
(2011) 08 KL CK 0096
In the High Court Of Kerala
Case No : O.P. (CAT) No. 648 of 2010

Union of India and Others

APPELLANT

Vs

V.K. Raveendran Achary

RESPONDENT

Date of Decision : 25-08-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 227

Citation : (2011) 4 KLJ 503 : (2011) 4 KLT 520

Hon'ble Judges : P.S. Gopinathan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : N.N. Sugunapalan and S. Sujin, for the Appellant; S. Radhakrishnan, for the Respondent

Judgement

P.S. Gopinathan, J.—Petitioners are the respondents in O.A. 25 of 2008 on the file of the Central Administrative Tribunal, Ernakulam Bench. Respondents herein are the applicants before the Tribunal. Respondents entered the service of the petitioners as Engineering Assistants. In between 24.9.1988 and 30.9.1990 they were promoted as Assistant Engineers. As per Schedule II of the Recruitment Rules, they are entitled to be promoted in the junior time scale on completing three years period as against the 50% quota for promotees. Because of the administrative reasons, the DPC was not convened for a pretty long period and ultimately, on 29.4.1999 respondents were promoted on ad hoc basis and they were continuing in service. While so, on 24.4.2007 they were regularized. They represented before the petitioners to regularize their service with effect from the date of ad hoc promotion. But the request was turned down. As against the order declining to give regular promotion with effect from the date of ad hoc promotion, they moved the Tribunal below with the application. The Tribunal by the impugned order, arrived at a finding that the respondents were holding the post for a pretty long time and there were vacancies to accommodate them and having taken into account that they are holding the post such a long period of about nine years, in the light of the rulings in The Direct Recruit Class-II Engineering Officers" Association and others Vs. State of Maharashtra and

others, and in Rudra Kumar Sain and Others Vs. Union of India and Others, arrived at a finding that the respondents are entitled to get regularized with effect from the date of ad hoc promotion. Consequently, the application was allowed. Annexure A-5 order impugned before the Tribunal was set aside. The petitioners were directed to issue appropriate orders promoting respondents from 29.4.1999 and to grant all other consequential benefits. Assailing the said order, this writ petition was filed under Article 227 of the Constitution of India. We have heard Sri. N.N. Sugunapalan, Senior counsel appearing for the petitioners and Sri. S. Radhakrishnan, learned counsel appearing for the respondents. Perused the impugned order and the documents. The fact that the respondents were promoted, though on an ad hoc basis, after due selection process is not at all disputed. It is also not disputed that they were promoted to existing vacancies. The delay in promotion occurred only because of the delay in convening the DPC. That is nothing but administrative reasons. In the above circumstances, we find that had the DPC been convened and the promotion of the respondents were considered in time, the respondents would have been regularly promoted on 29.4.1999. Such being the factual background, we find that the Tribunal was justified in holding that the respondents are entitled to be regularized with effect from the date of ad hoc promotion.

2. The learned senior counsel appearing for the petitioners submitted that along with the respondents, certain other persons were also promoted and they had not come up with claim for regularizing their service with effect from the date of ad hoc promotion and in the event the promotion of the respondents alone is regularized with effect from the date of adhoc promotion, that may crumble the settled seniority. We find that no such plea was advanced before the Tribunal. In this writ petition also, no such plea is taken up. In the above circumstances, we find that it is not at all a good reason to interfere with the order impugned. In the event, any other person promoted along with the respondents is entitled to be regularized so as to have an equitable granting of benefit, it is left open to the petitioners to grant it. It is not disputed that delay in regularization would affect the respondents in respect of grade, promotion etc. It is not appropriate to withhold service benefits like grade, promotion etc. for administrative delay. It is also pertinent to note that those who were recruited directly simultaneously or subsequent to the respondents were given due benefits in time. At the same time, such benefits were denied to the respondent. Suppose, the regularization is declined with effect from the date of adhoc promotion, it would in effect, be denial of equal treatment with those who were recruited directly. To put it other way, the respondents, for no fault of theirs but for administrative reasons, would be disadvantageously treated when compared to their direct recruited counterparts. It would amount to denial of right to equality guaranteed by Article 14 of the Constitution of India. We cannot agree for such a recourse. Direct recruits and promotees are entitled to equal treatment. The orders of the Tribunal impugned is one upholding equal treatment of the respondents with the direct recruits.

We find no reason to interfere with the order impugned. The petition is devoid of merits.

In the result, the writ petition is dismissed.