

(2010) 07 MAD CK 0400

In the Madras High Court

Case No : Writ Petition No. 1111 of 2007 (T) and O.A. No. 1955 of 2000

A. Abdul Kalam Azad

APPELLANT

Vs

The Director of Rural Development, The District Collector,
Trichy and The District Collector

RESPONDENT

Date of Decision : 12-07-2010

Acts Referred:

Administrative Tribunals Act, 1985 — Section 21

Citation : (2010) 07 MAD CK 0400

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : A. Amal Raj, for the Appellant; V. Manoharan, G.A., for the Respondent

Judgement

T. Raja, J.—The prayer made by the petitioner in the present writ petition is to direct the respondents to refix the petitioner's seniority with effect from 08.12.1972 on par with other incumbents (juniors) and consequently include the petitioner's name in the panel of Block Development Officers prepared by the 1st respondent made in his proceedings Rc. No. 592/99/A2, dated 09.07.1999 and promote him as Assistant Director placing him in the regular order of seniority, pay scale and with all other attendant benefits.

2. The petitioner joined the service as Junior Assistant on 09.06.1967 by way of direct recruitment at K. Paramathi Panchayat Union. After 10 years, he was promoted as Assistant by order dated 04.05.1977. Subsequently, his next promotion to the post of Extension Officer was also effected by the 2nd respondent, in his proceedings dated 03.02.1989 and he was posted at K. Paramathi, Trichy District. After the bifurcation of Trichy District, the 3rd respondent/District Collector, Karur, promoted the petitioner as Deputy Block Development Officer on 15.07.1996 by posting him at Karur Collectorate and subsequently, he was again promoted as Block Development Officer on 20.10.97.

3. Learned Counsel appearing for the petitioner complained that the petitioner's

seniority was handled in an irregular manner right from the cadre of Assistant promoted from 04.05.77. It was further contended that juniors, namely, R. Radhakrishnan and M.A. Benjamin are now holding the post of D.D.O and they have been promoted to the post of DDO in the year 1997. But, in the present case, if the petitioner's name was fixed as per the order of the Tribunal, he would have reached the post of DDO during 1997 prior to his juniors. But, unfortunately, at every stage, the petitioner's chance was arbitrarily and illegally denied and his name was not included in the list. Therefore, the petitioner gave a detailed representation on 29.11.1995 to include his name in the appropriate place as per G.O.Ms. No. 585, dated 12.04.84 and another G.O.Ms. No. 169, dated 16.09.94. But, unfortunately, the 2nd respondent, rejected the petitioner's representation, in his proceedings passed in Na.Ka.Tha.3/9841/99, dated 23.07.1999 on the ground that the appeal was not filed within a period of three years on receipt of seniority list issued pursuant to G.O.Ms. No. 1140, dated 02.12.83.

In his further submission, it was contended that the G.O.Ms. No. 1140, dated 02.12.83 is common to all Government Departments and the petitioner also claimed the benefit as per G.O.Ms. No. 169/R.D/E.VI/dated 16.09.94, which was communicated to the department only on 26.06.95 and immediately thereafter, on 29.11.1995, the above said appeal was filed. Therefore, the reasoning given by the 2nd respondent that the appeal was not filed within a period of three years is not correct. Further, the reasoning given by the respondents by erroneously applying G.O.Ms. No. 1140, dated 02.12.1983 for rejection is not only unsustainable but also unwarranted, which also shows non application of mind. On that basis, prayed for a direction to refix the petitioner's seniority with effect from 08.12.1972 on par with the other incumbents.

