

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 181/00054/2015

Monday, this the 24th day of December, 2018

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member

C.P. Mullakoya, S/o. Akkare Muthukoya, age 59 years,
 Subject Matter Specialist, Krishi Vigyan Kendra,
 Farm Science Centre, Kiltan Island,
 UT of Lakshadweep.

Applicant

(By Advocate : Mr. M.P. Krishnan Nair)

V e r s u s

1. The Administrator, UT of Lakshadweep, Kavarathi – 682 555.
2. The Director of Agriculture, Directorate of Agriculture, UT of Lakshadweep, Kavarathi – 682 555.
3. The Secretary, Agriculture Department, Lakshadweep Admn., Kavarathi – 682 555.
4. The Secretary, Services, Lakshadweep Admn., Secretariat, Kavarathi – 682 555.
5. Shri Jatin Goyal, Enquiry Officer, Director (Rural Development), UT of Lakshadweep, Kavaratti – 682 555. **Respondents**

[By Advocate : Mr. S. Manu (R1-4)]

This application having been heard on 12.12.2018 the Tribunal on 24.12.2018 delivered the following:

O R D E R

Hon'ble Mr. Ashish Kalia, Judicial Member –

The relief claimed by the applicant are as under:

“i) to call for the entire records leading to the issue of Annexure A-3, A-10, A-15, A-16 and A-17 and all action taken on the basis of Annexure A-3, A-10 and A-17 and set aside the same.

- ii) to declare that the issuance of Annexure A-3, A-10, A-15, A-16 and A-17 is a clear case of misuse of powers of the authorities and are highly illegal, arbitrary, malafide in nature, discriminatory in character, ab initio void, unjust, unfair unreasonable and unsustainable and liable to be quashed by this Hon'ble Tribunal;
- iii) to allow the applicant to retire from service on superannuation on 30.6.2015 with all service benefits and consequential monetary benefits and also all arrears with interest at market rate;
- iv) to direct the respondents to pay all pending TA, DA and other allowances to the applicant with interest at market rate immediate in any case, before his retirement on 30.6.2015;
- v) to declare that the action of the respondents in not implementing the orders of this Hon'ble Tribunal is a clear case of violation of the orders of this Hon'ble Tribunal;
- vi) to direct the respondents to act according to law and not to harass and victimize the applicant in any way during his service and also after retirement;
- vii) to pass any other appropriate order or orders, direction or directions which are deemed just and necessary in the facts and circumstances of the case;"

2. The applicant was working as a Soil Analyst in Soil Test Lab., Kadamath in the pay scale of Rs. 4,500-7,000/- . After establishment of Krishi Vigyan Kendra (for short KVK) the applicant was posted as Training Associate later re-designated as Subject Matter Specialist at KVK in the pay scale of Rs. 8,000-13,500/- during 1999. The service conditions of the staff selected for the KVK will be like transfer from one department to another, but with the KVK scale without fixation benefits. The appointment of the applicant as Subject Matter Specialist was initially for a period of one year with effect from the date of joining the post and further continuation would be allowed based on the satisfactory performance of the incumbent in the post. Later UPSC had invited applications for selection and appointment as Coconut Development Officer. The post of Coconut Development Officer

has to be filled up in consultation with the UPSC by promotion/transfer on deputation (including short term contract) failing which by direct recruitment. The applicant and others applied for the said post. Dr. C.P. Hamsakoya was selected and appointed as Coconut Development Officer. The appointment of Dr. C.P. Hamsakoya was challenged by four persons in OA No. 79 of 20906 before this Tribunal. The OA was allowed by quashing the appointment of Dr. C.P. Hamsakoya. Dr. C.P. Hamsakoya challenged the said order in OA No. 79 of 2006 before the Hon'ble High Court in WP(C) No. 12983 of 2007. During the pendency of that Writ Petition Dr. C.P. Hamsakoya expired on 21.5.2008 and therefore, the Writ Petition was dismissed as abated. The respondents vide OM dated 22.1.2009 requested the applicant to submit fresh application along with relevant documents. The applicant submitted a fresh application. But that also was not forwarded to respondent No. 4. Aggrieved the applicant has filed OA No. 362 of 2009 before this Tribunal. The OA was disposed of directing the respondents to consider the representation of the applicant. The respondents issued employment notice dated 7.9.2009 inviting applications for appointment to the post of Coconut Development Officer by way of direct recruitment. The applicant preferred representation dated 30.9.2009. Since no action was taken in the matter applicant preferred OA No. 777 of 2009 before this Tribunal. After hearing, this Tribunal dismissed OA No. 777 of 2009 through a common order dated 19.7.2011. While so the 3rd respondent issued OM dated 13.7.2011 making lot of allegations of misconduct against him regarding the functioning of the KVK, implementation of coconut marketing programme and seeking his explanation to the allegations. The

applicant submitted his explanation dated 23.7.2011. Since Annexure A4 explanation submitted by the applicant was not considered the applicant filed OA No. 684 of 2011. After hearing OA No. 684 of 2011 was disposed of with certain directions. The respondents had not taken any action to complete the proceedings. Thereafter respondents issued a charge sheet dated 29th November, 2013 (Annexure A10) with the following charges:

“Article I -

That Shri C.P. Mullakoya, SMS and Programme Coordinator in charge of KVK had engaged coconut climbers without the approval of the competent authority and started implementation of Department Programmes on 20.6.2011 without the concurrence of the Secretary (Agriculture).

