

K.K. Abdul Nazar and Others Vs. Union of India, Represented by Its Secretary to Government of India, Ministry of Rural Development, New Delhi and Others

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Court : Central Administrative Tribunal CAT Ernakulam

Decided On : Mar-07-2011

Judge : P.R. Raman, Judicial Member & the Honourable Mr. K. George Joseph, Administrative Member

Appeal No. : [

Case No : Original Application N

Appellant : K.K. Abdul Nazar and Others

Respondent : Union of India, Represented by Its Secretary to Government of India, Ministry of Rural Development,

Advocate for Pet/Ap. : For the Applicant: Mrs. K.P. Geethamani, Advocate. For the Respondents: R2 to R4 - S. Radhakrishnan, Counsel, R1 - A.D. Raveendra Prasad, Counsel, R5 - M.R. Hariraj, Counsel, R8 - Shafik M.A., Counsel

Judgement :

HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

1. As the question of law raised in the above O.As filed by the same applicant are connected and similar, they are clubbed together for hearing and are disposed of by this common order.

2. The applicant is a native of Kalpeni, Minicoy Island, Union Territory of Lakshadweep. He was placed first in the merit list for appointment to the post of Village Extension officer (VEO, for short) in 1987. He was not appointed to the said post for quite a long time. When he came to know that the 7th respondent in O.A. No. 770/2010 was appointed as VEO on ad hoc basis on 09.10.1987, he represented to the 2nd respondent for his appointment. He was replied on 19.12.1988 that there was no vacancy and that 7th respondent was already ousted from service. Respondents 4 to 6 were appointed on ad hoc basis vide Annexure A-3 order dated 13.02.1988. On 13.02.1992, when one Mr. Thanga Koya was appointed as VEO on ad hoc basis, the applicant filed O.A. No.1840/1992 before this Tribunal, praying for the following reliefs:

"(a) To quash Annexure-F as unconstitutional and issued in violation of the applicant's fundamental right under Article 14 and 16 of the Constitution;

(b) To issue a direction to the first respondent to appoint the applicant to the post of Village Extension officer in the vacancy existing in the office of the second respondent on promotion of C.G. Sherif Ahmedkoya to the post of Extension Officer (General) on ad hoc basis against the deputation vacancy;

(c) To direct the first respondent to produce the select list of Village Extension officers prepared by the Interview Board after the written test conducted on 02.08.1987 before this Hon'ble Court."

3. The said O.A. was allowed as under:

"13. In view of what is stated above, we are of the view that the impugned Annexure-F order dated 17.12.91 is liable to be quashed. Accordingly, we quash the order and direct the respondents to consider the appointment of the applicant to the post of Village Extension Officer in the place of the third respondent. This shall be done within a period of two months from the date of receipt of a copy of

this judgement."

4. He was appointed as VEO vide order dated 26.05.1993 and joined duty on 31.05.1993. He made five representations dated 29.12.1993, 26.01.1994, 26.09.2001, 22.03.2002 and 20.10.2004 to give him retrospective seniority in the post of VEO above the respondents 5 to 7 who were ranked below him in the select list, but to no avail. In the provisional seniority list of VEO published on 17.08.2007, he was listed below 4 others who were ranked below him in the select list of 1987. The provisional seniority list (Annexure A-10) was finalised as such inspite of the objections raised by the applicant. His representations against the final seniority list were not replied to. On learning that there are vacancies in the cadre of Extension Officer, which is the promotion post for VEO and apprehending that he would be superseded, the applicant has filed this O.A. (OA No. 770/2010) for the following reliefs:

(i) To set aside Annexure A-6 seniority list since the same is issued in flagrant violation of principles of natural justice;

(ii) To declare Annexure A-6 seniority list as invalid to the extent of ranking the applicant below respondents 4 to 7 in that list;

(iii) To direct respondents 2 and 3 to assign seniority to the applicant above respondents 4 to 7 in the cadre of Village Extension Officer in the light of Annexure A-2 judgement;

(iv) To direct the respondents 2 and 3 not to follow Annexure A6 seniority list for effecting promotion to posts above that of VEO's.