4. Per contra, learned Counsel appearing for the respondents submits that the very claim made by the petitioner to issue a direction to refix the petitioner's seniority with effect from 08.12.1972 by filing Original Application in the year 2000, is not only unsustainable, but also barred by limitation. Secondly, the petitioner's representation was admittedly rejected by order dated 23.07.1999 by the 2nd respondent in his proceedings No.Na.Ka.Tha.3/9841/99 has not been challenged, though he had a grievance for not fixing his seniority. Thirdly, had the petitioner got any grievance for not getting his seniority fixed from 08.12.72 on par with other incumbents, the petitioner should have challenged the matter in the year 1972 or 1973 itself. Without doing so, leaving the matter at rest for about 25 years and trying to reap after a quarter century to refix his seniority in the cadre of Assistant from 08.12.1972 is hopelessly barred by time and legally not sustainable in law. On that basis, prayed for dismissal of the present writ petition.

5. Heard the learned Counsel appearing on either side and perused the materials available on record.

6. The petitioner, after his appointment as Junior Assistant in K. Paramathi

Panchayat Union on 09.06.1967 by way of direct recruitment, was again promoted as Assistant temporarily on 04.05.1977 in proceedings passed by the Trichy Collector in proceedings No. Rc./R4/24313/77, dated 02.05.77 and he was again posted in K. Paramathi Panchayat Union. Thereafter, he passed the department test on various dates ending on 10.11.1971. Therefore, he was fit for further promotion only on 10.11.1971, whereas, one R. Radhakrishnan appointed through TNPSC to the Panchayat Development Unit in Trichy District as Junior Assistant in Sub-Collector's Office, Karur, joined duty on 01.07.68 and thereafter, he was posted as Assistant on 08.09.69. Subsequently, the Government of Tamil Nadu issued G.O.Ms. No. 275, dated 09.04.1985 with an instruction to fix the seniority of Assistants/Accountants/Managers. As per para 2 of the said GO, the persons who were already covered by Rule 35(r), their seniority inter-se would be fixed and served there for few months and then he revised his option to come back to Trichy District and served there for few months. Once again, he gave another option to go back to Karur District and served there. Therefore, he being a man of ambivalence and always wandering for promotion, he could not get his seniority fixed at one place permanently.

In any event, the petitioner, while serving in Karur District, he got his promotion to the post of Deputy Block Development Officer and again got another promotion as Block Development Officer in between the gap of 2 years of service. Further, a separate seniority among the Head Clerks (Education), considering the length of services rendered in panchayat union, in the cadre as on 01.04.74 has been fixed on the basis of G.O.Ms. No. 422, dated 09.03.1977 and their seniority have been arranged in the continued seniority list of Assistants as on 01.04.74. However, till the petitioner made his belated representation dated 23.07.1999, several promotions have been given to hundreds of incumbents. Therefore, as rightly contended by the learned Counsel appearing for the respondents, the petitioner having waited from 1974 till 29.11.95, his representation is hopelessly barred by limitation and is not maintainable, as Section 21 of the Administrative Tribunals Act, 1985, provides a period of limitation for one year for approaching the Tribunal.

Further, as per Rule 35(r), persons, who were promoted to the posts mentioned in Rule 35(r), after 31st December, 1969, would be junior to the persons, who were already covered by Rule 35(r) and their seniority inter-se would be determined with reference to the respective dates of their promotion. On that basis, many categories of Assistants were put together while preparing the seniority list, which is as follows;

- i) Those who have got appointed prior to 16.10.64 as Assistants - 34 Nos.
- ii) Those who have got appointed as Assistant after 16.10.76 and passed all departmental test before 31.12.69 - 38 Nos.
- iii) Those who have got appointed as Assistant after 31.12.69 - 9 Nos.
- iv) 1973 TNPSC candidates - 13 Nos.

v) 01.04.74 Head Clerks - 28 Nos.

vi) Assistants after 01.04.74 - 76 Nos.

Since the petitioner was in the last category as mentioned above, he served as Assistant only after 01.04.74, therefore, he has no right in claiming the seniority against the above persons. Therefore, his appeal was rightly rejected on 09.11.95. Admittedly, the rejection order was not even challenged. Once the petitioner has accepted the rejection order, he cannot ask for any further direction to refix his seniority with effect from 1972 by moving an application in the year 1995. This Court, finding no merit in the present writ petition, dismisses the same. No Costs.