Article II -

That Shri C.P. Mullakoya was asked to meet the Secretary Agriculture vide fax message 70/1/2011-Agril (Part-II) dated 22.6.2011. That he reported that there is no conveyance available and decided on his own not to come over to Kavaratti. Again the Secretary (Agriculture) directed to call the Programme Coordinator to discuss the entire proceedings of KVK functioning and also orders to meet the CDC in connection with the proposal made by him for shifting the KVK from Kiltan to Minicoy. It is observed that he did not turned up and avoided to come over to Kavaratti neither made any efforts on his part to meet Secretary (Agriculture) who is the Controlling and Reporting Officer for him.

Article III -

The Zonal Project Director, ICAR reported that the funds has been utilized for meeting the salary/TA and office contingencies have been spent by the KVK with no expenditure made on other mandated activities and very lower performance. The grant in Aid provided by the Department has been utilized for the unapproved items like salary/TA.

Article IV -

That the activities and progress of the project implementation and other details are not reported to Secretary (Agriculture) regularly. The Scientific Advisory Council (SC) meeting under the Chairman ship of Secretary (Agriculture) with members from all other line Departments of the Administration has not taken place for the last several years due to fault of Shri C.P. Mullakoya as he had not cooperated with them on implementation of projects.”

Applicant submitted his written statement of defence. In the meantime OP (CAT) No. 3147 of 2011 filed against the decision in OA No. 777 of 2009 by the applicant had been allowed by the Hon'ble High Court on 20.5.2015.

The proposed enquiry is with malafide intention and ulterior motive and somehow or other to deny the legitimate right of the applicant to get appointment as Coconut Development Officer and also to deny his retirement benefit. Aggrieved the applicant has filed this OA with the above prayers.

3. Notices were issued to the respondents. They entered appearance through Shri S. Manu for respondents Nos. 1-4. Respondents Nos. 1-4 filed a reply statement contending that the applicant was appointed as Soil Analyst in the Agricultural Administration unit at Kadamath in the scale of pay of Rs. 4,500-7,000/- (revised 5200-20,200/- plus Rs. 2,800/- GP) by direct recruitment on regular basis. Later he got appointed as Training Associate in KVK, Kiltan in the scale of pay of Rs. 8,000-13,500/- with effect from 8.1.1999 for a period of one year. On completion of one year his term was extended from time to time. During 2011 applicant conducted some programme under the banner of KVK without approval of competent authority. Certain complaints were received from political parties and other local people. Therefore, applicant was sought explanation vide Annexure A3 dated 13.7.2011. He submitted his explanation which was found not at all satisfactory. He was asked to meet the Secretary, Agriculture which regard to the above explanation which he refused and this attitude of the applicant was a gross negligence and disobedience on the part of a Government servant. Consequently, Annexure A10 charge sheet was issued against the applicant and the inquiry and presenting officers were also appointed. Meanwhile the OP (CAT) No. 3147 of 2011 filed by the

applicant before the Hon'ble High Court was allowed on 20.5.2015 with the following directions:

“21. For the foregoing reasons, the petitioner is entitled to succeed in this Original Petition. Ext.P16 Employment Notice dated 07-09-2009 is liable to be quashed. Ext.P21 order passed by the learned CAT in O.A. No.777 of 2009 is liable to be set aside.

In the result :

(i) Ext.P16 Employment Notice dated 07-09-2009 is quashed.

(ii) Ext.P21 order dated 19-07-2011 in O.A. No.777 of 2009 of the CAT is set aside.

(iii) It is declared that the petitioner is entitled to be considered for appointment to the post of Coconut Development Officer in the Department of Agriculture in the existing vacancy that arose due to the death of Dr. C.P.Hamsakoya.

(iv) The concerned respondent in the establishment shall forward the application submitted by the petitioner for appointment to the post of Coconut Development Officer in the Department of Agriculture to the Union Public Service Commission forthwith. If the application of the petitioner is not forwarded to the Union Public Service Commission within a period of 7 days after the receipt of a copy of this judgment, the petitioner shall be given appointment to the post of Coconut Development Officer in the Department of Agriculture forthwith.

(v) The petitioner shall produce a copy of this judgment before the concerned respondent in the establishment for compliance.

This O.P.(CAT) is allowed as above.”

