

**Central Administrative Tribunal
Madras Bench**

OA/310/00772/2017

Dated the 10th day of December Two Thousand Nineteen

P R E S E N T

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

R.Vassandhan,
Public Relations Assistant,
Directorate of Information & Publicity,
Government of Puducherry,
Puducherry. .. Applicant
By Advocate **M/s.V.Vijay Shankar**

Vs.

1. The Union of India, rep. by the Secretary to Government for Information & Publicity, Government of Puducherry, Puducherry.
2. The Director of Information & Publicity, Government of Puducherry, Puducherry.
3. M.Dhanasekaran,
Public Relations Assistant,
Director of Information & Publicity,
Puducherry.
4. I.Ganapathy,
Public Relations Assistant,
Director of Information Assistant,
Puducherry.
5. J.Kumaran,

Public Relations Assistant,
Director of Information Assistant,
Puducherry. .. Respondents

By Adovacte **Mr.R.Syed Mustafa(R1&2)**

ORDER

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

The above OA is filed seeking the following relief:-

“.....direct the respondents 1 & 2 to fix the seniority of the applicant as Public Relations Assistant with effect from March 2001 on par with his colleagues R.Balaji and K.Kulasegaran who were appointed in the same selection and place him above respondents 3 to 5 herein who joined service much later and consequently fix his pay with effect from March 2001 by granting him all arrears and other benefits and consider him for promotion as Assistant Director based on such refixed seniority and pass such other order or orders as may be deemed fit and thus render justice.”

2. The applicant while working as Assistant in the Department of Fisheries, Government of Puducherry, applied for the post of Public Relations Assistant (PRA) under the respondents 1 and 2 in the year 2000. But his candidature was rejected for the reason that he had not studied Tamil language at school level. Whereas apart from respondents 1 and 2, three other persons were selected. Aggrieved by this action of the respondents he filed OA 233/2001 challenging the said selection and seeking a direction to the respondents to consider his case for the said post. It is submitted that out of this Mr.Murugan, R3 in OA 233/2001 did not join even though he was offered appointment.

3. After considering the merits, the Tribunal has allowed the OA 233/01 holding that the rejection of the candidature of the applicant was illegal as proficiency in Tamil language alone was prescribed in the rules and directed the respondents to

consider the applicant to be appointed to the post of Public Relations Assistant within three months. The R1&2 challenged the above order before the Hon'ble High Court by filing WP 15485/02. The Hon'ble High Court confirmed the finding of the Tribunal and directed the respondents to appoint the applicant to the existing vacant post within two weeks as per order dated 01.11.07. Thereupon R1&2 filed SLP 24472/08 challenging the order of the High Court. But the Hon'ble Apex Court dismissed the SLP on 10.1.17 confirming the order of the Hon'ble High Court of Madras. So, the order passed by this Tribunal in OA 233/01 dt. 10.1.02 has become final. In the meanwhile, respondents had appointed R3,4&5 in this OA in the vacancies in 2007.

4. After the order of the Hon'ble Apex Court, the R1&2 had appointed the applicant as per Annexure A11 order dated 09.2.17. Eventhough he had given representation as Annexure A14 for notional appointment from the date of order of the Tribunal, the R1&2 has not acceded to it. So, he has filed the present OA praying for a direction to give notional appointment on par with the R.Balaji and K.Kulasegaran who were appointed in the same selection and place him above R3 to R5 (who were appointed later in 2007) in seniority.

5. The official respondents appeared and filed reply stating that the applicant is given appointment on 09.2.17 and there is no merit in his contention that he has to be appointed retrospectively from 2002 onwards. According to them, the litigation ended only in 2007. But the SLP was pending and hence it got delayed. The order of the Tribunal was only to consider his case and there was no specific direction. Only

the Hon'ble High Court has ordered for the appointment and that order was on 01.11.07. The applicant is not entitled to get the relief prayed for.

6. We have heard both sides. Admittedly, this Tribunal has allowed the OA 233/01 by order dated 10.1.02. This Tribunal has clearly stated in the said order as follows:-

“7.....A closer scrutiny of the RRs would establish the fact that it is not clearly mentioned as to what is meant by 'proficiency' and how it has to be assessed. In the instant case, we find that the applicant is a native of Pondicherry with Tamil as his mother tongue and therefore proficiency in Tamil in so far as speaking is concerned cannot be questioned. But it is a matter of satisfying the proficiency in writing of the Tamil language. In this connection we would like to observe that the applicant had passed the Tamil Typewriting examination conducted by the Tamil Nadu Govt. way back in 1994. Here we would like to invite a reference to the decision of this Bench of the Tribunal rendered in OA No.217 of 2001, decided on 27.2.01 filed by the very same applicant. Therein he had requested for writing the examination. Therefore the respondents, in all fairness even at that point of time if they had any doubt as to the proficiency of the Tamil language is concerned, could have subjected the applicant for an examination for assessing his proficiency in the Tamil language. Merely because the applicant had studied Hindi as the second language cannot be put against him by stating that he has no proficiency in Tamil, especially when the applicant's mother tongue is Tamil and is also a native of Pondicherry region. In this connection we would like to invite a reference to the observation of their Lordships of the Apex Court in a decision reported in AIR 2001 SC 2616 wherein it is stated as follows:-

“11. Though this Court in the case of Pandurangara (AIR 1963 SC 268(supra) has expressly laid down that validity of such a rule can be sustained on the ground that the object intended to be achieved thereby is that the applicant should have adequate knowledge of local laws and regional language but while doing so it has observed that for achieving this object the proper course could be to prescribe a

suitable examination which a candidate should pass whereby knowledge of local laws can be treated.”

