

**Central Administrative Tribunal
Madras Bench**

OA/310/01737/2014

Dated the 6th day of September Two Thousand Nineteen

P R E S E N T

**Hon'ble Mr. P.Madhavan, Member(J)
&
Hon'ble Mr.T.Jacob, Member(A)**

1. S.Kamaraj
S/o Subramanian,
Vocational Instructor,
Government ITI(Men),
Mettupalayam,
Puducherry.
2. S.Goby
S/o Selvarassou,
Vocational Instructor,
Government ITI(Men),
Mettupalayam,
Puducherry.

.. Applicants

By Advocate **M/s.V.Ajayakumar**

Vs.

1. Union of India, rep. by the
Secretary to Government for Labour,
Chief Secretariat,
Puducherry.
2. Commissioner of Labour,
Labour Department,
Puducherry.

.. Respondents

By Advocate **Mr.R.Syed Mustafa**

ORDER

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

The above OA is filed seeking the following relief:-

“To direct the respondents to promote the 1st applicant to the post of Vocational Instructor w.e.f. April 2002 and the 2nd applicant w.e.f. April 2003, the date on which the applicants have acquired the requisite qualification with all other consequential benefits including difference of wages, seniority etc. and to pass such other or further orders in the interest of justice and thus render justice.”

2. The case of the applicants is that they are working as Vocational Instructor in the Government ITI (Men), Mettupalayam. They entered into the service as Workshop Attendant in the year 1988. The 1st applicant has passed 10th Standard plus ITI plus CTI. The 2nd applicant has passed 10th Standard, ITI, DME and B.Com. According to them, they are fully qualified for the post of next promotion i.e. Vocational Instructor from the year 2003-04 onwards. As per the Recruitment Rules, 50% is to be given for promotion and 50% to be allotted for Direct Recruitment. In the year 2003 the respondents brought an amendment to the Recruitment Rules reducing the promotion quota of 50% to 15% and the experience was changed from 3 years to 18 years. The said amendment was challenged in OA 1142/2003 before this Tribunal and this Tribunal set aside the above rules. The said decision was challenged by the respondents in WP 44572/2006 before the Hon'ble High Court of Madras and the Hon'ble High Court dismissed the above WP confirming the said decision of the Tribunal. According to the applicants, the total number of posts

available in the cadre of Vocational Instructor is 114 out of which 57 posts has to be filled by promotion. The respondents had conducted a DPC on 16.2.2010 and 17 persons were given promotion including the applicants w.e.f. 03.3.2010. According to the applicants, they are entitled to get promotion with effect from the date of their acquisition of qualification as there exists enough vacancies at that time. One of the persons namely Thiru Pakirisamy who was given promotion along with the applicants w.e.f. 03.3.10 has challenged the order of promotion in OA 1513/2010 demanding retrospective promotion from 28.4.2004, which is the date of his acquisition of qualification. The said OA was allowed by this Tribunal and the applicant therein was given retrospective promotion from 28.4.2004. But the respondents in this case has denied the same benefit to the applicants who are also promoted from the same date. So, they pray for granting the same relief to them.

3. The respondents entered appearance and filed a statement substantially admitting the averments made in the OA and the quashing of the Recruitment Rules which was amended in 2003. According to them, the percentage of promotion i.e. 50% and the service requirement now remains the same as in the old service rules. So, according to them, the delay in promoting the applicants was due to litigation and they could comply with the promotion only after disposal of the WP and they have granted promotion to all the persons including the applicants. There is no reason for granting retrospective promotion. According to them, the judgment of *Pakirisamy's* case referred supra is applicable only to him and not to any other person.

4. We have heard both sides and perused the pleadings. On going through the

pleadings, it can be seen that the applicants were promoted on 03.3.10 on the basis of the available vacancies. On a perusal of the records, it can be seen that the 1st applicant had qualified himself in April '02 and the 2nd applicant was qualified in April '03. The applicants had submitted a representation to the respondents which is produced as Annexure A6 dated 25.6.14 and 19.6.14 respectively. But the claim of the applicants were not granted by the respondents. There is no serious dispute even for the respondents that one of the persons who was promoted w.e.f. 03.3.10 i.e. *Pakirisamy* was granted notional promotion w.e.f. the date of his acquisition of qualification i.e. from 28.4.04 onwards. It is not clear why the same rule is made applicable to the applicants in this case. The Hon'ble Supreme Court in ***State of U.P. & Ors. v. Arvind Kumar Srivastava & Ors. Reported in 2015 (1) SCC 347*** has held that “Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.”

The applicants in this case are similarly placed with *Pakirisamy* and they were also promoted in the same list approved by the DPC for promotion. The said *Pakirisamy* was given retrospective promotion on a notional basis. The applicants are also

entitled to get the benefits of the order of the Tribunal in OA 1513/10. The applicants as well as Pakirisamy came from the same list of promotion and they are entitled to be equally treated with Pakirisamy. There is no reason or explanation for denying the benefit to the applicants alone. We are bound by the earlier decision of this Tribunal in OA 1513/10. The action of the respondents in denying the benefit is arbitrary and illegal. *In view of the above, we find that the applicants are also entitled to get the promotion from retrospective effect from the date of acquisition of qualification by them.* But in this case there is no document to show that the applicants in this case were earlier promoted on an adhoc basis and they were working as Vocational Instructor even prior to the date of their appointment. So, the applicants are not entitled to get any financial benefits retrospectively in this case. They are entitled only to get a notional promotion w.e.f. the date of acquisition of qualification and consequential fixation of pay from the date of their joining duty as Vocational Instructor.

5. In the above circumstances, we **hereby direct the respondents to consider the matter afresh and pass appropriate orders within a period of three months from the date of receipt of a copy of this order. Accordingly, OA is allowed. No costs.**

(T.Jacob)
Member(A)

(P.Madhavan)
Member(J)

06.09.2019

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