5. The applicant contended that he had not been served with the seniority list dated 26.06.2009 at Annexure A-6. The said list is issued in flagrant violation of the principles of natural justice without giving him an opportunity of being heard. The respondents 4 to 7 approached this Tribunal seeking regularisation of their appointment to the post of VEO from the date of their ad hoc appoint to that post without impleading the applicant who is affected by such regularisation with retrospective effect. In para 13 of Annexure A-7 order in OA No. 294/2008 (filed in

OA No. 770/2010), this Tribunal had directed the respondents 2 and 3 to reschedule the seniority of Village Extension Officer on the basis of date of fulfilling the qualifications. The applicant who had successfully completed the VEO training course in 1987 has got every right to be ranked above the respondents 4 to 7 who had completed the VEO training course in 2000 and thereafter. A regular appointee to a sanctioned post in a department can never be ranked below of ad hoc appointee to that post in the matter of seniority and promotion to still higher post such ad hoc appointee can never be allowed to steel a march over such regular appointee. A reading of the orders of this Tribunal (Annexures A7 to A-9), show that the inter se seniority dispute between the respondents 4 to 7, who were ad hoc appointees, with that of the applicant, who was a regular appointee, in the VEO post was never an issue. The only issue considered and decided in all the above cases is whether the service of the respondents 4 to 7, are liable to be terminated on the ground of their not successfully completing the VEO training course. This Tribunal directed the Administration to confer the benefit given to Mr. Yousuff and Mr. Muhammed Manikfan whose services were regularised even before they were sent for training to the applicants in those cases like the respondents 4 to 7.

6. The respondents contested the O.A. The official respondents in their reply statement submitted that the 2nd respondent had considered 4 candidates who have completed one year training of VEO whereas the applicant had completed only 5 months of training. The 2nd respondent is not having the records to establish as to why the 7th respondent was appointed as VEO at Kalpeni in the year 1987 without having completed the training course. The respondents 5 to 7 (i.e. Respondents No. 4 to 6 in O.A. No. 770/2010) were regularised with effect from their ad hoc appointments as per orders of this Tribunal in various O.As. That is why no reply was given to the representations made by the applicant for granting seniority retrospectively. The applicant was appointed to the post of VEO in 1993 only on the basis of the order of this Tribunal whereas the respondents 5 to 7 were appointed to the post of VEO 4 years earlier than the applicant. As such he cannot be treated as senior in the grade of VEO overlooking the respondents 5 to 7. The promotion to the post of Extension officer (G) is to be made based on the seniority in the grade of VEO. The party respondents got their service as VEO

regularised with effect from the date of their ad hoc appointments on the basis of the orders of this Tribunal and not from the date of successful completion of training course which was the stand of the respondent No. 2. Accordingly, the 2nd respondent modified the existing final seniority list in compliance of the orders of this Tribunal. In the light of the above, the O.A is liable to be dismissed.

7. The reply statement filed by the respondents in O.A. No. 431/2010 is adopted as reply statement in O.A. No. 770/2010 also.

8. We have heard Mrs. K.P. Geethamani, counsel for the applicant, Mr. S. Radhakrishnan, counsel for R2-4 in OA No. 431/2010 and for R2-3 in OA No. 770/2010, Mr. M.R. Hariraj, counsel for R-5 and Mr. Shafik M.A., counsel for R-8 in O.A No. 431/2010 and perused the records.

9. The applicant has filed M.A. No. 426/2010 for condonation of delay in filing O.A. No. 431/2010. In this M.A, the applicant stated that he was waiting for a reply from the respondents 2 and 3 to his representations dated 04.01.2008 and 12.07.2009 against the final seniority list published on 20.10.2007. He also submitted that he became aggrieved by the ranking of respondents 5 to 7 above him, only when steps were taken by the respondents 2 to 4 to supersede the applicant for promotion to the next higher post of Extension Officer (G) in 2010. Further, the delay in filing the O.A is unspecified for which the cause of action arose in 1987 or 1993. We do not find the above submission good enough to condone the delay in filing O.A. No. 431/2010. In our view, the said O.A is hopelessly barred by limitation. Hence, the M.A. No. 426/2010 praying for condonation of delay in filing O.A. No. 431/2010 is dismissed.

10. The applicant has filed M.A. No. 692/2010 for condonation of delay of 72 days in filing O.A. No. 770/2010. The applicant submits that he came to know about the Annexure A-6 seniority list only from the reply affidavit filed by the 4th respondent herein in O.A. No. 431/2010. A copy of that seniority list was never served on the applicant. For the above reason and the other reasons stated therein, the M.A. No. 692/2010 is allowed and O.A. No. 770/10 is taken up for consideration.

