



GOVERNMENT OF KERALA

Abstract

Labour and Skills Department – National Employment Service (Keralam) Department – Final Order of Hon'ble Kerala Administrative Tribunal in OA No. 472/17 filed by Sri.Sreekumar.T.K, Junior Employment Officer & another- Complied – Orders issued.

Labour & Skills (G) Department

G.O.(Rt)No.33/2020/LBRDated,Thiruvananthapuram 07/01/2020

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- Read 1 Order dated 01.02.2019 of Hon'ble Kerala Administrative Tribunal in OA No. 472/2017 filed by Sri.Sreekumar.T.K. & another
 - 2 Letter no.DE/3431/2017-J4 dated 25.7.2019 of the Director of Employment.
 - 3 Proceedings No. J4/12861/14/DE dated 08/07/2016.
 - 4 Representation dated 30.08.2019 submitted by Sri.T.K.Sreekumar and sri. Joylal.R
 - 5 Representations submitted by the affected Officers in the Annexure – A2 (a) Seniority List.

ORDER

Sri.Sreekumar.T.K, Junior Employment Officer in National Employment Services(Keralam) Department filed O.A No. 472/2017 before the Hon'ble Kerala Administrative Tribunal for a direction to the 1 st respondent (Secretary to Government, Labour Department) for a revision of Annexure – A2 (a) Seniority List. The Hon'ble Kerala Administrative Tribunal as per order read as paper first above set aside Annexure A3 and directed the first respondent to take a fresh decision on after hearing the applicants and persons included in Annexure – A2 (a) Seniority List from Serial No. 604 to 755 who might have objections in the matter and to pass appropriate orders within three months from the date of receipt of a certified copy of the order. A copy of the order received in Government on 14/05/2019 and as such the time limit for complying the order expired on 13/08/2019 and Government filed Extention Petition which was later granted.

In compliance with the direction of Hon'ble Kerala Administrative Tribunal in Order dated 01.02.2019, Under Secretary, Labour and skills Department was authorised to hear the Applicants. Accordingly, the applicants and officers included in the Annexure A2 (a) Seniority List (Sl. No. 604-755) who had objections in the matter including retired hands, were heard in the presence of representatives from Employment Directorate.

The petitioners are Junior Employment Officers in the National Employment Service (Kerala). They entered service in the cadre of Lower Division Clerks. The first applicant joined duty as LDC on 24-7-1997 as advised by Kerala Public Service Commission. He cleared the departmental test on 1-6-1999 and thus became qualified for promotion to the cadre of UDC, designated as Senior Clerk from 21-8-1999. The 2nd applicant joined duty as LDC on 16-10-1998, cleared the departmental test on 1-6-1999 and became an approved probationer in cadre of LDC on 16-10-2000 and became qualified for promotion to the cadre of UDC. 1:1 is the ratio fixed between LD and UD Clerks as per Pay Revision Order dated 25-11-1998. According to them, they have not been assigned seniority in the cadre of Senior Clerk with reference to the date of occurrence of vacancies and the date of acquisition of qualification for promotion. But their seniors in the cadre of LDC who had been test qualified much later, were assigned seniority above the applicants. Even though objections were filed against the seniority list, those were rejected by Government vide letter dated 12-8-2016. It was also pointed out that in the case of Shri.R.Bose, the Government issued Annexure-A4 letter, pursuant to the directions issued by the Hon'ble Kerala Administrative Tribunal.

The applicants submitted that on a perusal of the seniority list, it can be seen that the 1st applicant qualified for promotion on 21/08/1999 and that the 2nd applicant qualified on 16/10/2000. However Sl. No. 604 onwards who were test qualified on or after 22/07/2000 were placed above the 1st applicant and Sl. No. 621 and others who were test qualified subsequent to the 2nd applicant were placed above him. The applicants submitted that illegality in the matter is glaring and self explanatory on a bare perusal of the seniority list rather than going into the depth of the matter and it is needless to say unless and until the seniors are test qualified as on the dates of occurrence of vacancies, they cannot be promoted to the higher cadre reckoning their seniority and they cannot be assigned seniority over and above the juniors who were test qualified much before and available for promotion with reference to the dates of occurrence of vacancies.