Applicant had also filed IAs Nos. 7994/2015, 7995/2015, 7996/2015 and 8458/2015 in OP (CAT) No. 3147 of which the Hon'ble High Court passed the following order:

“For the aforesaid reasons, it is ordered directing that while the establishment will be at liberty to forward to the Union Public Service Commission all papers including the papers relating to the disciplinary proceedings which, according to the establishment, are pending, the petitioner is eligible to be appointed as Coconut Development Officer in the Department of Agriculture forthwith provisionally and subject to the decision of the UPSC. If the petitioner is not so appointed and posted in terms of the directions contained in this order, he shall be treated as appointed as Coconut Development Officer on 29.6.2015 for all intents and purposes, provisionally and subject to the decision of the Union Public Service Commission. We further direct that disciplinary proceedings shall not be carried on unless the UPSC concludes on the matter, and the direction issued as per Ext. P-49 requiring the petitioner to appeal for disciplinary proceedings shall not be insisted upon.”

The respondents contend that UPSC had not yet concluded the matter and therefore, the disciplinary proceedings are kept in abeyance in compliance with the above direction issued by the High Court. Now since the applicant had already retired from Government service on superannuation on 30.6.2015 his pensionary benefits are pending due to the delay in concluding the inquiry proceedings.

4. A rejoinder has been filed by the applicant reiterating the contentions raised by him in the Original Application. It is also submitted that pursuant to the directions of the Hon'ble High Court the Union Public Service Commission had rejected his claim for promotion to the post of Coconut Development Officer as per order dated 28.7.2016. Therefore, now there is no scope at all to contend that the respondent can start any further enquiry or fresh enquiry or any continuation of enquiry in the matter as the applicant had already retired on superannuation on 30.6.2015. The pensionary benefits of the applicant is pending for the last 2 years.

5. Heard Shri M.P. Krishnan Nair, learned counsel appearing for the applicant and Shri S. Manu, learned counsel for respondents Nos. 1-4. Perused the records.

6. The short point to be considered in this matter is whether the respondents can proceed with the enquiry any further?

7. In this regard, we find that the respondents had categorically stated in the reply statement that since the UPSC had not yet concluded the matter, the disciplinary proceedings against the applicant are kept in abeyance in compliance with the directions issued by the Hon'ble High Court in IAs Nos. 7994/2015, 7995/2015, 7996/2015 and 8458/2015 in OP (CAT) No. 3147. However, the applicant in the rejoinder fairly submitted that Union Public Service Commission had rejected his claim for promotion to the post of Coconut Development Officer as per order dated 28.7.2016. Now since the applicant had already retired from Government service on superannuation on 30.6.2015, we feel that it would be in the fitness of things if we direct the disciplinary authority to decide whether any further enquiry/fresh enquiry/continuation of enquiry in the matter is required or not. Ordered accordingly. Such decision by the disciplinary authority shall be taken as per the rules on the subject within a period of sixty days from the date of receipt of a copy of this order.

8. The Original Application is disposed of as above. There shall be no order as to costs.

**(ASHISH KALIA)
JUDICIAL MEMBER**

**(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER**

“SA”

Original Application No. 181/00054/2015**APPLICANT'S ANNEXURES**

Annexure A1 - True copy of the appointment order F. No. 1/1/98-KVK(3) dated 1.1.1999 issued by the 1st respondent.

Annexure A1(a) - True copy of the order dated 3.2.2001.

Annexure A2 - True copy of the order dated 8.6.09 in OA No. 362/09.

Annexure A3 - True copy of the office memorandum No. 70/1/2011-Agri(Part-1) dated 13.7.2011 issued by the 3rd respondent.

Annexure A4 - True copy of the explanation dated 23.7.2011 submitted by the applicant to the respondent No. 3.

Annexure A5 - True copy of the order dated 19.7.2011 in OA 777/2009 of this Hon'ble Tribunal.

Annexure A6 - True copy of the reply statement filed by the respondents in OA No. 684/11.

Annexure A7 - True copy of the rejoinder filed by the applicant in OA No. 684/11.

Annexure A8 - True copy of the order dated 20.9.2012 on this Hon'ble Tribunal in OA No. 684/11.

Annexure A9 - True copy of the letter dated 26.9.12 submitted by the counsel for the applicant to the respondents.

Annexure A10 - True copy of the charge sheet dated 29.11.2013 issued by the 3rd respondent.

Annexure A11 - True copy of the written statement submitted by the applicant to Annex. A10.

Annexure A12 - True copy of the points raised by applicant to the charges leveled against him.

Annexure A13 - True copy of the detailed reply submitted by the applicant to the charges leveled against him.

Annexure A14 - True copy of the representation submitted by the applicant on 20.12.2013.

Annexure A15 - True copy of the order dated 8.3.14 issued by 3rd respondent appointing Shri Vadodaria Karanjhit as Enquiry Officer.

Annexure A16 - True copy of the order dated 8.3.2014 issued by 3rd respondent appointing Shri Shaik Abdulla as Presenting Officer.

Annexure A17 - True copy of the order dated 17.4.15 issued by the 3rd respondent appointing Shri Jitin Goyal as Enquiry Officer.

RESPONDENTS' ANNEXURES

Nil

-X-X-X-X-X-X-X-