11. From the facts of the case, the following position emerges. The applicant had represented for his appointment as VEO, when he learned about the appointment of the 7th respondent as VEO on ad hoc basis in 1987. His representation was rejected vide Annexure A-2 letter dated 19.12.1988. This rejection was not challenged by the applicant. Vide order dated 13.02.1988 at Annexure A-3, respondents 4 to 6 were appointed as VEO on ad hoc basis and the 7th respondent was transferred from Kalpeni to andrott. The applicant never challenged the said order. On 13.02.1992 one Mr. Thanga Koya was appointed as VEO on ad hoc basis. In O.A. No. 1840/92, the applicant challenged the appointment order of Mr. Thanga Koya. Respondents 4 to 7 were not made parties to this O.A. The direction of this Tribunal in the aforesaid O.A. in the order dated 26.03.1993 was to consider the applicant to the post of VEO in the place of Mr. Thanga Koya who was appointed in 1992 only. This Tribunal did not grant any retrospective seniority to the applicant. In fact, there was no prayer for retrospective seniority in the said O.A. The applicant's claim for seniority now is hit by constructive res judicata because he had not raised a prayer that he must be appointed with effect from 1987 in O.A. No. 1840/1992 leading to Annexure A-4 order dated 26.03.1993.

12. The applicant represented against the provisional seniority list dated 17.08.2007 and the final seniority list dated 20.10.2007. It was not fair on the part of the respondents not to have given him a reply. The applicant chose not to challenge the seniority list dated 20.10.2007.

13. As to the contention of the applicant, we find that the principles of natural justice were violated in issuing the Annexure A-6 seniority list dated 26.06.2009, without affording him an opportunity of being heard. This violation is deprecated. We also find that giving the applicant an opportunity of being heard, would not have resulted in any material change in favour of the applicant, as the impugned seniority list was being published in compliance with the orders of this Tribunal in O.A. Nos. 384/2008, 710/2007 and so on. The only difference between the seniority lists dated 20.10.2007 and 26.10.2009 is that the 7th respondent is placed above the applicant and the respondents 4 to 6. The applicant had already acquiesced in, by not challenging the seniority list dated 20.10.2007 wherein the

respondents 4 to 6 were placed above him. Thus in effect, the applicant's challenge in the instant O.A. is limited to the seniority of the 7th respondent only. The 7th respondent had joined service as VEO on ad hoc basis on 15.10.1987. He was given the benefit of the order of this Tribunal to regularise the ad hoc appointment with effect from the date of joining duty as VEO as per office order dated 16.02.2009, following the principle of extending judicial decision in matters of general nature to all similarly placed employees. The ranking of the 4th, 5th and the 6th respondents in the seniority list of 26.06.2009 and 27.10.2007 were based on the direction given by this Tribunal in O.A. No. 384/2008, O.A. No. 710/2007 and O.A. No. 05/2001 respectively. The applicant has not challenged the order dated 16.02.2009 by which the respondent No. 7 became his senior. The applicant could have filed Review Applications, at the appropriate time, if the orders in O.A. Nos. 384/2008, 710/2007 and 05/2001 prejudiced his rights. This Tribunal had directed the respondents in O.A. No. 294/2008 (Annexure A-7) on 17.04.2008 to reschedule the seniority of the VEO on the basis of date of fulfilling the qualification. The applicant had fulfilled the qualification in February, 1987 much earlier than the respondents 4 to 7 but unfortunately for him, he joined service on 31.05.1993, years later than them. Therefore, the direction of this Tribunal in O.A. No. 294/2008 is of no benefit to him.

14. The applicant has rightly stated that a reading of the orders rendered by this Tribunal in O.A. Nos. 384/2008, 710/2007, 05/2001 and 294/2008 would show that in all these cases inter se seniority dispute between the applicant and the respondents 4 to 7 was never an issue. For the first time, the applicant has challenged the seniority of the respondents 4 to 7 by filing the instant O.A. His claim for seniority based on the first rank in the select list accrued to him in February, 1987. He initiated legal proceedings to defend his claim for seniority over the respondents 4 to 7 in the year 2010. Between 1987 and 2010, the respondents had secured their seniority over the applicant on the basis of various orders of this Tribunal. Besides, the 7th respondent whose seniority over the applicant is challenged in this O.A., has already been promoted to the next higher post of Extension Officer (G). The applicant slept over his claim for seniority far too long. He woke up only when the respondents 4 to 6 were to be promoted. A claim that is not enforced for years together, is as good as given up. There is no legally

tenable ground for giving effect to the claim of the applicant for seniority over the party respondents that arose decades ago.

15. In the result, we are unable to grant any of the reliefs sought by the applicant. The O.A. No. 431/2010 is dismissed as barred by limitation and O.A. No. 770/2010 is dismissed as lacking in merit. No order as to costs.

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