The Director of Employment stated that even though the 1st applicant was qualified for promotion to the cadre of Senior Clerk, with effect from 21-8-1999 and the 2nd applicant as on 16-10-2000, there were no vacancies which remained unfilled during that period for want of sufficient number of qualified officials in the seniority list. All the officials who got promotion much prior to the applicants were given promotion in the vacancies which arose after they acquired the requisite qualification such as declaration of probation and acquisition of the obligatory department test qualification. Therefore, the contention of the applicants that unqualified seniors were placed before them in the seniority list is baseless. They also stated that the senior officials were given promotion with reference to the conditions at the time of

date of occurrence of vacancy and no vacancies had remained unfilled during that period due to the non-availability of qualified officials. In the final seniority list of Senior Clerks dated 01/01/2014, the 1 st applicant's name is included as Sl. No. 716 and the 2 nd applicant's name is included as Sl. No. 756. However the applicants have not been assigned seniority in the cadre of Senior Clerks with reference to the date of occurrence of vacancies and the date of acquisition of qualification for promotion but seniors of the applicants in the cadre of LDC who had qualified the departmental test much later, were assigned seniority above the applicants. The objections filed by the applicants were rejected by Government letter dated 12/08/2016 and feeling aggrieved by and challenging the same, the applicants approached the Hon'ble KAT by filing the OA, which was allowed setting aside the rejection order.

As per the pay revision order dated 25/11/1998, a ratio of 1:1 was fixed between LD and UD Clerks and thereafter the applicants became entitled to get promotion. The benefit of the same had been extended to the eligible persons and hence the averment of the petitioners is baseless. It was reported that Ext P3 order rejecting the claim of Sri. Joylal was issued based on the facts reported by the Employment Director. Also reported that in compliance of judgment in OA filed by sri. Bose and sri. Harikumar, only regulating their seniority was done and the seniority of certain juniors who were placed higher without merit, consequent to this, is yet to be corrected. Employment Director has also reported that many such complaints regarding the seniority list are received and more litigations are being filed and the only solution to resolve the issues is nothing but a revision of the seniority list and recommended for a revision of Annexure A2 (a) Seniority List

Most of the affected persons including retired hands argued that many of them are senior to the petitioners and are eligible for promotion well before on a date claimed by the petitioners and they shall be placed senior to the petitioners if seniority of applicants is reassigned with reference to the dates of occurrence of vacancies. They alleged that reassigning seniority of the petitioners alone shall affect the seniors who were eligible for promotion at the time of occurrence of vacancy.

The applicants and most of the affected parties who attended the hearing requested to issue necessary orders to recast the seniority list by re-assigning their seniority with reference to the date of occurrence of vacancies, which existed at the time when they became test qualified and arose thereafter.

The Hon'ble KAT in its order dated 01.02.2019 in O.A.No.472 of 2017 has set aside Annexure A3 and directed the 1st respondent to take a fresh decision after hearing the applicants and persons included in Annexure A2(a) seniority list from Sl No.604 to 755 who may have objections in the matter and to pass appropriate orders. The Employment Director has not provided the details regarding exact date of occurrence of vacancies, the test qualifications (Date of Examination, publication of result etc) of the affected parties pointed out in the order of the Hon'ble KAT and their opponents, who allegedly, were included as senior to them in the seniority list.

Government observed that reassigning of seniority to the petitioners in the OA alone shall lead to the inflow of more such complaints and shall attract

more litigations. On detailed examination Government arrived at the conclusion that revising seniority list with reference to the date of occurrence of vacancies, exact date of acquiring qualification etc is the only way to sort out all complaints and discrepancies crept in, leaving the right of the petitioners to approach Government if their grievances are not resolved even after revising the Seniority list.

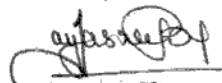
In the above circumstances the Director of Employment is hereby directed to revise the Annexure A2(a) Seniority List by re-assigning the seniority considering all the discrepancies crept in as alleged by the petitioners in the OA including the date of occurrence of vacancies, the date of qualifications acquired (Date of Examination, publication of result etc) of the Officers included in the aforesaid Seniority List strictly in accordance with the relevant rules in KS&SSRs. The petitioners shall have the right to approach Govt if their grievances persist even after recasting the seniority list accordingly. The Director of Employment is also hereby permitted to constitute a Seniority Cell at department level for the purpose of revision of the challenged Seniority list, if necessary. The Director of Employment shall submit final report in this regard to Government within three months from the date of this order.

Accordingly, the direction contained in the order dated 01.02.2019 of the Hon. Administrative Tribunal in O.A No. 472/2017 is complied with.

(By order of the Governor)
LEEMA MANUEL
ADDITIONAL SECRETARY

The Advocate General, Kerala, Thiruvananthapuram (with C/L)
 The Director of Employment, Thiruvananthapuram.
 ✓ All the Applicants and affected parties in the Annexure A2 (a) Seniority
 List(Through the Director of Employment)
 The Principal Accountant General (Audit), Kerala, Thiruvananthapuram.
 The Accountant General (A&E), Kerala, Thiruvananthapuram
 Stock File/Office Copy.

Forwarded /By order


 Section Officer