc appointment, were bound to regularise the ad hoc period of service of the present applicant to put an end to the discrimination meted out to him without any basis, rhyme or reason.

In support he would cite the following decisions:-

(i) **Lt. Governor, through Secretary, A&N & Others – Versus – Parimal Halder & Another in Special Leave to Appeal (C) No.31187/2013 arising**

out of impugned final judgment and order dated 04.03.2013 in WPCT No.683/2012 passed by the High Court of Calcutta, where Hon'ble Apex Court succinctly held :-

“Since the appointment of the respondents from the very beginning was in a pay scale, and not on a fixed pay, we are of the view, that the High Court was fully justified in allowing pay fixation to the respondents, with effect from the date of their appointment in the first instance on adhoc basis.”

(ii) **S. Sumnyan & Others – Versus – Limi Niri & Others in Civil Appeal No.3512 of 2010 reported in 2010(3) Supreme 332**, where Hon'ble Apex Court relying upon the judgment in cases of **Shri L. Chandrakishore Singh v. State of Manipur & Others**, reported in ,1(1999)8 SCC 287 at para 15, **G.P. Doval and Another v. Chief Secretary, Government of U.P. and Others**[(1984)4 SCC 329] and **Direct Recruit Class II Engineering Officers' Assn. v. State of Maharashtra** reported in 4(1990)2 SCC 715, held :-

“Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.”

(iii) **Jayanta Kumar Maitra –Versus – State of Orissa & Others in Original Jurisdiction Case No.12902 of 1998**, where Hon'ble High Court at Orissa, following the decision of Hon'ble Supreme Court in **Direct Recruit Class-II Engineering Officers' Association Vrs. State of Maharashtra and Others**[AIR 1990 SC 1607] wherein the Hon'ble Supreme Court held that “If the initial appointment is not made by following the procedure laid down by the Rules but the appointee continues in the post uninterruptedly till the regularization of his service in accordance with the Rules, the period of officiating service will be counted”, allowed the writ petition and directed the opposite parties to count the period of temporary/ad hoc services rendered by the petitioner from 1.1.1993 to 13.08.1998 towards his service.

(iv) **Gurdip Singh –Versus- Punjab State Electricity Board in CWP No.6113 of 2007 [Punjab & Haryana High Court];**

(v) **Ms. Thakuri Devi & Others –Versus- State of Himachal Pradesh & Others in CWP(T)No.4357 of 2008 with CWP(T)Nos.4356,4358,4359,4389 and 4390 of 2008 [Himachal Pradesh High Court];**

(vi) **Brajabandhu Nayak & Others –Versus- State of Orissa and Others in WP(C) Nos.1759,1732 and 765 of 2010 [High Court of Orissa, Cuttak]**

7. Ld. counsel were heard and materials on record were perused.

8. Since the representation of the applicant seeking regularisation of the ad hoc services is still pending before the authorities, with consent of the parties we dispose of this O.A. with a direction upon the concerned respondent authority to consider the grievance of the applicant in the light of the decisions supra, justifying the reasons for not regularising the ad hoc services of the present applicant when such regularisation has been admittedly granted to several other identically circumstanced Tehsildars. Let appropriate orders be issued within a period of two months from the date of receipt of a copy of this order.

9. The O.A. is disposed of. No costs.

(Dr.Nandita Chatterjee)
Administrative Member
sb

(Bidisha Banerjee)
Judicial Member