8. Applying the above ratio to the case on hand, we hold that the respondents ought to have conducted a test for ascertaining his 'proficiency in the Tamil language'. But that was not done. Therefore in our opinion the impugned action of the respondents is arbitrary and calls for interference and as the same suffers from the vice of non-application of mind. Therefore placing reliance upon the documents produced by the applicant, we hold that the applicant's case squarely falls within the stipulated conditions in the RRs and the applicant's case deserves to be considered for the post of PRA.

9. In the result, the applicant succeeds and the ends of justice would be met if the following orders are passed:-

The respondents are directed to consider the case of the applicant for selection to the post of PRA and this exercise shall be completed within three months of receipt of a copy of this order by the respondents.

10. With regard to the selection and appointment, if any, made already, we are not inclined to interfere with such selection and appointment of the incumbents to the post of PRA.

11. The OA is allowed to the extent indicated above with no order as to costs.”

7. From the above, it can be seen that the order of this Tribunal was not to merely consider the applicant for selection. The respondents ought to have initiated the procedure on the date of disposal of the OA. But R1&2 filed appeal before the Hon'ble High Court and the High Court directed R1&2 to appoint the applicant in the available vacancy within two weeks. It is the case of the applicant that one of the person selected Sri Murugan has not accepted the appointment and it was lying vacant at the time of filing of OA 233/01. The respondents had also not seriously

disputed the same in the reply. So, there is no merit in the contention of the R1&2 that there was no vacancy when the OA was disposed of on 10.1.02. So, the applicant is entitled to get notional appointment to the vacant post below R.Balaji and K.Kulasegaran who were selected as per notification G.O.Ms.9 dt. 12.10.2000. The Tribunal in its earlier order had clarified that the appointment of those persons should not be affected.

8. The counsel for the applicant has cited the decision of Hon'ble Supreme Court in ***Kshiti Goswami & Others v. Subrata Kundu & Others reported in I(2013) 11 SCC 618*** wherein it is stated as follows:-

“11. It is not in dispute that the Selection Committee had recommended the names of 179 candidates including the respondents. Shri Pijush Roy, learned counsel for the petitioners stated that out of 179 candidates recommended by the Selection Committee, 161 were appointed and the remaining 18 persons were not appointed despite the directions given by the Tribunal and the High Court because the merit list had become defunct. He made strenuous effort to persuade us to take the view that in exercise of contempt jurisdiction the High Court cannot issue direction for implementation of the order, violation of which led to the initiation of the contempt proceedings, but we have not felt persuaded to agree with him. Rather, we are in complete agreement with the High Court that one of the objects of the contempt jurisdiction which is exercised by the High Court under Article 215 of the Constitution read with the Contempt of Courts Act, 1971 is to ensure faithful implementation of the direction given by it. This is precisely what the Division Bench of the High Court has done in this case. Therefore, we do not find any valid ground or jurisdiction to entertain the petitioners' challenge to the impugned order.”

.....

13. The Chief Secretary, Government of West Bengal, the Principal Secretary, Public Works Department (Roads), West Bengal and the Chief Engineer, Public Works Department (Roads), West Bengal are directed to implement order dated 12.9.1997 passed by the High Court in *Principal Secy. Writers' Building v. Santanu Mitra* within a period of

four weeks from today. The appointments to be made hereinafter shall be effective from the date of the order of the Tribunal. It should be specifically mentioned in the appointment letters that the appointees shall get all consequential benefits including seniority except the pay which shall be notionally fixed.”

9. The applicant herein is also entitled to get the benefit of the order passed in OA 233/01 w.e.f 10.1.02. There is no merit in the contention put forward by R1&2. R3 to R5 remained absent and did not file any objection.

10. In the above backdrop, we direct R1&2 to appoint the applicant notionally to the post of PRA w.e.f. 10.1.02, the date of the order of the Tribunal in OA 233/01 and grant him the consequential benefits flowing therefrom as per rules permit (excluding arrears) within a period of three months from the date of receipt of a copy of this order.

11. OA is allowed accordingly. No costs.

(T.Jacob)
Member(A)

(P.Madhavan)
Member(J)

10.12.2019

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Annexures referred to by the applicants in OA 772/2017:

Annexure A1: Recruitment Rules

Annexure A2: Appointment order of K.Kulasegaran dt. 28.3.01.

Annexure A3: Order in OA 233/01 dt. 10.1.02.

Annexure A4: Representation by applicant dt. 02.3.02.

Annexure A5: Order in WP No.15485/02 dt. 01.11.07.

Annexure A6: Representation dt. 03.6.08.

Annexure A7: Appointment order of 3rd respondent dt. 15.7.08.

Annexure A8: Final seniority list of PRA dt. 19.11.10.

Annexure A9: Representation dt. 23.8.16.

Annexure A10: Order in SLP 24472/08 dt. 10.1.17.

Annexure A11: Officer of appointment dt. 09.2.17.

Annexure A12: Applicant joining as PRA dt. 15.2.17.

Annexure A13: Representation dt. 16.2.17.

Annexure A14: Representation dt. 16.3.17.

Annexure A15: Letter from respondent dt. 26.4.17.

Annexure with Reply Statement:

Annexure R1: Offer of appointment order for the post of PRA dt. 09.2.17.

Annexure R2: Appointment order for the post of PRA dt. 20.2.17.

Annexure R3: Copy of RR-G.O.Ms.No.9 dt. 12.10.2000.

Annexure R4: Order copy in OA 233/2001 dt. 10.1.02.

Annexure R5: High Court Order copy in WP 15485/02 dt. 01.11.07.

Annexure R6: Court order copy in SLP(C) No.24472/08 dt. 10.1.17.